

Fair Housing and Nondiscrimination Requirements

Contents

1	Chapter Overview	3
2	Fair Housing and Civil Rights Authorities.....	3
2.1	Title VI of the Civil Rights Act of 1964	4
2.2	Executive Orders 11063 and 12892.....	5
2.3	The Fair Housing Act.....	5
2.3.1	Affirmatively Furthering Fair Housing and Fair Housing Planning	6
2.4	Age Discrimination Act of 1975	7
2.5	Equal Access to Housing Rule.....	8
2.6	Section 504 of the Rehabilitation Act of 1973.....	8
2.7	Titles II and III of the Americans with Disabilities Act of 1990.....	10
2.8	The Violence Against Women Act (VAWA).....	11
3	Ensuring Program Access for Individuals with Disabilities	16
3.1	Who is an Individual with a Disability?	16
3.1.1	Disability under Federal Civil Rights Laws.....	16
3.1.2	Disability under the HUD Program Definition.....	17
3.2	Reasonable Accommodations.....	18
3.2.1	Assistance Animals as a Reasonable Accommodation	20
3.2.2	Reasonable Accommodation Process	21
3.2.3	Reasonable Accommodation Requests.....	23
3.2.4	Disability-related Need.....	24
3.2.5	Establishing a Nexus between a Disability and Reasonable Accommodation	25

3.2.6	Approval or Denial of the Request	26
3.2.7	Confidentiality of Information.....	27
3.3	Effective Communication.....	27
3.4	Physical Accessibility	28
3.5	Assignment and Waitlist Procedures for Accessible Units	30
3.6	The Integration Mandate and <i>Olmstead</i> Decision	31
3.6.1	The Integration Mandate	31
3.6.2	<i>Olmstead</i>	32
3.7	Section 504 Coordinators	33
4	Improving Access to Services for Persons with Limited English Proficiency (LEP)	34
4.1	Who is a Limited English Proficient Person?	34
4.2	Providing LEP Services – Four Factor Analysis	34
4.3	Oral Interpretation.....	35
4.4	Written Translation.....	36
4.5	Language Access Plan or Implementation Plan.....	38
5	Affirmative Marketing and Tenant Screening.....	38
5.1	Affirmative Fair Housing Marketing	38
5.2	Where to Advertise.....	39
5.3	Contents of Marketing Materials	39
5.4	Tenant Screening.....	40
5.5	Clear Policies and Reliable Records	41
6	Data Collection, Reporting, and Recordkeeping.....	42
7	Addressing Discrimination Complaints.....	42
7.1	PHA Actions to Prevent Discrimination	42
7.2	Filing Procedures for Discrimination Complaints.....	43
7.3	Processing of Discrimination Complaints.....	43

1 Chapter Overview

Public housing agencies (PHAs) are subject to civil rights and nondiscrimination laws and requirements. This chapter provides an overview of the Federal civil rights laws and requirements that PHAs must follow in administering the Public Housing (PH) program and offers guidance for implementation.

Federal laws prohibit discrimination because of race, color, religion, sex (including sexual orientation and gender identity), national origin, familial status, disability, and age. In addition, HUD requires equal access to its programs regardless of actual or perceived sexual orientation, gender identity, and marital status. Federal fair housing and civil rights laws prohibit intentionally discriminatory practices, as well as practices with an unjustified discriminatory effect. The major requirements include:

- Title VI of the Civil Rights Act of 1964;
- Executive Order (E.O.) 11063, as amended by E.O. 12892;
- The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended;
- The Affirmatively Furthering Fair Housing (AFFH) obligation under the Fair Housing Act;
- The Age Discrimination Act of 1975;
- HUD's Equal Access Rule;
- Section 504 of the Rehabilitation Act of 1973;
- Titles II and III of the Americans with Disabilities Act of 1990;
- Violence Against Women Act of 1994, as amended (VAWA); and
- HUD's generally applicable nondiscrimination and civil rights statutes, regulations, and Executive Orders, which are outlined in HUD's regulations at 24 CFR 5.105(a).

Additionally, PHAs may be subject to local and/or state statutes, regulations, or other authorities that prohibit discrimination on other bases, such as source of income. This chapter addresses only Federal requirements, but all recipients and subrecipients of HUD funding must comply with all state and local fair housing and civil rights laws, including those with additional protected classes.

When both Federal and state or local laws apply, or more than one Federal law applies, compliance with all applicable laws is required. If one law provides greater protections or accessibility, the PHA must comply with the provision that provides the greatest protections or affords the greatest fair housing rights. When multiple laws or requirements apply, HUD encourages PHAs to seek legal counsel.

2 Fair Housing and Civil Rights Authorities

This section provides more information about the fair housing and civil rights requirements introduced above. These requirements create rights for tenants and impose responsibilities on PHAs beyond those provided by program specific requirements. In some cases, it is possible that policies and practices that appear compliant with program regulations violate fair housing and civil rights laws and regulations. These fair housing and civil rights obligations take precedence over program requirements unless there is a specific statutory provision that excludes the specific action from compliance with these laws.

All PHA policies, including admission and continued occupancy policies (ACOP), for public housing must comply with the fair housing and civil rights requirements discussed throughout this chapter.¹ Most, if not all, of the policies and procedures included within the ACOP implicate fair housing and civil rights requirements. Some examples include application and screening policies and waitlist policies such as opening, organizing, administering and removing families from the waitlist, use of site-based or agency-wide waitlists, merger or separation of lists for all of a PHA's programs (i.e., Public Housing, HCV, and other subsidized housing programs), and the amount of information the waitlist includes about families to allow the PHA to appropriately prioritize, apply preferences, and offer available units. HUD recommends that PHAs ensure that all components of their ACOPs comply with and reference applicable fair housing and civil rights requirements. PHAs are strongly encouraged to regularly review and update their policies and procedures to ensure compliance with fair housing and civil rights requirements.

Periodic updates to marketing, waiting list, and application policies and practices ensure that PHAs continue to promote compliance with fair housing and civil rights requirements. Changes in technology, media, and living patterns can impact whether a PHA's practices in these areas still operate to ensure equal access to the program. For example, the availability of new technology that makes advertising or application submission easier could prompt a reevaluation of existing practices. Additionally, a shift in the racial living patterns in an area might drive a shift in marketing efforts to ensure that potential applicants of all racial groups are reached.

HUD strongly recommends that PHAs ensure that PHA staff, as well as applicants and tenants, are aware of how the PHA's policies, practices, and procedures comport with its fair housing and civil rights obligations.

2.1 Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 (Title VI) and HUD's implementing regulations prohibit, on the basis of race, color, or national origin, the exclusion from participation in, denial of the benefits of, and discrimination under all programs and activities of recipients of Federal financial assistance, whether provided directly or through a subrecipient.² It applies to all HUD programs that are covered by this Guidebook as more specifically explained in this chapter.

The discrimination prohibited by Title VI includes denying, restricting access to, or limiting participation in a program or activity, housing, accommodations, facilities, services, financial aid, or other benefits, or providing such benefits in a way that is different than how they are provided to others. It also includes subjecting a person to segregation or separate treatment or restricting a person's enjoyment of any advantage or privilege enjoyed by others in connection with such benefits under the program or activity. It also prohibits treating a person differently from others in determining if they satisfy any requirements or conditions, including conditions of occupancy, admission, or eligibility. In addition, recipients may not utilize criteria or methods of administration which have the effect of subjecting persons to discrimination, nor may they make siting decisions with a discriminatory purpose or effect.

¹ Several civil rights statutes apply to the public housing program, including the list provided in Section 1 of this Chapter. For a more comprehensive list, including implementing regulations, PHAs should consult HUD's Office of Fair Housing and Equal Opportunity's website, currently available at https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law (last accessed Jan. 23, 2024).

² Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; 24 CFR 1.2(f).

Title VI applies to all aspects of a PHA’s operations and the administration of their programs and activities, including but not limited to marketing, waitlist administration, tenant selection and admission, preferences³, record-keeping, application of lease requirements, termination and meeting the needs of residents with limited English proficiency. PHAs are encouraged to consult their local field office if questions arise.

HUD’s Title VI regulations also provide that recipients of Federal financial assistance have an affirmative obligation to take steps to overcome the effects of discrimination based on race, color, or national origin. The regulations also require, that even in the absence of prior discrimination, recipients must take affirmative steps to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.⁴ For additional types of discrimination prohibited by Title VI, see 24 CFR 1.4.

2.2 Executive Orders 11063 and 12892

Executive Order 11063, signed by President Kennedy on November 20, 1962, preceded the Civil Rights Act of 1964. This order was amended by Executive Order 12892 and together they prohibit discrimination, including segregation, based on race, color, religion, sex (including sexual orientation and gender identity), familial status, disability, or national origin in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the Federal government or provided with Federal funds. For HUD’s regulations implementing these Executive Orders, see 24 CFR parts 107 and 121.

2.3 The Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended, (Fair Housing Act)⁵ prohibits discrimination in the sale, rental, and financing of dwellings and in other housing-related services and transactions because of race, color, religion, sex (including sexual orientation and gender identity), national origin, disability, and familial status (presence of children under 18 years of age, pregnancy, being in the process of securing legal custody of a person under age 18, having such legal custody, or being the designee with written permission of a parent or other person with such custody). The Fair Housing Act contains several narrow exemptions, which do not apply to public housing properties.⁶ PHAs should review the list of exemptions at 24 CFR 100.10.

The Fair Housing Act applies to a broad range of persons, entities, housing transactions, and housing-related services, including PHAs, property owners, landlords, housing managers, real estate agents, brokerage service agencies, and banks. Similarly, the Fair Housing Act prohibits a broad range of discriminatory activities and statements. For example, housing providers may not because of race, color, religion, sex (including sexual orientation and gender identity), national origin, disability, or familial status:

- Refuse to sell or rent a dwelling or otherwise make unavailable or deny a dwelling unit;
- Impose different terms, conditions or privileges related to the sale, rental, or financing of a dwelling;
- Deny or limit services, facilities, or privileges in connection with the sale or rental of a dwelling;
- Restrict, discourage, or obstruct the housing choices of a person by word or conduct;
- Create, perpetuate, increase, or reinforce segregation, or impede desegregation;

³ For example, because of segregated living patterns, an overly restrictive residency preference is highly likely to discriminate in violation of fair housing and civil rights requirements. 24 CFR 960.206(b)(1)(i).

⁴ 42 U.S.C. §§ 3601- 19; See 24 CFR 1.4(b)(6). Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development – Effectuation of Title VI of the Civil Rights Act of 1964.

⁵ 42 U.S.C. §§ 3601 – 19; See also, 24 CFR parts 100, 103, 180.

⁶ See 42 U.S.C. §§ 3603(b); 3607; 24 CFR 100.10.

- Assign any person to a particular section of a community, neighborhood, development, or particular floor of a building;
- Communicate to a prospective tenant that they would not be comfortable or compatible with the existing residents in a community, neighborhood, or development;
- Make, print or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation, or discrimination;
- Provide inaccurate or untrue information about the availability of dwellings for sale or rental; or
- Engage in quid pro quo or hostile environment harassment in housing or housing-related transactions⁷.

PHAs and others covered by the Fair Housing Act are also prohibited from discriminating against persons, including applicants or residents because of their disability, or the disability of a person residing in or intending to reside in the dwelling, or any person associated with that applicant or resident. For example, housing providers, including PHAs, must not:

- Refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodation may be necessary to afford individual(s) with disabilities an equal opportunity to use and enjoy a dwelling. This includes refusing to assign an accessible parking space to a person with a mobility disability; refusing to assign a mailbox in an accessible location for a person who uses a wheelchair; and refusing to accept rental payments by mail instead of in person for a person with a mobility disability,⁸ or
- Refuse residency to persons with disabilities⁹ or place conditions on their residency because those persons may require reasonable accommodations.¹⁰

In addition, persons and entities covered by the Fair Housing Act may not coerce, intimidate, threaten or interfere with any person:

- In the exercise or enjoyment of any right granted or protected by the Fair Housing Act;
- On account of a person having exercised or enjoyed any right granted or protected by the Fair Housing Act; or
- On account of a person having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act.

This includes retaliating against any person for exercising any right under the Fair Housing Act.

2.3.1 Affirmatively Furthering Fair Housing and Fair Housing Planning

Section 808(d) of the Fair Housing Act requires all executive branch departments and agencies administering housing and urban development programs and activities to administer these programs in a manner that affirmatively furthers the policies of the Fair Housing Act.¹¹ Public housing programs must be administered in

⁷ See 81 FR 63054; 24 CFR 100.600.

⁸ HUD DOJ Joint Statement on Reasonable Accommodations, 5/17/04 available at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

⁹ Throughout this document the phrases “individuals with disabilities” and “persons with disabilities” are used interchangeably. See Section 3.1.2 for a discussion of the definition of disability under Federal civil rights laws and the definition of disability for the purposes of determining program eligibility.

¹⁰ See HUD’s implementing regulations at 24 CFR part 100.

¹¹ 42 U.S.C. § 3608.

a manner that affirmatively furthers the policies of the Fair Housing Act.¹² Currently, HUD funding recipients, including PHAs, must regularly certify compliance with the Fair Housing Act’s affirmatively furthering fair housing (AFFH) requirement,¹³ and will, in doing so, commit to supporting those certifications by engaging in voluntary fair housing planning or taking other steps to remedy their unique fair housing issues. The certification requires the PHA to affirmatively further fair housing consistent with 24 CFR part 5.¹⁴

PHAs may engage in fair housing planning to support their AFFH certifications, but current regulations do not require any specific form of planning or the submission of fair housing plans to HUD. PHAs may seek technical assistance from HUD on their voluntary fair housing planning activities that support their certifications. HUD anticipates issuing a more detailed implementation of a program participant’s AFFH obligations,¹⁵ and will seek to build on and improve the processes set forth in the 2015 AFFH Rule¹⁶ to further help PHAs comply with their statutory obligation while reducing the regulatory burden on them. Additional technical assistance and training will be available to support the implementation of PHA AFFH obligations as regulations change.

