



703 Market St., Suite 2000
San Francisco, CA 94103
Telephone: 415-546-7000
Fax: 415-546-7007
nhlp@nhlp.org
www.nhlp.org

List of Supporting Documents for the Webinar “Housing Rights of Survivors with Disabilities (November 10, 2015)

A. National Coalition Against Domestic Violence (NCACV) Domestic Violence and Disabilities, Fact Sheet

B. NHLP Manual

1. NHLP, Maintaining Safe and Stable Housing for Domestic Violence Survivors, A Manual for Attorneys and Advocates, Chapter 5, Housing Rights of Domestic Violence Survivors with Disabilities

C. HUD and DOJ documents

1. Joint Statement of The Department Of Housing And Urban Development and the Department of Justice, *Reasonable Accommodations Under The Fair Housing Act* (May 17, 2004)
2. Non-Discrimination and Accessibility for Persons with Disabilities, PIH 2010-26 (July 26, 2010), *see also* Guidance on non-discrimination and equal opportunity requirements for PHAs, PIH 2011-31 (June 13, 2011).
3. Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO-2013-01 (April 25, 2013).

D. Documents: Transitional Housing

1. Model Protocol on Service Animals in Domestic Violence Shelters, Washington State Coalition Against Domestic Violence (February 2009)
2. Questions & Answers: Domestic Violence Shelters and Civil Rights Statutes, National Law Center on Homelessness & Poverty (no date)

E. Sample letters seeking reasonable accommodation

1. Letter (Feb. 27, 2008) Re: Request for Reinstatement of Section 8 Voucher under VAWA and For Improper Notice and Inadequate Due Process; Alternative Request for New Informal Hearing as Reasonable Accommodation. Request that MHA Resume Section HAP’s Pending Requests
2. Letter (Nov. 7, 2007) Request to reinstate voucher terminated for failure to recertify

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DOMESTIC VIOLENCE AND DISABILITIES

WHY IT MATTERS

Women with developmental disabilities have among the highest rates of physical, sexual and emotional violence perpetrated by intimate partners and family members.¹ Disabled individuals are at greater risk of severe physical and sexual violence than non-disabled persons, and many disabled victims of violence experience multiple assaults.^{2,3} Domestic abuse victims with disabilities are often more dependent on their caretakers than victims without disabilities, and face many barriers to reporting abuse and seeking services.⁴ Victims who do report abuse or seek services often do not find adequate help, since many programs that serve domestic violence victims are not equipped or trained to offer proper care to disabled victims.⁴

DID YOU KNOW?

- Women with disabilities had a 40% greater risk of violence than women without disabilities.⁵
- Women with disabilities are at particular risk for severe violence.⁵
- The most common perpetrators of violence against women with disabilities are their male partners.⁵
- Studies estimate that 80% of disabled women have been sexually assaulted.⁶
- Women with disabilities are three times more likely to be sexually assaulted than women without disabilities.⁷
- One study showed that 47% of sexually abused women with disabilities reported assaults on more than ten occasions.⁸
- Approximately 48% of substantiated cases of abuse involve elder adults who are not physically able to care for themselves.⁹
- Disabled children are more than twice as likely as children without disabilities to be physically abused, and almost twice as likely to be sexually abused.¹⁰
- Virtually all women with disabilities who were sexually assaulted also reported social, emotional, and behavioral harm.¹¹

REPORTING ABUSE

- Studies estimate that between 70% and 85% of cases of abuse against disabled adults go unreported.¹²
- One study found that only 5% of reported crimes against people with disabilities were prosecuted, compared to 70% for serious crimes committed against people with no disabilities.¹²
- Disabled victims are more vulnerable to threats by their abusers if they report the abuse.¹³

BARRIERS TO SEEKING SERVICES

- People with disabilities often lack accessible services due to limited resources, lack of transportation (especially in rural communities), or structural limitations of service facilities.¹⁴
- Some disabled victims lack the skills or abilities necessary to act independently to seek help.¹³
- Many disabled victims lack knowledge about services. Public information and awareness education are generally not distributed in Braille, large print, or audio tape and do not define domestic violence in ways that people with disabilities can relate to.¹³
- Disabled victims of violence are heavily dependent on their abusive primary caretakers and run the risk of losing their caretaker if they report abuse.¹³
- Victims may experience an increased risk of being institutionalized or losing their basic decision-making rights if they are viewed as unable to take care of themselves without the help of their abuser.¹³
- Disabled victims may be at greater risk for losing child custody if they are viewed as being unable to care for children independently from an abusive primary caretaker.¹³

DISABILITY TRAINING

- Only 35% of shelters surveyed have disability awareness training for their staff and only 16% have a dedicated staff person to deliver services to women with disabilities.¹⁵
- Service providers often lack the training and sensitivity necessary to serve victims with disabilities.¹⁴
- Some people see people with disabilities as less credible than nondisabled victims.²⁶
- Some people think abusive treatment is necessary to manage people with disabilities or blame disabled victims for the abuse they suffer, and because they hold these beliefs they consider domestic violence against people with disabilities to be justified.¹³

PROTECTIONS FOR DISABLED VICTIMS OF VIOLENCE¹⁶

The Violence Against Women Act and Victims with Disabilities

The Violence Against Women Act (VAWA) provides support to victims with disabilities. Although the original version of VAWA did not provide funding for victims with disabilities, the 2000 reauthorization authorized a grant program to provide education and technical assistance to service providers to better meet the needs of disabled victims of violence.

The 2005 reauthorization of VAWA further expanded coverage for disabled victims. The 2005 reauthorization:

- Expanded education, training, and services grant programs.
- Included added construction and personnel costs for shelters that serve disabled victims of domestic violence to the purpose areas that can receive VAWA funding.
- Focused on the development of collaborative relationships between victim service organizations and organizations that serve individuals with disabilities.
- Provided funding for the development of model programs that implement advocacy and intervention services within organizations servicing disabled individuals.

Protection and Services for Disabled Victims:

Although the Department of Justice authorized \$10 million per year for FY 2007 through FY 2011, only \$7.1 million was allocated for protections and services for disabled victims in FY 2007. The Campaign for Funding to End Domestic and Sexual Violence requests \$10 million for FY 2008 and subsequent years to be allocated to serve victims with disabilities.

FOR MORE INFORMATION

For more information or to get help, please contact:
The National Domestic Violence Hotline at 1-800-799-SAFE
The National Sexual Assault Hotline at 1-800-656-HOPE

SOURCES

¹ Abramson, W., et al. (Ed). "Violence Against Women with Developmental or Other Disabilities." *Impact*. 13(3).

² Brownridge, Douglas. (2006) "Partner Violence Against Women With Disabilities: Prevalance, Risk, and Explanations." *Violence Against Women*. (12)9.

³ Abramson, W., et al. (Ed). "Violence Against Women with Developmental or Other Disabilities." *Impact*. 13(3).

⁴ West Virginia Coalition Against Domestic Violence. "People With Disabilities." Resources. Accessed online at http://www.wvcadv.org/people_with_disabilities.htm, July 2007.

⁵ Brownridge, Douglas. (2006) "Partner Violence Against Women With Disabilities: Prevalance, Risk, and Explanations." *Violence Against Women*. (12)9.

⁶ Protection and Advocacy, Inc. (2003) "Abuse and Neglect of Adults with Developmental Disabilities: A Public Health Priority for the State of California."

⁷ Brownridge, Douglas. (2006) "Partner Violence Against Women With Disabilities: Prevalance, Risk, and Explanations." *Violence Against Women*. (12)9.

⁸ Abramson, W., et al. (Ed). "Violence Against Women with Developmental or Other Disabilities." *Impact*. 13(3).

⁹ Metropolitan Life Insurance Company. (2004) "Preventing Elder Abuse." *Since You Care* Guide. New York.

¹⁰ Abramson, W., et al. (Ed). "Violence Against Women with Developmental or Other Disabilities." *Impact*. 13(3).

¹¹ Abramson, W., et al. (Ed). "Violence Against Women with Developmental or Other Disabilities." *Impact*. 13(3).

¹² Protection and Advocacy, Inc. (2003) "Abuse and Neglect of Adults with Developmental Disabilities: A Public Health Priority for the State of California."

¹³ West Virginia Coalition Against Domestic Violence. "People With Disabilities." Resources. Accessed online at http://www.wvcadv.org/people_with_disabilities.htm, July 2007.

¹⁴ Chang, J. C., et al. (2003). "Helping women with disabilities and domestic violence: Strategies, limitations, and challenges of domestic violence programs and services." *Journal of Women's Health*. 12(7): 699-708.

¹⁵ Nosek, Ph.D. Margaret A. et al. "Violence Against Women with Disabilities—Fact Sheet #1: Findings from Studies 1992-2002." Baylor College of Medicine.

¹⁶ National Coalition Against Domestic Violence. (2006) "Comparison of VAWA 1994, VAWA 2000 and VAWA 2005 Reauthorization Bill." Accessed online at http://www.ncadv.org/files/VAWA_94_00_05.pdf, July 2007.

For more information please see our website at ncadv.org



The Public Policy Office of the National Coalition Against Domestic Violence (NCADV) is a national leader in the effort to create and influence Federal legislation that positively affects the lives of domestic violence victims and children. We work closely with advocates at the local, state and national level to identify the issues facing domestic violence victims, their children and the people who serve them and to develop a legislative agenda to address these issues. NCADV welcomes you to join us in our effort to end domestic violence.

Chapter 5: Housing Rights of Domestic Violence Survivors with Disabilities

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5.1 Introduction

Safe, secure and accessible housing is critically important to all survivors, but it may be especially difficult to secure for victims with physical and/or cognitive disabilities.¹⁶⁷ This is because appropriate, affordable housing stock is often limited and admission may be difficult to gain. Victims with physical disabilities may be barred or impeded from residing in housing that is not designed to accommodate their needs. For example, a victim with a physical disability or mobility challenges may need housing that is wheelchair accessible. A deaf or hard of hearing victim may need a residence where the telephones, smoke alarms, security alarms, and other safety devices are visual instead of auditory. These services and devices may be especially important to a victim who was assaulted in her home, or in situations where the victim believes the perpetrator knows where she resides. Victims with mental or cognitive disabilities are sometimes evicted from or denied entry to certain housing because their mental

¹⁶⁷ Portions of the chapter, “Housing Issues and Remedies for Survivors with Disabilities,” are excerpted, with permission, from the Victim Rights Law Center’s national manual, BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims, A Practical Guide for Attorneys and Advocates. All rights are reserved by the Victim Rights Law Center (VRLC). The material may not be altered or modified without the express permission of the VRLC. Preparation of the manual was supported by VRLC grant number 2004-WT-AX-K062, awarded by the U.S. Department of Justice, Office on Violence Against Women. The opinions, findings, and conclusions expressed in the document are those of the authors and editors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

illness is perceived to or does in fact result in anti-social, physically aggressive, or self-destructive behavior. (For example, some residential facilities will not accept or retain a resident who engages in serious acts of self-harm.) Addressing housing needs may be the first step to providing effective advocacy for victims with disabilities. The following examples illustrate how a disabled victim's circumstances may result in an acute housing need:

- Client was sexually assaulted in her apartment and the landlord denies her request to have a service animal to alert her to visitors;
- Client is not permitted to bring her service animal into emergency or transitional housing;
- Landlord refuses to allow client to make reasonable modifications to apartment to establish or enhance accessibility (e.g., a designated disabled parking space or a parking space closest to an accessible entrance);
- Client faces eviction for failure to pay rent on time due to a traumatic brain injury she sustained during a sexual assault;
- The survivor resides in a group home, family home, or other residential care facility where the perpetrator is employed; or
- Client's safety is at risk and she wishes to relocate but is told there are no accessible units available that can accommodate her disability.

5.2 The Right to Reasonable Accommodation

As the examples above illustrate, it is critical that advocates familiarize themselves with the housing issues that survivors with disabilities face. In helping survivors utilize and maintain safe housing, advocates should look not only to laws that specifically protect the housing rights of survivors, but also to laws that protect the housing rights of persons with disabilities. Both federal and state fair housing laws prohibit discrimination based on a person's disability. One form of discrimination under these laws includes a refusal to make reasonable accommodations in rules or policies when needed to provide persons with disabilities an equal opportunity to use and enjoy a dwelling.¹⁶⁸ While other forms of housing discrimination based on disability may occur, this Chapter focuses on the right to reasonable accommodation. This Chapter discusses the reasonable accommodation process and describes how that process can be used to advocate for the housing rights of survivors with disabilities.

In the housing context, a reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. Most fair housing laws require that housing providers' policies treat and impact groups equally. In contrast, fair housing laws related to reasonable accommodation require that housing providers make exceptions to policies that may be otherwise nondiscriminatory in order to guarantee equal housing opportunities for persons with disabilities.

Reasonable accommodation laws arise from a number of sources. The Fair Housing Act (FHA),¹⁶⁹ the Americans with Disabilities Act (ADA),¹⁷⁰ and the Rehabilitation Act of 1973¹⁷¹ are federal laws that require reasonable accommodation for individuals with disabilities. States also have enacted laws requiring reasonable accommodation in terms and conditions of housing. The FHA applies to most housing, except for (1) a dwelling with four or fewer units, as long as the owner is one of the

¹⁶⁸ 42 U.S.C. § 3604(f).

¹⁶⁹ §§ 3601 *et seq.*

¹⁷⁰ §§ 12101 *et seq.*

¹⁷¹ 29 U.S.C. § 794.

occupants; (2) a single family home, provided the owner does not own more than three such houses at one time; and (3) certain housing run by private clubs for their members.¹⁷² The Rehabilitation Act applies only to federally assisted housing, and the ADA applies only to state-funded housing. Advocates should note that state and local fair housing laws may provide broader and more comprehensive coverage than the federal laws. Accordingly, in addition to the federal laws, advocates should examine whether a survivor who needs a reasonable accommodation may have remedies under state and local fair housing laws. This section provides a brief overview of the federal reasonable accommodation laws.

5.2.1 The Fair Housing Act (FHA)

In 1988, the Fair Housing Amendments Act amended the FHA to prohibit discrimination against people with “handicaps,” defining handicap in the same way that disability is defined in other federal legislation.¹⁷³ Discrimination under the FHA includes a refusal to make reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to give persons with disabilities equal opportunity to use and enjoy a dwelling.¹⁷⁴ The FHA applies to most housing providers, regardless of whether they are government subsidized. The FHA is of primary importance in helping survivors with disabilities obtain safe and accessible housing. The FHA regulations can be found at 24 C.F.R. § 100.204.

5.2.2 Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 provides additional protections for survivors living in federally subsidized housing. The statute provides that no qualified individual with a disability shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.”¹⁷⁵ Section 504 applies only to housing providers receiving federal assistance. Such housing providers include public housing agencies (PHAs) and owners of project-based Section 8 properties, Section 202 properties (housing for seniors), Section 811 properties (housing for persons with disabilities), or properties subsidized by funds from the Community Development Block Grant, HOME, or Housing Opportunities for Persons with AIDS programs. Housing projects subsidized by the U.S. Departments of Veterans Affairs and Agriculture are also subject to Section 504. Section 504 regulations are found at 24 C.F.R. Part 8.

5.2.3 The Americans with Disabilities Act (ADA)

The ADA prohibits discrimination by state and local governments on the basis of disability.¹⁷⁶ Its protections are essentially equivalent to those of Section 504.¹⁷⁷ In 2008, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA).¹⁷⁸ The Act clarifies certain definitions under the ADA in response to Supreme Court decisions that had narrowed their scope. The ADAAA

¹⁷² 42 U.S.C. §§ 3603(b)(1)-(2), 3607.

¹⁷³ See Chapter 4 for general information on the Fair Housing Act.

¹⁷⁴ 42 U.S.C. § 3604(f).

¹⁷⁵ See 29 U.S.C. § 794(a).

¹⁷⁶ 42 U.S.C. § 12132.

¹⁷⁷ *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (stating that the ADA extends Section 504 coverage to state and local programs).

¹⁷⁸ ADA Amendments Act, Pub. L. No. 110-325, 122 Stat. 3553 (effective Jan. 1, 2009).

emphasizes that the definition of disability should be construed in favor of broad coverage. ADA regulations are found at 28 C.F.R. § 35.130(b)(7).

5.3 Defining “Reasonable Accommodation”

A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. A housing provider must grant a requested reasonable accommodation if it is necessary to accommodate the disability and does not create an undue financial or administrative burden. Failure to provide a reasonable accommodation may be construed as discrimination.¹⁷⁹ Practically, a reasonable accommodation helps individuals with disabilities fully use and enjoy their housing. As discussed below, one of the first considerations in determining whether a survivor has a right to a reasonable accommodation is whether the survivor has a disability as defined under state or federal law.

5.3.1 Federal Definition of Disability for the Purpose of Reasonable Accommodation

All three federal laws define disability in the same manner,¹⁸⁰ based on the initial definition created in Section 504 of the Rehabilitation Act.¹⁸¹ A person with disabilities is any person who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment.¹⁸² Each prong of this definition is discussed in detail below. A survivor need only satisfy one of these prongs to be considered a person with a disability. State fair housing laws may have more expansive definitions of disability than the federal laws, so it is important for advocates to carefully review their jurisdiction’s laws on reasonable accommodation.

Has a Physical or Mental Impairment that Substantially Limits One or More Major Life Activities

To determine whether a person is “substantially limited,” courts will often consider whether the individual is unable to perform a major life activity at all, or whether he or she is “significantly restricted in the duration, manner, or condition” under which he or she can perform that activity, as compared to the average person.¹⁸³ “Major life activities” can include either: (a) certain activities, such as caring for oneself, performing manual tasks, reading, bending, speaking, breathing, or working; or (b) major bodily functions, such as digestive, neurological, bowel, bladder, or reproductive functions.¹⁸⁴

¹⁷⁹ 42 U.S.C. § 3604(f)(3).

¹⁸⁰ 29 U.S.C. § 705(20); 42 U.S.C. §§ 3602(h), 12102; 24 C.F.R. §§ 8.3, 100.201; 28 C.F.R. § 35.104.

¹⁸¹ While a number of Supreme Court decisions had interpreted the ADA definition of disability differently than Section 504, Congress clarified the meaning of various terms in the ADA Amendments Act of 2008. *See* 42 U.S.C. § 12102 (effective Jan. 1, 2009).

¹⁸² 29 U.S.C. § 705(20)(B) (1973); 42 U.S.C. § 12102.

¹⁸³ *Peters v. City of Mauston*, 311 F.3d 835, 843 (7th Cir. 2002).

¹⁸⁴ 29 U.S.C. § 705(20)(B) (Rehabilitation Act); 42 U.S.C. § 12102(2)(A)-(B) (Americans with Disabilities Act).

Has a Record of Such Impairment

“Having a record” of an impairment requires that a person has a history of, or has been misclassified as having, a disability as defined above.¹⁸⁵ This would include, for example, a survivor who has recovered from cancer or mental illness.¹⁸⁶

Is Regarded as Having Such an Impairment

This final prong of the definition covers persons who: (a) have an impairment that does not substantially limit a major life activity but are treated as having such a limitation; (b) have an impairment that substantially limits a major life activity only as a result of others’ attitudes toward the impairment; or (c) have no impairment but are treated as having such an impairment.¹⁸⁷ For example, this would cover a survivor with a facial disfigurement who is denied housing because a landlord feared negative reactions from other tenants.¹⁸⁸

5.3.2 Exceptions to the Definition of Disability

Although fair housing laws cover persons with a range of physical and mental impairments, they do not protect every individual who has an impairment. This section explains the major exceptions to the definition of disability.

Drug Use

A current illegal user of a controlled substance is not disabled for purposes of reasonable accommodation. However, an individual with a disability can include a survivor who has successfully completed drug rehabilitation, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use.¹⁸⁹

Direct Threat

Nothing in the FHA requires a landlord to make a dwelling available “to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”¹⁹⁰ Examples of a direct threat may include acts that affect tenants’ health, such as excessive noise or physical violence. A direct threat must be based on objective evidence. It cannot be subjective; other tenants’ perceived fears are not sufficient to create a direct threat, even if those fears are reasonable.¹⁹¹ Furthermore, the housing provider has an

¹⁸⁵ 29 C.F.R. § 1630.2(k).

¹⁸⁶ See U.S. Equal Employment Opportunity Commission, U.S. Department of Justice Civil Rights Division, Americans with Disabilities Act: Questions and Answers, <http://www.ada.gov/qandaeng.htm> [hereinafter Americans with Disabilities Act: Questions and Answers].

¹⁸⁷ 45 C.F.R. § 84.3(j)(2)(iv).

¹⁸⁸ See Americans with Disabilities Act: Questions and Answers, *supra* note 186.

¹⁸⁹ 42 U.S.C. § 12210(b).

¹⁹⁰ § 3604(f)(9).

¹⁹¹ See, e.g., *Twp. of West Orange v. Whitman*, 8 F. Supp. 2d 408 (D.N.J. 1998) (finding that a municipality and homeowners could not use a direct threat argument to prevent the siting of nearby group homes for persons with mental illness where the fear of the risk the home posed was based on generalized, subjective fear); *Wirtz Realty Corp. v. Freund*, 721 N.E.2d 589 (Ill.

obligation to provide a reasonable accommodation that may help mitigate the threat.¹⁹² Therefore, if a survivor presents a direct threat to the health and safety of others for a reason related to disability, advocates should request an accommodation that would mitigate such a threat. For example, a survivor suffering from post-traumatic stress disorder who struck another tenant during a verbal altercation could request that the landlord refrain from evicting her while she enrolls in a specialized treatment program. If an accommodation that eliminates or mitigates the threat cannot be made, then the individual's tenancy may not be protected. Solutions to direct threat allegations will often need to be creative and individualized.¹⁹³

5.4 Requesting an Accommodation

There are several components to requesting a reasonable accommodation, including initial requests, verification, reasonableness, and the interactive process. Each of these components is discussed in detail below. For more information, advocates should consult the Department of Housing and Urban Development's (HUD) guidance regarding the process of requesting a reasonable accommodation.¹⁹⁴

Initial Requests

If a tenant tells a housing provider that she is disabled and needs a rule, policy, practice, or service changed to accommodate her disability, the provider is obligated to begin the reasonable accommodation process.¹⁹⁵ A request may be oral or written. In some cases, the provider may ask the tenant to make the request by filling out a form. While a housing provider may provide such a form, it must also accept a letter or oral request from the tenant. As a best practice, tenants or their advocates should request accommodations in writing, so that there is a clear record in case of a dispute. The appendix to this Manual contains a sample letter requesting a reasonable accommodation.¹⁹⁶ All requests should include a statement that the tenant has a disability, a description of the requested accommodation, an explanation of how the accommodation is related to the tenant's disability, and an explanation of how

App. 1999) (finding that objective evidence is required for a direct threat, and that residents' belief that they were in danger, even if that belief proved to be "reasonable," did not satisfy this requirement).

¹⁹² *McAlister v. Essex Prop. Trust*, 504 F. Supp. 2d 903 (C.D. Cal. 2007); *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814 (D. Colo. 1995); *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636 (D.N.H. 1993); JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE, REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT 4 (2004)[hereinafter Joint Statement], <http://www.hud.gov/offices/ftheo/library/huddojstatement.pdf>.

¹⁹³ For more information regarding the direct threat exception, see Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #8, Reasonable Accommodations for Tenant Posing a "Direct Threat" to Others*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet8.html>.

¹⁹⁴ See Non-discrimination and Accessibility for Persons with Disabilities, HUD Letter 2007-05 (Sept. 21, 2007) (making permanent Notice on Non-discrimination and Accessibility for Persons with Disabilities, PIH 2006-13 (March 8, 2006)); Joint Statement, *supra* note 192.

¹⁹⁵ Joint Statement, *supra* note 192, at 10.

¹⁹⁶ See Appendix 10.

the accommodation will help the tenant remain in the housing.¹⁹⁷ Note that a housing provider cannot ask about the diagnosis, treatment, nature, or extent of the disability.¹⁹⁸

Verification

The housing provider may seek to verify the tenant's accommodation request. There are three possible verification scenarios. If a person's disability is obvious or is known to the housing provider, and the need for the requested accommodation is known, then the housing provider may not ask for any more information.¹⁹⁹ If the disability is known or obvious, but the need for the accommodation is not, then the housing provider should ask only for information necessary to verify the need.²⁰⁰ If neither the disability nor the need for the accommodation is readily apparent, the housing provider may ask for verification of both the disability and the need for the accommodation.²⁰¹

In some cases, housing providers should allow individuals to self-certify their disabilities. For example, an applicant/participant may provide proof of Supplemental Security Income (if younger than 65) or Social Security Disability Insurance benefits in order to certify.²⁰² A doctor or other medical professional, a peer support group, a non-medical service agency, or any reliable third party who is in a position to know about the individual's disability may also provide verification of the disability and the need for the accommodation.²⁰³

Reasonableness

If a housing provider has verified the need for the accommodation, and the requested accommodation is reasonable, then he or she must provide it. The term "reasonable" means that the accommodation does not cause the housing provider an undue burden or fundamentally alter the nature of the program.

An undue burden may be financial or administrative.²⁰⁴ To determine if an undue financial burden exists, four factors should be considered: the housing provider's financial resources, the costs of the requested accommodation, the benefit to the tenant, and the availability of a less expensive alternative accommodation.²⁰⁵ Courts have recognized that reasonable accommodation will often cause housing providers some financial or other burden.²⁰⁶

¹⁹⁷ See, e.g., *Andover Hous. Auth. v. Shkolnik*, 820 N.E.2d 815 (Mass. 2005) (holding that tenant's requested reasonable accommodation, delay or withdrawal of eviction action, would not permit the tenant to comply with lease provisions regarding excessive noise); *Landmark Props. v. Olivo*, 783 N.Y.S.2d 745 (N.Y. App. Term 2004) (affirming order of eviction where tenant had not submitted clear evidence establishing that his dog was necessary to his enjoyment of his rental unit); U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 20 (2003), <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>.

¹⁹⁸ PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 197, at 19.

¹⁹⁹ Joint Statement, *supra* note 192, at 12.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 13.

²⁰² *Id.*

²⁰³ *Id.* at 13-14.

²⁰⁴ 24 C.F.R. § 8.11.

²⁰⁵ Joint Statement, *supra* note 192, at 8; see, e.g., *Solberg v. Majerle Mgmt.*, 879 A.2d 1015 (Md. 2005) (finding an undue burden where request would have required landlord to make significant changes to his personal life and daily activities and would have prevented him from inspecting tenant's unit).

²⁰⁶ *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413 (9th Cir. 1994) (holding that mobile home park owner, under duty to provide reasonable accommodation, may have to incur reasonable financial costs).

An accommodation may also be unreasonable if it fundamentally alters the nature of the program. A housing provider does not have to grant a reasonable accommodation request if it includes services or policies that would change the very nature of what the housing provider does. For example, a tenant's request that a landlord provide daily transportation services would likely be considered unreasonable if the building currently has no such service.

Interactive Process

If a housing provider rejects a tenant's reasonable accommodation request, the housing provider still must engage in an interactive process with the tenant.²⁰⁷ This means that the housing provider must offer to discuss alternative accommodations that would satisfy the tenant's need while not imposing an undue burden or fundamental alteration to the housing provider's program. During this interactive process, keep in mind that the person with disabilities knows best what accommodation will satisfy her needs. If the two parties cannot agree on an alternative accommodation, it is treated as a denial of the reasonable accommodation request.

Federally assisted housing providers are required to create grievance procedures designed to address claims of discrimination against program participants with disabilities.²⁰⁸ Therefore, a survivor living in federally assisted housing may use the grievance procedure to challenge an initial refusal to accommodate. In practice, this grievance procedure is often used as the vehicle for the interactive process.

Timing of the Request

A reasonable accommodation may be requested at any time, including prior to application and admission, during occupancy, after termination or eviction, and even during litigation.²⁰⁹ Advocates should raise a request for a reasonable accommodation as soon as it is apparent that such accommodation is needed.

5.5 Common Issues for Survivors

This section describes some of the reasonable accommodation issues that may be encountered by survivors with disabilities, including requests to have a live-in aide or assistive animal in the unit, requests to transfer or move to units that better serve the survivor's needs, and evictions and subsidy terminations related to the survivor's disability.

²⁰⁷ Joint Statement, *supra* note 192, at 7.

²⁰⁸ 24 C.F.R. § 8.53.

²⁰⁹ Joint Statement, *supra* note 192, at 12; *see also* Radecki v. Joura, 114 F.3d 115 (8th Cir. 1997) (finding that landlord may be required to halt eviction even if the accommodation request was not made until the eviction proceedings); Douglas v. Kregsfeld Corp., 884 A.2d 1109 (D.C. 2005) (explaining the "general rule under the Fair Housing Act [is] that a reasonable accommodation defense will be timely until the proverbial last minute"); Hous. Auth. of Bangor v. Maheux, 748 A.2d 474 (Me. 2000) (finding that until writ is issued, landlord remains under obligation to provide reasonable accommodation); Schuett Inv. Co. v. Anderson, 386 N.W.2d 249 (Minn. Ct. App. 1986) (ordering landlord not to evict tenant).

Receiving Assistance from an Aide or Animal

A survivor who has a disability may need a live-in aide to help her perform activities of daily living. A PHA or owner must approve a live-in aide as a reasonable accommodation.²¹⁰ In some cases, a housing provider may be reluctant to allow a survivor to have a live-in aide where the prior aide had committed acts of domestic violence against the survivor. However, all reasonable accommodations must be judged on a case-by-case basis, and a housing provider should not restrict a survivor's right to a caregiver because of prior abuse.

A survivor with a disability may need an assistive animal to perform tasks, provide emotional support, or alert the survivor to intruders. State and federal laws protect the right of people with disabilities to keep assistive animals, even when a housing provider's policy prohibits pets.²¹¹ A housing provider may be required to provide an exception to a no-pets policy as a reasonable accommodation to a survivor who needs an assistive animal. For example, a court found that a survivor could request an exception to a landlord's pet policy as a reasonable accommodation where she kept a dog in her apartment to alleviate her post-traumatic stress disorder.²¹² The tenant stated that she was a survivor of domestic violence and that the dog lessened her constant state of fear because he preceded her into rooms, switched on lights in darkened rooms, and had been trained to bring her cell phone to her.²¹³

Transferring or Moving

Many PHAs and owners have policies restricting transfers to other units or moves with a Section 8 voucher. For example, housing providers often have policies that prohibit tenants from moving during their first year in the unit, or from moving more than once during a 12-month period. Tenants with disabilities can request exceptions to these policies as a reasonable accommodation. Accordingly, a survivor who lives on the third floor of a walk-up apartment complex and who has become disabled as a result of acts of violence committed against her may request relocation to a ground-floor apartment.²¹⁴ Similarly, a survivor who is suffering from post-traumatic stress disorder as a result of an assault in the parking lot of her apartment complex may request a transfer to another apartment complex.

A Section 8 voucher tenant who needs to move due to her disability can do so and continue to receive rental assistance. If a survivor with a disability needs to make such a move with her Section 8 voucher, she should request a reasonable accommodation and explain that the relocation is related to her disability.

²¹⁰ § 982.316(a).

²¹¹ See, e.g., *Green v. Hous. Auth. of Clackamas County*, 994 F. Supp. 1253 (D. Or. 1998); *Auburn Woods I Homeowners Ass'n v. Fair Employment & Hous. Comm'n*, 18 Cal. Rptr. 3d 669 (Cal. Ct. App. 2004); see also U.S. Department of Justice, *Commonly Asked Questions About Service Animals in Places of Business*, <http://www.ada.gov/qasrvc.htm>; Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #6, Right to Emotional Support Animals in "No Pet" Housing*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html>.

²¹² *State of Iowa v. Des Moines Mun. Hous. Agency*, 2010 WL 4484005 (Iowa Ct. App. 2010).

²¹³ *Id.*

²¹⁴ See, e.g., *Bentley v. Peace & Quiet Realty 2 LLC*, 367 F. Supp. 2d 341, 346 (E.D.N.Y. 2005) (finding that a request to move between units of an apartment building is a cognizable accommodation under the FHA); *Roseborough v. Cottonwood Apartments*, No. 94cv3708, 1994 WL 695516 (N.D. Ill. Dec. 9, 1994) (same); *United States v. Hialeah Hous. Auth.*, 2011 WL 989815, slip op. (11th Cir. Mar. 22, 2011) (same); PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 197, at 148; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD HANDBOOK 4350.3: OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS 3-65, 3-67 (2008).

Eviction/Termination

Individuals with disabilities sometimes face evictions or housing assistance terminations that are directly related to the disability. If a PHA seeks to terminate assistance or evict a tenant, it may consider disability as a mitigating circumstance and determine if a reasonable accommodation would allow the tenant to remain in the program.²¹⁵ All housing providers must consider a request for reasonable accommodation at any time, including after the housing provider has served an eviction or termination notice. For example, a survivor who has been hospitalized for an extended period of time as a result of a physical or psychological condition may request, as a reasonable accommodation, that an eviction notice for nonpayment of rent be withdrawn and that she be given additional time to pay the rent. As another example, a survivor who failed to attend a meeting with the PHA to certify her income because she was suffering from severe depression may request that the PHA cease any efforts to terminate her subsidy for failure to attend the meeting. As a third example, a survivor who threatened a PHA staff member due to aggressive behavior caused by a change in her medication may request that the PHA cease any efforts to terminate her subsidy for threatening conduct.²¹⁶

5.6 Enforcement

Individuals with disabilities who have been denied their right to a reasonable accommodation have several options for enforcement, including administrative complaints and civil lawsuits. For information on these options, see Chapter 4.

5.7 Conclusion

Survivors with disabilities face unique challenges to accessing safe and stable housing. Advocates must be aware of all the tools available to help survivors with disabilities, including the right to a reasonable accommodation. In many cases, a reasonable accommodation may lead to a swift and responsive solution to the survivor's housing needs.

²¹⁵ 24 C.F.R. § 982.552(c)(2)(i); HUD, HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK 15-10 (2001).

²¹⁶ See *Wojcik v. Lynn Hous. Auth.*, 845 N.E.2d 1160, 1164 (Mass. Ct. App. 2006) (upholding hearing officer's decision not to terminate a disabled Section 8 voucher tenant who had recently been the victim of a domestic assault and whose children were also disabled).



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) 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 (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

SPECIAL ATTENTION OF:

Regional Directors; State and Area
Coordinators; Public Housing Hub
Directors; Program Center Coordinators;
Troubled Agency Recovery Center Directors;
Special Applications Center Director;
Public Housing Agencies;
Housing Choice Voucher/Section 8 Public
Housing Agencies; Resident
Management Corporations

NOTICE PIH 2010-26 (HA)

Issued: July 26, 2010

Expires: July 31, 2011

Cross Reference: Notice
PIH 2003-31 (HA)
PIH 2006-13 (HA)
PIH Letter L-2007-05
PIH Notice 2009-5

Subject: Non-Discrimination and Accessibility for Persons with Disabilities

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 mandate non-discrimination and accessibility in federally funded housing and non-housing programs for persons 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 all public housing programs and activities receiving Federal financial assistance either directly or indirectly from the Office of Public and Indian Housing. This Notice is not applicable to ONAP programs, Tribes or TDHEs.

Federal financial assistance and programs or activities are both defined very broadly. See 24 CFR 8.3 for the regulatory definitions.

Contractors or other agents of public housing agencies (PHAs) performing covered work or conducting covered activities on behalf of PHAs are subject to the requirements of this Notice.

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 PHAs and other recipients of Federal PIH funds 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 laws referenced below and implementing regulations.

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 of the Rehabilitation Act of 1973 (Section 504)¹; Title II of the Americans with Disabilities Act of 1990 (ADA)²:

Initially, with the issuance of the Section 504 implementing regulations at 24 CFR Part 8 on June 2, 1988, PHAs were required to conduct needs assessments and develop transition plans to address the 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).

Likewise, PHAs were required to conduct a self-evaluation their current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of Section 504. PHAs must then modify any policies and practices that do not meet the requirements and take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation. See 24 CFR § 8.51.

The Department's Office of Fair Housing and Equal Opportunity (FHEO) 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 in addressing non-compliance issues that may arise. In addition, effective January 26, 1992, Title II of the ADA required PHAs to conduct a self-evaluation of their current services, policies and practices. See 28 CFR §§ 35.105 and 35.150 (d).

PHA-Plan regulations pursuant to the U.S. Housing Act of 1937 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.

¹ 29 U.S.C. § 794; 24 CFR Part 8

² 42 U.S.C. §§ 12101 et seq.; 28 CFR Part 35

Additionally, to ensure continued compliance with Section 504 and Title II of the ADA, PHAs are encouraged to conduct needs assessments and self-evaluations, at least yearly, working with persons/residents with disabilities and local advocacy groups for persons with disabilities. (see 24 CFR §§ 8.25(c) and 8.51 for additional information). Transition plans should be updated as a result of such needs assessments and self-evaluations. The transition plan must be made available for public review.

B. SECTION 504/24 CFR 8 – MAJOR PROVISIONS

[see <http://www.hud.gov/offices/fheo/disabilities/504keys.cfm>]

1. New Construction [see 24 CFR § 8.22 (a) and (b)]. A minimum of 5 percent of the total dwelling units, or at least one unit (whichever is greater), must be made accessible for persons with mobility impairments. An additional minimum of 2 percent of the 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 shown, HUD may prescribe higher percentages than those listed above. [see 24 CFR 8.22(c).] Accessible units must be on an accessible route from site arrival points and connected by an accessible route to public and common use facilities located elsewhere on the site. Also, see visitability recommendations in Section I. of this Notice.
2. Calculating the Required 5% and 2%. PHAs and all other HUD recipients must calculate and provide the proper number of accessible units consistent with the applicable requirements of Section 504. As noted above for New Construction, 24 CFR § 8.22 (b), requires a minimum of 5 percent of the total dwelling units be made accessible for persons with mobility impairments. An additional 2 percent of the total units must be made accessible for persons with hearing or vision impairments.