2.4 Age Discrimination Act of 1975

The Age Discrimination Act prohibits discrimination based on age in Federally assisted programs and activities. A recipient of HUD funds must not use age distinctions or take any other actions that have the purpose or effect of excluding individuals, denying or limiting benefits or participation, or subjecting them to discrimination because of age.¹⁷ There are limited exceptions for an age distinction established by statute¹⁸ or if the otherwise prohibited action reasonably considers age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. The four-factor test to determine whether an explicit age distinction meets this exception considers if:¹⁹

- (1) Age is used as a measure or approximation of one or more other characteristics; and
- (2) The other characteristics must be measured or approximated for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and
- (3) The other characteristics can be reasonably measured or approximated using age; and
- (4) The other characteristics are impractical to measure directly on an individual basis.

Examples of Prohibited Policies that May Discriminate Based on Age

- Setting a minimum age (for example, age 50) for persons with disabilities in a designated public housing mixed (elderly and persons with disabilities) project; and
- Setting a minimum age (for example, age 25 or older) for participation in the PH program.

¹² See, e.g., 42 U.S.C. § 3608(e)(5); 24 CFR 5.150 *et. seq.*; 24 CFR 903.7(b)(2)(iv) and (v)(D), (o), 903.15(c), and 903.23(f).

¹³ See 24 CFR 903.7(o).

¹⁴ See 24 CFR 903.7(o) (requiring certification of compliance pursuant to 24 CFR 5.151 and 5.152).

¹⁵ See 88 Fed. Reg. 8516 (Feb. 9, 2023).

¹⁶ See 80 Fed. Reg. 42272 (July 15, 2015).

¹⁷ See 24 CFR part 146.

¹⁸ For e.g., designated public housing for elderly persons established in Section 7 of the United States Housing Act of 1937.

¹⁹ 24 CFR part 146.

2.5 Equal Access to Housing Rule

The Equal Access Rule (EAR), promulgated in 2012 and amended in 2016,²⁰ applies to housing assisted by HUD or subject to a mortgage insured by HUD and requires that such housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.²¹ Through the rule, HUD clarified the definition of “family” for eligibility purposes and its applicability “regardless of actual or perceived sexual orientation, gender identity, or marital status...”²²

HUD’s regulations define gender identity, perceived gender identity and sexual orientation as follows:

- Gender identity *means* the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of how the person’s gender identity is perceived;
- Perceived gender²³ identity means the gender with which a person is perceived to identify based on that person’s appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents; and
- Sexual orientation means one’s emotional or physical attraction to the same and/or opposite sex (e.g., homosexuality, heterosexuality, or bisexuality).²⁴

HUD also added the term “co-head” to the definitions of *elderly family*, *near-elderly family*, and *disabled family* to codify HUD’s established interpretation of heads of household, which recognizes that some families have more than one family head, which is more inclusive of differing marital statuses and family arrangements.²⁵

The EAR preamble clarified that a person’s identity documents may not accurately reflect that person’s gender identity. Thus, when determining eligibility, a PHA must not deny a family because the PHA perceives one or more members of the family to be a sex different from that with which they identify themselves.²⁶

Since PHAs include definitions of “family” in their Annual Plans, they need to ensure these policies comply with EAR. The PHA cannot limit the definition of family in a way that discriminates against a protected class under any Federal, state, or local law, or as provided by the Equal Access Rule mandating that access to HUD’s programs be available to any eligible person regardless of sexual orientation, gender identity or marital status. For example, a PHA must not require family members to be related by blood, marriage, adoption, or other operation of law to be considered a “family.”²⁷

2.6 Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973²⁸ prohibits, because of disability, exclusion from participation in, denial of the benefits of, and discrimination under any programs or activities receiving Federal financial

²⁰ See 77 Fed. Reg. 5661 (Feb. 3, 2012), *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity*; 81 Fed. Reg. 64764 (Sep. 21, 2016), *Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs*; 81 Fed. Reg. 80989 (Nov. 17, 2016), *Equal Access to Housing in HUD’s Native American and Native Hawaiian Programs – Regardless of Sexual Orientation or Gender Identity*.

²¹ 24 CFR 5.100, 5.105(a)(2), 5.106, and 5.403.

²² 24 CFR 5.403.

²³ The definition of “perceived gender identity” is included in the definition of “gender identity” at 24 CFR 5.100.

²⁴ HUD uses the acronym “LGBTQ” to collectively refer to persons identifying as lesbian, gay, bisexual, transgender, and/or queer/questioning.

²⁵ 24 CFR 5.403.

²⁶ 81 Fed. Reg. 64764, 64766 (Sep. 21, 2016).

²⁷ 24 CFR 5.100, 5.105(a)(2), 5.106, and 5.403.

²⁸ 29 U.S.C. § 794.

assistance. This law applies to PHAs as recipients of Federal financial assistance, as well as to the PHA's contractors, subcontractors, subrecipients, transferees, successors, and assignees. For example, when a PHA's public housing development is converted under the Rental Assistance Development (RAD) program, the new owner and operator assumes Section 504 responsibilities as a recipient of Federal financial assistance.

Section 504 obligates PHAs to ensure nondiscrimination and make their programs and activities accessible to persons with disabilities, including:

- Making and paying for structural changes, modifications to units and/or common areas as a reasonable accommodation that may be necessary for applicants and tenants with disabilities;
- Providing for reasonable accommodations to 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 their housing unit, the common areas of a dwelling, housing related services and amenities, maintenance and administrative operations, and programs and activities conducted or sponsored by the PHA and/or recipient;
- Operating housing that is not limited to persons with disabilities or persons with a specific type of disabilities unless authorized by Federal law;
- Taking appropriate steps to ensure effective communication with persons with disabilities, including by providing auxiliary aids and services where necessary to afford persons with disabilities an equal opportunity to participate in and enjoy the benefits of a program or activity of the PHA;²⁹
- Administering programs or activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities;³⁰
- Complying with program accessibility requirements, including accessibility requirements for individuals with mobility, hearing, and vision impairments for new construction, substantial alterations, other alterations, and other program access requirements, meaning, among other obligations, that the PHA maintains the designated accessible units for individuals with mobility impairments and designated accessible units for individuals with sensory impairments that are dispersed pursuant to regulatory requirements;³¹
- If the PHA did not develop a “needs assessment” for accessible units for applicants and tenants, and a transition plan to achieve program accessibility, in accordance with the timeframes set out in HUD’s Section 504 regulation (i.e., by July 11, 1990), the PHA must conduct a needs assessment and implement a transition plan;³²
- If the PHA has not performed a self-evaluation of the PHA’s programs and policies to ensure that they do not discriminate based on disability by the date specified in HUD’s Section 504 regulation (i.e., by July 11, 1989), the PHA must conduct a self-evaluation in accordance with regulatory requirements;³³ and
- Ensuring that the PHA is operating the program in compliance with Section 504.

Section 504 requires PHAs to affirmatively ensure that persons with disabilities are given an equal opportunity to participate fully in a PHA’s HUD-assisted housing programs and receive the full benefit of these programs.

²⁹ See 24 CFR 8.6.

³⁰ See 24 CFR 8.4(d).

³¹ See 24 CFR 8.20-23; 8.26.

³² See 24 CFR 8.25(c) and (d).

³³ See 24 CFR 8.51.

Section 504 requires PHAs to afford persons with disabilities an equal opportunity to obtain the same result or to gain the same benefit as those afforded to persons without disabilities.

PHAs must adopt suitable means to ensure that information regarding the availability of accessible units reaches eligible individuals with disabilities and must take reasonable nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals with disabilities whose disability requires the accessibility features of the unit.³⁴ A PHA may require a tenant who does not need a unit's accessible features to move to another unit without such features.

A more detailed discussion of PHA responsibilities as it relates to the PH program, physical accessibility requirements, and reasonable accommodations is covered in *Section 3* of this chapter.

2.7 Titles II and III of the Americans with Disabilities Act of 1990

Signed into law in 1990 and amended in 2008, the Americans with Disabilities Act (ADA) is a comprehensive civil rights law for persons with disabilities. Title II of the ADA and its implementing regulations extend Section 504's nondiscrimination requirements to all programs, services, and activities of public entities regardless of whether the public entity receives Federal financial assistance.³⁵

States and local governments, any department, agency, special purpose district, or other instrumentality of a State or local government, whether they receive Federal funds, cannot discriminate against individuals with disabilities in any of their programs, services, or activities such as public education, transit, health care, social services, town meetings, voting, and court access, as well as all housing services, programs, and activities. Title II and Section 504 are similar, but they have some unique requirements. Like Section 504, the Title II ADA regulations also adopted physical accessibility requirements known as the 2010 ADA Standards for Accessible Design.³⁶

Because both Section 504 and Title II generally apply to PHAs, and they are subject to the architectural standards under both, until HUD adopts a new accessibility standard for purposes of compliance with HUD's Section 504 requirements, PHAs may either use the Uniform Federal Accessibility Standards (UFAS) or HUD's Deeming Notice,³⁷ which permits the use of the 2010 ADA Standards with certain exceptions, in order to meet their physical accessibility obligations under Section 504. However, the standards applicable to any given facility or element within a property depend on various considerations, such as when the facilities or elements were designed, constructed and altered.³⁸

Also, if a PHA employs more than 50 people, Title II requires the PHA to adopt grievance procedures for anyone denied a reasonable accommodation, including applicants to the PH program. These grievance procedures can be the same as the regular informal hearing or grievance procedures, as long as they provide due process to resolve complaints under Title II and comply with all nondiscrimination requirements.³⁹ The PHA may not require an individual who believes their request for a reasonable accommodation was incorrectly

³⁴ See 24 CFR 8.27.

³⁵ For more information, please refer to the Department of Justice's Titles II and III ADA implementing regulations at 28 CFR part 35.

³⁶ See https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm.

³⁷ 79 Fed. Reg. 29671 (May 23, 2014).

³⁸ See U.S. Department of Justice, Revised ADA Requirements: Effective Date and Compliance Date (2011), https://www.ada.gov/revised_effective_dates-2010.htm.

³⁹ 28 CFR 35.107; see 24 CFR part 966 subpart B.

denied to utilize the PHA’s grievance procedures and must make clear that individuals are permitted to file complaints alleging discrimination with HUD at any time.⁴⁰

Title III of the ADA prohibits private entities that own, lease, and operate places of public accommodation from discriminating on the basis of disability and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with established accessibility standards.⁴¹ Places of public accommodation include rental offices, as well as shelters, social service establishments, and other facilities that are open to the public.

2.8 The Violence Against Women Act (VAWA)

What is the Violence Against Women Act?

The Violence Against Women Act (VAWA) provides housing protections, among other things, for survivors of domestic violence, dating violence, sexual assault, and stalking (“VAWA violence/abuse”).⁴² These protections are not limited to women, and survivors are eligible for protections without regard to sex, including gender identity or sexual orientation.⁴³

PHAs Have Responsibilities Under VAWA

Under VAWA, PHAs cannot deny admission or assistance, or terminate or evict from housing, an applicant or tenant on the basis or as a direct result of the fact that the applicant or tenant is or has been a survivor of VAWA violence/abuse if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.⁴⁴ This includes that a PHA cannot deny admission or assistance, or terminate or evict an applicant or tenant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant or tenant is or has been a VAWA violence/abuse survivor. On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, or eviction. However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. For examples of adverse factors that may be a direct result of VAWA violence/abuse, and further discussion of scenarios explaining the meaning of “direct result,” see Notice PIH-2017-08.⁴⁵ Incidents or threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a serious or repeated lease violation by the survivor, or good cause to terminate the tenancy of the survivor.⁴⁶

Moreover, PHAs shall not discriminate against any person because that person has opposed any act or practice made unlawful by VAWA or because that person testified, assisted, or participated in any matter related to VAWA’s housing protections.⁴⁷ In addition, VAWA prohibits PHAs from coercing, intimidating, threatening, or interfering with or retaliating against any person in the exercise or enjoyment of, on account of the person having exercised or enjoyed, or on account of the person having aided or encouraged any other person in the exercise or enjoyment of, any rights or protections under VAWA.⁴⁸ Furthermore, VAWA protects the right of landlords, homeowners, tenants, residents, occupants, guests of, or applicants for any housing (including, but not limited to, tenants, residents, occupants, guests of, and applicants in the Public Housing

⁴⁰ 24 CFR 8.56(c) and (k), 24 CFR 103.10.

⁴¹ See 42 U.S.C. §§ 12181–12189.

⁴² 34 U.S.C § 12291 (definitions); 34 U.S.C. §§ 12471-12496 (addressing the housing needs of victims); 24 CFR 5.2001-2011.

⁴³ 24 CFR 5.2001.

⁴⁴ 24 CFR 5.2005(b)(1).

⁴⁵ Notice PIH-2017-08, Section 7.

⁴⁶ 24 CFR 5.2005(c) and Notice PIH-2017-08.

⁴⁷ 34 CFR 12494(a).