For example, if a recipient newly constructs a 41-unit development, 24 CFR § 8.22 (b), requires a minimum of 5 percent of the total dwelling units be made accessible for persons with mobility impairments. That is $41 \text{ total units} \times 5 \text{ percent} = 2.05$ accessible units. However, to provide the minimum of 5 percent requires that any fraction of a whole number, in this example .05 units, be rounded up to 3 units. If the recipient instead rounded the fraction down to 2 units ($2 \text{ accessible units} \div 41 \text{ total units} = 4.8 \text{ percent}$), the recipient would not comply with the requirement that there be a minimum of 5 percent.

Since 24 CFR § 8.22 (b) requires an additional 2 percent of the total units be made accessible for persons with hearing or vision impairments, the recipient must provide one such unit as prescribed by the regulation because $41 \text{ total units} \times 2 \text{ percent} = .82$ such units.

This method of calculating the required number of accessible units also applies to developments subject to the Substantial Alterations requirements of 24 CFR § 8.23 (a).

3. Substantial Alterations [see 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 percent 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, with the sole exception that load bearing structural members are not required to be removed or altered. If alterations of single elements or spaces of a dwelling unit when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once 5 percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units or entire dwelling units are required to be accessible under this paragraph.

4. Other Alterations [see 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 percent of the units in a project are accessible unless HUD prescribes a higher number or percentage pursuant to 24 CFR § 8.23 (b)(2). PHAs should also include up to 2 percent of the units in a development accessible for persons with hearing and vision impairments. See 24 CFR. § 8.32 (c) for exception regarding removing or altering a load-bearing structural member. (Note: these exceptions do not relieve the recipient from compliance utilizing other units/buildings/developments or other methods to achieve compliance with Section 504.)
5. Adaptable Units: Section 504 permits recipients to construct or convert adaptable units. A dwelling unit that is on an accessible route, as defined by Section 504 and UFAS, and is adaptable and otherwise in compliance with the standards set forth in 24 C.F.R. § 8.32 is “accessible”. Adaptable or adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks and grab bars to be added to, raised, lowered, or otherwise altered to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disabilities. An accessible route is defined as a continuous, unobstructed UFAS-compliant path as prescribed in 24 CFR §§ 8.3 and 8.32; UFAS. § 4.3. See 24 CFR §§ 8.3 & 8.32; UFAS §§ 4.34.3-4.34.6.

Adaptable units may be appropriate when the PHA has no immediate demand for accessible units since adaptable units may be more marketable to families without disabilities. **[NOTE: A unit that meets the requirements of the Fair Housing Act Design & Construction requirements is NOT equivalent to an Adaptable or Accessible Unit as defined by UFAS and Section 504.]**

6. Uniform Federal Accessibility Standards (UFAS) 24 CFR § 8.32 –

Compliance with UFAS shall be deemed to comply with the accessibility requirements of Section 504, 24 CFR §§ 8.21, 8.22, 8.23 and 8.25. Departures from the technical and scoping requirements of UFAS are permitted where substantially equivalent or greater access and usability of the building is provided. See 24 CFR § 8.32 (a). The United States Access Board promulgates the minimum guidelines and requirements for accessible design upon which UFAS is based. The UFAS may be found at: <http://www.access-board.gov/ufas/ufas-html/ufas.htm>

See also Section I.C., below.

NOTE: On July 23, 2004, the U.S. Access Board issued new Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Guidelines which cover new construction and alteration of a broad range of facilities in the private and public sectors and serve as the basis for enforceable accessibility standards issued by Federal Agencies, including HUD. These Guidelines, once adopted by HUD, will replace the current UFAS. However, they will only apply to new construction and planned alterations and generally will not apply to existing facilities except where altered. HUD recipients are not required to comply with the new Guidelines until such time as HUD adopts them as enforceable standards. Information about the new Guidelines may be obtained from the Access Board website at <http://www.access-board.gov/ada-aba/final.cfm>.

7. Reasonable Accommodations [see 24 CFR §§ 8.20, 8.21, 8.24 and 8.33]. 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 housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the PHA and/or recipient. When a family member requires a policy modification to accommodate a disability, PHAs must make the policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue hardship on the PHA's programs. Factors to be considered include:

- The overall size of the (PHA's) program with respect to the number of employees, number and type of facilities and size of budget;
- The type of (PHA's) operation, including the composition and structure of the (PHAs) workforce and;
- The nature and cost of the accommodation needed.

See discussion on Screening/Reasonable Accommodations in Section 2F(6) and reasonable accommodation under the Fair Housing Act in Section 1E(3). Note: A recipient is not required to accommodate an individual with a disability by modifying a rule or policy that is required by statute. Such a change would be a fundamental alteration of a program.

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 assistance animal if the animal is needed to provide the resident with a disability an equal opportunity to use and enjoy the housing.
- If the recipient provides transportation to PHA sponsored/funded functions or activities then 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 also required to provide reasonable accommodations to tenants and applicants with disabilities who need

structural modifications to existing dwelling units and public use and common use areas in order to make effective use of the recipient's program. Under the regulations, this obligation may be met either by making and paying for requested structural modifications or by using other equally effective methods. See 24 CFR §§ 8.20, 8.21(c), 8.24. However, when the PHA is accommodating a resident's disability-related needs without making structural changes, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. See 24 CFR §§ 8.21 (c), 8.24 (b) for a variety of suggested, but not all inclusive compliance methods. As with other requested reasonable accommodations, PHAs and other recipients are not required to provide requested structural modifications if doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. However, the PHA or other recipient is required to provide any other reasonable accommodation up to the point that would not result in an undue financial or administrative burden on the particular recipient and/or constitute a fundamental alteration of the program.

For example:

- A PHA may be required to pay for and install a ramp to allow a resident who is a wheelchair user to have access to a dwelling unit that has a step at the front door if the resident cannot be accommodated by relocation to a different unit that meets the resident's needs.
- A PHA may be required to pay for and install grab bars in the resident's dwelling unit in order to accommodate a resident who has a mobility disability.
- A PHA may be permitted to transfer a resident with disabilities who needs an accessible unit to an appropriate available accessible unit or an appropriate accessible unit that can be modified in lieu of modifying the tenant's current inaccessible unit.

Note: This requirement to accommodate individual tenant's requests for accessible features is separate from the PHA's affirmative obligation to have an inventory of accessible units available for persons with disabilities pursuant to 24 CFR §§ 8.22, 8.23 and 8.25.

8. Distribution of Accessible Dwelling Units (see 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 persons with disabilities have choices of living arrangements comparable to that of other families eligible for assistance under the same program.
9. Occupancy of Accessible Dwelling Units (see 24 CFR § 8.27). PHAs shall adopt suitable means including providing information in its application packets, providing refresher information to each resident during annual re-certifications and posting notices in its Admissions & Occupancy Offices to ensure that information regarding

the availability of accessible dwelling units reaches eligible persons with disabilities. The PHA shall also modify its Admissions, Occupancy and Transfer policies and procedures in order to maximize the occupancy of its accessible units by eligible individuals whose disability requires the accessibility features of the particular unit.

PHAs shall also take reasonable non-discriminatory 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, the PHA shall:

- a. First, offer the unit to a current occupant with disabilities in the same development that requires the accessibility features of the vacant accessible unit and occupying a unit not having those accessibility features. The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability.
- b. Second, if there is no current resident in the same development who requires the accessibility features of the vacant, accessible unit, the PHA will offer the unit to a current resident with disabilities residing in another development that requires the accessibility features of the vacant, accessible unit and occupying a unit not having those accessibility features.
- c. Third, if there is no current resident who requires the accessibility features of the vacant, accessible unit, then the PHA will offer the vacant, accessible unit to an eligible, qualified applicant with disabilities on the PHA's waiting list who can benefit from the accessible features of the available, accessible unit.
- d. Fourth, if there is not an eligible qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible unit, then the PHA should offer the available accessible unit to an applicant on the waiting list who does not need the accessible features of the unit. However, the PHA may require the applicant to execute a lease that requires the resident to relocate, at the PHA's expense, to a non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. *See* 24 CFR § 8.27. Although the regulation does not mandate the use of the lease provision requiring the nondisabled family to move, as a best practice, the Department strongly encourages recipients to incorporate it into the lease. By doing so, a recipient may not have to retrofit additional units because accessible units are occupied by persons who do not need the features of the units. In addition, making sure that accessible units are actually occupied by persons who need the features will make recipients better able to meet their obligation to ensure that their program is usable and accessible to persons who need units with accessible features. *See* 24 CFR 8.20.

Note: A PHA may not prohibit an eligible disabled family from accepting a non-accessible unit for which the family is eligible that 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.

10. Most Integrated Setting Appropriate (see 24 CFR Part 8 and 28 CFR Part 35).
Section 504 regulations at 24 CFR § 8.4(d) require that recipients administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The regulations provide that a specific class of individuals with disabilities may not be excluded from a program unless the program is limited by Federal statute or executive order to a different class of individuals. Section 504 regulations (see 24 CFR § 8.4(b)(1)(iv)) also state that recipients cannot limit benefits to a particular category of people with disabilities unless it is necessary in order to provide housing services that are as effective as those provided to others. Further, the regulations (see 24 CFR § 8.4(5)(i)) state that in determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would exclude qualified individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance.
11. While Section 504 requires such integration only in programs that are Federally-assisted, Title II of the ADA similarly requires public entities to provide **all** their services in the most integrated setting appropriate to the needs of qualified individuals with disabilities regardless of Federal assistance. The concept of community integration is at the heart of Section 504 and the ADA. Consistent with the standards of Section 504 and the ADA, in most instances, separate programs for individuals with disabilities will not be permitted.
12. PHA Requirements for the Housing Choice Voucher Program (see 24 CFR § 8.28).
[*see* Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the Housing Choice Voucher Program.]

In carrying out the requirements of 24 CFR § 8.28, the PHA or other 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 ensure that the notice reaches eligible individuals with disabilities and that they can have an equal opportunity to participate in the application process for the Housing Choice Voucher Program;
 - I. In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;
 - II. When issuing a Housing Choice 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;

- III. Take into account the special problems of locating an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers; and
- IV. 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.
- V. If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception payment standard under Sec. 982.505(d) for a regular tenancy under the Section 8 voucher program so that the program is readily accessible to and usable by persons with disabilities.
13. Non-housing Facilities (see 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 made 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 usable 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.

For example:

- A PHA operates a community center. The PHA wishes to provide a tutoring program and the only available space available after school is on an inaccessible second floor. A child who uses a wheelchair and lives in the PHA development served by the community center wishes to participate in the tutoring program. The PHA may provide space on the first floor for the child to work with his tutor or make tutoring available at another location that is accessible and convenient to the child as an alternative to installing an elevator or chair lift to get the child to the second floor tutoring site.

Departures from UFAS are permitted as outlined in Section I. B, item 5 of this Notice.

14. Accessibility Standards Accessibility Standards (see 24 CFR § 8.32). The design, construction or alteration of buildings in conformance with sections 3-8 of the UFAS shall be deemed to comply with the accessibility requirements of §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from the requirements of UFAS are permitted where substantially equivalent or greater accessibility is provided. The Section 504 requirements at 24 CFR § 8.32 do not require that building alterations be made when such alterations have little likelihood of being accomplished without removing or altering a load-bearing structural member.

15. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or 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. *See* 24 CFR § 8.24(a) and 28 CFR § 35.150 (a).

Therefore, the PHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, community buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, public transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and recreational centers, are accessible to individuals with disabilities. In the alternative, the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, a PHA may comply with the requirements of 24 CFR § 8.24 through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. *See* 24 CFR § 8.24 (b).

C. ARCHITECTURAL BARRIERS ACT (ABA) OF 1968/24 CFR 40 – MAJOR PROVISIONS

Accessibility Standards for Design, Construction and Alteration of Publicly Owned Residential Structures (see 24 CFR § 40.4) - The Architectural Barriers Act applies to certain buildings financed with Federal funds to ensure that they are designed, constructed or altered so as to be accessible to persons with disabilities. The Act applies to buildings, other than a privately owned residential structure, which are (1) constructed or altered by or on behalf of the United States; (2) leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States; or (3) financed in whole or in part by a grant or loan made by United States after August 12, 1968, if the structure is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan. *See* 24 CFR § 40.2.

The United States Access Board has issued updated guidelines for the Architectural Barriers Act, as well as the Americans with Disabilities Act. These standards are the *ADA/ABA Accessibility Guidelines*. While other Federal agencies have adopted these updated guidelines as their standards, at present HUD uses the Uniform Federal Accessibility Standards (UFAS).

UFAS Notes:

- Under the Architectural Barriers Act, four standard setting agencies—the General Services Administration, HUD, the Department of Defense, and the United States Postal Service (USPS) are responsible for development of the standards for Federal facilities. UFAS is HUD’s current standard. See Note in Section I.B.5. The UFAS is available at <http://www.access-board.gov/ufas/ufas-html/ufas.htm>.
- Figure 47(a) in UFAS does not permit the water closet to encroach on the clear, unobstructed (*see* UFAS §3.5) floor space required to provide an unobstructed 60° turning circle. *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 percent 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 housing units accessible to persons with disabilities. Recipients instead should look to HUD’s regulations for Section 504 at 24 CFR Part 8 in order to ensure compliance.
- The exception for bathrooms found at Section 4.22.3 of UFAS is not applicable to dwelling unit bathrooms.
- UFAS Section 4.34.2(15)(c) requires at least two bedrooms in dwelling units with two or more bedrooms to be accessible and located on an accessible route. PHAs need to be mindful that new construction or substantial rehabilitation of multistory dwelling units must be in compliance with this requirement. Further, the Department wishes to encourage designs that provide persons with disabilities access to all parts of their dwelling units, and therefore encourages PHAs to take advantages of the strategies outlined in the PIH guidebook, *Strategies for Providing Accessibility and Visitability for Hope VI and Mixed Finance Homeownership.*” This guidebook may be found at the following link: <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm>.
- Because UFAS does not fully address accessibility of units for persons with impaired hearing, for the 2 percent units that are required to be accessible for persons with hearing impairments, it is recommended that PHAs follow the July 2004 ADA/ABA Accessibility Guidelines, Section 809.5, Residential Dwelling Units with Communication Features. The ADA/ABA Accessibility Guidelines are available from the U.S. Access Board. See <http://www.access-board.gov/ada-aba/>. PHAs may also follow the 2003 edition of ICC/ANSI A117.1 Standard for Accessible and Usable Buildings and Facilities, Chapter 10, Section 1005. These Standards are available through the International Code Council, 500 New Jersey Avenue NW, Washington, DC 20001. See also ICC’s Website at <http://www.iccsafe.org>.

Note: The U. S. Access Board issued new ADA and ABA Accessibility Guidelines in July 2004. See the note about this on Page 4, Item B.5.

D. AMERICANS WITH DISABILITIES ACT OF 1990/28 CFR 35 FOR TITLE II (SEE WWW.ADA.GOV) –

1. Applicability. Title II of the ADA prohibits discrimination on the basis of disability by public entities. Public entity means any state or local government; or any department, agency, special purpose district or other instrumentality of a State or States or local government, including a PHA. *See* 28 CFR §§ 35.102 and 35.104.
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. (*see* 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. (*see* 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 (*see* 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. (*see* 28 CFR § 35.151(b)).
6. Accessibility standards. Design, construction, or alteration of facilities in conformance with the UFAS or with the ADA Accessibility Standards (ADA Standards) shall be deemed to comply with requirements of 28 CFR § 35.151 except that the elevator exemption contained at §§ 4.1.3(5) and 4.1.6(1)(j) of the ADA Standards shall not apply. (*see* 28 CFR § 35.151(c)).
7. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity, including those 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. *See* 24 CFR § 8.24(a) and 28 CFR § 35.150 (a). (**Note:** The title II regulations at 28 CFR Part 35 contain extensive requirements that apply to public entities, including PHAs, and should be reviewed in their entirety to ensure compliance with the ADA.).

Therefore, the PHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, community buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and recreational centers, are accessible to individuals with disabilities. In the alternative,

the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, a PHA may comply with the requirements of 28 CFR § 35.150(a) through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. (See 24 CFR § 8.24 (b)).

E. THE FAIR HOUSING ACT/24 CFR PART 100

[see <http://www.usdoj.gov/crt/housing/title8.htm>;

see also http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr100_00.html]

1. Illegal Inquiries (24 CFR § 100.202) – The Fair Housing Act makes it 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.

Housing providers may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability;

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is involved in current, illegal use of drugs;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability. A PHA may inquire whether an applicant has a disability for determining if that person is eligible to live in mixed population (elderly/disabled) housing or housing designated for persons with disabilities;
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means a PHA may ask applicants if they need units with accessible features, including units designed to be accessible for persons with hearing and/or visual impairments, or if they qualify for a housing choice voucher designated for persons with disabilities only.

Verification of eligibility for PHA programs and benefits for persons with disabilities:
PHAs are required to verify that an applicant qualifies as a person with a disability

before permitting them to move to housing designated for persons with disabilities, or granting the \$400 rent calculation deduction, disability expense allowance, or deduction for unreimbursed medical expenses. Applicants and residents cannot be compelled to reveal that they have a disability; however, if they do not, they may not receive any of the benefits that such status confers. The wisest course is to ask **all** applicants whether they wish to claim disability status or need any special unit features or methods of communication for persons with disabilities.

Note: The PHA should explain the consequences of the disclosure of one's disability as having possible benefits in rent calculation or an accessible unit, and required verification of disability prior to receipt of the particular benefit at issue. The verification issue is discussed in greater detail in Chapter 4 of the *Public Housing Occupancy Guidebook* (June 2003).

Verification of disability and need for requested reasonable accommodation(s): To verify that an applicant is a person with a disability, PHA staff can first check to see whether the applicant is under age 62 and receives either Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) income. Receipt of such disability income is sufficient verification that an individual qualifies as a person with a disability. However, individuals with disabilities who do not receive SSI or SSDI may still qualify as a person with a disability under the statutory definitions of disability. In these cases, the individual with a disability may need to provide supporting documentation. (**Note:** Refer to Chapter 4 of the *Public Housing Occupancy Guidebook* (June 2003) for further information.)

If a person requests a reasonable accommodation, then the PHA may need to verify that the person is a qualified individual with a disability and whether a requested accommodation is necessary to provide the individual with an equal opportunity to use or enjoy a dwelling unit, including the public and common areas. In doing so, PHAs should only ask for information that is actually necessary to verify that the person has a disability and that there is a reasonable nexus between the individual's disability and the requested accommodation(s). PHAs are not permitted to inquire about the nature or severity of the person's disability. Further, PHA staff may never inquire about an individual's specific diagnosis or details of treatment. If a PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment and/or information regarding the nature or severity of the person's disability, the PHA should immediately dispose of this confidential information; this information should never be maintained in the individual's file. If the information needs to be disposed of, the PHA should note in the individual's file that verification of a disability (as opposed to a specific disability), and special features required was received, the date received and the name and address of the person/organization that provided the verification. Under no circumstances should a PHA request an applicant's or resident's medical records, nor should PHAs require that applicants or residents submit to physical examinations or medical tests such as TB testing or AIDS testing as a condition of occupancy. For further information about verification of disability related to requests for reasonable accommodation, see HUD and the Department of Justice (DOJ) *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).