⁴⁸ 34 U.S.C § 12494(b) (prohibition on coercion).

program) to seek law enforcement or emergency assistance on their own behalf or on behalf of someone else who needs assistance.⁴⁹

Documentation of VAWA Violence/Abuse

PHAs are not required to ask for documentation when an individual presents a claim for VAWA protections; the PHA can accept a survivor's oral representation that they are or have been a survivor of VAWA violence/abuse. If the PHA chooses to request documentation of the VAWA violence/abuse, the PHA must make its request for documentation to the survivor in writing. The PHA may choose to accept any evidence of VAWA violence/abuse provided by the survivor, even if it is not listed below.⁵⁰ However, if the PHA decides to request documentation of the VAWA violence/abuse, the PHA is required to accept any of the following forms of documentation from the survivor:⁵¹

1. VAWA self-certification form (HUD-5382);
2. A record from a court, administrative agency or law enforcement agency (records from all Federal, State, tribal, territorial and local law enforcement agencies are acceptable, including police reports);
3. A document related to the VAWA violence/abuse signed by a professional that the survivor has sought assistance from.
 - o Who can sign?
 - Any of the following types of professionals may provide a verifying signature:
 - Attorney
 - Medical professional (including doctor)
 - Mental health professional
 - Survivor service provider
 - People who work for the professional as employees or agents may sign, and people who are volunteers for the professional may also sign.
 - o What must the document from the professional contain?
 - Two signatures:
 - The applicant/tenant must sign, and
 - The professional (or an employee, volunteer or agent of the professional) must sign.
 - A statement by the professional that contains the following:
 - Under penalty of perjury, the professional believes:
 - That the survivor experienced an incident of domestic violence, dating violence, sexual assault, or stalking,⁵² and
 - That this incident fits the definition of domestic violence, dating violence, sexual assault, and/or stalking described in 24 CFR 5.2003.⁵³

If the PHA chooses to require a person seeking protections to provide documentation, the PHA must provide the person with at least 14 business days. A PHA may, at its discretion, extend the 14-business day deadline. PHAs are encouraged to consider factors that may contribute to the survivor's inability to provide the documentation in a timely manner. These factors may include, but are not limited to cognitive limitations, disabilities, limited English proficiency, absence from the unit due to hospitalization or time in an emergency

⁴⁹ See 34 U.S.C. § 12495.

⁵⁰ 24 CFR 5.2007(b)(1)(iv)

⁵¹ 24 CFR 5.2007(b)

⁵² See 24 CFR 5.2003 for the VAWA definitions of these terms.

⁵³ See 24 CFR 5.2003 for the VAWA definitions of these terms.

shelter, administrative delays in obtaining police or court records, the danger of further violence, and the survivor’s need to address health or safety issues. PHAs may also need to extend the deadline as a reasonable accommodation for a person with a disability.

However, if the applicant or tenant does not provide the documentation within 14 business days after receiving the written request for that documentation or within the designated extension period, neither VAWA nor HUD’s VAWA regulations prevent the PHA from acting within its lawful authority to:

- (A) Deny admission by the applicant or tenant to the covered housing program;
- (B) Deny assistance under the covered housing program to the applicant or tenant;
- (C) Terminate the participation of the tenant in the covered housing program; or
- (D) Evict the tenant, or a lawful occupant that commits a violation of a lease⁵⁴

An individual’s failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual’s right to challenge the denial of assistance or termination, nor does it preclude the individual’s ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings. If the PHA denies VAWA protections, it must still follow its established procedures for grievance hearings, informal hearings, or informal reviews.

If a PHA requests and receives written documentation of VAWA violence/abuse and that documentation contains conflicting information, then a PHA may require additional third-party documentation from the person requesting protection (example: if a PHA receives VAWA self-certification forms from different members of the same household who each claim to be survivors and name one or more of the other household members who have requested VAWA protections as the perpetrator).⁵⁵ In this situation, the PHA may request additional third-party documentation. However, PHAs are prohibited from conducting further fact finding for the purpose of trying to verify the “validity” of an applicant or tenant’s survivor status⁵⁶.

The survivor can provide any of the following types of third-party documentation: records from agencies (number two in the list above), a signed document from a professional (number three in the list above), or a statement or other evidence provided by the applicant or tenant that the PHA chooses to accept. The PHA may choose to require that the person requesting protection submit this additional third-party documentation within 30 calendar days of the PHA’s request for this additional documentation.

VAWA Notice of Occupancy Rights Requirements

PHAs must provide a VAWA Notice of Occupancy Rights to each applicant and to each tenant.⁵⁷ The Notice of Occupancy Rights must be based on HUD’s model form, HUD-5380, without changes to the core protections and confidentiality rights, and must be customized to reflect the specific program and PHA’s information. The Notice of Occupancy Rights must be provided to all applicants and tenants when they are provided assistance or admission, when an applicant is denied assistance or admission, and with any notification of eviction or termination of assistance.⁵⁸ The PHA must also provide the HUD VAWA self-certification form, HUD-5382, with the Notice of Occupancy Rights.⁵⁹ The Notice and form must be made available in multiple languages.⁶⁰ The

⁵⁴ 24 CFR 5.2007(a)(2)(i).

⁵⁵ 24 CFR 5.2007(b)(2).

⁵⁶ Notice PIH 2017-08, Pg. 15

⁵⁷ 24 CFR 5.2005(a)(1).

⁵⁸ 24 CFR 5.2005(a).

⁵⁹ 24 CFR 5.2005(a).

⁶⁰ 24 CFR 5.2005(a)(3); Executive Order 13166.

VAWA Notice of Occupancy Rights is for use by all HUD-covered programs and PHAs are responsible for this activity in the public housing program.

VAWA Emergency Transfer Plan Requirements

PHAs must adopt and follow an Emergency Transfer Plan based on HUD's model emergency transfer plan (HUD-5381).⁶¹

The Emergency Transfer Plan must allow for emergency transfers if a tenant who is a survivor of domestic violence, dating violence, sexual assault, or stalking reasonably believes there is a threat of imminent harm from further violence if they remain in the same unit, and requests a transfer.⁶² A tenant's reasonable belief that there is a threat of imminent harm from further violence may be based on domestic violence, dating violence, sexual assault, or stalking that happened to a household member.

The Emergency Transfer Plan must also allow for emergency transfers where a tenant who is a survivor of sexual assault requests a transfer and the sexual assault occurred on the premises at some point during the 90 days prior to the survivor's request for an emergency transfer.⁶³ In this case, the survivor does not need to show that they have a reasonable belief in imminent harm – the occurrence of the sexual assault within the last 90 days is sufficient to trigger eligibility for an emergency transfer. A tenant's request for an emergency transfer may be based on the occurrence of a sexual assault against a household member on the premises within the last 90 days.

The Emergency Transfer Plan must⁶⁴ specify the PHA's procedures for receiving and responding to emergency transfer requests, and for taking steps to provide internal and external emergency transfers. It must include information regarding how the PHA will allow internal emergency transfers, which are emergency transfers in which the survivor would not be considered a new applicant for assistance. One example of an internal emergency transfer is a move from one public housing unit to another public housing unit owned by the same PHA. It must also include information about the reasonable efforts the PHA will take to assist a tenant who wishes to make an external emergency transfer, which are emergency transfers to units or assistance for which the survivor would be considered a new applicant. An example of an external emergency transfer is an emergency transfer from a public housing unit owned by one PHA to a public housing unit owned by another PHA.

The plan must⁶⁵ allow the PHA's tenants who qualify for an emergency transfer to make an "internal emergency transfer" to another public housing unit in that PHA's portfolio when the unit is immediately available, and the survivor believes that unit to be safe. The plan must also include internal emergency transfer policies to cover instances where no units may be immediately available, or the survivor may not consider any of the immediately available units to be safe. These policies must ensure that requests for "internal emergency transfers" under VAWA receive, at a minimum, any applicable additional priority the PHA may already provide to other types of emergency transfer requests (such as transfer requests due to fire or flooding). The PHA must continue to consider and allow internal emergency transfers to available units until the survivor determines the identified unit is safe.⁶⁶

⁶¹ 24 CFR 5.2005(e).

⁶² 24 CFR 5.2005(e)(2)(ii)(A)-(B).

⁶³ 24 CFR 5.2005(e)(2)(ii)(B).

⁶⁴ 24 CFR 5.2005(e)(5), 5.2005(e)(6) and 5.2005(e)(7).

⁶⁵ 24 CFR 5.2005(e)(5).

⁶⁶ 24 CFR 5.25005(e).

The Emergency Transfer Plan must specify if the PHA will accept verbal self-certification of eligibility for an emergency transfer or if a written request is necessary.⁶⁷ HUD has provided a model Emergency Transfer Request document (HUD-5383). The Emergency Transfer Plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA *out of* the public housing program or unit and a tenant who is seeking an external emergency transfer under VAWA *into* the public housing program or unit.⁶⁸

Confidentiality

The PHA must keep strictly confidential any information that is submitted to the PHA in relation to an individual's representation that they are a survivor entitled to a protection or remedy under VAWA or in relation to an individual's inquiry about or request for VAWA rights or protections. This includes all information an individual may provide on the certification form, HUD-5382, or the Emergency Transfer Request form, HUD-5383, Information covered by this confidentiality requirement ("confidential information") may only be accessed by a PHA's employees or contractors if explicitly authorized by the PHA for reasons that specifically call for those individuals to have access to that information under applicable Federal, State, or local law (e.g., the information is needed by a PHA's employee to provide the VAWA protections to the survivor).

Confidential information also must not be entered into any shared database or disclosed to any other entity or individual, except if:

- Requested or consented to in writing by the tenant in a time-limited release;
- Required for use in an eviction proceeding or hearing regarding termination of assistance, or
- Otherwise required by applicable law.

In addition, HUD's VAWA regulations require the PHA's Emergency Transfer Plan to provide strict confidentiality measures to ensure that the location of the survivor's dwelling unit is never disclosed to a person who committed or threatened to commit the VAWA violence/abuse.

Bifurcation of the lease

When a tenant or lawful occupant engages in criminal activity directly relating to VAWA violence/abuse, the PHA may choose to remove *only that individual* from the lease in order to evict, remove, terminate occupancy rights, or terminate assistance to *that individual* without evicting, removing, terminating assistance to, or otherwise penalizing a survivor of that criminal activity who is also a tenant or lawful occupant.⁶⁹ This process is known as "bifurcation of the lease." In addition, under HUD's currently codified regulations, if the person removed was the only individual in the unit who had established eligibility as a eligible public housing tenant, the PHA must provide any remaining tenant an opportunity to establish eligibility for the covered housing program and a reasonable time to do so or find other housing.⁷⁰ In the Public Housing program, assistance is

⁶⁷ 24 CFR 5.25005(e)(10).

⁶⁸ 24 CFR 5.25005(e)(7).

⁶⁹ 24 CFR 5.2009(a).

⁷⁰ 24 CFR 5.2009(b) codifies the existing requirement per the 2013 reauthorization. HUD notes, for future reference, that in 2016, the Justice for All Reauthorization Act (Pub. L. 114-324, 130 Stat. 1948) amended VAWA by clarifying VAWA's lease bifurcation provisions, including adding certain rights not just for tenants, but, more broadly, for residents with respect to establishing eligibility or finding other housing following a lease bifurcation. HUD's existing VAWA regulations implement VAWA as amended only through its 2013 reauthorization, and therefore only define the reasonable time period for tenants. HUD has explained that it intends to implement changes to VAWA by the Justice for All Reauthorization Act of 2016 in its rulemaking implementing VAWA 2022. 88 Fed. Reg. 321, 322; 42 U.S.C. 1436a(d)(4)(A); see also Violence Against Women Reauthorization Act of 2013 Guidance, PIH-2017-08 (HA), Section 17.

limited to 30 days if the remaining family member has not submitted documentation evidencing a satisfactory immigration status or a pending appeal of a verification determination of the family member's immigration status.

Enforcement of VAWA Protections

The Office of Fair Housing and Equal Opportunity (FHEO) has authority to investigate potential non-compliance with VAWA, both through initiating a compliance review or investigating an individual complaint. Individuals who believe they have experienced a violation of their VAWA rights can file a complaint with FHEO. FHEO will investigate the complaint and seek to voluntarily resolve the allegations. If the complaint cannot be resolved, FHEO will determine whether there is reasonable cause to believe a VAWA violation occurred and undertake enforcement action to resolve the violation.

For more information on how VAWA applies in public housing, see Notice PIH-2017-08 or successor notice.

3 Ensuring Program Access for Individuals with Disabilities

To ensure persons with disabilities have equal access to a PHA's programs, services, or activities, PHAs have obligations under the Fair Housing Act, Section 504, and the ADA to provide reasonable accommodations and reasonable modifications, ensure effective communication, and comply with accessibility requirements.

3.1 Who is an Individual with a Disability?

There are different definitions of disability that are used by PHAs. For purposes of compliance with Federal nondiscrimination requirements, the PHA must use the definitions under the civil rights statutes (i.e., the Fair Housing Act, Section 504, and the ADA). For other purposes of program administration, the PHA must use the definition in the program regulations. It is important to note that the definitions serve different purposes, and the definition used in program regulations cannot be used for purposes of compliance with fair housing and civil rights requirements.⁷¹

3.1.1 Disability under Federal Civil Rights Laws

The Fair Housing Act/ADA/Section 504 definitions of disability are used for purposes of complying with each of these Federal civil rights laws. The definition of disability under the Fair Housing Act is very similar to the definition of disability under the ADA and Section 504.⁷² These statutes define a person with a disability to include:

- Individuals with a physical or mental impairment that substantially limits one or more major life activities;
- Individuals who are regarded as having such an impairment; and
- Individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, intellectual disabilities, emotional

⁷¹ 24 CFR 8.3, 8.4, 24 CFR 100.201; 28 CFR 35.108.

⁷² See 42 U.S.C. § 12102; 28 CFR 35.108 (Title II ADA); 29 U.S.C. § 705(20); 24 CFR 8.3 (Section 504); 42 U.S.C. § 3602(h); 24 CFR 100.201 (Fair Housing Act).

illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

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 oneself, learning, working, and speaking. This list of major life activities is not exhaustive.⁷³ Major life activities also include the operation of major bodily functions, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

For purposes of federal nondiscrimination requirements, the definition of "disability" shall be construed broadly in favor of expansive coverage to the maximum extent permitted. The primary focus should be whether PHAs have complied with their obligations and whether discrimination has occurred, rather than if the individual meets the definition of "disability." The question of whether an individual meets the definition of "disability" should not demand extensive analysis.⁷⁴

Nothing in this section requires a PHA to offer or continue tenancy for an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to others that cannot be eliminated or mitigated by a reasonable accommodation or modification of policies, practices or procedures, or by the provision of auxiliary aids or services.⁷⁵ An individual who abuses alcohol or drugs and whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others, is not considered to be an individual with a disability, unless a purpose of the specific program or activity is to provide health or rehabilitation services to such individuals.⁷⁶

3.1.2 Disability under the HUD Program Definition

The program definition of disability is used for the purposes of determining program eligibility, for example, in determining allowances and deductions for families with disabilities. However, a different definition of disability is used to determine whether a person is an individual with a disability under Federal civil rights laws.⁷⁷

The HUD program definition of "person with disabilities"⁷⁸ may be used for eligibility for designated housing and when reporting disability status on form HUD-50058 that is collected in the Public and Indian Housing Information Center (PIC) or successor system. The HUD program definition incorporates both the Social Security Administration definition of a person with disabilities found at 42 U.S.C. 423, and the definition of

⁷³ See e.g., *Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998) (holding that for certain individuals, reproduction is a major life activity).