<http://www.hud.gov/utilities/intercept.cfm?/offices/fheo/library/huddojstatement.pdf>

Note: It is a violation of Section 504 and the Fair Housing Act for a PHA to inquire whether an applicant or tenant is capable of “living independently.” Courts have consistently held that this is not a legitimate inquiry to make of applicants or residents in HUD-assisted housing and PHAs should ensure that their screening materials do not include questions related to such an inquiry.

2. Reasonable Modification to Existing Premises (see 24 CFR § 100.203) – Applies to private owners participating in housing choice voucher programs or other tenant-based programs, as well as to PHA owners of existing public housing units. (see Note below.)

Under the Fair Housing Act, 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 require that a resident restore modifications to the interior of the unit.

Note: PHAs must follow the more stringent reasonable accommodation requirements of 24 CFR §§ 8.4, 8.20, 8.24 and 8.33, which require PHAs to pay the cost of structural changes to facilities unless the PHA can accommodate the individual with a disability by equally effective means, or unless such structural changes would result in an undue financial and administrative burden (in such cases, the PHA must provide other alternative reasonable accommodation(s).) See also the discussion of reasonable accommodation under Section 504 above. For further information about the reasonable modifications provisions of the Fair Housing Act, see the HUD and DOJ Joint Statement on Reasonable Modifications Under the Fair Housing Act, issued May 5, 2008. This statement is available at:

http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

3. Reasonable Accommodation (see 24 CFR § 100.204) - Applies to private owners participating in Housing Choice Voucher programs, PHAs and all housing providers that are recipients of Federal financial assistance. PHAs are also covered under Section 504. (see Section I.B. above.) The Fair Housing Act makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (see regulation for further requirements and guidance). See HUD and DOJ *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).

<http://www.hud.gov/utilities/intercept.cfm?/offices/fheo/library/huddojstatement.pdf>.

4. Design and Construction Requirements (see 24 CFR § 100.205) - applies to housing regardless of whether it receives Federal financial assistance. The Fair Housing Act requires that “covered multifamily dwellings” (see definition below) built for first occupancy after March 13, 1991, shall be designed and constructed so that:
 - a. At least one building entrance is on an accessible route unless it is impractical due to terrain or unusual characteristics of the site [see 24 CFR § 100.205(a)],
 - b. Public and common use areas are accessible [see 24 CFR § 100.205(c)(1)],
 - c. All doors into and within all premises are wide enough for passage by persons using wheelchairs [see 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 [see 24 CFR § 100.205(c)(3)(i)]
 - (ii) Light switches, electrical outlets, thermostats and other environmental controls, are in accessible locations [see 24 CFR § 100.205(c)(3)(ii)]
 - (iii) Reinforcements in bathroom walls for later installation of grab bars [see 24 CFR § 100.205(c)(3)(iii)]
 - (iv) Usable kitchens and bathrooms for people using wheelchairs [see 24 CFR § 100.205(c)(3)(iv)]

The Act defines covered multifamily dwelling as:

- (A) buildings consisting of 4 or more units if such buildings have one or more elevators; and
- (B) ground floor units in other buildings consisting of 4 or more units.

In most cases, multistory dwelling units are not covered by the Fair Housing Act’s design and construction requirements. There are two exceptions: (1) If an interior elevator provides access within an individual multistory dwelling unit, that unit is covered, and all floors of the multistory unit must meet the Fair Housing Act’s design and construction requirements; and (2) If a multistory townhouse is located in a building that has one or more public elevators, the primary entrance level of the multistory townhouse must be the story served by the elevator, and that story must comply with the Fair Housing Act requirements, including providing an accessible bathroom or powder room on that story.

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. [see <http://www.hud.gov/offices/fheo/disabilities/fhefhag.cfm>.] These Guidelines were supplemented by the following 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.

Following reviews of certain building code documents and three subsequent editions of the ANSI A117.1 standard, the Department currently recognizes ten documents as providing a safe harbor for meeting the accessibility requirements of the Fair Housing Act. **NOTE:** Once again, these safe harbors only apply to the Fair Housing Act. They do not apply to the accessibility requirements mandated under Section 504 of the Rehabilitation Act for HUD-assisted housing. The ten safe harbors are:

1. HUD's March 6, 1991 Fair Housing Accessibility Guidelines (the Guidelines) and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines;
2. ANSI A117.1-1986 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations and the Guidelines;
3. CABO/ANSI A117.1-1992 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations, and the Guidelines;
4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations, and the Guidelines;
5. HUD's Fair Housing Act Design Manual;
6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000;
7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes; and
8. 2003 International Building Code (IBC), with one condition. Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."
9. ICC/ANSI A117.1-2003 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations and the Guidelines; and
10. 2006 International Building Code, with a January 31, 2007, erratum to correct the text missing from Section 1107.7.5 and interpreted in accordance with the relevant 2006 IBC Commentary.

Note: It should be noted that the ANSI A117.1 standard contains only technical criteria, whereas the Fair Housing Act, HUD's regulations, and the Guidelines contain both scoping and technical criteria. Therefore, in using any of the ANSI standards, it is necessary to also consult the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements. The CRHA and the IBC contain both scoping and technical criteria and are written in building code language.

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

- A new construction project consisting of a building with a central public elevator is constructed with Federal financial assistance from HUD is required to have 100 percent of the dwelling units meet the Fair Housing Act design and construction requirements (see 24 CFR 100.205), and of this 100 percent, 5 percent, or at least one unit, whichever is greater, is also required to comply with the stricter accessibility requirements of Section 504 and 24 CFR 8.22. In addition, Section 504 requires that an additional 2 percent of the units, or at least one unit, whichever is greater, be made accessible for persons with visual or hearing impairments. *See* 24 CFR § 8.22 (b).
- In a newly-constructed 100-unit two-story walk-up apartment building with no elevator that is constructed with Federal financial assistance, Section 504 requires a total of five accessible units for persons with mobility disabilities (5 percent of 100 units = 5 accessible units). Further, these 5 units must be located on the ground floor, and be built to comply with the Section 504 accessibility requirements at 24 CFR §§ 8.22 and 8.32. In addition, if half of the 100 units are on the ground floor, all 50 of these ground floor units must comply with the Fair Housing Act's design and construction requirements. In addition, Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. *See* 24 CFR § 8.22 (b). These units can be located on either floor.

Note: Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. These units can be located on either floor of the two-story walk-up, non-elevator building. *See* 24 CFR § 8.22 (b).

- A development consisting entirely of attached multistory dwelling units is not a covered multifamily dwelling for purposes of the Fair Housing Act's design and construction requirements at 24 CFR § 100.205. However, if any of the multistory dwelling units has an internal elevator, that dwelling unit and any public and common use spaces would be required to be accessible under the Fair Housing Act. On the other hand, a development of four or more single-story, attached dwelling units would be covered by the Fair Housing Act's accessibility requirements. In addition, if the development receives Federal financial assistance from HUD, Section 504 requires that 5 percent of the multistory units, or at least one unit, whichever is greater, be accessible for persons with mobility disabilities

and an additional 2 percent of the units, or at least one unit, whichever is greater, be accessible for persons with hearing or vision impairments. *See* 24 CFR § 8.22. For those units required to be accessible for persons with mobility disabilities, this may be accomplished by making 5 percent of the multistory units accessible or by building 5 percent of the development as single-story accessible units.

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 building 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 dependence. 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. *See* <http://www.design.ncsu.edu/cud>.

Note: Universal Design concepts do not typically reach all of the requirements of accessibility laws like Section 504 and the Fair Housing Act, therefore, care must be taken to ensure that the requirements of all applicable laws are met in projects promoting universal design.

II. PROGRAM SPECIFIC COMPLIANCE/ACTIVITIES

A. HOUSING CHOICE VOUCHER PROGRAM

[*see* Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the 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. *See* 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.

A PHA has the discretion to approve exception payments standards up to 110 percent of the Fair Market Rent when requested as a reasonable accommodation. *See* 24 CFR § 982.505(d). The HUD field office may approve an exception payment standard amount within the upper range (between 110-120% of the Fair Market Rent) 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. *See* 24 CFR § 982.503(c)(2)(ii) and 24 CFR § 8.28(a)(5). Requests for exception rents above 120% that are needed as a reasonable accommodation for a person with a disability to allow the person to rent an

appropriate unit must be submitted to HUD headquarters for regulatory waiver and approval.

3. A PHA may approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. See 24 CFR § 982.306(d) also see <http://www.hud.gov/offices/pih/publications/notices/09/pih2009-22.pdf> for additional guidance on live-in aides.
4. 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 and must allow the person with a disability to make reasonable modifications in accordance with 24 CFR § 100.203. See also 24 CFR § 100.204 (a).

B. SECTION 8/HOMEOWNERSHIP OPTION 24 CFR § 982.625 – THRU § 982.643

1. 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. See 24 CFR § 982.627 (b)(3)
2. 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. See 24 CFR § 982.627(c)(2)(i).
3. The full-time employment eligibility requirement does not apply to a family with a disability. See 24 CFR § 982.627(d)(3).
4. The limit on the length of time a family may receive homeownership assistance does not apply to families with disabilities. See 24 CFR § 982.634(c).
5. 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 family member with a disability if the PHA determines the allowance of such costs is needed as a reasonable accommodation. See 24 CFR § 982.635(c)(vii).

C. PROJECT-BASED VOUCHER PROGRAM

1. PHAs, at their discretion, may choose to use up to 20 percent 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 percent of the units in a project may be subsidized. However, the law allows an exception for units for families with disabilities, elderly families and for families who receive supportive services.

NOTE: 24 CFR § 983.251(d) states that PHAs may give preference to disabled families who need services offered at a particular project in accordance with certain limits. Limits include: families with disabilities that significantly interfere with the ability to obtain and maintain themselves in housing; families who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and for families whom such services cannot be provided in a non-segregated setting. Disabled persons cannot be required to accept the particular services offered in a project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

D. CAPITAL FUND PROGRAM

Planning. Regulations governing the Capital Fund at 24 CFR 968 require compliance with statutory and regulatory requirements prohibiting discrimination against persons with disabilities. PHAs must ensure that all work is in compliance with these requirements in conducting Capital Fund activities.

- a. **Substantial Alterations.** The requirements for new construction at 24 CFR § 8.22(a) and (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 percent of the units in the development or replace the elements being modernized with accessible elements in all units of the project. PHAs should provide an additional 2 percent of the units for persons with hearing or vision impairments. *See* 24 CFR § 8.23 (b).
- 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. **Residents/Advocacy Consultation.** PHAs are encouraged to ensure that, at least yearly, residents with disabilities and advocates for persons with disabilities have an opportunity to provide input on modernization plans and activities.

The housing needs of persons 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 24 CFR Part 903 for additional related requirements.

Note: Modernization activities covered by statutory civil rights requirements such as Section 504, the ABA, the FHA and the ADA take precedence over non-emergency modernization activities.

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 percent of for-sale units accessible for persons with mobility impairments and 2 percent for persons with hearing and vision impairments.
3. Visitability. The HOPE VI Program strongly encourages making as many "visitable" units as possible. Visibility standards recommended by HUD apply to units that are not otherwise covered by accessibility requirements. The elements of visitability are also described in the Glossary of HOPE VI terms, which are posted to the HOPE VI website. See <http://www.hud.gov/hopevi>.
4. Advocacy Consultation/Participation. The HOPE VI Program encourages PHAs to work with local advocacy groups that represent persons with disabilities, the elderly and other special needs populations in developing HOPE VI plans.
5. Relocation Units. HOPE VI 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 persons 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 at <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm>.
7. Designated Housing Plans. All allocation plan applications for designated housing are now published on HUD's web site at www.hud.gov/pih.
8. Single People with Disabilities. The HOPE VI program encourages 1 bedroom units for single people with disabilities.
9. Accessible Townhouse Design. In addition to the designs already available and in use, HOPE VI will continue to explore design alternatives for townhouse dwellings.

F. CHOICE NEIGHBORHOOD PROGRAM

1. Choice Neighborhood Notice of Funding Availability (NOFA) Accessibility Requirements. Must meet all applicable accessibility standards.

G. ADMISSION/OCCUPANCY

1. Application Process. PHAs must ensure 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 must provide accessible materials for persons with sight and hearing impairments and otherwise provide effective communication, upon request. *See* 24 CFR § 8.6 and § 8.54(c). A PHA must make special arrangements to take the application of persons who are unable to come to the PHA's offices because of a disability. At the initial point of contact with each applicant, the PHA must inform all applicants of alternative forms of communication. *See* 24 CFR § 8.6.

2. Effective Communication/Provision of Auxiliary Aids & Services:

The PHA shall provide appropriate auxiliary aids and services, where necessary, to afford an individual with disabilities an equal opportunity to participate in the PHA's programs, services and activities. In determining what auxiliary aids are appropriate, the PHA shall give primary consideration to the request(s) of the individual with disabilities unless doing so would result in a fundamental alteration of the PHA's programs or in undue financial and administrative burden. If an action would result in such an alteration or burdens, the PHA shall take any other action up to the point that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the PHA's program or activity.

The PHA is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. *See* 24 CFR § 8.6, 28 CFR §§ 35.160 and 35.161.

When the PHA has initial contact with the applicant, resident, or member of the public, the PHA staff should ask whether the applicant, resident, or member of the public requires an alternate form of communication. Examples of alternative forms of communication might include, but are not limited to: the provision of a qualified sign language interpreter; having written materials explained orally by staff either in person or by telephone; provision of written materials in large/bold font; information on audiocassette; permitting applicants to file applications by mail; and permitting alternative sites for the receipt of applications.

In addition, the PHA may never require the applicant to provide, or pay for, his/her own sign language interpreter. Rather, it is always the PHA's responsibility to provide, upon request, a qualified sign language interpreter. However, the PHA's responsibility to provide a qualified sign language interpreter does not preclude an individual's right to have a friend, relative or advocate accompany him/her for purposes of conducting business with the PHA.

3. 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 to be essential to the care and well being of a family member with a disability; (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, 982.402(b).

4. 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 reasonable accommodation or accessible unit. A PHA may not seek the individual's specific diagnosis, nor may the PHA seek information regarding the nature, severity or effects of the individual's disability.

5. Vacant Accessible Units. In order to maximize the use of accessible features of the unit, if an appropriate size accessible unit is not available, a PHA may consider over-housing an applicant with a disability who needs an accessible unit. *See* 24 CFR § 8.27. If there is not an eligible, qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible or adaptable unit, then the PHA may offer the unit to an applicant on the waiting list or another resident who does not need the accessible features of the unit. *See* 24 CFR § 8.27. However, the PHA may require the applicant or resident to execute a Lease/Lease Addendum that requires the resident to relocate at the PHA's expense to a vacant, non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. See discussion in Section I.B(8).

In addition, the PHA should maintain an adequate pool of eligible applicants with disabilities who require accessible or adaptable units so that when such a unit becomes available, there is an eligible applicant with disabilities ready and willing to rent the unit. *See* 24 CFR § 8.27. The PHA should also conduct outreach activities for income-eligible persons with disabilities. The outreach activities may include, but are not limited to publicity/advertising in local print media, contacts with advocacy groups representing persons with disabilities and other entities that come into contact with persons with disabilities such as social service agencies, medical providers, etc.

Reminder – As noted previously in Section I.B.8 – “Occupancy of Accessible Dwelling Units” – Section 504 requires that accessible units must be offered first to a current PHA resident in need of the accessible features of the available accessible unit and second to a qualified applicant with a disability on the PHA's waiting list who requires the accessibility features of the vacant, accessible unit. *See* 24 CFR § 8.27.

6. Screening/Reasonable Accommodations. Many applicants with disabilities will pass screening, will not need a reasonable accommodation, will not need special accessibility features, and will be admitted in exactly the same manner as applicants without disabilities. Applicants who fail screening will receive a rejection letter. This letter must provide all applicants with 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 unless doing so would result in a fundamental alteration in the nature of the PHA's program.

If requested by the applicant, a PHA must consider verifiable mitigating circumstances that explain and/or overcome any prior misconduct related to a previous tenancy. If a reasonable accommodation would allow an applicant with a disability to meet the eligibility requirements for housing, a housing provider must provide the requested accommodation.

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require the PHA to reduce or waive essential eligibility or residency requirements. Examples of reasonable accommodations include, but are not limited to: physical alteration of units; making services and programs currently located in an inaccessible location in an alternate, accessible location; and revising the PHA's policies and procedures. The PHA should focus on finding a reasonable accommodation that will permit the applicant with a disability to comply with the essential obligations of tenancy. A PHA is not required to excuse the applicant from meeting those requirements. The PHA should provide all applicants with information regarding the PHA's Reasonable Accommodation Policy and Procedures at the time they apply for admission and at every annual re-certification. Each PHA must have a reasonable accommodation policy. The PHA's responsibility to provide reasonable accommodations for applicants and residents is present at all times, including during lease enforcement. See discussion in Section I.B.(7).

7. Unit Size. In public housing, a family with a disability may need a unit that is larger than the PHA's permitted occupancy standards. 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.
8. 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.

Note: Persons with disabilities cannot be required to occupy first floor units in elevator buildings, or in non-elevator buildings if the person is able to and wishes to use stairs.

9. 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. [An "assistance animal" is an animal that is needed as a reasonable accommodation for persons with disabilities. An assistance animal is not considered a "pet" and thus, is not subject to the PHA's pet policy. Assistance animals are animals that work, provide assistance, perform tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability.] See regulation published on October 27, 2009, 24 CFR Part V, Pet Ownership for the Elderly and Persons with Disabilities, Final Rule.

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with a disability.

Assistance animals are exempt from a PHA's "pet" restrictions or a PHA's policy requiring pet deposits or monthly pet fees. However, all reasonable lease provisions relating to health and safety apply to assistance/service animals such as maintaining the premises in a clean and sanitary condition and ensuring that neighbors enjoy their premises in a safe and peaceful manner.

H. VISITABILITY

1. Visitability Concept. Although not a requirement, it is recommended that all design, construction and alterations incorporate, whenever practical and economical, 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 persons with disabilities to interact with their neighbors, friends and associates in the community. *See* www.huduser.org/publications/pubasst/strategies.html.

2. Design Considerations. Visitability design incorporates the following in all new construction or alterations, in addition to other requirements mandated by the accessibility laws discussed in this Notice, whenever practical, for as many units as possible within a development:
 - a. Provide at least one entrance grade (no steps) approached by an accessible route such as a sidewalk; and
 - b. Provide an entrance door, and all interior passage doors, that are at least 2 feet 10 inches wide allowing 32 inches of clear passage space.
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.

I. ACCESSIBILITY FUNDING SOURCES

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

MODEL PROTOCOL

on Service Animals in Domestic Violence Shelters

Prepared by Phil Jordan and Summer Carrick for the
Washington State Coalition Against Domestic Violence

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Introduction

During the past few years, the subject of service animals coming to domestic violence shelters has been a hot topic whenever shelter managers, staff and volunteers get together. There are always interesting stories to be heard at these gatherings – some of them funny, some of them horrifying, and some just plain strange.

Communal living situations are always hard, and introducing service animals into the mix can create more complications, conflicts and confusion. This document is divided into three sections with the goal of minimizing confusion, providing a framework for addressing conflicts, and embracing complications as an integral part of advocacy.

The three sections of this document are:

- Basic information about service animals and the people who use them (page 2);
- Basic information about the laws that apply to shelters and service animals (page 6); and
- Suggested policies and procedures for service animals in shelters (page 14).

In various places throughout this document we have used personal pronouns to identify survivors. These individuals could be of any gender. For expedience, we have chosen to use the pronouns “she” and “her” because the majority of survivors are female. Similarly, when referring to abusers we have used the pronouns “he” and “him” because more abusers are male.

Disclaimer

This document contains references to several laws relating to service animals and domestic violence shelters. It is not meant to be a complete review of all laws applicable to the subject. It is written for non-lawyers and is not intended to provide specific legal advice. Laws change over time, so if you want legal information for a specific situation, consult the internet resources listed in this document and/or contact an attorney.

Service Animals

Basic information about service animals

What is a service animal?

A service animal is any animal that has been individually trained to provide assistance or perform tasks for the benefit of a person with a physical, sensory or mental disability.

What kind of animal can be a service animal?

Any kind of animal can be a service animal. Dogs, cats, monkeys, miniature horses, birds, snakes (yes, snakes!) have all been service animals. Most often, service animals are dogs.¹

What kind of certification do service animals have?

Service animals do not require any kind of certification. They need to be individually trained to provide assistance, but training varies widely based on the tasks the animal performs. The training can be done by professional trainers or individually by the person with the disability. Some service animals have harnesses, collars, or other documentation, but many do not.

What is a companion animal? What is an emotional support animal? What is a prescription animal?

These terms all describe a type of service animal. Increasing numbers of people with emotional or psychological disorders are finding that an animal helps alleviate their symptoms. The most common terms are "emotional support animal" or "companion animal." The term "prescription animal" is sometimes used when a medical provider documents the need for such an animal.

¹ In some cases, a particular animal may not be appropriate, and the laws about service animals recognize this. For example, poisonous snakes would not be appropriate in public places, nor would rats be appropriate in restaurants.

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Because this is a relatively new practice the terminology is not settled. Regardless of how they are labeled, emotional support animals are service animals. They help alleviate anxiety or other symptoms of an emotional or psychological disorder. For more information, see the discussion of the Americans with Disabilities Act in **Section 2**.

If there is no certification, how do I know the animal is really a service animal?

If a person says their animal is a service animal, it is good advocacy practice to take them at their word.

For more information on this subject, see **Section 3**.

For information on the laws relating to housing providers requesting documentation for service animals, see **Section 2**.

What is the difference between a service animal and a pet?

Service animals are not pets. A person with a disability uses a service animal as an auxiliary aid, similar to the use of a cane, crutches or wheelchair. "No pet" or "no animal" policies do not apply to service animals.

Who uses service animals?

Some people with disabilities use an animal to provide support, perform tasks related to their disabilities, provide warnings, or help keep them safe. The assistance the animals provide can lessen symptoms, help remove day-to-day barriers, or help keep them healthy. People with many different types of disabilities use service animals.

How do I know the person has a disability?

If they are using a service animal, then they have a disability. Usually, that is all you need to know. There are laws and rules that limit what you can ask a person who wants to use your services. For example, you may not ask a person to tell you what type of disability she has (see **Section 2**).

Our work embraces the value of believing survivors when they seek our services or support. If a survivor identifies as having a disability, it is

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recommended that you accept her word and assume she is protected by disability rights laws.

Don't I need to know about the survivor's disability so I can provide services?

You will need to know about the survivor's *abilities*. Knowing the name of a survivor's disability or diagnosis may lead you to make incorrect assumptions. The same disease, disorder or condition might affect two people in completely different ways.

When you ask someone about their disability, you may not get information that is helpful. The survivor may think you are asking only about things she cannot do, rather than helping her develop an advocacy plan based on her strengths and survival strategies. A better approach is to discuss with every survivor how things work throughout your program so she can tell you what works best for her. It is always helpful to know what tasks a survivor needs support with.

For example:

- What is the physical layout of your shelter? Does your building have stairs and no elevator? What would be the best way to solve any problems created by your building's layout?
- Will the survivor need to schedule and maintain appointments? What kind of reminder for appointments works for her?
- Will she need to review written documents? How does that work best for her? Read them together aloud? Have documents available in large print or on a cassette tape?

What do service animals do?

Below is a list of *some* of the various types of service animals.

- *Hearing animals* alert a person who is Deaf or hard of hearing when a sound occurs, such as a doorbell or fire alarm.
- *Seeing eye or guide animals* assist people who are blind or have low vision.
- *SSIG (social signal) animals* assist a person with autism. These animals are trained to alert their owner to certain behaviors or

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repetitive movements, like hand flapping. This can help the person better communicate and process sensory input.

- *Emotional support, or companion animals* can help a person manage symptoms of a psychiatric disability or mental illness. Sometimes the term *therapy animal* is used to describe animals that are trained to visit hospitals, schools, nursing homes and other facilities.
- A *diabetes animal* may be trained to help a person with diabetes by carrying medication and going for help in an emergency. These animals may even learn to predict and warn of low blood sugar.
- A *seizure animal* may help someone who has epilepsy or a seizure disorder by carrying medicine or going for help. Some even learn to predict and warn the person of an impending seizure.

Where can I find more information about service animals?

- The Delta Society
www.deltasociety.org
- The Invisible Disabilities Advocate
www.myida.org/serviceanimals.htm
- Assistance Dogs International
www.assistedogsinternational.org
- Guide Horse Foundation
www.guidehorse.org
- Helping Hands: Monkey Helpers
www.monkeyhelpers.org

Laws about Service Animals

Basic information about the laws that apply to domestic violence shelters and service animals

What are the laws that apply to domestic violence shelters and service animals?

There are four laws that directly apply to service animals and domestic violence shelters. Three of them are federal laws and one is a Washington state law.

- Washington Law Against Discrimination
- Title III of the Americans with Disabilities Act
- Section 504 of the Rehabilitation Act
- Fair Housing Amendments Act

Why are there four different laws?

Each law has a slightly different focus, but all four laws embrace the same principle - making sure that people with disabilities have equal access to services. All four laws apply to domestic violence shelters.

- *Washington Law Against Discrimination (WLAD)* is a state law that is broader in scope than any of the federal laws listed below. The WLAD applies to all businesses and non-profit service providers, including domestic violence programs and shelters. The WLAD specifically prohibits discrimination against people who use service animals.
- *Title III of the Americans with Disabilities Act (ADA)* is a federal law that applies to all businesses and non-profit service providers. The ADA calls these “places of public accommodation.” Any program operated by a domestic violence or sexual assault agency is a place of public accommodation, and thus subject to Title III of the ADA.²

² As of January 2009, the ADA is undergoing rule changes that may limit the types of animals that can be designated service animals and may provide fewer protections for people using emotional support animals. These potential changes will have little or no effect on shelters in Washington state because the broader WLAD is still in effect.

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- *Section 504 of the Rehabilitation Act* is a federal law that covers any program operated by agencies receiving federal financial assistance. All state-funded shelters are covered under this law because they receive federal funds that pass through the state (if your organization receives VOCA, FVPSA, VAWA or RPE funds, even if they pass through DSHS or OCVA, you are receiving federal dollars).
- *Fair Housing Amendments Act* is a federal law that applies to most housing providers, including shelter and transitional living programs.

Do these laws require that shelters allow service animals?

Yes. All four laws require shelters to allow service animals. Your program is required to modify any “no animal” policy if it’s necessary to allow equal access for a person with a disability using a service animal.

What is my shelter required to do under these four laws?

The *Washington Law Against Discrimination* (WLAD) is very specific on the subject of service animals. Places of public accommodation must not only allow service animals, but may not “treat a person with a disability as not welcome, accepted, desired, or solicited because of their use of a service animal.”³ Under the WLAD, any policy or practice that discourages a person with a service animal from using your services violates the law.

Under *Title III of the ADA*, your program is required to make reasonable modifications (sometimes called reasonable accommodations) to your policies and practices so that a person with a disability can have access to your services. Generally speaking, your program is responsible for the cost associated with these reasonable accommodations (see www.ada.gov for information about what is considered “reasonable”).

Like the ADA, *Section 504 of the Rehabilitation Act* requires “reasonable modifications” to policy and practice be made for people with disabilities. This includes allowing service animals if it’s necessary for the person with the disability to participate in the program. The law states that “*no . . . individual in the United States shall, solely by reason of [her disability],*

³ From the *Washington State Human Rights Commission*, the entity that enforces the WLAD.

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be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 29 U.S.C. §794(a)

The *Fair Housing Act* also requires reasonable modifications and reasonable accommodations for people with disabilities. The Department of Housing and Urban Development (the agency that enforces the Fair Housing Act) has made it clear that service animals must be allowed. The language in this law can be a little confusing because they define reasonable modifications differently than the other federal laws. When the Fair Housing Act talks about reasonable modifications, they are talking about changes to the actual housing unit such as adding ramps or grab bars, changing door knobs to levers, or widening doorways. Reasonable accommodations under the Fair Housing Act are changes to policy and practice, such as allowing service animals despite a no animal policy, or providing assistance in filling out application forms.

How do I find out if an animal is really a service animal?

The easy answer: It is good advocacy practice to believe survivors when they tell you the animal is a service animal. You do not need documentation. This is not only good practice, but conforms with all four laws. For more information, see **Section 3**.

The complicated answer: There are two parts to this answer.

1. When a survivor comes to you for advocacy services (other than shelter), you cannot ask for documentation or certification for her service animal. This is prohibited by the ADA, the Rehabilitation Act and the WLAD.

When someone contacts your program for services, the law is very clear. You cannot ask about the survivor's disability (either directly or indirectly), and you cannot require documentation that an animal is a service animal. The laws were written this way so that people with disabilities would not have to prove they have a disability by carrying documentation.

If you feel you must ask someone about their animal, be aware that you must be very careful about what you ask. The Washington State Human Rights Commission, which enforces the WLAD, says that you may ask if the animal "is a service animal required

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because of a disability.” However, they go on to say that you “cannot require any proof of a person’s disability, or identification or certification of the service animal’s status.” The U.S. Department of Justice suggests that under the ADA, you may only ask two questions: “Is this a service animal?” and “What tasks does the animal perform for the person?” Other inquiries could leave you liable to a discrimination complaint.

2. However, when a survivor applies for space in your shelter or for transitional housing, things get a little more complicated. When a survivor is applying for housing, the Fair Housing Act applies, and it is a little different than the other laws. Under the Fair Housing Act and the WLAD, a housing provider *may* ask for a statement from a health care or mental health professional (the provider does not need to be an M.D., but should be qualified to provide the diagnosis or prescription). The statement should say that the individual is a person with a disability and will be assisted by a service animal. Your shelter staff may *not* ask for details or the nature of an individual’s disability.

Neither law requires that you ask for this documentation, and many shelters do not require it. However, if you choose to ask for it, you should proceed carefully. If you ask for documentation from one survivor, you should ask all survivors with service animals for documentation. If you assist one survivor in obtaining the needed documentation, you should assist all survivors with service animals. Your policy and practice should be consistent.

Can I keep the service animal out of the common areas?

No. When service animals are working, they accompany their owner. By limiting where a service animal can go in your shelter, you are limiting where the survivor can go. The person with the disability and a working service animal must be allowed to go wherever any other survivor is allowed to go, including kitchens, restrooms, and sleeping areas. Limiting access to common areas could lead to a discrimination complaint.

This does not mean that the animal has free run inside your shelter. When the animal is working, it must always be under direction and control of the owner. This could be on a leash or harness, or it could be simply that the animal obeys the voice commands of the owner. When the animal is not working, you may ask the owner to keep the animal in

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her room, in a kennel or crate, or make arrangements that are satisfactory to everybody.

What if the animal is growling or threatening other residents or the staff?

If the animal is directly threatening a resident or staff member, ask the owner of the animal to get it under control.

However, sometimes a resident or staff member might misinterpret an animal's actions. If you receive a complaint that an animal is exhibiting aggressive behavior, take the time to ask the owner what is going on. There are a variety of reasons a person could misinterpret an animal's behavior. For example, the animal could be being teased by children, which interferes with its work. The animal may have had its tail accidentally stepped on. Some service animals inform their owners of impending seizures by making noises that could be misinterpreted. Other service animals place themselves between their owner and someone talking to them because of social anxiety issues - this behavior can seem to be threatening when, in fact, it is what the animal has been trained to do.

What if the animal is actually threatening staff or residents?

There are three reasons that can lead to the removal of a service animal from your shelter. You can ask a person to remove their service animal if:

1. The service animal is a direct threat to the safety of others. It is extremely rare for service animals to be truly dangerous. To have an animal removed for this reason, there must be actual evidence of danger. You cannot, for example, ask to have a dog removed simply because someone is afraid of it. Nor could you ban all pit bulls because you believe they are dangerous.
2. The service animal is disruptive to the point that it is interfering with programming or the provision of services. In general, if a service animal is disruptive (for example, jumping up on people in a friendly but annoying way, barking) staff should talk with the participant, telling her that the animal is interfering with programming and may need to be removed if the survivor cannot get the animal under control. If the behavior continues to disrupt

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programming, the participant may be asked to remove the animal and told the animal may not return.

3. The service animal is creating an unsanitary condition. Note that the survivor may be unable to keep the animal clean, or to clean up the animal's waste because of a disability. Although the law may not require this type of assistance, it likely falls within your program's mission and values to help with these tasks. Moreover, supporting the survivor in this way allows her to have a wider array of choices for safe housing and ending the cycle of violence in her life.

Important note: In any case where you ask a survivor to remove her service animal, you should make it clear that she is welcome to continue participating in shelter activities without the animal, and you must make efforts to provide reasonable accommodations so she can do so.

Do I have to pay for the animal's food? Do I have to clean up after the animal? What are the survivor's responsibilities?

Generally, the owner of the service animal has the responsibility to look after and supervise the animal, including costs associated with food and care. If the survivor is unable to pay for the animal's care, consider a small investment in food and grooming supplies. This assistance may enable the survivor to stay in your shelter and remain safe.

If the survivor's disability prevents her from being able to perform any of the functions needed to care for the animal, she may request that shelter staff assist her. Many programs have provided this sort of assistance as a reasonable accommodation.

The owner of the service animal is responsible for maintaining control of the animal at all times. This generally means that while the animal is in common areas, it is on a leash, in a carrier, or otherwise in the direct control of the animal owner or an assistant. When in the presence of others, the animal is expected to be well-behaved (not jumping on or barking at people).

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What if the animal doesn't have the shots that it needs, or doesn't have an animal license from the county?

Check the laws in your county about licensing animals. Most counties require licenses and proof of certain vaccinations. Service animals generally must comply with these laws. If the survivor left her home quickly, she may not have the documentation she needs. Although not required by law, many shelters have assisted survivors in obtaining vaccinations and/or a license for their animal.

Our program doesn't have very much money. What do we do if we can't afford the "reasonable modification" or "reasonable accommodation" needed by the survivor?

People with disabilities often know what they need, and are accustomed to finding creative solutions to accommodation problems. In many cases, low-cost (or no-cost) solutions can be found when advocates discuss with the survivor what might solve the access problem.

In cases where the solution to the problem involves considerable expense or effort, you may or may not be responsible for the cost. Generally speaking, if the accommodation is reasonable, readily achievable, and does not require you to make changes that would fundamentally alter the nature of the services you provide, you are responsible for the cost of the accommodation. The law does *not* require you to provide an accommodation that would result in an undue burden on your program.

For more complete information on the definitions of the legal terms in the paragraph above ("reasonable," "readily achievable," "fundamentally alter the nature of the services," and "undue burden") you should look on the ADA website at <http://www.ada.gov>, or the other web resources listed on the next page.

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Where can I get more information about the laws that apply to service animals?

- Service Animal Questions
Washington State Human Rights Commission
www.hum.wa.gov/generalInfo/faq_serv_animal.htm
- ADA Questions and Answers
U.S. Dept. of Justice Human Rights Division
www.ada.gov/q%26aeng02.htm#Public
- ADA Small Business [and Non-profit Service Provider] Guide
U.S. Dept. of Justice Human Rights Division
<http://www.ada.gov/smbusgd.pdf>
- Right to Emotional Support Animals in “No Pet” Housing
Bazelon Center for Mental Health Law
www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html
- Reasonable Modifications Under the Fair Housing Act
U.S. Dept. of Justice & U.S. Dept. of Housing & Urban Development
www.usdoj.gov/crt/housing/fairhousing/reasonable_modifications_mar08.pdf
- Brief Overview of Housing and Companion Animals
Kate Brewer, Michigan State University College of Law
www.animallaw.info/articles/qvuspetsandhousinglaws.htm
- Summary of Emotional Support Animals and Housing Laws
Kate Brewer, Michigan State University College of Law
www.animallaw.info/articles/ovuspetsandhousinglaws.htm

Service Animals in Domestic Violence Shelters

Suggested policies and procedures

The first section in this document provided basic information about service animals and the people who use them. The second section was about the laws that relate to service animals and your shelter. This third section will provide information and suggestions about developing policies and practices in your program related to service animals.

Screening and intake practices at your program

The first step in developing your new service animal policy is to examine your program's screening and intake practices.

No domestic violence advocate would tell a survivor that their program does not serve people with disabilities, but some common questions asked during screening or intake can inadvertently make survivors with disabilities feel unwelcome.

Historically, many service providers have found it expedient to screen people with disabilities out of services. This may have happened because they believed that people with disabilities were hard to serve. Thus, screening them out saved time and resources for the staff. When providers do this – whether they are domestic violence advocates or any other service agency – they are establishing a de facto policy that people with disabilities are not welcome.

Because of this dynamic, many people with disabilities are accustomed to being screened out when they seek services and may be suspicious of your intent. Look at your program's screening and intake questions and answer them as though you were a survivor with a disability. Look for questions that might inadvertently send a message that you would be unwelcome. Think of ways you can collect the information in a supportive manner.

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For WSCADV's model protocol on screening practices, go to the WSCADV website at www.wscadv.org, browse the "Resources" by title, and select "Screening Practices for Domestic Violence Victims with Disabilities."

Issues & problem solving

The first time a service animal comes into your shelter, you are likely to have concerns. There are many things to think about and if you have never had animals in your shelter, these issues will be new to you. This section will help identify concerns or issues surrounding service animals in shelters, suggest some possible solutions, and explore approaches to problem-solving that empower survivors.

The issues that are addressed in this section are:

- Sanitation
- Liability
- Allergies/Fear of animals/Aversion to animals
- Licensing and required shots for the animal
- Talking with the survivor about the animal
- Talking with other participants about the animal
- Disruption of programming
- Dangerous animals

Sanitation

Caring for the animal

Service animals should be kept reasonably clean and it is the responsibility of the animal's owner to maintain its hygiene. One thing to consider is that people with service animals are often dependent on their animal. For this reason, it is likely that the abuser has not allowed the survivor to take care of it. This tactic gives him greater control over the animal, and by extension, over the survivor. If this is the case, the survivor may not know what it takes to keep the animal clean. It is also possible that the survivor's disability makes it difficult or impossible to take care of the animal.