⁷⁴ 28 CFR 35.101.

⁷⁵ See 42 U.S.C. § 3604(f)(9); 24 CFR 8.3; 28 CFR 35.104. HUD DOJ Joint Statement on Reasonable Accommodations, Q&A 5, <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

⁷⁶ See 24 CFR 8.3. This requires that the individual not be able to participate in the program or activity offered because of alcohol abuse in order to be excluded from the housing. If the program offered is simply rental of a unit, with no services provided, the housing provider will need to show that the applicant's drinking prevents the applicant from meeting the terms and conditions of tenancy (subject to the reasonable accommodation requirement). Alcohol abuse, in and of itself, is not sufficient reason for rejecting an applicant.

⁷⁷ 24 CFR 8.3, 8.4, 100.201; 28 CFR 35.108 and 35.130(b)(8).

⁷⁸ 42 U.S.C. § 1437a(b)(3)(E).

developmental disability in the Developmental Disabilities Assistance and Bill of Rights Act. Persons who have acquired immunodeficiency syndrome (AIDS) or any conditions arising from the AIDS virus are not excluded from this definition. The HUD program definition does not include a disability based solely on any drug or alcohol dependence.⁷⁹

3.2 Reasonable Accommodations

The Fair Housing 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.⁸⁰ The Fair Housing Act also prohibits the refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person to afford full enjoyment of the premises.

Section 504 similarly requires recipients to make reasonable accommodations in rules, policies, practices, procedures, and services as well as structural changes, which may be necessary to avoid discrimination based on disability.⁸¹ Under Section 504, recipients are required to pay for a structural modification as a reasonable accommodation unless it amounts to an undue financial and administrative burden or a fundamental alteration to the essential nature of the program. If an undue burden or fundamental alteration exists, the housing provider is still required to provide any other reasonable accommodation up to the point that would not result in an undue financial and administrative burden on the provider and/or constitute a fundamental alteration to the essential nature of the program.⁸² Since this requirement is greater under Section 504 than under the Fair Housing Act, the PHA typically must pay for physical modifications that private housing providers would not be required to pay for. For the purposes of this section, a reasonable modification will be referenced as a reasonable accommodation.⁸³ In most circumstances, PHAs will also be covered by Title II of the ADA.

A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, procedure, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including any physical or structural changes to a housing unit or public or common use spaces, to have an equal opportunity to participate in or benefit from a recipient's program or activity, or to otherwise avoid discrimination against individuals with disabilities. Any change in the way things are customarily done that enables a person with disabilities to enjoy housing opportunities, participate in or benefit from a PHA's programs, services, or activities, or to meet program requirements is a reasonable accommodation. In other words, reasonable accommodations eliminate barriers that prevent persons with disabilities from fully participating in or benefiting from housing opportunities or in any HUD-assisted program or activity. An individual with a disability may make as many reasonable accommodation requests as needed; there is no limit to the number of reasonable accommodation requests that may be provided to someone. A PHA may not deny a reasonable accommodation request on the grounds that the requester has made prior reasonable accommodation request(s).

Reasonable accommodations can occur or be required in relation to all areas of PHA operations including, but not limited to:

⁷⁹ 42 U.S.C. § 1437a(b)(E)(iii); 24 CFR 5.403.

⁸⁰ HUD DOJ Joint Statement on Reasonable Accommodations, 5/17/04 available at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

⁸¹ The ADA also requires reasonable modifications. 28 CFR 35.130(b)(7).

⁸² Joint Statement on Reasonable Accommodations, Q&A 7.

⁸³ See Joint Statement of HUD and DOJ Reasonable Modifications Under the Fair Housing Act, 3/5/2008, Q&A 31.

- Applications
- Admissions
- Determinations of eligibility
- Briefings
- Inspections and repairs
- Leasing
- Modifications to rules, requirements, policies, or structural changes to units or common or public use areas
- Annual or interim reexams
- Terminations of assistance
- Hearings
- Physical accessibility of PHA facilities or housing

Some examples of reasonable accommodation include:

- Making home visits for eligibility interviews;
- Providing an extra bedroom in family unit size for a live-in aide or for medical equipment;
- Allowing assistance animals, including service and support animals;⁸⁴
- Permitting an individual with a disability to remain on a waiting list when they do not respond to requests made by the PHA because of a disability-related reason;
- Using remote video rather than in-person meetings since online platforms offer captioning, when requested and provided it ensures effective communication;
- Providing additional time for an individual with a disability who is unable to move within a specific time period because of their disability when the individual reaches the top of a waiting list, e.g., treatment, hospitalization;
- Assigning an accessible parking space;
- Incorporating physical or structural changes to accommodate an individual's specific disability, e.g., adding a grab bar in a tenant's bathroom, widening a doorway or installing ramps for wheelchair access; and
- Relaying information verbally for people who have difficulty with the written word.

The PHA should provide all applicants tenants with information regarding the PHA's Reasonable Accommodation Policy and Procedures at the time they apply for admission and at every annual re-certification. 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 participate in or have access to the program. Not all persons with disabilities will have a need to request a reasonable accommodation. However, all persons with disabilities have a right to request a reasonable accommodation.⁸⁵ In addition, under Section 504, PHAs have an obligation to ensure that their programs, services, and activities are accessible to and usable by individuals with disabilities. This obligation may require the PHA to offer and provide an accommodation if the PHA knows the individual is a person with a disability. This obligation to offer accommodations applies even if the

⁸⁴ HUD interprets the FHA to require access for individuals who use service animals, a type of assistance animal. When considering a request for an assistance animal as a reasonable accommodation, housing providers should initially follow the established analysis for assessing whether an animal is a service animal under the ADA. See FHEO Notice 2020-01, part I, "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act" for best practices on determining whether an animal is a service animal under the ADA, <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalINC1-28-2020.pdf>; see also 24 CFR 100.204(b).

⁸⁵ 24 CFR part 100, 24 CFR part 8, 28 CFR part 35; HUD/DOJ Joint Statement 5/17/04.

individual has not requested such an accommodation; however, the individual is not obligated to accept an accommodation when it is offered by the PHA. HUD advises the PHA to review its forms, letters, notices, posters and signs for inclusion of this information. Not all residents will be able to read and/or access typical forms of media.

As a best practice, PHAs can use the following sample language: “If you or anyone in your family is a person with disabilities, and you require an accommodation in order to fully use and enjoy our programs, services, or activities please contact [insert appropriate staff name and phone number].” A reasonable accommodation includes a change, exception, or adjustment to a rule, policy, practice, or service, or a structural change, that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces, or for the PHA to fulfill its programmatic obligations.

As a best practice, a PHA’s ACOP should include key information about reasonable accommodations. It should include, but is not limited to, the following examples of reasonable accommodation-related procedures:

- Procedures to prioritize emergency transfers to provide a reasonable accommodation. Some reasonable accommodation transfer requests may rise to the level of emergency transfer requests depending on the needs of the individual with a disability. In emergency situations, when no other appropriate public housing units are available, it is common for PHAs to provide families with an HCV or cover the cost of hotel accommodations until repairs, modifications, or alterations are made, or a transfer to alternative housing is completed; and
- A process for when a PHA offers a family a unit and the family does not accept the unit for disability-related reasons. For instance, a PHA must not give the family only one opportunity to accept a unit and remove them from the waitlist or place them at the bottom of the waitlist if the family does not accept the unit. Put differently, if a family does not accept a unit because it does not meet their disability-related needs, the PHA must ensure that the family maintains its current position on the waitlist.

3.2.1 Assistance Animals as a Reasonable Accommodation

Persons with disabilities may request a reasonable accommodation for assistance animals, often referred to as service animals or support animals, under the Fair Housing Act. This type of reasonable accommodation request is common and is usually for an exception to a housing providers’ pet ownership rules or policies so that that individuals with disabilities are permitted to use assistance animals in housing, including public and common use areas.

Assistance animals are not pets. They are animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities. There are two types of assistance animals: (1) service animals; and (2) other animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to in this chapter as a “support animal”). An animal that does not qualify as a service animal or support animal is a pet for purposes of the Fair Housing Act and may be treated as a pet for purposes of the lease and the housing provider’s rules and policies. Separately, pet ownership is permitted in PHA projects for elderly persons and persons with

disabilities⁸⁶ as well as general occupancy developments.⁸⁷ A housing provider may not exclude certain types, breed, sizes or ages of animals or charge a fee or deposit for service animals or other assistance animals even if the housing providers does so for pets. For more information on pet ownership in public housing, see the Chapter on Pet Ownership in Public Housing in this guidebook.

HUD issued guidance in FHEO Notice 2020-01 that provides housing providers with a set of best practices for complying with the Fair Housing Act when assessing requests for reasonable accommodations to keep animals in housing, including the information that a housing provider may need to know from a health care professional about an individual’s need for an assistance animal in housing.⁸⁸

In addition, under the ADA, public entities, including PHAs, and public accommodations must permit an individual with a disability to use a service animal as defined by the regulations implementing that statute.⁸⁹ In the context of a service animal under the ADA, a public entity may only make two inquiries: 1) if the animal is required because of a disability; and 2) what work or task the animal is trained to perform.⁹⁰ Under the ADA no documentation is required, and, generally, the inquiries should not be made when it is readily apparent that an animal is trained to do work or perform a task 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).⁹¹

3.2.2 Reasonable Accommodation Process

A PHA must provide reasonable accommodations when there is a disability-related need for an accommodation, unless the request amounts to an undue financial and administrative burden or a fundamental alteration in the essential nature of the program. For the PHA to provide a reasonable accommodation, the individual with disabilities may request a reasonable accommodation. This begins the process. Providers must also provide an accommodation when the provider has knowledge of the individual’s disability and the need for an accommodation. The process for providing a reasonable accommodation is:

- Determine if an accommodation is being requested;
- Determine if the requestor is a person with disabilities;
- Determine if there is a nexus between the disability and the request;
- Grant the request and provide the accommodation unless it is unreasonable,⁹² *i.e.*, would result in an undue financial and administrative burden or a fundamental alteration in the essential nature of the program or activity.

Each PHA must have and implement a reasonable accommodation policy.⁹³ A best practice for PHAs is to include policies and procedures related to reasonable accommodations in the Admissions and Continued Occupancy Policies. In their written policies and procedures, PHAs may want to describe the protocol and steps, beginning with the original request for an accommodation and concluding with the resolution of the

⁸⁶ Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1); 24 CFR 5.300-380 (“Pet Ownership for the Elderly or Persons with Disabilities”).

⁸⁷ 42 U.S.C. 1437a(b); 24 CFR 960,701-707 (“Pet Ownership in Public Housing”).

⁸⁸ FHEO 2020-01, “Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act,” available at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalINC1-28-2020.pdf>.

⁸⁹ See 28 CFR 35.104, 36.104.

⁹⁰ See 28 CFR 35.136, 36.302.

⁹¹ See 28 CFR 35.136(f), 36.302(c)(6).

⁹² HUD/DOJ Joint Statement 5/17/04, Q&A 7, available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf.

⁹³ Notice PIH 2011-31, *Guidance on non-discrimination and equal opportunity requirements for PHAs*.

request. Standardized procedures help ensure that all employees follow the same process. The PHA's written procedures could include information on the following:

- The PHA employee or department responsible for overseeing reasonable accommodation compliance;⁹⁴
- The way requests can be made, including specifying that requests must be allowed to be received orally. If the request is received orally, the PHA will document the request in writing. The PHA will maintain records of all reasonable accommodation requests. It is recommended that the PHA provide the requestor with a copy of the final request as received as well as documentation related to approval or denial of the request;
- The manner in which the PHA responds to requests:
 - The decision-making process (including determination of undue financial and administrative burden or fundamental alteration in the essential nature of the program or activity);
 - The information that may be needed to confirm a disability-related need for the request;
 - The time limitations for decision-making and implementation of an accommodation, and noting that most accommodations should be granted as soon as possible and that the PHA will not delay implementation of any granted accommodation ⁹⁵; and
 - How the PHA will document the request status and disposition of the request in the tenant file or separate tracking log.
- The appeal procedure, which includes the right of appeal for unfavorable decisions regarding an accommodation or a particular choice of accommodation; and
- The procedure for an interactive process when (1) a housing provider denies a reasonable accommodation request because it is unreasonable (i.e., because it would result in an undue administrative and financial burden or a fundamental alteration in the essential nature of the program or activity) or (2) because the provider lacks the minimum information necessary to make a decision, sometimes called “verification,” described below. Notice that the requester is not obligated to accept any alternative accommodation that would not be effective in meeting their disability-related needs and that the PHA may not refuse to grant the requested accommodation unless the request would result in an undue administrative and financial burden or a fundamental alteration to the essential nature of the program or activity.
- A description of under what circumstances the PHA may request additional information for purposes of confirming the disability related need for the requested accommodation, including specifying that if a person's disability is obvious, readily apparent, or otherwise known to the PHA, and if the need for the requested accommodation is also readily apparent or known, then the PHA may not request any additional information.
- Notice that if the disability and/or the disability-related need for the requested accommodation is not known or obvious, the PHA may request only information that is necessary to evaluate the disability and/or disability-related need for the accommodation.
- Notice that such verification information may be provided by the requesting individual, a 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.
- The procedure for handling confidential information and verification forms that may disclose private medical facts.⁹⁶

⁹⁴ 24 CFR 8.53

⁹⁵ 24 CFR 8.1, 8.2, 8.3, 8.4, 8.20, 8.33 and 28 CFR 35.130(b)(7).