Giving the survivor some support in learning how to care for the animal or some assistance with difficult tasks could not only be considered a reasonable accommodation, but would increase her autonomy. If the shelter staff or volunteers are unable to assist in this way, you may be able to find someone at your local animal shelter, humane society, or animal rescue organization who would be happy to work with your shelter.

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*P.O.O.P.*⁴

Service animals should be housebroken and the owner should clean up after the animal. Plastic bags can be used to pick up feces, and they can be tied off and thrown in the garbage can. The produce section at your grocery store has bags that work well for this. If the survivor is unable to perform this task, you may be able to recruit an animal lover from the staff or other survivors to assist. Some advocates have said they would rather clean up after an animal than do dishes!

Animals in food preparation areas

Working service animals are allowed to accompany their owner in all common areas, including the kitchen. As always, animals must be under the direction and control of the owner and should be well-behaved.

Fleas

Dogs (or other animals) that have fleas can create an ongoing problem for shelters. Several shelter advocates said they have been successful treating animals by using one of the commercial products that are available. These products do not expose people to airborne insecticides and are easily applied on the back of the animal. They generally rid the animal of fleas within 18 hours. If possible, an animal that is infested with fleas should be treated before coming inside the shelter.

If your shelter becomes infested with fleas, there are many commercial options that can deal with the problem. Follow all product instructions and pay careful attention to any cautions or warnings.

Liability

Domestic violence and sexual assault programs are understandably concerned about potential liability when an animal is present in the shelter. This concern may have led your program to adopt a “no pet” or “no animal” policy at your program.

You should also realize that your program is exposed to liability for denying or discouraging access to a person with a disability who uses a service animal. **Section 2** of this document describes your obligation to allow service animals. When considering liability issues, it is worth repeating that the Washington State Human Rights Commission states that places of public accommodation must not only allow service animals, but may not “treat a

⁴ Primary Offal Obliteration Protocol

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person with a disability as not welcome, accepted, desired, or solicited because of their use of a service animal.”

When you increase access to your services, you may actually decrease your risk of liability.

Allergies/Fear of animals/Aversion to animals

Your program is dedicated to serving all survivors. Because shelters are community living environments, sometimes the wishes or needs of survivors can conflict. If a staff person or another shelter resident is allergic or afraid of the service animal, you have an issue that must be addressed. The *Violence Against Women with Disabilities Project of Wisconsin* offers this advice:

A best practice approach would be to try different options to work out this dilemma without solely burdening the person with the service animal, so that both people can participate. This practice involves dialogue among the staff and the program participant using the service animal and the individual who is scared or has allergies. Think creatively. Are there options that allow both persons to fully participate but maintain some distance from each other (use common space at different times)? Are there options that might reduce exposure for allergies (single bedroom for a person with service animal)?

From a legal perspective, keep in mind that while some people might have fear of dogs or other animals, this is not generally a valid reason for excluding a person with a disability using a service animal. For most people with allergies, the presence of an animal causes only minor discomfort, such as sneezing or sniffing. Although it is understandably uncomfortable, this reaction does not constitute a “disability” as defined under the law; therefore, no accommodation is necessary for the allergic person. Rarely, another participant’s allergy is so severe that animal contact may cause acute respiratory distress. In these cases, the allergic participant also may request an accommodation.

-- *Disability Rights Wisconsin, Wisconsin Coalition Against Domestic Violence, Wisconsin Coalition Against Sexual Assault (2008).*

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There are a couple of issues to consider when attempting to resolve conflicts between residents related to a survivor's service animal. Before discussing the situation with other residents, be sure to ask the survivor for permission to talk with other residents about her service animal.

Do not assume that the survivor with the service animal is responsible for resolving the situation. The conflict is not her fault or solely her responsibility. Talk with all people involved and do not assume the person with the service animal is the one who should leave or go to a hotel.

You may encounter staff or residents who object to animals living indoors for personal reasons. This can be a challenge, but many shelter advocates have found that open discussions between staff and residents (with permission from everyone involved) have often led to solutions that are acceptable to everyone *and* preserved the right of the survivor with the service animal to use your services.

Licensing and required shots (county requirements)

Most counties require animals to receive certain types of shots and that they be licensed in the county. The requirements vary by county, so be sure to check with your local officials. Service animals are generally not exempt from these laws.

It is likely that the survivor came to you without stopping to collect documentation about the animal's health and immunization history. Advocates are accustomed to helping survivors with various kinds of documentation, and advocates across the state report that obtaining health records for a service animal has not been difficult.

It is also possible that the animal has not been licensed or received its shots. Assisting the survivor with these tasks will help her gain more autonomy. Advocates from across the state have formed relationships with local animal shelters, Humane Societies, or animal rescue groups. These allies have been helpful in resolving these and many other issues.

Talking with the survivor about how the animal will fit in

Communal living is always difficult. Bringing a service animal into the shelter can create challenges for the survivor, the animal, and for staff. Shelter advocates emphasize that letting the survivor know what to expect and

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having a discussion about how the animal will interact with staff and other survivors is an important first step.

When initiating this discussion, there are a couple of things to keep in mind. First, people who use service animals often face discrimination when trying to access public places. This sometimes leads to defensiveness about their animal. Start your conversation by assuring the survivor that she and the animal are welcome.

Disability rights laws such as the ADA and the Washington Law Against Discrimination limit the questions you can ask about a person's service animal (see **Section 2**). One question that you are allowed to ask is: What tasks does the animal perform for you? The answer to this question will help you understand when the animal will be accompanying the survivor. This can lead into a discussion about how the survivor and her service animal can best coexist with other residents and staff in the shelter.

Some domestic violence advocates have expressed concern about some of the exotic service animals that a survivor might bring into the shelter. At least one shelter in Washington state has hosted a service snake! Exotic service animals are often "emotional support animals" – that is, the task they perform is to help ease symptoms of emotional or mental disorders and/or reduce anxiety. If this is the case, the animal may not need to accompany the survivor at all times. Your discussion with the survivor can establish how and when the animal will interact with staff and other residents, if at all.

Talking with staff and other survivors in the shelter about the service animal

When a service animal comes into your shelter, staff and other residents will be curious. Staff or other residents should not pet or play with the animal when it is working. A service animal is not a pet and should not be distracted from its duties. Be prepared to explain the presence and function of the animal, without breaching the confidentiality of the survivor. Remember that the survivor's confidentiality includes the nature of her disability.

In your preliminary discussion with the survivor, ask her what she is comfortable sharing about her animal and its function with other residents. Obtain her permission before passing on this information to staff and other residents.

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Disruption of programming

Service animals should not disrupt programming at your shelter. If a service animal is not well behaved - for example, jumping on people to seek attention, or barking – you may ask the survivor to keep the animal under control. Usually you and the survivor can find a solution to a problem like this.

If you and the survivor have tried and failed to end the disruptive behavior, you may ask the survivor to take the animal out of the shelter. At this point, you must offer the survivor the opportunity to stay in your shelter without the animal, and discuss accommodations that would make that possible.

If you have a relationship with a local animal shelter, they may be a part of the solution to this problem.

Dangerous animals

Service animals should not threaten, growl, bite, or claw other residents or staff. If you receive a complaint about an animal that is threatening others or appears dangerous, act quickly to find out exactly what has happened. If there is not an immediate threat, take the time to ensure that the animal's behavior has not been misinterpreted (see **Section 2**).

You may ask that the service animal be removed from the shelter only if it represents a direct threat. If you ask the survivor to remove the animal, you must offer the survivor the opportunity to stay in your shelter without the animal, and discuss accommodations that would make that possible.

Asking survivors for documentation for their service animals

As discussed in **Section 2**, housing providers – such as your shelter – may ask for documentation that an animal is a service animal. However, it is recommended that you do not require this. Survivors are unlikely to have this documentation with them when they come to your shelter. If the survivor perceives this as a barrier to service, she may choose to return to an unsafe situation.

If you do decide to ask for this documentation, remember to ask for it consistently from all survivors with animals. Review the requirements of the Fair Housing Act, as outlined in **Section 2**. You might also want to consider obtaining legal advice before proceeding.

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Service animals in your shelter - things to remember

- Make the survivor feel at ease – let her know that her service animal is welcome.
- Talk with the survivor about the animal and communal living. Ask the survivor about the tasks the animal performs for her and how much about the animal you can share with other residents.
- Consider the confidentiality of the survivor – including information about her disability – when discussing the service animal with staff and other residents.
- After obtaining the survivor’s permission, talk to other residents and staff about the service animal.
- When problems arise between the survivor and staff or other residents, find creative ways to resolve differences that do not place the burden for solving the problem on the survivor with the service animal.
- Build relationships with local animal shelters, Humane Societies, or animal rescue organizations. These relationships may help solve problems around licensing, immunizations, or animal care.
- Decide whether your shelter will ask for documentation of a service animal. If you opt to require this documentation, develop a policy that details:
 - how equal access for a person with a service animal is assured;
 - how your staff will assist survivors in getting the needed documentation;
 - how staff will be trained regarding how to ask for the documentation without asking for specific disability-related information;
 - how staff will be trained regarding what information is required in the documentation and who may provide the documentation.
- Remember that if you ask a survivor to remove her service animal from the shelter, invite her to remain and discuss accommodations that might make that possible.

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

QUESTIONS & ANSWERS: DOMESTIC VIOLENCE SHELTERS and CIVIL RIGHTS STATUTES

This Q&A provides information about federal civil rights laws that apply to domestic violence shelters and the services they provide to clients. Four federal civil rights laws are discussed in this Q&A:

1. Americans with Disabilities Act (referred to as the ADA)
2. Fair Housing Act (referred to as the FHA)
3. Title VI of the 1964 Civil Rights Act (referred to as Title VI)
4. Section 504 of the Rehabilitation Act (referred to as Section 504)

The ADA and FHA are applicable to most shelters. Section 504 and Title VI apply only if the shelter receives federal financial assistance.

Please note: This Q&A does not discuss all federal civil rights laws, nor does it discuss state and local laws, which may have additional requirements. This information is not offered as legal advice and should not be used as a substitute for seeking professional legal advice. For more information about state and local disability rights laws, contact the disability council, commission, or committee in your state, listed at <http://www.dol.gov/odep/state/state.htm>. This Q&A also does not discuss employment discrimination laws. For more information about employment discrimination, see the U.S. Equal Employment Opportunity (EEOC) website: [www.http://www.eeoc.gov/http://www.eeoc.gov/types/ada.html](http://www.eeoc.gov/http://www.eeoc.gov/types/ada.html).

I. AMERICANS WITH DISABILITIES ACT (ADA) REQUIREMENTS

Q. What is the ADA?

The Americans with Disabilities Act (ADA) is a federal civil rights statute passed in 1990 based on congressional findings that discrimination against individuals with disabilities was a “serious and pervasive social problem.” The ADA is modeled after other civil rights laws that prohibit discrimination on the basis of race, color, sex, national origin, age, and religion. The general purpose of the ADA is to guarantee that individuals with disabilities are fully integrated into all aspects of American society. It imposes a general duty of nondiscrimination but it also has some specific requirements to insure that individuals with disabilities have full access to enjoy the goods and services offered by various entities.

Q: Who has obligations under the ADA?

With the ADA, Congress sought to eliminate discrimination in many areas: public accommodations, access to public services, employment, education, transportation, communication, recreation, institutionalization, health services, and voting. Therefore,

the ADA is broadly applicable to for-profit and non-profit organizations, businesses of all sorts that offer goods or services to the public, and state and local government programs.

Q: Do domestic violence shelters have obligations under the ADA?

Shelters, including domestic violence shelters, operated by local or state governments as well those that are privately owned both have obligations under the ADA but in somewhat different ways:

- Title II of the ADA imposes nondiscrimination requirements on **all of the “programs, services, and activities” of state and local governments and therefore applies to any domestic violence shelter operated by a government.**
- Title III of the ADA covers **non-government entities that provide goods and services to the public** (called “public accommodations”) which include “**social service center establishments**” and specifically “homeless shelters.” Domestic violence shelters are considered “social service center establishments.” The ADA applies equally to for-profit and non-profit entities.

The general ADA non-discrimination and reasonable accommodations requirements are the same for government-operated and privately-operated shelters, but there are some differences regarding physical accessibility requirements as noted below.

Q: Do domestic violence shelters operated by religious organizations have obligations under the ADA?

Shelters owned and operated by religious organizations do not have ADA obligations. Congress was concerned about preserving the division between church and state and therefore provided an exemption for religious organizations in the ADA. However, **a private non-religious entity that operates a shelter in a church or other building owned by a religious organization will still be covered by the ADA, as would a government-owned shelter operated in such a building.** But the religious organization as landlord would have no ADA obligations. A religious organization that receives federal financial assistance to operate a shelter would have obligations under Section 504 as discussed below.

Q: Who has rights under the ADA?

The ADA provides non-discrimination guarantees to “persons with disabilities.” The ADA defines disability as a “**physical or mental impairment that substantially limits one or more major life activities**” of an individual. Congress recently passed amendments to the ADA to emphasize that this is a broad definition intended to include obvious physical impairments such as paraplegia, blindness and deafness, as well as physical and mental impairments and conditions and diseases that may not be so apparent, such as diabetes, epilepsy, tuberculosis, AIDS, alcoholism, drug addiction, mental illness (including depression, post-traumatic stress syndrome, and schizophrenia), developmental and intellectual disabilities, and learning disabilities. (Although recovering drug addicts are considered individuals with disabilities, individuals currently engaged in illegal drug use, including unlawful use of prescription drugs, are not protected by the ADA.)

The ADA also protects individuals who have a history of disability and individuals who are discriminated against because they are perceived to have a disability whether or not they actually do. For example, an individual with severe burn scarring may currently have no “mental or physical impairment that substantially limits a major life activity,” but s/he may have once been disabled and/or may be perceived to be disabled. Finally, the ADA protects individuals from discrimination on account of their association with a person with a disability -- for example, a parent may not be refused services because of the disability of his/her child.

Q: How does a domestic violence shelter determine whether someone has a disability?

Many disabilities are obvious – such as mobility impairments or blindness. But other disabilities may not be visible, such as AIDS or mental illness. **As a general rule, staff may not ask** about disabilities or inquire into the nature or severity of a disability **except** as needed to make a reasonable accommodation or to determine if an individual meets a particular eligibility requirement (see discussions below). Any information acquired about a disability must be kept confidential, except as needed to provide an accommodation.

Q: What does a shelter have to do to comply with the ADA?

DV shelters have four types of obligations under the ADA:

1. Implementing nondiscriminatory policies and procedures
2. Affording reasonable accommodations as necessary in policies and procedures in order to provide equal enjoyment and use of their services
3. Providing auxiliary aides and services as necessary for effective communication
4. Providing physical access to and within the shelter.

These types of obligations are discussed in more detail below.

Q: How do domestic violence shelters create nondiscriminatory policies and procedures?

Domestic violence shelters must have non-discriminatory admission criteria and operating rules, and they may not segregate or treat individuals with disabilities differently while in residence. For example, a rule prohibiting admission of alcoholics or persons with mental illness would be a discriminatory admission criterion. Designation of a particular room or area for individuals with mobility impairments to eat would be a discriminatory operating rule.

Domestic violence shelters should review and make changes, as necessary, to their written admissions criteria and operating rules to insure that they are written in a neutral way. They should also review unwritten admissions criteria and operating rules to insure non-discrimination. Individuals with disabilities may not be afforded services that are lesser, different or separate from those offered others. Services provided to them should not be delayed or provided in a different setting unless necessary to afford equal enjoyment and use of shelter services.

The ADA does not require a shelter to have any particular admissions criteria or operating rules; however, it is good practice to have a written policy of nondiscrimination that is provided to both staff and clients. It is essential to train staff so that the shelter operates in a non-discriminatory fashion.

Q: Is it permissible to have a program that provides services only to individuals with a specific type of disability?

A shelter may afford its service only to individuals with a particular type of disability – for example, individuals with post-traumatic stress disorder (PTSD). But it may not exclude someone who meets this eligibility requirement but also has another disability – for example, an individual with PTSD who is also deaf. To determine whether someone is eligible for this type of program, it is permissible to ask about the individual’s disability and even to require medical documentation of it. However, it is not permissible to make broad inquiries beyond what is necessary to determine eligibility for the program – for example, asking for someone’s entire medical record.

Q: Can a domestic violence shelter require individuals with disabilities to comply with its ordinary rules and requirements?

Domestic violence shelters may impose neutral rules and requirements so long as they are uniformly enforced for individuals with and without disabilities alike. An individual with a disability can be required to comply with a shelter’s rules of behavior and can be penalized for failure to comply as would any other client. However, as described below, an individual with a disability may be entitled to a “reasonable accommodation” – that is, an alteration in the ordinary rules and procedures, in some circumstances.

Q. What can a domestic violence shelter do if an individual with a disability poses a safety risk?

A shelter may establish safety criteria for its operations, so long as they are not based on stereotypes or generalizations about persons with disabilities. A shelter may exclude a person with disabilities if it makes an individualized assessment based on objective evidence that the individual poses a “direct threat” to the health or safety of others, and that the risk cannot be mitigated by reasonable modifications to the shelter’s policies and procedures. “Direct threat” is determined by the nature and severity of the risk and how likely it is to occur **Thus a shelter may not have a general rule that excludes individuals with schizophrenia from the shelter.** However, a particular individual who has schizophrenia may be excluded based on his/her past or current violent behavior that cannot be mitigated by some reasonable accommodation – such as removing the conditions that might provoke the violent behavior.

Q: What does “reasonable accommodation” mean?

A “reasonable accommodation” is a sensible change in a regular policy or procedure that is necessary in order for an individual with a disability to have **full access to and fully use and enjoy** the services provided by the shelter. An accommodation can be any number of things, such as:

- Allowing a guide dog or other service animal in a facility that otherwise prohibits animals.

- Assisting someone with a mental disability in filling out forms.
- Providing a secure location or refrigeration for medications – such as insulin for an individual with diabetes
- Providing storage space for medical equipment – wheelchairs, crutches, etc.
- Rearranging furnishings of a room for a person with obsessive-compulsive disorder.

Providing personal services – such as helping an individual dress, eat, take medicine, or use the toilet-- is not required under the law. Nor is the shelter obligated to provide personal aids such as canes, eyeglasses, or wheelchairs.

In most cases, it is not difficult to determine whether an accommodation is “reasonable” or “necessary” as the examples suggest. Most accommodations are easy to provide and will result in little or no cost.

Q: How does a domestic violence shelter determine whether an accommodation request is “reasonable?”

Although a shelter is expected to incur some cost and administrative burden in making accommodations, an accommodation that is particularly expensive or difficult would not be considered “reasonable.” Nor is a shelter required to provide an accommodation that would “fundamentally alter” the nature of the shelter’s services.

For example, an individual with mental illness that causes her to fear being with strangers may request that the shelter staff provide meals in her room. If the shelter does not provide any meal service to residents, it need not do so for this resident. The ADA does not require that individuals with disabilities be given services not ordinarily offered to others. However, if that same individual ordered meals to be delivered to the shelter, it would be a “reasonable accommodation” to take them to her room. Or, if providing meals is part of the shelter’s array of services, it would not be a “fundamental alteration” to provide meals in the individual’s room.

Q: What should a domestic violence shelter do if a requested accommodation is too expensive, too difficult, or would result in a fundamental alteration?

A shelter can offer an alternative accommodation that is less costly or burdensome or more in keeping with its regular services. Consulting with the individual about what is needed and how it might be provided is a good practice. If the proffered alternative would be effective in providing “equal enjoyment” of shelter services, the shelter has met its obligation, even if the individual with a disability is dissatisfied or refuses the alternative. The ADA does not allow an individual to mandate the precise form of an accommodation, but the individual’s preferences should be taken into account. If no alternative is possible, an accommodation is not “reasonable” and the shelter has no obligation to provide it.

Q: How can a shelter determine if a requested accommodation is “necessary”?

If it is not clear that an accommodation is really needed, staff may inquire into the nature of an individual’s disability and the need for the accommodation, and may even require

the individual to provide some medical documentation of both. The shelter should only request such information as is necessary to determine whether the individual is entitled to the requested accommodation. **Thus a shelter may not request to see a client's full medical record.** Any personal medical information about the disability that is obtained in this process must be kept confidential and shared only with staff that needs to know in order to provide the accommodation or to handle emergency situations.

Q: Does an individual have to formally request an accommodation?

A shelter is not obligated to make an accommodation unless it is aware of an individual's disability and the need for accommodation. This generally means that an individual must ask for an accommodation, unless both the disability and the need for accommodation are obvious – for example, a shelter should know that it must alter its “no pets” rule for a blind individual walking in the door with a guide dog. Shelters should develop a regular procedure for accepting and considering requests for accommodations and for making sure clients are aware of the procedure, with posters, handouts, and the like. However, the shelter must respond to any request for accommodation even if the designated procedures aren't used to request it.

Q: If a shelter makes a change in rules for an individual with a disability, will it have to allow others to have the same benefit?

The “reasonable accommodation” mandate does not require a shelter to alter or abandon its generally applicable rules, but merely to make an exception as necessary so that a particular individual with a disability can have full access to all services. It is possible that even another person with the same disability may not be entitled to the same accommodation.

Q: What is necessary to provide “effective communication”?

Individuals with hearing, vision, and speech impairments may need auxiliary aids and services in order to communicate effectively in their interactions with the shelter. In many circumstances, it is easy to provide simple aids that will afford effective communication. For example, for someone who has a vision impairment, reading documents to them, or providing large print documents or audio recordings of important information will generally suffice. For an individual with a hearing impairment, writing instructions, and exchanging notes will often be adequate. Shelters should also have in place at least one TTY (telephone device with a keyboard and visual display for use by persons with hearing and speech impairments).

The length and complexity of the communication determines whether more sophisticated aids and services are required. For example, if the shelter offers some type of class or formal presentation, or offers individual or group counseling – it will likely be necessary to provide a sign language interpreter in order to afford effective communication if someone who is deaf is expected to attend. In situations where an interpreter is required, the services of a qualified interpreter should be arranged. Sign language services are available in most communities and can often be located through a quick internet or yellow pages search. **It is not appropriate to ask a friend or family member to interpret, unless there is an emergency situation.**

Q: Does the shelter have to provide all auxiliary aids and services that are requested?

As with the “reasonable accommodation” requirement, the cost and difficulty of providing an aid or service can be taken into account. However, the **effective communication requirement sets a somewhat higher standard** – and the shelter must provide some means of effective communication appropriate to the situation, unless doing so would be an “undue burden” (significant cost or difficulty) or would result in a “fundamental alteration” in the nature of the services provided by a shelter. The shelter should work with the individual with a disability to find a means of communication that is effective, but the shelter need not necessarily provide what the individual has requested, so long as communication is effective.

Q: What are the accessibility requirements for DV shelters?

The ADA has different accessibility requirements for buildings, depending on when they were constructed.

“New” Buildings

Buildings designed for first occupancy after the effective date of the ADA (January 26, 1993) must comply **fully** with the ADA Accessibility Guidelines (ADAAG) issued by the U.S. Department of Justice. ADAAG provides very detailed design requirements to insure accessibility, such as specifying down to the inch how wide doorways and corridors have to be to allow wheelchair access, when and where Braille signage must be used to indicate restroom locations, and when visual alarms must be provided to alert individuals who are deaf.

“Older” buildings

For buildings that were in existence prior to the effective date of the ADA (January 26, 1993), the accessibility requirements are different for government-operated (Title II) versus privately-operated (Title III) shelters

Title II

For Title II shelters, or government-operated shelters, the government is required to provide “program access.” That means that all persons with disabilities must have full access to whatever shelter services are offered. However, the local government has some flexibility, in the case of inaccessible buildings, to move programs around or to provide services in a different location that is accessible rather than making accessibility modifications to each building. However, when a building that was constructed before 1993 is altered, the alterations must also comply fully with ADAAG.

Title III

Title III shelters, or privately operated shelters must make accessibility modifications to **all** older buildings to the extent it is “readily achievable” to do so. This is a flexible legal standard that takes into account an entity’s resources and the architectural difficulty of making accessibility alterations, and means that changes that are **not too difficult or too expensive** must be made. The typical kinds of changes needed are installing entrance ramps where there are steps, widening of doorways, changing door hardware, and altering restrooms to meet ADAAG standards. This obligation to remove access barriers when it is “readily achievable” requires a shelter to act even if there is no person with a

disability currently needing services. The obligation is also a continuing one – which means that a barrier removal that is too costly in one year given the shelter’s financial situation may have to be made in a subsequent year when finances improve. Furthermore, any alterations to a building must also comply fully with ADAAG. If the shelter leases space, both the landlord and the shelter have obligations under the ADA, and generally the lease provisions will determine how the responsibilities will be allocated.

Q: How is the ADA enforced?

The ADA provides a variety of enforcement mechanisms with differences depending on whether it is Title II (state or local government) or Title III (private organization or business) requirements that are believed to have been violated.

Lawsuits

Under both Titles II (privately owned entities) and Title III (government entities), individuals with disabilities can bring lawsuits in federal court against the organizations and individuals they believe have discriminated against them. The U.S. Department of Justice can also file lawsuits to enforce Titles II and III. A court can order the party who has discriminated to change policies and procedures that were found discriminatory, to provide a reasonable accommodation that was denied, or to make accessibility modifications to a building deemed to be out of compliance.

Under Title II (but not Title III), an individual who files suit can also obtain “compensatory damages” (an amount of money) to compensate them both for expenses incurred (such as the cost of a hotel stay if shelter services are denied) and for emotional pain and suffering. In suits brought by the Department of Justice compensatory damages for individuals can be obtained under both Titles II and III. In a Title III suit, the Department of Justice can also obtain “civil penalties” (a fine paid to the government) – of up to \$50,000 for a first offense and \$100,000 for a second offense.

Administrative Proceedings

Instead of (or in addition to) filing a lawsuit, an individual with a disability who believes s/he has been discriminated against may file a complaint to the federal government. All Title III complaints against privately-operated agencies should be filed with the Department of Justice. Title II complaints against government-operated entities are divided up among various federal agencies, depending on the type of program that is alleged to have discriminated. For example, a complaint about a local government’s bus service would go to the U.S. Department of Transportation and a complaint about a state park’s accessibility problems would go to the U.S. Department of the Interior. For a domestic violence shelter, (as a “social services establishment”) complaints go to the U.S. Department of Health and Human Services. The government agency investigates the complaint, and, if meritorious, will usually attempt to reach a settlement between the parties, with relief similar to that which a lawsuit would provide. If there is no resolution, the Department of Justice will review the matter and may decide to file a lawsuit.

Q: Where can I get more information?

There are many resources available to assist shelters in learning more about the ADA and how to comply.

- **ADA.gov:** <http://www.ada.gov/> This is the place to start when seeking ADA information. This website provides extensive information about the ADA, including a specific listing of resources for small businesses and non-profit service providers, information about government enforcement, links to ADA regulations and guidelines and many other documents, as well as links to other government agencies and organizations.
- **ADA Information Line:** The U.S. Department of Justice provides a toll-free phone service to obtain general ADA information, answers to specific technical questions, and free ADA materials. 800 - 514 - 0301 (V) 800 - 514 - 0383 (TTY)
- **DBTACs:** <http://www.adata.org/>

The Disability and Business Technical Assistance Center (DBTAC) is a national network of 10 regional DBTAC: ADA Centers that provide the information, referrals, resources, and training on the Americans with Disabilities Act (ADA). The DBTACs maintain a toll free information line, (800) 949-4232 (V/TTY), and each DBTAC responds to calls generated from within its regional service area.

II. FAIR HOUSING ACT (FHA) REQUIREMENTS

Q: What is the FHA?

The Fair Housing Act (FHA) is a federal civil rights law that imposes a duty of non-discrimination on housing providers of all types. As originally enacted in 1968, the FHA prohibited discrimination on the basis of race, color, national origin, and religion. Subsequent amendments added gender, familial status, and disability to the prohibited bases of discrimination and gave the federal government strong enforcement tools as described below.

Q: What is the purpose of the FHA?

The purpose of the FHA is to guarantee equal access to all housing opportunities, free of discrimination on the basis of race, color, national origin, religion, sex, familial status or disability.

Q: How are domestic violence shelters covered by the FHA?

The FHA prohibits discrimination in any type of transaction involving a “dwelling.” Nontraditional housing, such as a domestic violence shelter, is considered a dwelling in some circumstances. Courts typically look at factors such as whether a person sees the shelter as his/her residence for a period of time, whether s/he intends to stay, whether s/he keeps his/her belongings there, whether s/he has another residence, and how long individuals typically stay at the shelter. The more “transient” its population is, the less

likely a shelter is to be deemed a dwelling. Thus, a shelter that allows only a one or two night stay is not likely to be covered by the FHA, but a facility where individuals stay for a longer period may be.

Q: What does a domestic violence shelter have to do to comply with the FHA?

Written and unwritten admission criteria and operational rules should be reviewed to insure they are nondiscriminatory. It is essential to train staff in their obligations under the FHA. It is good practice, but not required by the FHA, to have a written policy of non-discrimination that is posted and provided to staff and residents.

Race, color, national origin discrimination. An individual cannot be excluded or treated differently at the shelter because of his/her race, color, or national origin. Nor can a shelter implement criteria for admission or an operational rule that has the effect of discriminating on these bases. For example, a **rule requiring residents to be able to speak English could have the effect of discriminating on the basis of national origin.** The shelter must also insure that residents are free of racial or ethnic harassment by employees or other residents.

Religious discrimination. A religious organization operating a shelter may discriminate in favor of its own members and give preference to individuals of the same religion, unless membership in the religion is restricted on account of race, color, or national origin.

Sex discrimination. While most individuals who apply for admission to domestic violence shelters happen to be women, that does not necessarily mean that a shelter can have a rule excluding male tenancy. Sex discrimination is prohibited under the FHA. However, the law does recognize that some housing opportunities may be limited in order to protect sexual privacy, which means that a shelter can exclude males from admission if sleeping and bathroom facilities are shared. But a shelter that affords private locked sleeping rooms maybe required to admit individuals of both sexes who otherwise meet their admission requirements.

Familial status discrimination. With some exceptions for senior housing, the FHA prohibits housing providers from refusing to admit adults on the basis of the fact that they live with children under 18. However, a shelter can set reasonable limits on the number of individuals who can occupy a unit, and this may result in large families with children being excluded. Also, as noted above, reasonable policies designed to protect sexual privacy are permissible where there are shared sleeping and bathroom facilities, and a court could find that it is therefore legitimate to exclude older male teenagers from a shelter. However, limitations that have the effect of excluding all children are likely to be unlawful.

Disability. Like the ADA, the FHA prohibits discrimination on the basis of disability -- discriminatory admission criteria and operating rules are forbidden and reasonable accommodations in rules and procedures must be made. The requirements for architectural accessibility are different, however. Under the FHA, there is no obligation to make accessibility improvements to housing that was built before 1988. However, the FHA has a specific requirement allowing tenants with disabilities to make reasonable structural modifications at their own cost. The owner can require that such modifications

to individual units be restored to their original condition when the individual leaves but changes to common areas – such as the entrance and lobby – need not be restored.

Under the FHA, multi-family housing (4 or more units) built after the 1988 amendments must have specific accessibility features such as entrance ramps, doorways and hallways wide enough for wheelchair passage, and kitchens and bathrooms configured in such a way that wheelchair-users can move in and around the space. It is not clear whether these requirements apply to shelters that provide communal living space rather than separate sleeping units. Shelter operators should be aware of these general requirements and seek legal advice of necessary.

Q: How is the FHA enforced?

The FHA provides a variety of ways to enforce fair housing rights and affords strong remedies.

Administrative Proceedings

The FHA established an administrative process for handling FHA complaints. Individuals may file complaints about discrimination with to the U.S. Department of Housing and Urban Development (HUD). If the state or locality in which the complaint arose has a comparable fair housing law, HUD will refer the matter to the appropriate state or local agency. A list of all the states and localities that have comparable fair housing laws and the relevant agencies can be found at

<http://www.hud.gov/offices/fheo/partners/FHAP/agencies.cfm>

Complaints handled by the states and localities should be processed at the state level in the same way that HUD would handle them at the federal level, but that does not always happen.

If the state or locality in which the complaint arose does not have a comparable fair housing law, HUD will investigate and will first attempt to resolve the matter informally. If there is no resolution and the investigation results in a determination that discrimination has occurred, HUD will issue a formal charge of discrimination.

At that point either party can decide to have the matter tried in federal court, in which case the Department of Justice (DOJ) files a lawsuit on behalf of the individual who believes s/he was discriminated against. If neither party elects to go to court, an “administrative hearing,” very similar to a court trial, is held before an administrative law judge. HUD attorneys, rather than DOJ attorneys act on behalf of the individual who claims discrimination. Whether it is an administrative hearing or a federal court trial, the result can be an order to remedy the discrimination: change the discriminatory policy, offer the housing that was denied, make the accommodation, etc. Individuals may also receive compensatory monetary damages. In addition, if DOJ files the lawsuit, victims of discrimination can also obtain “punitive damages” – that is, an amount of money designed to punish the person who has discriminated. This can be an amount substantially greater than the compensatory damages that the individual has received, but it is only awarded when there is a “willful disregard” of the individual’s civil rights. If the administrative hearing route is followed, punitive damages aren’t available, but the administrative law judge can order civil penalties (a fine paid to the government) – of up to \$11,000 for a first offense, up to \$27,500 for a second offense, and up to \$50,000 for a third.

Lawsuits

Instead of (or in addition to) filing an administrative complaint with HUD, individuals can file lawsuits to enforce their rights under the FHA in state or federal court. If a judge (or jury) finds that discrimination has occurred, the individual can receive compensatory and punitive damages. The court can also issue an order requiring the housing/shelter provider to change the discriminatory policy, provide the housing, etc.

The Department of Justice can also file suit even if it has not received an individual complaint through the HUD process if it believes there is a more widespread or particularly serious problem of discrimination. In the DOJ suit, the court may award both compensatory and punitive damages for individual complainants, civil penalties paid to the government, and an order to remedy the discrimination.

Q: Where can I get more information about the FHA?

Both HUD and DOJ provide information about the FHA on their websites. HUD's website: <http://www.hud.gov/offices/fheo/FHLaws/>. DOJ's website: <http://www.usdoj.gov/crt/housing/>

III. TITLE VI OF THE 1964 CIVIL RIGHTS ACT & SECTION 504 OF THE REHABILITATION ACT

Q: What is Title VI?

Title VI is part of the landmark Civil Rights Act of 1964 targeting racial discrimination in many aspects of society. Title VI was intended specifically to insure that federal monies are not used to finance discrimination. Thus Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives "federal financial assistance."

Q: What is "federal financial assistance"?

A direct grant from a federal agency is the simplest example of "federal financial assistance." But a shelter might also receive federal financial assistance if, for example, a state agency that is the principal recipient redistributes federal funds to various organizations, including the shelter. If a shelter receives federal financial assistance directly from a federal agency or redistributed through a state, it will generally be required to sign an "assurance of nondiscrimination" form as a condition of receipt of the funds, thus giving it notice of its obligations under these laws. A shelter may also receive federal financial assistance indirectly if shelters are reimbursed for services through federal programs that provide benefits to eligible individuals such as Social Security or Medicare.

Q: What is Section 504?

Section 504 is part of the 1973 Rehabilitation Act that provided numerous programs for individuals with disabilities. Like Title VI, Section 504 was intended to insure that federal monies are not used to finance discrimination. Like Title VI, Section 504 prohibits discrimination on the basis of disability in any program or activity that receives "federal financial assistance."

Q: Are the nondiscrimination mandates in Title VI and Section 504 different than the ADA or the FHA?

The nondiscrimination mandate is essentially the same for all of these laws. However, there are no exemptions under Title VI and Section 504. So, for example, a religious organization that has no ADA obligations would be prohibited from discriminating on the basis of disability and would be required to make reasonable accommodations if it receives federal financial assistance

Q: How are Title VI and Section 504 enforced?

An individual may file a lawsuit in federal court if s/he believes discrimination has occurred. If a case is successful, the court can award compensatory damages to the plaintiff and can order changes to eliminate the discriminatory practices. Individuals may also file a complaint with the federal agency responsible for providing federal financial assistance to the shelter. Agencies are required to investigate such complaints and will attempt to resolve them, often through a compliance agreement. If compliance cannot be obtained voluntarily, the agencies have the authority to cut off federal funding or to refer the matter to DOJ for litigation, but these tools are rarely used.

Q: Where can I get more information about Title VI and Section 504?

The particular agency that has provided the funding will be able to provide information about compliance requirements. DOJ also has general coordinating authority for both Title VI and Section 504 and can provide information about both.

For Title VI, see: <http://www.usdoj.gov/crt/cor/>

For Section 504, see: <http://www.usdoj.gov/crt/drs/drshome.php>

ACKNOWLEDGEMENTS: *The National Law Center on Homelessness and Poverty (NLCHP) would like to thank Joan Magagna for her assistance in compiling the information and drafting this document.*

The National Law Center on Homelessness and Poverty's mission is to prevent and end homelessness by serving as the legal arm of the nationwide movement to end homelessness. To achieve its mission, NLCHP pursues three main strategies: impact litigation, policy advocacy, and public education.

LEGAL AID FOUNDATION OF LOS ANGELES

Central Office
1550 W. Eighth Street
Los Angeles, CA 90017-4316
(213) 640-3881

East Office
5228 E. Whittier Boulevard
Los Angeles, CA 90022-4013
(213) 640-3883

ATTORNEYS AT LAW
1640 Fifth Street, Suite 124
Santa Monica, California 90401-3343
Telephone: (310) 899-6200
Fax: (310) 899-6208

Long Beach Office
110 Pine Avenue, Suite 420
Long Beach, CA 90802-4421
(562) 435-3501

South Central Office
8601 S. Broadway
Los Angeles, CA 90003-3319
(213) 640-3884

West Office
1102 Crenshaw Boulevard
Los Angeles, CA 90019-3111
(323) 801-7989

Writer's Direct Dial Number 323-801-7966

Our File Number

February 27, 2008

VIA FACSIMILE NO. 310-264-7757 AND U.S. MAIL

Peter Mezza
Director of Santa Monica Housing Authority
Santa Monica Housing Authority
2121 Cloverfield Blvd., Suite 131
Santa Monica, CA 90404

Re: [REDACTED]

Request for Reinstatement of Section 8 Voucher under VAWA and For Improper Notice and Inadequate Due Process; Alternative Request for New Informal Hearing as Reasonable Accommodation. Request that SMHA Resume Section 8 HAP's Pending Requests.