⁹⁶ Notice PIH 2011-31; HUD/DOJ Joint Statement on Reasonable Accommodations, 5/17/04.

3.2.3 Reasonable Accommodation Requests

Since individuals must be informed of their right to ask for reasonable accommodations, PHAs may create or adopt standardized forms or processes that clearly and simply ask for all the information. Asking the same questions of everyone is one way to assure consistency in the process. However, a person with disabilities is not required to use a specific form or format to request a reasonable accommodation.

As a best practice, PHAs may create or adopt standardized forms or processes that clearly and simply ask for all the information in order to easily facilitate the accommodation requests. Asking the same questions of everyone is one way to assure consistency in the process; however, PHAs must understand that disabilities are varied and so PHAs must adapt to the methods of communication, provision and solicitation of information to and by individuals with disabilities. In some circumstances, PHAs may be required to engage in interactive process discussions to better understand a requested accommodation or to discuss what accommodations may be equally effective in meeting the individual's disability-related need; however, the individual is not obligated to accept an alternative accommodation if it would not meet their disability-related need and a PHA must provide the requested accommodation if it is not an undue administrative and financial burden or a fundamental alteration to the essential nature of the program or activity. PHAs must accept requests either orally or in writing, and written requests do not have to be on the form provided by the PHA. A request cannot be refused simply because the person did not use the PHA's standardized form or procedures. Regardless of how the request is made, it is important to consistently document the date and type of request in the tenant file or a separate tracking log, which must be made available to HUD upon request.⁹⁷ As a best practice, a separate tracking log, which can only be accessed by staff who need to know the information, may better ensure the confidentiality of individuals with disabilities. Another best practice includes providing the requester with a copy of the documentation relating to their request at the time it was made.

Additionally, PHAs must use caution that such forms do not make illegal or unnecessary inquiries of individuals with disabilities beyond what is appropriate for a reasonable accommodation request. An individual with a disability may request a reasonable accommodation at any time during the application process, tenancy period, or eviction process.⁹⁸

An individual with a disability may make as many reasonable accommodation requests as needed; there is no limit to the number of reasonable accommodation requests that may be granted to someone. A PHA may not deny a reasonable accommodation request on the grounds that the requester has made prior reasonable accommodation request(s).

⁹⁷ 24 CFR 8.55(c); 24 CFR 146.27; 2 CFR 200.337

⁹⁸ 24 CFR part 100, 24 CFR part 8, 28 CFR part 35; HUD/DOJ Joint Statement on Reasonable Accommodations 5/17/04.

The need for an accommodation can come to the PHA's attention in many ways other than a formal request. A PHA's policies must be sufficient to provide reasonable accommodations throughout its programs, services, and activities regardless of a formal request being made.

For example, a PHA may learn of the need for an accommodation in the course of looking into potential noncompliance with program requirements, and must work through the reasonable accommodation process before moving forward with any adverse action based on the potential noncompliance, as illustrated by the following scenario: a person misses two annual reexamination appointments, and when confronted with the possibility that their assistance could be terminated for failing to complete the annual reexamination process, the PHA learns that they could not keep their appointments due to hospitalization or other disability-related need. In this case, the PHA must not take any adverse action against the individual. The PHA engages in its reasonable accommodation process with the individual and determines it will provide the person another appointment date as a reasonable accommodation instead of simply moving forward with an adverse action.

3.2.4 Disability-related Need

Once the PHA is aware or has reason to believe an individual is a person with disabilities, the PHA has an obligation to provide reasonable accommodations that may be necessary. After an individual makes a request for a reasonable accommodation, the next step is to determine if the requester is an individual with disabilities. If the disability and the disability-related need for an accommodation are obvious, readily apparent or already known, the PHA cannot request additional information about the individual's disability or disability-related need. If the disability and disability-related need for an accommodation are not known, obvious, or readily apparent, the PHA may seek limited information to determine that the person is an individual with a disability and the requested accommodation is necessary because of that disability. The PHA must seek the least amount of information needed to determine whether an accommodation may be needed (see next section) – to preserve the requestor's privacy and observe the confidentiality of the information to the greatest extent possible.⁹⁹

On occasion, some housing providers, when faced with considering whether to provide an accommodation, have focused extensively on whether an individual meets the definition of disability under the Fair Housing Act, Section 504, and the ADA. Based on changes made by Congress in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which included conforming amendments to Section 504, the focus should be on meeting one's obligations under Section 504 and providing an accommodation. Therefore, under this approach, the definition of "disability" shall be construed broadly in favor of expansive coverage to the maximum extent permitted. The primary object of attention in cases should be whether entities have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of "disability." The question of whether an individual meets the definition of "disability" should not demand extensive analysis.¹⁰⁰ Once the entity is aware an individual is a person with disabilities, the entity has an obligation to provide reasonable accommodations that may be necessary.

⁹⁹ See HUD/DOJ Joint Statement on Reasonable Accommodations 5/17/04.

¹⁰⁰ 28 CFR 35.101.

If the applicant or family member is an individual with a disability, it may be unnecessary to seek additional information. In this circumstance, it may be a violation of Section 504 and the Fair Housing Act to require the household to provide additional disability related information. For example, in some instances the PHA may want to consult with HUD or its own counsel before seeking additional information to verify an applicant's or resident's disability – especially if the PHA will already have recorded disability related information about the individual. For example, PHAs must indicate disability status, sources of disability related income, and accessibility requests on an applicant's or residents Form HUD-50058, *Family Report*. In many circumstances, an individual with a disability will have in their possession or already provided information to the PHA other information about their disability in tenant-provided documents (e.g., Social Security Disability Insurance award letter or SSDI monthly statements).

If necessary, documentation may be provided, with the applicant's or tenant's consent by, for example, a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability and the need for the accommodation. In most cases, an individual's medical records and other detailed information about the nature of a person's disability are not necessary for this inquiry.

The PHA must request only information that is necessary to make the determination that the requested accommodation is for a disability-related need. The PHA must not inquire about the nature or severity of any disability.

In addition to seeking limited information when it is necessary to evaluate a reasonable accommodation request, verifying disability may be needed in the administration of the PHA's programs and activities, such as to determine if an applicant qualifies for a disability allowance, or for a medical expense deduction in calculating adjusted income. In this case, the PHA will use the HUD program definition of disability found at 24 CFR 5.403. The PHA must not request any information regarding the nature or severity of the disability.¹⁰¹

3.2.5 Establishing a Nexus between a Disability and Reasonable Accommodation

The PHA will need to determine whether there is a nexus, or identifiable relationship, between the disability and the accommodation being requested. In other words, is there a disability-related need for the reasonable accommodation that is requested? If a person's disability is obvious¹⁰², or otherwise known to the PHA, and if the need for the requested accommodation is also readily apparent or known, then the PHA cannot request any additional information about the requester's disability or the disability-related need for the accommodation, and must grant the request unless doing so would result in an undue administrative and financial burden or fundamental alteration in the essential nature of the program or activity. Depending on the PHA's own policies described in its ACOP, the PHA must have a method for noting where an accommodation meets a disability-related need and is granted.

If the requester's disability is known or readily apparent to the PHA, but the need for the accommodation is not readily apparent or known, the PHA may request only information that is necessary to evaluate the disability-related need for the accommodation.¹⁰³ In most cases, this information can be provided by the individual making the request. In some cases, additional third-party information may be necessary. This third party may be a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability and the need for the

¹⁰¹ See HUD/DOJ Joint Statement on Reasonable Accommodations 5/17/04.

¹⁰² HUD/DOJ Joint Statement on Reasonable Accommodations 5/17/04, Q&A 12.

¹⁰³ 24 CFR 8.4, 8.20, 8.33.

accommodation. 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 and may be inappropriate.

3.2.6 Approval or Denial of the Request

PHAs must assess requests for accommodations on a case-by-case basis. Once the PHA determines a disability-related need for the accommodation, the PHA must approve the request unless doing so would result in a fundamental alteration in the essential nature of the program or activity or an undue financial and administrative burden. A fundamental alteration is a modification that alters the essential nature of a provider's operations. This is a high standard.

A housing provider may incur some costs associated with providing a reasonable accommodation. Under Section 504, PHAs are obligated to pay for accommodations, including structural modifications that have costs associated with them unless doing so would result in an undue administrative and financial burden. The determination of an undue financial and administrative burden involves various factors, such as: the cost of the requested accommodation, all of the financial resources of the PHA at the time of the request, the benefits that the accommodation would provide to the individual with a disability, and the availability of other, less expensive alternative accommodations that would effectively meet the individual's disability-related needs.¹⁰⁴

If the accommodation being requested poses an undue financial and administrative burden on the PHA, or the accommodation would result in a fundamental alteration to the essential nature of the program or activity, the PHA is still obligated to engage in an interactive process to determine whether an alternative accommodation would effectively address the tenant or prospective tenant's disability-related needs. An interactive process occurs when the PHA and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations. The interactive process can be helpful because it often results in the PHA gaining a better understanding of the needs of the individual with a disability so that they can provide an effective accommodation for the requester that does not pose an undue financial and administrative burden or fundamental alteration in the essential nature of the PHA's programs or activities. Note that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and the accommodations that will meet their disability-related needs. While the interactive process can occur at any time, it is required to occur prior to a denial of a reasonable accommodation. The PHA is still required to provide a reasonable accommodation up to the point of an undue financial and administrative burden.¹⁰⁵

Once the PHA determines whether to approve or deny the request, the PHA would document the disposition of the request and date of any action taken in the tenant file unless the PHA maintains separate tracking log for reasonable accommodation requests. If the person does not have a disability or there is no disability-related need for the accommodation, then the accommodation request would be denied. Persons whose requests are denied have the right to appeal using the PHA's appeal policies and procedures described in the PHA's reasonable accommodation policy or grievance procedures. Persons who believe their request was improperly denied are also permitted to file complaints with HUD and are not required to utilize the PHA's grievance procedures prior to filing a complaint.

¹⁰⁴ HUD/DOJ Joint Statement on Reasonable Accommodations 5/17/04, Q&A 9.

¹⁰⁵ 24 CFR part 100, 24 CFR part 8, 28 CFR part 35; HUD/DOJ Joint Statement on Reasonable Accommodations 5/17/04.

3.2.7 Confidentiality of Information

In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for reasonable accommodation inquiries and may be inappropriate.

The PHA must keep all information confidential, and the information 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 or HUD regulation).¹⁰⁶ Thus, such records should not be retained in the applicant/tenant file. Alternatively, once a decision is made or the records or information is not needed, they may be returned to the applicant/tenant.

3.3 Effective Communication

Section 504 and ADA regulations require the PHA to take appropriate steps to ensure effective communication with applicants, tenants, and members of the public and to furnish appropriate auxiliary aids and services where necessary to afford individuals with hearing and vision impairments an equal opportunity to access and participate in the program. The obligation to provide auxiliary aids and services is separate from and in addition to a PHA's reasonable accommodation obligations.

When determining the appropriate aid or service, PHAs must give primary consideration to the preferred method of communication of the individual. An individual with a disability may request a specific type of auxiliary aid or service as his or her preferred method of communication. PHAs should consult with the individual to identify the most appropriate auxiliary aid or service because the individual with a disability knows best what type of aid or service will be effective for them.¹⁰⁷ A PHA has a continuing obligation to assess the auxiliary aids and services it is providing and should continually consult as necessary with individuals with disabilities to confirm it is providing appropriate aids and services to ensure effective communication¹⁰⁸. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.¹⁰⁹

To meet the needs of persons with hearing impairments, when communicating by telephone, the PHA must provide telecommunication devices for deaf persons (TDDs) such as Video Relay Service (VRS), Video Remote Interpreting (VRI) or TTD/TTY (text telephone display/teletype) and initiate and accept relay calls through the Federal Relay Service, or equally effective communication devices. Auxiliary aids and services may also include, for example, note takers, real-time computer aided transcription services (CART), written materials, exchange of written notes, assistive listening device systems; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.

To meet the needs of persons with vision impairments, the PHA must make available large-print and audio versions of key program documents, optical readers on computers available for viewing by applicants or

¹⁰⁶ 24 CFR part 100, 24 CFR part 8, 28 CFR part 35; HUD/DOJ Joint Statement on Reasonable Accommodations Q&A 18 5/17/04.

¹⁰⁷ 24 CFR 8.6(a)(1)(i).

¹⁰⁸ 24 CFR 8.6(a)(1)(i).

¹⁰⁹ 28 CFR 35.160(b)(2).

residents, or other effective methods of making visually delivered materials accessible to individuals who are blind or have low vision. When visual aids are used in public meetings or presentations, one-on-one assistance or other requested auxiliary aids and services must be provided.

Additionally, as part of their effective communication obligations, PHAs must make sure that information and communications technology (ICT) are accessible to individuals with disabilities, meaning websites, emails, pdf and other documents must all be accessible to persons with vision, hearing, and other disabilities. In particular, the U.S. Department of Justice updated its Title II regulation, which applies to PHAs, owners, and their contractors, to provide additional clarity on making such content accessible. See *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities*, 89 Fed. Reg. 31320 (to be codified at 28 CFR part 35, subpart H, effective June 24, 2024). The final rule and its preamble provide extensive information on ensuring effective communication involving ICT.

Other alternative forms of communication to be considered include sign language interpretation, having material explained orally by staff, or having a third-party representative such as a friend, relative, or advocate chosen by the individual to receive, interpret, and explain housing materials and be present at all meetings. However, the PHA must not require the applicant or tenant to provide, or pay for, their own sign language interpreter. It is the PHA's responsibility to provide, upon request, a qualified sign language interpreter. A qualified sign language interpreter is one who can interpret effectively, accurately, and impartially, both receptively and expressively, using any specialized vocabulary.

Adult family and friends may not be required or used to interpret, except: (1) in an emergency involving an imminent threat to the safety or welfare of an individual or the public when there is no qualified interpreter available; or (2) at the choice of the individual when the individual requests this, the accompanying adult agrees, and reliance on the accompanying adult is appropriate under the circumstances. A minor child may not be used to interpret except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter available.¹¹⁰

The requirement to provide for effective communication does not include personal items such as hearing aids or magnifying eyeglasses, for example.

3.4 Physical Accessibility

In addition to reasonable accommodation obligations, a PHA is subject to physical accessibility requirements under Federal accessibility laws. PHAs may choose to provide greater accessibility than that specified in these requirements. The PHA must comply with multiple Federal accessibility laws and the applicable Federal architectural standards, including:

- Section 504 of the Rehabilitation Act of 1973;
- The Americans with Disabilities Act of 1990;
- The Architectural Barriers Act of 1968; and
- The Fair Housing Act.

All the PHA's facilities must be readily accessible to and usable by applicants and tenants. All application offices must be accessible in accordance with Federal civil rights laws.

¹¹⁰ 24 CFR 8.6; 28 CFR part 35, subpart E. See also <https://www.ada.gov/effective-comm.htm>.

For purposes of housing subject to HUD's Section 504 requirements, the design, construction, or alteration of PHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS), or the 2010 ADA Standards for Accessible Design, except for certain specific identified provisions, as detailed in HUD's Deeming Notice on "Instructions for use of alternative accessibility standard," published in the Federal Register on May 23, 2014, and available at <https://www.gpo.gov/fdsys/pkg/FR-2014-05-23/pdf/2014-11844.pdf>. This option exists until HUD issues a final rule updating its accessibility standard for purposes of Section 504 compliance. For further information and training on these requirements, please contact HUD's Fair Housing Accessibility First technical assistance resource at https://www.hud.gov/program_offices/fair_housing_equal_opportunity/accessibility_first_home. Further, accessibility requirements for public housing and multi-family housing are addressed in HUD's Section 504 regulations.¹¹¹

Section 504 requires that newly constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Accessible units in a new construction project must include a minimum of five (5) percent of the total dwelling units in a multifamily housing project, or at least one unit, whichever is greater, must be made accessible for persons with mobility impairments.¹¹² An additional two (2) percent of the total units, but not less than one unit, in such a project must be made accessible for persons with hearing or vision impairments.¹¹³ In circumstances where greater need is demonstrated, HUD may prescribe higher percentages or numbers. Accessible units must be distributed throughout projects and sites and be available in a sufficient range of sizes and amenities so that a qualified individual with disabilities' choice of living arrangements is, as a whole, comparable to that of other persons eligible under the same program.¹¹⁴ For multifamily housing projects undertaking substantial alterations, the new construction requirements are triggered.¹¹⁵ Other alterations to existing facilities must be made accessible to the maximum extent feasible, meaning that the PHA would not need to undertake the alteration if it would result in an undue financial and administrative burden on the operation of the multifamily housing project. 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 must be made accessible.

PHAs also are subject to accessibility requirements under Title II of the ADA. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity must be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction began after January 26, 1992. Alterations must, to the maximum extent feasible, be made in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration began after January 26, 1992. Physical construction or alterations on or after March 15, 2012, must comply with the 2010 ADA Standards for Accessible Design.¹¹⁶

Both Section 504 and Title II of the ADA also include program access requirements, requiring that a PHA operate each existing housing program or activity so that when the program or activity is viewed in its entirety, it is readily accessible to and usable by individuals with disabilities.¹¹⁷

¹¹¹ 24 CFR part 8, Subpart C – Program Accessibility.

¹¹² See 24 CFR 8.20, 8.22, 8.25.

¹¹³ See 24 CFR 8.20, 8.22, 8.25. Designated sensory units should not be combined with designated mobility units unless an individual with disabilities has requested a reasonable accommodation because they need the features of both units.

¹¹⁴ See 24 CFR 8.20, 8.26.

¹¹⁵ See 24 CFR 8.20, 8.23, 8.25.

¹¹⁶ See 28 CFR part 35 for more information.

¹¹⁷ See 24 CFR 8.20, 8.24(a) and 28 CFR 35.150(a).

The Fair Housing Act requires that “covered multifamily dwellings” built for first occupancy after March 13, 1991, must be designed and constructed in accordance with specified minimum standards of accessibility.¹¹⁸ In buildings with four or more units and an elevator, all units must be accessible. In buildings with four or more units and no elevator, ground floor units must be accessible. A unit that meets the requirements of the Fair Housing Act design and construction requirements is not equivalent to an adaptable or accessible unit as defined by Section 504.¹¹⁹

When a family includes a person with disabilities, the PHA must assist the family by matching the household with a unit that meets the household’s disability-related needs. A PHA must ensure its accessible units are occupied by individuals who need the accessibility features of the units.¹²⁰ This includes establishing waiting list procedures by which a vacant unit would first be offered to a person with disabilities who is currently occupying a non-accessible unit/is an applicant, who requires accessible features. If a designated accessible unit is occupied by a family that does not include a person with disabilities, the PHA must have a procedure, such as use of a lease addendum, that could require the family to vacate the unit and move to a different unit if a family that includes a person with a disability requires the accessible features of the designated accessible unit.¹²¹ See Section 10.2 for additional information on assigning accessible units and wait list procedures. PHAs must assist individuals in securing accessible housing units that meet their disability-related needs. Documenting their efforts to do so will help PHAs meet their program access obligations under Section 504 and the ADA.¹²²

3.5 Assignment and Waitlist Procedures for Accessible Units

A PHA must ensure its accessible units are occupied by individuals who need the accessibility features of the units. This includes establishing waiting list procedures by which a designated mobility or vision/hearing accessible vacant unit would first be offered to a person with disabilities who is currently occupying a non-accessible unit or is an applicant who requires accessible features. Section 504 requires that PHAs take reasonable, nondiscriminatory steps to maximize the use of accessible units by eligible individuals whose disability requires the accessibility features of a particular unit. As part of this requirement, PHAs must assign available designated accessible units to tenants/applicants in the following order:¹²³

1. When there is a current tenant or qualified applicant with a household member requiring accessibility features of the unit:
 - a. **Current Tenants.** PHAs must first offer the unit to an individual with disabilities currently residing in a non-accessible unit in the same project, a comparable project under common control, or in any of the PHA’s programs who requires the features of the unit;
 - b. **Applicants with Disabilities.** If no current tenants require the special features of the accessible unit, the PHA must then offer the unit to the next qualified applicant on the waiting list with a family member who needs the features of the accessible unit.

¹¹⁸ 42 U.S.C. 3604(f)(3)(C).

¹¹⁹ See 24 CFR 100.205; 85 Fed. Reg. 78957 (Dec. 8, 2020), *Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors*; and HUD’s *Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of the Fair Housing Act* for more information about design and construction requirements under the Fair Housing Act.

¹²⁰ 24 CFR 8.27.

¹²¹ 24 CFR 8.27

¹²² See 24 CFR part 8, subpart C.

¹²³ 24 CFR 8.27.

2. When neither a current tenant nor a qualified applicant requires the features of the available accessible unit:
 - a. PHAs may offer the unit to another tenant or applicant in a manner consistent with the PHA's ACOP and may incorporate into the lease an agreement that the tenant will move to a non-accessible unit of the proper size within the same property when one becomes available. The PHA is responsible for paying for the cost of the relocation.
 - b. In the case where the members of the tenant household who required the accessibility features of the designated accessible unit no longer reside in the unit, and where the lease permits, PHAs may require the remaining members of the household to move to a unit without accessibility features. The Department suggests that PHAs incorporate this provision as an addendum to the lease.

HUD strongly encourages PHAs to include in their ACOP policies relating to how the PHA will process requests for reasonable accommodations and tenant designated accessible units. This may include how the PHA maintains a separate reasonable accommodation transfer list, how the list is prioritized, and how the PHA will provide structural modifications to an existing unit in order to provide the applicant or tenant with disabilities the accessibility features they need.

3.6 The Integration Mandate and *Olmstead* Decision

3.6.1 The Integration Mandate

Both Title II of the ADA and HUD's Section 504 regulations contain an integration mandate. Under HUD's Section 504 regulation, recipients must administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities.¹²⁴ According to the Department of Justice, an integrated setting is a setting that enables persons with disabilities to interact with persons without disabilities to the fullest extent possible. Such settings provide persons with disabilities with opportunities to live, work, and receive services in the greater community, like persons without disabilities. Integrated settings are located in mainstream society. They offer access to community activities and opportunities at times, frequencies, and with people of an individual's choosing. They afford individuals with disabilities choice in their daily life activities.¹²⁵

Such settings allow persons with disabilities to live independently with persons without disabilities and without restrictive rules that limit their activities or impede their ability to interact with persons without disabilities. HUD's housing programs, including the PH program, play a significant role because they may offer affordable, accessible, and integrated housing opportunities for persons with disabilities.

HUD encourages PHAs to work with state and local governments to provide integrated, affordable and accessible housing options for persons with disabilities who are transitioning from, or at serious risk of entering, institutional or other segregated settings. For example, a PHA could offer certain admission preferences that will enable persons with disabilities to transition from institutional settings more quickly and

¹²⁴ 24 CFR 8.4(d).

¹²⁵ For more information on public entities' obligations under *Olmstead*, please refer to the *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.* Individuals may also contact the Department of Justice and refer to resources online at www.ADA.gov or by calling the ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

enable individuals at serious risk of institutionalization to reside in integrated, affordable housing in the community.

3.6.2 Olmstead

Individuals with disabilities have historically faced discrimination that limited their opportunities to live independently in the community and resulted in them living in institutions and other segregated settings. In 1999, the U.S. Supreme Court issued a landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999) affirming that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the ADA. The *Olmstead* ruling means that states and localities cannot require persons with disabilities to reside in nursing homes, state psychiatric hospitals, or other institutional settings in order to receive necessary services if those services could reasonably be provided in integrated, community-based settings. Specifically, the Court held that public entities must provide services to persons with disabilities in community settings rather than institutions when:

- Such services are appropriate to the needs of the individual,
- The affected persons do not oppose community-based treatment, and
- Community-based services can be reasonably accommodated, considering the resources available to the public entity and the needs of others who are receiving disability-related services from the entity.¹²⁶

Under the decision, State governments must develop plans to transition individuals with disabilities from institutional to community-based settings.

As a result of the *Olmstead* decision, there have been increased efforts to assist individuals with disabilities who are institutionalized or reside in other segregated settings to move to integrated, community-based settings. State health care delivery systems are shifting away from an overreliance on providing long-term services via institutions, hospitals, nursing homes, adult care facilities, and other restrictive, segregated settings and moving towards a greater reliance on home and community-based services. In many areas of the country these efforts to comply with *Olmstead* are confounded by a lack of integrated housing options for persons with disabilities. As a result, there is a great need for affordable, integrated housing opportunities where individuals with disabilities can live and interact with individuals without disabilities, while receiving the health care and long-term services they may need. HUD encourages PHAs to partner with state and local governments to provide additional community-based, integrated housing opportunities for persons with disabilities transitioning out of, or at serious risk of entering, institutions or other segregated settings.

HUD also encourages PHAs to implement preferences that support *Olmstead* efforts. General preferences for persons with disabilities who are transitioning from or at serious risk of entering an institutional setting are permissible. Preferences that target individuals with specific disabilities or diagnoses may be authorized in connection with remedial actions undertaken pursuant to DOJ enforcement, *Olmstead*-related settlements or litigation, and state and local governments' voluntary, documented affirmative *Olmstead* planning and implementation efforts. Since targeted preferences for specific disabilities can only be authorized as remedial actions, such preferences must be reviewed and approved by the Office of General Counsel's Office of Fair

¹²⁶ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

Housing at HUD. PHAs also must request a waiver of HUD's program regulations that prohibit disability-specific preferences.¹²⁷

For more information on the integration mandate under Section 504 and HUD's support of *Olmstead* enforcement and implementation efforts, please refer to the *Statement of the U.S. Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead*,¹²⁸ or contact the Associate General Counsel for Fair Housing.

3.7 Section 504 Coordinators

If a PHA employs fifteen or more people, one employee must be designated to coordinate compliance with Section 504.¹²⁹ Written communication must identify the coordinator for Section 504. Depending on the size of the agency and how the agency is organized, the 504 Coordinator position may be a full-time position where this is the only role the individual performs. Alternatively, the 504 Coordinator may also perform other roles, such as the role of a manager or supervisor. Even in smaller agencies that employ fewer than fifteen people, the PHA must ensure coordination of Section 504 responsibilities, whether the duties are spread among several employees or are handled by one person. The goal of 504 coordination is to ensure compliance in providing equal opportunity to otherwise qualified persons with disabilities.

504 coordination includes several other areas of PHA operations, not just reviewing reasonable accommodation requests by employment applicants, employees, housing applicants and residents. Areas where 504 coordination must be involved include marketing and community outreach for housing and employment applicants. The responsibilities of the 504 coordinators include ensuring compliance with various accessibility requirements, such as:

- Physical accessibility of the premises including designated accessible units,¹³⁰ common areas, facilities, parking lots, walkways, and units;
- PHA's policies and procedures for program management and employment for compliance with Section 504 requirements; and
- Of all aspects of PH program operations.

PHAs that employ fifteen or more persons are required to adopt grievance procedures¹³¹ that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited under Section 504.¹³²

¹²⁷ See 24 CFR 5.110 and Notice PIH-2018-16, Regulatory Waivers, available at <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-16.pdf>.

¹²⁸ <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>.

¹²⁹ See 24 CFR Part 8 Subpart D; 24 CFR 8.53(a), 8.54.

¹³⁰ See 24 CFR 8.20, 8.22, 8.23; see also https://www.hud.gov/program_offices/fair_housing_equal_opp/physical_accessibility.

¹³¹ See 24 CFR 8.53(b).

¹³² Grievance procedures do not need to be established with respect to complaints from applicants for employment or from applicants for admission to housing.

4 Improving Access to Services for Persons with Limited English Proficiency (LEP)

Under Title VI of the Civil Rights Act, recipients of Federal financial assistance have a responsibility to ensure meaningful access to programs and activities by persons with limited English proficiency (LEP persons). Executive Order 13166, signed August 11, 2000, directs Federal agencies whose programs are subject to Title VI to ensure that programs receiving Federal financial assistance provide meaningful access to LEP persons. All Federal agencies, including HUD, were also directed to issue LEP guidance based on Title VI and this executive order, and HUD issued a final notice of guidance in the Federal Register on January 22, 2007. This guidance provides PHAs with a framework to integrate, formalize, and assess their LEP efforts.¹³³ In 2016, HUD also issued guidance on the Fair Housing Act protections against national origin discrimination for LEP persons, explaining that language-related policies that are intentionally discriminatory or that have an unjustified discriminatory effect violate the Fair Housing Act.¹³⁴

Some PHAs operate in jurisdictions where English has been declared the official language. However, these PHAs must still comply with Federal nondiscrimination laws. By not providing full and meaningful access to persons with limited English proficiency, the PHA would be discriminating based on national origin.¹³⁵

4.1 Who is a Limited English Proficient Person?

Persons who have limited ability to read, write, speak, or understand English can be considered LEP individuals and may be entitled to language assistance with respect to a particular type of service, benefit, or encounter. Persons who have difficulty communicating with a PHA generally identify themselves as being LEP individuals. There is no one way to determine if a person is limited English proficient. Some persons can be English proficient in some contexts and limited in others. For example, a person may identify as LEP if there are legal issues involved with technical language but can feel comfortable doing an annual reexamination without language assistance.

For a PHA, LEP persons include not only LEP applicants for housing assistance and current tenants but also could include anyone inquiring or communicating on behalf of applicants or tenants, such as parents of LEP or English-proficient minors and dependents, and family members who encounter the PHA. It could also include anyone inquiring with regard to the services provided by the PHA.

4.2 Providing LEP Services - Four Factor Analysis

PHAs are required to take reasonable steps in providing LEP services to ensure meaningful access to their programs and activities by LEP persons. HUD guidance provides for an individualized assessment that balances four factors:

¹³³ See Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Person, 72 Fed. Reg. 2731 (Jan. 22, 2007) (hereinafter Final LEP Guidance), available at <https://www.hud.gov/sites/documents/FINALLEP2007.PDF>.

¹³⁴ See Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, (Sept. 15, 2016), (hereinafter Fair Housing Act LEP Guidance), available at <https://www.hud.gov/sites/documents/LEPMEM0091516.PDF>.

¹³⁵ See Final LEP Guidance.

1. The number or proportion of LEP persons served or likely to be encountered in the eligible service population by the PHA;¹³⁶
2. The frequency with which LEP persons come in contact with the program;
3. The nature and importance of the program, activity, or service provided by the program to people's lives; and
4. The resources available to the PHA and the costs involved.

After conducting the above analysis, the PHA may determine that different language assistance measures will be sufficient for different programs and activities. Some activities, particularly compulsory activities such as reexaminations, will be more important than others and have a greater impact on LEP persons, and would therefore require more language assistance. Language assistance means that a PHA provides LEP persons with oral interpretation services, bilingual staff, telephone service lines interpreter, written translated services, notices to staff and recipients of the availability of LEP services, or referrals to community liaisons proficient in the language of LEP persons. PHAs have adopted innovative ways to ensure they are meeting their LEP obligations. For example, some PHAs partner with other agencies in the jurisdiction to provide language assistance materials and other services to reduce costs. PHAs also have adopted technology that can help communicating with LEP individuals or hired bilingual staff to act as interpreters and translators.

This is a flexible and fact-dependent standard; however, this does not minimize the PHA's obligation to serve the needs of its LEP populations. These four factors must be applied to the various types of contact PHAs have with the public to assess language needs and identify reasonable steps to take to ensure meaningful access for LEP persons.¹³⁷

4.3 Oral Interpretation

When providing oral interpretation services, PHAs must ensure that the language service provider is competent. Mere self-identification as bilingual does not make the person an effective interpreter. However, formal certification as an interpreter is not necessary, although it does serve as documentation of competency to interpret. Hiring bilingual staff offers one of the best and most economical ways to accommodate the needs of LEP persons if the staff can communicate directly with LEP persons in the LEP person's own language. Staff members also may provide interpretation services, provided that they are able to not only communicate in a different language, but also can interpret that language into English. PHA staff used as interpreters or who communicate directly with LEP persons in the LEP person's own language would need to have a technical understanding of the words and phrases used in HUD programs. However, HUD cautions the PHA not to utilize this method of providing service if the role of the employee as interpreter may conflict with their other roles, such as with program enforcement and hearings.

PHAs that find they do not need a regular interpreter on staff may find it beneficial to use a teleconferencing or video interpreter services, maintain a contract with an interpreter, or rely on competent community volunteers to assist with interpretation services.

Some families may prefer to use family or friends as interpreters. However, PHAs may not plan to rely on an LEP person's family or friends. If an LEP person prefers to use an interpreter of their own choosing, at their own expense, they may be permitted to do so as long as they are aware that free language services are offered by the PHA. The PHA is to take special care to ensure that any informal interpreter is appropriate in

¹³⁶ "Served or encountered" includes individuals who would be served or encountered by the recipient if the persons were afforded adequate education and outreach. Final LEP Guidance at 2,734.

¹³⁷ Final LEP Guidance at 2,740–41.

light of the circumstances and subject matter of the communication, particularly if an LEP person chooses to use a minor as an interpreter as additional issues of competency, confidentiality, or conflict of interest may arise. During interviews, grievance hearings, reexaminations, or other situations in which sensitive information of a personal nature is discussed, there may be privacy issues and possible conflicts of interest when adult family or friends are interpreters. In particular, interpreter services of this nature are usually inappropriate when PHA personnel are responding to a domestic disturbance. PHAs must ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems, especially if the preferred interpreter is a minor child, and that the LEP person knows that the recipient could provide a competent interpreter at no cost.

Quality and accuracy are critical. It is important that interpreters demonstrate proficiency to communicate accurately in both English and the other language. Terms and concepts relating to the program, as well as words and phrases used by the LEP person need to be understood. Also, the interpreter must understand and follow confidentiality rules and not show partiality. It is important that the interpreter knows if there are differences in word usage in different regions in the language they are interpreting. For example, someone from Mexico who speaks Spanish will use and understand certain words differently than someone from Cuba. These distinctions need to be understood by the interpreter. Interpreters also must not deviate into other roles such as counselor or legal advisor.

All interpretation services need to be provided in a timely manner to be meaningfully effective. Language assistance must be provided at a time and place that avoids the effective denial of services, benefits, or rights at issue, or the imposition of an undue burden on or delay in important services, benefits, or rights to the LEP person. For example, it is likely insufficient to rely solely on a staff member who is only available to provide interpretation services one day per week.¹³⁸

Unlike in written materials, there is no safe harbor for oral translation, and PHAs need to provide oral translation services regardless of PHA size.¹³⁹

4.4 Written Translation

Written translation is the other means to provide language services. The PHA will have many vital documents that an LEP individual must be able to understand. Examples of vital documents that may be translated include:

- Consent forms;
- Intake forms;
- Complaint forms;
- Written notices of rights, denial, loss, or decreases in benefits or services;
- Notices of hearings and eviction;
- Notices informing LEP persons of free language assistance;
- Leases;
- Program rules;
- Marketing Materials and
- Applications to participate in a PHA's program or activity or to receive benefits or services.

¹³⁸ Final LEP Guidance at 2,742–44.

¹³⁹ Final LEP Guidance, at 2,753, Question XIII

Some documents will have parts that are vital as well as other parts that are not as vital. In such a case, only the vital parts need to be translated. PHAs are encouraged to create a plan for consistently determining which documents and parts of documents are considered vital.

HUD has released several documents relevant to the PH program in many languages (e.g. Arabic, Cambodian, Chinese, Creole, French, Hmong, Korean, Russian, Spanish, and Vietnamese). The forms can be accessed on HUD-CLIPS at https://www.hud.gov/program_offices/administration/hudclips/forms.

The PHA may encounter some languages more frequently than others. When determining which languages vital documents and correspondence need to be translated into, the PHA is to consider, on a case-by-case basis, the totality of the circumstances in light of a *four-factor analysis*. Consideration may be given to whether the up-front cost of translating, as opposed to oral interpretation, is more cost-effective over the likely lifespan of the document. Well-substantiated claims of lack of resources to translate all vital documents into dozens of languages does not necessarily relieve the PHA of its obligation to translate those documents into at least several of the languages it more frequently encounters.

If a PHA provides written translations in accordance with the chart below, this will provide a “safe harbor,” which means that the PHA’s action will be considered strong evidence of compliance with the recipient’s written-translation obligations. However, these “safe harbors” are a starting point in the analysis and are only a guide for recipients that would like greater certainty of compliance¹⁴⁰.

Safe Harbors for Written Translation	
Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries <i>and</i> more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries <i>and</i> 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

¹⁴⁰ Final LEP Guidance at 2,744-45.

As with oral interpreters, translators of written documents must be competent. A competent interpreter is not necessarily a competent translator. It is important that translators understand the expected reading level of the audience and recognize that direct translation of materials could result in a translation that is written at a much more difficult level than the English language version, and sometimes, there is no direct translation of some English terms. PHAs must work with translators to develop consistent and appropriate descriptions of such terms.¹⁴¹

4.5 Language Access Plan or Implementation Plan

After completing the four-factor analysis and deciding which language services are appropriate, the PHA needs to develop a Language Action Plan (LAP) or implementation plan. Although PHAs have flexibility in developing this plan, it will likely be most appropriate and cost-effective to periodically update the plan in consideration of potential changes in immigrant populations of the jurisdiction. The plan may be in writing and address training, administration, planning, and budgeting.

Small PHAs with limited budgets and resources that serve very few LEP persons may choose not to develop a written plan; however, the PHA is still obligated to ensure meaningful access by LEP persons and may consider an alternative way to articulate its plan.¹⁴²

Some helpful steps in developing a plan include:

- Identifying LEP individuals who need language assistance, showing what data the PHA used to make this identification;
- Identifying the vital documents and services that are affected;
- Identifying types of language assistance that will be provided;
- Reviewing the PHA's budget and assessing costs;
- Training staff;
- Providing effective outreach to the LEP community;
- Providing notice to LEP persons of which services are available and that the services will be provided free of charge; and
- Implementing process for determining when new documents, programs, services, and activities need to be made accessible for LEP persons.

The Department of Justice has developed a self-assessment tool that can be obtained at https://www.lep.gov/sites/lep/files/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf.

5 Affirmative Marketing and Tenant Screening

5.1 Affirmative Fair Housing Marketing

HUD regulations require PHAs to engage in affirmative fair housing marketing.¹⁴³ Affirmative fair housing marketing activities aim to ensure that individuals and families who are income-qualified for public housing “have a like range of housing choices available to them regardless of their race, color, religion, sex, [disability],

¹⁴¹ Final LEP Guidance at 2,744–45.

¹⁴² Final LEP Guidance at 2,745–46.

¹⁴³ 24 CFR 964.30(a); see also *Alschuler v. HUD*, 515 F. Supp. 1212, 1234 (N.D. Ill. 1981).

familial status or national origin.”¹⁴⁴ PHAs “shall pursue affirmative fair housing marketing policies in soliciting ... tenants, in determining their eligibility, and in concluding ... rental transactions.”¹⁴⁵

Complying with these requirements means ensuring that eligible applicants of all races and other protected class groups have the knowledge and opportunity to apply for and gain admission to public housing. Marketing efforts that reach the entire housing market area, rather than only some neighborhoods within it, help ensure that potential applicants are not being excluded because of their race or other protected class in violation of fair housing and civil rights laws.

5.2 Where to Advertise

Many families today rely less on printed media for their information, and more on the internet (including social media and mobile-friendly websites), local cable TV, and radio. Advertising through a variety of print and digital media – including media specifically for groups who are less likely to apply for the housing – is one part of affirmative marketing.

Affirmative marketing also includes outreach to community contacts to partner in getting out information to groups of people otherwise unlikely to receive it. Community contacts can include foodbanks, legal aid offices, emergency shelters, health clinics, employers, advocacy organizations, social service organizations, local government offices, and community gathering places (e.g., recreation centers, libraries, schools, places of worship). Partnerships with community contacts throughout the market area are more likely to equitably reach potential applicants and avoid perpetuating segregation or exclusion. As many organizations serve only a subset of eligible residents, in general, the more organizations that are contacted, the more likely marketing efforts are to reach a diverse pool of applicants across the market area. Partnership with community contacts throughout the market area may be particularly effective for reaching potential applicants who have limited internet access, limited English proficiency, or who may otherwise require assistance in applying.

5.3 Contents of Marketing Materials

All advertising must provide detailed, clear, and consistent information to all potential applicants, including descriptions of property amenities, eligibility criteria, where and when to apply, procedures for obtaining and submitting applications, and an explanation of how applicants will be selected. All advertising must include the Department-approved Equal Housing Opportunity logo, slogan or statement.¹⁴⁶ Additionally, PHAs are required to display the fair housing poster at their rental office and other locations.¹⁴⁷

Marketing materials must be written in clear and easy to understand language and be designed in a manner that conveys that all applicants are welcome regardless of their protected class. Marketing materials highlighting that individuals with disabilities are welcome to apply and can request reasonable accommodations when doing so help ensure equal participation. PHAs must provide translation of written materials or interpretations, consistent with their language access plan or implementation plan, to facilitate education and outreach to limited English proficient (LEP) individuals (see *Section 4* of this chapter).

¹⁴⁴ 24 CFR 200.610.

¹⁴⁵ *Id.*

¹⁴⁶ See HUD’s Fair Housing and Equal Opportunity [Advertising and Marketing](https://www.hud.gov/program_offices/fair_housing_equal_opp/advertising_and_marketing) webpage, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/advertising_and_marketing.

¹⁴⁷ See 24 CFR part 110. The fair housing poster and [FHEO Outreach Tools](https://www.hud.gov/program_offices/fair_housing_equal_opp/marketing) are available at https://www.hud.gov/program_offices/fair_housing_equal_opp/marketing.

5.4 Tenant Screening

PHAs must comply with fair housing and civil rights laws when screening tenants for admission or continued occupancy. Screening policies and criteria, including those related to criminal, credit, and eviction history, must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner and consistent with public housing program requirements. PHAs also must ensure that none of their screening criteria result (or predictably will result) in an unjustified discriminatory effect. For example, an overbroad criminal records policy that screens out, evicts, or terminates assistance to individuals who pose no actual threat to the health, safety, or right to peaceful enjoyment of the premises of their neighbors may have an unjustified discriminatory effect in violation of the Fair Housing Act and other civil rights laws.¹⁴⁸ Screening policies for credit history and eviction records may also have an unjustified discriminatory effect on protected class groups, so carefully reviewing these policies can help ensure compliance with the law.¹⁴⁹ Additional guidance on nondiscriminatory tenant screening policies and practices can be found in [HUD's Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing](#).¹⁵⁰

HUD encourages PHAs to adopt screening policies that reduce barriers to participation for justice-involved individuals and their families. PHAs are reminded that criminal history background checks are required by HUD only to determine whether any household member is convicted of methamphetamine production or subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.¹⁵¹ If a PHA decides to perform additional screening, to ensure compliance with fair housing and civil rights laws the PHA can adopt and implement a policy of considering individual circumstances before a denial or termination. This individualized assessment can consider the nature and severity of the offense, the length of time since the offense, evidence of rehabilitation, and any other evidence or circumstances that may be helpful during the assessment. Evidence of rehabilitation may include, but is not limited to, evidence of employment, enrollment in or completion of an educational program, a positive rental history, participation in mental health or other counseling, involvement with community organizations or religious groups, or references from social service providers. Criminal records unrelated to any drug-related or violent criminal activity or other criminal activity which would adversely affect the resident health, safety, or right to peaceful enjoyment of the premises by other residents should not be considered.¹⁵² Note that an arrest is not evidence of criminal activity that can support an adverse admission, termination, or eviction decision.¹⁵³

Reasonable accommodations to screening policies must be made for individuals with disabilities (see Section 3.2). For example, when considering the criminal record eviction record, or credit history of an individual with a disability, a reasonable accommodation may be required depending on the circumstances (see section 3.2 for more information on how to determine if a reasonable accommodation is required). Such an accommodation may be required, for example, if the criminal activity related to a mental health disability that is now well-managed by treatment. In addition, reasonable accommodations may be required if the applicant's poor rental history or poor credit history is related to their disability (e.g., a gap between a loss of employment

¹⁴⁸ Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, HUD Office of General Counsel (April 4, 2016).

¹⁴⁹ See FHEO General FAQ – Housing Providers and Fair Housing, Frequently Asked Questions (FAQs) On Fair Housing Issues Regarding Exceptions to Credit Check Policies and Occupancy Limits, Affirmative Marketing, and Language Access.

¹⁵⁰ See Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing (April 29, 2024).

¹⁵¹ 24 CFR 960.204(a)(3) - (4).

¹⁵² See 42 U.S.C. § 13661(c).

¹⁵³ See, e.g., Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, available at <https://www.hud.gov/sites/documents/PIH2015-19.PDF>.

income and receipt of disability benefits).¹⁵⁴ In these situations, admitting the applicant by making an exception to the screening policy could be an appropriate accommodation depending on the circumstances.

Additionally, PHAs must not consider any adverse factor – including criminal records, eviction records, or credit history – that is the direct result of the applicant or tenant’s status as a survivor of domestic violence, dating violence, sexual assault or stalking, even if on the surface such adverse factor does not appear related to the tenant’s status as a survivor (see Section 2.9).¹⁵⁵

If a state or local law requires screening in a way that would violate Federal law, including the Fair Housing Act or other Federal civil rights laws, the Federal law prevails. State and local laws that provide additional rights or protections to tenants or applicants must be followed, except to the extent they require an admission or continued occupancy prohibited by Federal law.¹⁵⁶

5.5 Clear Policies and Reliable Records

Having clear, written screening policies that are publicly available (e.g., on a PHA’s website) and distributed to applicants can help ensure compliance with fair housing and civil rights laws. PHAs are encouraged to provide as much detail as possible about which records will be considered (e.g., for what type of crimes, what credit score cutoff, evictions from how long ago), how an applicant can dispute their relevancy or accuracy, and how evidence of mitigating circumstances will be treated.¹⁵⁷ In general, a policy of providing applicants with an opportunity explain the context of a record or dispute its accuracy before a denial can help ensure that a screening policy is not overbroad.

Using a third-party screening company to conduct tenant screenings does not negate the fair housing and civil rights obligations of a PHA. PHAs should be aware that they may be held responsible for any discriminatory acts by a third-party screening company.¹⁵⁸ Therefore, caution and oversight are recommended when using a third-party screening company to ensure that it is not conducting tenant screenings in a manner that violates fair housing and civil rights laws.¹⁵⁹ A PHA using a screening company is responsible for ensuring that screenings do not consider records or activities outside of the PHA’s screening policy and must be able to inform the applicant of the basis for their denial with specificity.¹⁶⁰ PHAs should also be aware that the use of third-party tenant screening reports will subject the PHA to other requirements, including the Fair Credit Reporting Act¹⁶¹ and any federal or state law governing the use of tenant screening reports.

Additional information about requirements for screening tenants can be found in the Eligibility and Determination and Denial of Assistance and Waiting List and Tenant Selection chapters of this Guidebook.

¹⁵⁴ [Giebeler v. M & B Associates, 343 F.3d 1143 \(9th Cir.2003\)](#)

¹⁵⁵ See PIH notice 2017-8.

¹⁵⁶ 24 CFR 5.105(a)(1).

¹⁵⁷ 24 CFR 5.852 (e).

¹⁵⁸ 24 CFR 100.7(b).

¹⁵⁹ 24 CFR 960.509(b)(11)(iv)(G)(4).

¹⁶⁰ 24 CFR 960.204(c).

¹⁶¹ 15 U.S.C. § 1681 et seq.

6 Data Collection, Reporting, and Recordkeeping

HUD requires PHAs to maintain records on applicants and tenants for at least three years to provide HUD data on the racial, ethnic, gender, family characteristics, elderly and disability status of applicants and tenants. (See 24 CFR part 121, for example.) For HUD's public housing program, this data is captured and submitted on form HUD-50058. FHEO may compare tenant characteristic data to Census data for the larger community to be sure that the PHA is reaching all protected class populations of low-income families and individuals. PHAs will need to confirm that the PHA is using the most up-to-date version of form HUD-50058 to ensure the PHA is collecting the correct data. Failure to maintain and submit this data to HUD can lead to a violation of both public housing and civil rights related requirements. The PHA performs a similar analysis for the PHA Plan to monitor the extent to which the applicant and tenant populations' demographics reflect community-wide demographics.

Sometimes a PHA employee will encounter resistance from an individual in providing their race or ethnicity. An applicants' refusal to respond will not result in a denial of service. In such cases, the PHA may complete the form HUD-50058 race and ethnicity disability questions relying on its own observations of the applicant or tenant.

HUD also requires PHAs to report whether a family member has a disability on the form HUD-50058 but does not require the family member or the PHA to identify the nature or extent of the disability. Individuals may need to provide disability status for any programs where having a disability is a program eligibility requirement. The definition of disability used in determining program eligibility for the public housing program is found in 24 CFR 5.403 and not the broader definitions used for compliance with Federal nondiscrimination and civil rights laws and requirements.¹⁶²

The collection of demographic information is permitted under Federal fair housing and civil rights laws provided that the information is not used in a discriminatory way. Collecting and analyzing demographic information to ensure that a program is equitably reaching all those it was designed to serve is permissible and required by HUD regulations. Disclosure of a protected characteristic by an applicant or tenant cannot be used by a PHA as justification for any discriminatory action. Furthermore, any private information disclosed on a form must not be shared beyond PHA employees who need to know.¹⁶³

To avoid discrimination under federal civil rights laws, PHAs may also need to consider if additional collection of demographic information beyond what is required by HUD is consistent with federal nondiscrimination requirements, including data collection required by state or local laws. This includes compliance with language access requirements, privacy protections, and considerations of proper terminology and equity.

7 Addressing Discrimination Complaints

7.1 PHA Actions to Prevent Discrimination

As described throughout this chapter, various statutes, regulations and other authorities prohibit discrimination because of race, color, religion, sex (including sexual orientation and gender identity), national origin, familial status, disability, age, or status as a survivor of domestic violence, sexual assault, dating

¹⁶² See 24 CFR 1.6(b); 8.55; 107.30; 121.2; 146.27.

¹⁶³ Notice PIH 2015-06.

violence, or stalking. All PHA employees need to be aware of their responsibilities under civil rights and fair housing laws.

The PHA is responsible for promoting an internal culture that makes it clear that discriminatory practices, including sexual harassment, will not be tolerated at any level by staff or residents. For example, comments that stereotype an applicant or occupant based on ethnic background, that mimic an accent, or that jokingly discuss a client's perceived mental state are discriminatory. Though these are just a few examples, discriminatory statements of any kind cannot be tolerated, and PHAs have an obligation to ensure they do not occur or go unaddressed, if they do occur.

One way to promote ongoing awareness and competence is diversity and inclusion training for staff, providing them with opportunities to challenge stereotypes and confront biases -- including implicit biases -- in a training environment. Training on fair housing and civil rights laws more broadly is also important to promote compliance since all PHA staff are obligated to comply with Federal fair housing and civil rights laws. Staff and residents must be permitted to speak up if they observe harassing or other discriminatory conduct and be assured that they will be protected from retaliation for doing so.

Beyond this, all policies, procedures, and practices must not discriminate because of any protected class. PHA employees must ensure that they apply program rules, services, and procedures in a consistent nondiscriminatory manner. PHAs must also consider the demographics of the people impacted -- positively and negatively -- by policies and practices to ensure that none have an unjustified discriminatory effect.

Any aggrieved person may file a fair housing claim against the PHA. PHAs must ensure that all applicants and tenants are aware that filing a complaint with HUD is their right, that they will not be subject to retaliation for doing so, and how they may obtain more information about filing a complaint, including how to access HUD's complaint filing site linked below.¹⁶⁴

7.2 Filing Procedures for Discrimination Complaints

A person who believes that they have been or are about to be injured by a discriminatory housing practice may file a complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). HUD accepts complaints alleging discrimination in violation of the Fair Housing Act, Title VI, Section 504, the ADA, the Age Discrimination Act, VAWA, and other Federal civil rights laws.

HUD accepts complaints alleging discrimination using form HUD-903.1, "Housing Discrimination Claim Form," which is easy to complete and may be submitted at a HUD field office, through electronic submission online, by U.S. mail, or over the telephone. The complaint form can be accessed here: https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint.

7.3 Processing of Discrimination Complaints

Once a person submits a complaint to FHEO, if the complaint is jurisdictional, FHEO will investigate the allegations in the complaint. During the investigation, FHEO will offer the parties the opportunity to reconcile or voluntarily resolve the matter. Conciliation and voluntary resolution are an opportunity for the parties to voluntarily resolve the complaint through monetary compensation and/or injunctive relief to the complainant and includes a public interest component to address any current or future discriminatory housing practices. If

¹⁶⁴ 24 CFR 1.7(b); 8.56(c); 103 Subpart B.

the matter involves Title VI, Section 504, the ADA, or one of the other compliance authorities, HUD will seek appropriate relief to remedy any noncompliance, including harm to aggrieved individuals, and obtain relief to ensure the noncompliance does not reoccur.

If a Fair Housing Act or Violence Against Women Act complaint is not successfully resolved through conciliation, FHEO will determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred. Where reasonable cause is found, HUD's Office of General Counsel files a charge of discrimination, and a hearing is scheduled before a HUD administrative law judge (ALJ). Either the complainant or the respondent may elect to have the case litigated in Federal district court instead of before a HUD ALJ. Whenever a party elects to go to Federal court, the Department of Justice takes over HUD's role as litigation counsel, and the matter proceeds as a civil action. A judge may award compensatory, injunctive and equitable relief, as well as attorney fees whether in an administrative hearing or civil action. Additionally, an ALJ may award civil penalties to vindicate the public interest. A Federal district court judge may award punitive damages. Decisions in either forum, the ALJ proceeding or the civil action in Federal district court, may be appealed to the U.S. Court of Appeals.

Similarly, if a complaint under one or more other civil rights authorities does not voluntarily resolve and FHEO's investigation finds there has been noncompliance with civil rights requirements, FHEO will issue a letter of findings. In cases involving disability discrimination under Section 504, the complainant or the PHA may request review of the letter of findings, which will either be sustained or modified in a letter of determination. If, following the issuance of a letter of findings or a letter of determination the matter still does not voluntarily resolve, FHEO may refer the matter to the Department of Justice with a recommendation that a lawsuit be filed in Federal district court or HUD may proceed to file a case before HUD's ALJs to seek appropriate relief to resolve the noncompliance.

Under the Fair Housing Act, some complaints filed with HUD may be referred for enforcement to a local, HUD-certified fair housing agency for processing.¹⁶⁵ Fair Housing Act administrative complaints could also begin at a state or local fair housing agency or a local human rights commission and subsequently be referred to HUD for enforcement.

Private actions involving authorities such as the Fair Housing Act, Title VI, Section 504, the ADA, and/or the Age Discrimination Act can also be brought in local, state, or Federal court. Individuals are not required to first file a complaint with the PHA, HUD, or any other administrative body.¹⁶⁶

More information on the complaint process and potential enforcement actions is available on [FHEO's website](#).

¹⁶⁵ 42 U.S.C. § 3610(f); 24 CFR part 115 (certification and funding of state and local fair housing enforcement agencies).

¹⁶⁶ 42 U.S.C. § 3613 (private actions brought directly in Federal court).