Dear Mr. Mezza:

This office represents [REDACTED]
[REDACTED] suggested that I direct this letter to you concerning termination of [REDACTED] Section 8 assistance.

Santa Monica Housing Authority's (hereinafter "SMHA") letter of September 26, 2007 to [REDACTED] stated that her housing assistance was terminated based on her failure to attend one scheduled appointment on September 25, 2007. (See letter dated September 26, 2007, Exhibit A) However, she didn't attend this meeting as a direct result of her being a victim of stalking. [REDACTED] requested a hearing, and a hearing was held on November 29, 2007. (See letter dated October 3, 2007, Exhibit B) Following the hearing, Ms. [REDACTED], the informal hearing examiner for the SMHA, sent a letter to [REDACTED] upholding the termination. [REDACTED]'s assistance was terminated effective January 31, 2008. (See letter dated December 6, 2007, Exhibit C), She is now facing eviction.

We request that SMHA rescind the termination and restore [REDACTED]'s voucher retroactive to January 31, 2008 on three grounds. First, the Violence Against Women Act (VAWA) provides that a victim of violence cannot be terminated if the termination was directly related to her status as a victim of stalking. As will be discussed below, Ms. [REDACTED] did not attend the September 25, 2008 meeting because she was traumatized by her stalker, [REDACTED].

Second, SMHA failed to provide [REDACTED] basic due process by upholding her termination on a basis that was not disclosed in its termination letter of September 26, 2007. (See Exhibits A and C.) The SMHA even gave an altogether different reason to [REDACTED]'s landlord, for her termination than they gave her. (See letter, dated September 26, 2007 from [REDACTED], Exhibit D.)

Third, it is arguably an abuse of discretion to terminate Section 8 benefits based on missing one meeting, which constitutes only a minor violation of regulations.

Assuming for sake of argument that SMHA refuses to rescind the termination, we request as a reasonable accommodation for [REDACTED] a new hearing which would permit her to have the assistance of counsel. As discussed below, [REDACTED] was disabled at the time of the November hearing because she was viciously assaulted by her stalker on October 17, 2007. As part of the reasonable accommodation and to preserve the status quo, we also ask that the SMHA resume the Section 8 payments to her landlord pending its decision on this request.

[REDACTED] was a victim of Stalking, and Stalking Prevented [REDACTED] From Attending the Meeting on September 25, 2007.

The federal law entitled the Violence Against Women Act (VAWA) of 2005 provides protections for victims of stalking that live in public housing or receive federal housing money in the form of a voucher. Commencing January 5, 2006, all recipients of federal housing funds were required to follow these regulations. On April 25, 2007, the SMHA sent a notice to rental assistance owners and participants, including [REDACTED] informing them of their rights under this law. (See letter dated April 25, 2007, attached as Exhibit E)

VAWA 2005 defines "Stalking" as "to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person" and in the course of or as a result of such "stalking," that person is placed "in a reasonable fear of" death, "serious bodily injury," or "substantial emotional harm." 42 U.S.C. § 1437f(f)(10).

The statute specifically states that the fact that a "participant is or has been a victim of domestic violence, dating violence, **or stalking is not an appropriate basis for denial of program assistance** or for denial of admission, if the applicant otherwise qualifies for assistance or admission." (Emphasis Added) 42 U.S.C. §1437f (c)(9)(C).

It is important to have a basic understanding of the dynamics of stalking, and how it impacts victims, to appreciate the rationale behind this provision. Stalking is essentially a pattern of conduct intentionally targeted at a specific person that *terrorizes* him or her. The most commonly recognized stalking behavior is following the victim and keeping the victim under constant surveillance. However, the conduct is often far more expansive and stalking tactics may include a combination of vandalism, harassing letters, blackmail, identity theft, telephone harassment, verbal or physical threats and lying in wait. Stalkers also may manipulate their victims by creating financial and emotional dependency, sometimes through kindness and other times through intimidation. As a result, victims may live in a constant state of siege, unable to regain confidence or lead normal lives. It is a domesticated version of terrorism we all came to know after 9/11.

██████████ had been stalked by ██████████ for some time before he assaulted her on October 17, 2008. ██████████ met ██████████, who is 30 years her senior, about three years ago when her mother and his wife were dying in the same convalescent home. His wife died and ██████████'s mother survived. ██████████ did not stay in touch with Mr. ██████████. About a year later he contacted her out of the blue to find out how she was doing. Her mother was still in the convalescent home and, because her car was not working, she was having a hard time with transportation to visit her mother. Mr. ██████████ presented himself as a kind gentleman who understood her pain, and wanted to help her. He bought a car and let her drive it. When the car was totaled, he gave her a portion of the proceeds¹. He bought her a cell phone. He offered to take care of her after her mother passed away. He did other things to ingratiate himself to her.

Ms. ██████████ originally believed that ██████████ was just a friend, an angel who would help her through a difficult time. ██████████, however, began making romantic advances toward her, but she repeatedly and completely rejected them. He proposed to her and asked her to move into his home. As he realized that she had no romantic interest in him, he began to try to control her and to make her dependent on him. She rejected all his romantic advances, and hoped he would come to his senses.

During the period of September 2006 through September 2007, ██████████ was stalking ██████████. He was following her and calling her. At first, ██████████ tried to shrug off his insistent efforts to win her over as harmless badgering. Over time, however, she became more and more worried and concerned. During this time she learned that ██████████ had been convicted of manslaughter for killing the mother of his children in a domestic violence incident, claiming self-defense. After learning that, she tried to end all communication, but he would not leave her alone.²

██████████ changed her phone number, but he found the new number. He made copies of her keys and entered her apartment on several occasions, without her permission or

¹ ██████████ reported this income to SMHA.

² What she didn't know is that domestic violence statistics demonstrate that the most dangerous time for a victim is when the perpetrator perceives that the victim is ending the relationship. Two thirds of all homicides of victims of domestic violence occur after they leave.

knowledge. On one occasion, she was shocked to find him in her home going through her paperwork. She got that set of keys back. She does not know what personal financial information he took, but she believes he must have obtained her social security number.

However, on August 14, 2007, [REDACTED] met with [REDACTED] a SMHA investigator, who called the meeting to talk about her finances. [REDACTED] now believes that the SMHA's investigation into her finances in the summer of 2007 was a direct result of Mr. [REDACTED] stealing her identity, and perhaps even making calls to the SMHA about her finances. [REDACTED] told [REDACTED] that her credit report showed a \$34,000 debt to a Discover Card, with \$654 per month payments. She was shocked. She had never taken out such a loan or applied for the credit card. But, the credit report also contained personal information about [REDACTED]. It listed an additional name for [REDACTED] as [REDACTED]." [REDACTED] has never used that name. She knows that [REDACTED] has a daughter named [REDACTED]." [REDACTED] was also concerned that, among other things, the SMHA was asking for proof of automobile registration and insurance, even though she did not own an automobile. [REDACTED] told [REDACTED] that she would look into the matter further and get back to him.

Even though she was very scared, [REDACTED] confronted [REDACTED] in late August 2007 about the credit report, his involvement in her personal finances, and how she was being investigated by the SMHA. She hoped she could obtain documentation to prove to the SMHA that the information they had about her was false. [REDACTED] responded by asking her how she found out about it and he claimed he didn't know anything. He became agitated and then commented, "I am getting the house ready," which she took to mean that she would have to move in with him if she lost her voucher and had to move because of this false information.

After that, [REDACTED] refused talk to [REDACTED] and told him never to call her again. This appeared to agitate [REDACTED] even more. Shortly after that, he came to Ms. [REDACTED]'s apartment door at 3:00 a.m. and banged on the door. After she threatened to call the police, he left.

On September 17, 2007, [REDACTED] attempted to break into [REDACTED]'s apartment. Ms. [REDACTED] believes that he was staking out her home and he became incensed when he saw her son's father enter the apartment building. She called the Santa Monica Police, and they came to the apartment before he could gain entry. The SMPD did not arrest him. They took an incident report. (Attached as Exhibit F is the card she was given which lists the incident as [REDACTED] [REDACTED] does not yet have a copy of this police report.)

After this incident, the stalking intensified and [REDACTED] called [REDACTED] 5-6 times per day. He said, "I'll destroy you" and "You are playing with fire." [REDACTED] was emotionally traumatized and distracted; she was afraid for the welfare of her young son. [REDACTED] made threats. He also called some of [REDACTED]'s relatives at all hours of the

day and night, and said destructive things about her. [REDACTED] was enveloped by terror. She just didn't know what [REDACTED] would do next, and she feared him intensely.

Under the pressure of the constant stalking and harassment, [REDACTED] was finding it increasingly difficult to cope with her responsibilities. Eight days after she called the police, on September 25, 2007, [REDACTED] was scheduled to attend an appointment at the SMHA. She missed this appointment because she was too emotionally traumatized and afraid that [REDACTED] would injure her and her son. She was, in a word, terrorized. She didn't know what he would do next. Had she known, she would have gone into hiding, but —of course—she didn't know.

On October 17, 2008 at 4:30 p.m., [REDACTED], a SMHA housing authority specialist, entered [REDACTED]'s apartment to perform an HQS inspection. [REDACTED] believes that this visit may have set off [REDACTED] because he was insanely jealous of any man visiting her. That evening, [REDACTED] forced his way into [REDACTED]'s apartment and viciously attacked her. He punched, choked, bit her and hit her in the head with a carpenter's hammer. (See Santa Monica Police Department, Crime Report No. [REDACTED] Photograph, attached as Exhibits G, and H, respectively). Her 13 year-old son was not injured although he was a witness. If it were not for the fact that he ran to a neighbor's apartment and called 911, his mother would not have survived the ordeal. She suffered a head injury described as a "subdural hematoma secondary to an assault with a hammer" and was hospitalized for 5 days. (See UCLA Healthcare, Home Discharge Instructions, dated 10/22/07 attached as Exhibit I). She is still under treatment, still impaired, and still traumatized.

Mr. [REDACTED] was arrested and is in custody on attempted murder and other charges with bail set at one million dollars. The criminal case number is [REDACTED] and the case is called [REDACTED] (See LA Sheriff's Department, Inmate Information print out and Docket Sheet attached as Exhibits J and K.)

Since [REDACTED] is clearly a victim of stalking, terminating her rental assistance is a violation of VAWA, and would constitute a denial of program assistance based Ms. [REDACTED]'s status as a victim of stalking. Not only does the stalking explain why Ms. [REDACTED] could not comply with program requirements such as failing to attending one or more meetings, it also explains why the SMHA began investigating Ms. [REDACTED]'s finances, and why the SMHA may have assumed that [REDACTED] was uncooperative with its investigation into her finances.

Additionally, because [REDACTED] was a victim of stalking, she was unable to adequately represent herself at the hearing on November 29, 2007. Due to having suffered a head injury and emotional trauma at the hands of [REDACTED], she could not provide an explanation regarding the circumstances surrounding her failure to attend the September 25th appointment, or her inability to comply with whatever program requirements the SMHA believed she had violated.

The Decision Upholding the Termination Is Defective.

██████████ was informed on September 26, 2007 that she was being terminated for missing the September 25th appointment, but her landlord was given a different reason. He was informed in a September 26, 2007 letter that ██████████ was terminated for failing to provide income verification. (See Exhibits A and C)

On December 6, 2008, ██████████ upheld the termination of ██████████'s voucher based upon a reason that was different than the reason given to ██████████ or her landlord. She stated that the termination was based on ██████████'s failure to attend three scheduled appointments. ██████████ disputes that she missed two other meetings, but the September 26, 2007 letter said she was being terminated for missing only one appointment.³ Moreover, she had no prior notice that the hearing would be about failure to provide income verification.⁴

The hearing should have been confined to why she missed the September 25th appointment and only that topic because that was the reason given to ██████████ for termination. The subject of the hearing is confined to the issues presented in the notice to the applicant of the adverse action. Thus, information should not be presented at the hearing if it was not the basis for the denial because the participant has no opportunity to investigate so as to rebut the information. *See Wolff v. McDonnell*, 418 U.S. 539, 564 (1974) [Due process requires that the notice give the charged party a chance to marshal the facts in her defense, and to clarify what the charges are.]

Assuming for argument only that ██████████ was terminated on the basis of missing the September 25, 2007 meeting, a termination based on such a minor "violation" would be considered an abuse of discretion.

██████████ Requests a Reasonable Accommodation.

██████████ suffered from a disability at the time of the November hearing. As a result ██████████ attempt to kill her, she had a head injury and was suffering emotional trauma.

³ ██████████ states in her letter dated December 6, 2007 (Exhibit C) that ██████████ failed to keep two office appointments: on September 25th and August 7, 2007 and a meeting with ██████████ on June 1, 2007. However as is clear from SMHA correspondence, ██████████ called ██████████ to reschedule that appointment until August 14, 2007, for one week, and she attended the appointment on the rescheduled date. (See Letter dated July 27, 2007 from ██████████ Exhibit L.) ██████████ also went to see Ms. ██████████ on June 1, 2007, but ██████████ recalls that ██████████ was unavailable that day, and asked her to call back at 2:00 p.m. ██████████ called at that time and left her a message.

⁴ On September 10, 2007, ██████████ gave ██████████ a completed recertification packet, including financial verifications from her bank and other documentation.

February 27, 2008

██████████ diagnosis was "subdural hematoma secondary to an assault with a hammer." Because of her disability, she could not adequately present a defense at the hearing.

The SMHA has ample authority to implement this request to set a *de novo* hearing: Section 504 of the Rehabilitation act of 1973 requires that recipients of federal financial assistance, such as the Section 8 voucher program, must operate the federal program so that it is usable by disabled individuals. 29 U.S.C.A. § 794; 24 C.F.R. § 8.24(a); 24 C.F.R. § 8.24(b). The Federal Fair Housing Act of 1988 (FHAA) and the Americans with Disabilities Act (ADA) also impose an affirmative duty upon the SMHA to reasonably accommodate the needs of disabled persons. This obligation includes an accommodation with respect to administrative policies. See *Giebeler v. M&B Assocs*, 343 F.3d 1143, 1147 (9th Cir. 2003).

Although the SMHA may not have a specific procedure in place for permitting a new hearing, the SMHA may be required to waive or change any rule or regulation to accommodate ██████████ "unless so doing would result in a fundamental alteration in the nature of its program or an undue financial burden." See HUD Notice PIH 2003-31 (HA).⁵ Granting this request surely would not create such an alteration or financial burden.

I look forward to your response and hope that we are able to work this matter out informally. Please feel free to contact me, if you have any questions or need additional information from ██████████. I appreciate your time and effort in resolving this case, and in making the safety of victims of violence a priority in the Section 8 program.

Sincerely,
LEGAL AID FOUNDATION OF LOS ANGELES


Denise McGranahan, Esq.

Cc: Bob Montcrief
Julie Lansing
Jody Gilbert
Ivan Campbell, Esq.
Gary Rhoades, Esq.

Encl.

⁵ The SMHA is well aware of its Section 504 and FHA obligations and has adopted a Five Year Goal to "[u]ndertake affirmative measures to provide a suitable living environment for families living in assisted housing, regardless of . . . disability" and annually certifies that it will comply with Section 504 and the FHA. See SMHA Five Year and Annual Plan, <http://www.hud.gov/offices/pih/pha/approved/index.cfm> and HUD Form 50077, PHA Certification of Compliance with the Plan Plans and Related Regulations (04/30/2003) ¶ 5.

November 9, 2007

SENT VIA U.S. MAIL AND FACSIMILE, (408) 280-0358.

Aleli Sangalang
Housing Authority of Santa Clara County
505 W. Julian St.
San Jose, CA 95110

**Re: Client S, Voucher No. #
Request for Reasonable Accommodation**

Dear Ms. Sangalang:

I am writing on behalf of my client Client S, whose Section 8 voucher was terminated August 31, 2007. Ms. S did not receive notice from the Housing Authority regarding this termination, and she only learned of it within the last week, when her landlord told her that she owed over \$3000 in back rent. Ms. S hereby requests that her voucher be reinstated retroactively to the date of termination and that she be allowed another opportunity to furnish requested annual recertification paperwork as reasonable accommodations of her disability. If Ms. S's voucher cannot be reinstated without a hearing, please construe this letter as Ms. S's request for hearing.

Ms. S has a severe mental health disability and, as such, is entitled to reasonable accommodations in Housing Authority policies and procedures. HACSC Admin. Plan § 1.8.2. Ms. S's mental health disability affects her memory and concentration; it also causes her to become easily overwhelmed. As such, complying with paperwork requirements and deadlines is extremely difficult for her. Ms. S's alleged failure to comply with recertification requirements is therefore directly related to her mental health disability, and she asks that she be given another chance to furnish the requested information or documentation. Ms. S's mental health provider can certify this need for accommodation, and a supporting letter will follow under separate cover.

Ms. S was unable to request a hearing within ten days of the date of the termination notice because she did not receive the termination notice. Additionally, Ms. S cannot speak or read English, and the Housing Authority made no attempt to communicate its intent to terminate her voucher to her in Cambodian, her native language. Further, had Ms. S received a written notice of termination, she would have had difficulty following up on that notice due to her disability, as discussed above.

Since Ms. S has already received a three-day notice to pay rent or quit from her landlord, it is imperative that her voucher be restored immediately. If Ms. S is unable to resolve this matter, she may become homeless, greatly exacerbating the symptoms of her disability. She therefore asks that the Housing Authority process this request for accommodation as quickly as possible. Please also contact me to schedule an appointment to view Ms. S's file at the Housing Authority. My direct line is (408) 280-2429.

Thank you for your prompt attention to this reasonable accommodation request. I look forward to hearing from you soon.

Sincerely,

Melissa A. Morris
Staff Attorney

cc: Sandi Douglas. Section 504 Coordinator



OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors
of Public and Indian Housing (PIH); Housing;
Community Planning and Development (CPD), Fair
Housing and Equal Opportunity; and Regional Counsel;
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**
Issued: April 25, 2013
Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations¹ for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHAct, Section 504, and/or the ADA².

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

² Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

3. **Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities³ with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals⁴ in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.⁵ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

³ Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

⁴ Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

⁵ For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).

- (1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

If the answer to question (1) **or** (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.⁶

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

⁶ A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant’s dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider’s practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.⁷

Section II: The ADA Definition of "Service Animal"

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."⁸ Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses⁹), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

⁷ Ibid.

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

⁹ 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁰ A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.¹¹

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."¹²

¹⁰ 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).

¹¹ For more information on ADA requirements relating to service animals, visit DOJ's website at www.ada.gov.

¹² 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, “an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a ‘reasonable accommodation’ that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat.”¹³ In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may “nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct.”¹⁴ While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for “service animal,” the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁵

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider’s responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion

The definition of “service animal” contained in ADA regulations does not limit housing providers’ obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

¹³ 75 Fed. Reg. at 56194, 56268.

¹⁴ 75 Fed. Reg. at 56166, 56240.

¹⁵ 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.



John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity