
CHAPTER 2. CIVIL RIGHTS AND NONDISCRIMINATION REQUIREMENTS

2-1 Introduction

- A. Owners of HUD-subsidized multifamily properties are subject to several important federal civil rights laws affecting both admission and occupancy. These requirements seek to ensure that all applicants have equal access to affordable housing and that owners treat all tenants equitably. In addition, states and local jurisdictions often establish their own civil rights laws that affect rental housing.
- B. This chapter provides an overview of key federal civil rights and nondiscrimination requirements that pertain to admissions and occupancy in properties subject to this handbook. It also presents examples to help explain these requirements and notes how to address circumstances when federal, state, and local requirements overlap.
- C. The remaining chapters in the handbook will also refer to these requirements as they apply to the admissions or occupancy activities covered in that chapter.
- D. This chapter is organized into four sections:
- **Section 1: Applicable Laws** provides an overview of key civil rights laws relevant to occupancy in HUD-subsidized multifamily housing.
 - **Section 2: Nondiscrimination Requirements Under the Fair Housing Act** summarizes the key nondiscrimination requirements established under the Fair Housing Act that are applicable to multifamily housing.
 - **Section 3: Additional Nondiscrimination and Accessibility Requirements for Persons with Disabilities** explains the requirements and procedures that owners of HUD-subsidized multifamily housing must follow to ensure nondiscrimination and accessibility of their properties to persons with disabilities as required by Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act.
 - **Section 4: Housing Discrimination Complaints and Compliance Reviews** provides information about an owner's responsibilities in the event of a housing discrimination complaint and key references regarding fair housing compliance reviews.

2-2 Key Terms

- A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 2-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

- B. The terms “disability” and “persons with disabilities” are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.
 - 1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.
 - 2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 2-1: Key Terms

<ul style="list-style-type: none">• Accessible• Accessible route• Adaptability• Alteration• Auxiliary aids• Disability• Fair Housing Act• Familial status• Federal financial assistance	<ul style="list-style-type: none">• Federally assisted housing• **Limited English Proficiency (LEP)**• Person with disabilities (as defined for civil rights protections)• Prohibited bases• Qualified persons with disabilities• Recipient• Section 504• Title VI – D
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Section 1: Applicable Laws

2-3 Key Regulations and Statute

This paragraph identifies key regulatory and statutory citations pertaining to Section 1: Applicable Laws. The citations and their title (or topic) are listed below:

- A. 24 CFR, part 1 Title VI of the Civil Rights Act of 1964
- B. 24 CFR, part 8 Section 504 of the Rehabilitation Act of 1973
- C. 24 CFR, part 100 et seq Fair Housing Act
- D. 24 CFR, part 146 Age Discrimination Act of 1975
- E. 24 CFR 200.600 Affirmative Fair Marketing Regulations
- F. 24 CFR 880.612a, 881.601, 883.701, 884.223a, 886.329a (Allows preference for occupancy by elderly families in certain Section 8 developments)
- G. 42 U.S.C. 13641 Title VI, Subtitle D of Housing and Community Development Act of 1992 (Sets forth criteria under which certain HUD-subsidized multifamily properties can choose to serve elderly only, or set-aside a portion of the property for elderly only)
- H. Uniform Federal Accessibility Standards (UFAS), effective July 11, 1988; individual copies are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, D.C. 20004-1111, Telephone: 202-272-0080, TTY: 202-272-0082, email address: info@access-board.gov. Orders of 25 or more copies will be referred to the publisher.

2-4 General Provisions

- A. Federal civil rights laws addressing fair housing prohibit discrimination against applicants or tenants based on one or more of the following classifications:
 - 1. Race;
 - 2. Color;
 - 3. National origin;
 - 4. Sex;
 - 5. Age;

6. Disability;
7. Religion; and
8. Familial status.

NOTE: Familial status refers to families living with children under the age of 18, regardless of age or number of children. Familial status also includes pregnant women, families that are planning to adopt, and families that have or are planning to have foster children or to become guardians of children.

- B. There are multiple laws that address the rights of tenants in HUD-subsidized multifamily housing. The remaining paragraphs in this section provide brief descriptions of the key federal civil rights laws regarding fair housing and accessibility that pertain to HUD-subsidized multifamily housing, along with reference to their implementing regulations. Throughout this handbook, reference is made to applicable civil rights and nondiscrimination requirements with respect to key admissions and occupancy activities in HUD subsidized multifamily housing.
- C. Owners must be familiar with the regulations implementing these civil rights laws regarding fair housing and program accessibility, and with the applicable HUD Notices explaining those requirements. HUD's Office of Fair Housing and Equal Opportunity (FHEO) also provides technical assistance on these requirements.
- D. Other applicable laws and regulations include the following:
 1. Any state civil rights laws or local ordinances pertaining to housing; and
Note: Owners may be subject to local and/or state laws that prohibit discrimination based upon membership in other classes (e.g., marital status or sexual orientation).
 2. Any other legislation protecting the individual rights of tenants, applicants, or staff that may subsequently be enacted.

2-5 Fair Housing Act, Title VIII of the Civil Rights Act of 1968

A. General

The Fair Housing Act prohibits discrimination in most housing and housing-related transactions with respect to the following bases:

1. Race;
2. Color;
3. Religion;

4. Sex;
5. Disability;
6. Familial status; or
7. National origin.

The Act applies to all housing units subject to this handbook.

B. Prohibited Actions

Under the Fair Housing Act, owners or other housing providers must not take any of the actions listed below based on race, color, religion, sex, disability, familial status, or national origin:

1. Deny anyone the opportunity to apply to rent housing, or deny to any qualified applicant the opportunity to lease housing suitable to his or her needs;
2. Provide anyone housing that is different from that provided to others;
3. Subject anyone to segregation, even if by floor or wing;
4. Restrict anyone's access to any benefit enjoyed by others in connection with the housing program;
5. Treat anyone differently in determining eligibility or other requirements for admission, in use of the housing amenities, facilities or programs, or in the terms and conditions of a lease. See paragraph 2-5 C for a discussion of the owner's obligation to provide reasonable accommodations to persons with disabilities;
6. Deny anyone access to the same level of services;

NOTE: An owner should be certain that all services at the project are supplied in a nondiscriminatory fashion. For example, there cannot be a preference for providing a service to persons of a specific religion, even if the agency providing the service is a faith-based organization.

7. Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program;
8. Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons;
9. Discriminate in the provision of brokerage services or in residential real estate transactions;

10. Discriminate against someone because of that person's relation to or association with another individual; or
11. Retaliate against, threaten, or act in any manner to intimidate someone because he or she has exercised rights under the Fair Housing Act.

C. Additional Protections for Persons with Disabilities

Although the Fair Housing Act generally requires applicants to be given equal treatment and prohibits discrimination against anyone with respect to the prohibited bases, there are certain limited circumstances when the Act requires a housing provider to treat persons with disabilities differently to enable them to have equal access to, or enjoyment of, housing and other housing-related programs. Specifically, the Fair Housing Act requires housing providers to provide "reasonable accommodations" to persons with disabilities. This means an owner may have to modify rules, policies, practices, procedures and/or services to afford a person with a disability an equal opportunity to use and enjoy the housing. In addition, the Fair Housing Act contains specific accessibility requirements that apply to the design and construction of new multifamily housing built for first occupancy after March 13, 1991. (For further discussion see paragraph 2-45.)

D. Obligation to Affirmatively Further Fair Housing

1. The Fair Housing Act also requires HUD to administer all programs and activities relating to housing and urban development in a manner that affirmatively further fair housing. See paragraph 2-9 for a discussion of Civil Rights Related Program Requirements which implement this obligation. In addition, Subpart M of 24 CFR, part 200, sets forth HUD's equal opportunity regulations for affirmative fair housing marketing under FHA subsidized and unsubsidized housing programs. Each owner who participates in HUD's multifamily housing programs to which 24 CFR, part 200, applies must develop and provide a description of the Affirmative Fair Housing Marketing Plan for the property to comply with the requirements of Subpart M of 24 CFR, part 200. For example, under the requirement of affirmatively furthering fair housing, an owner must engage in affirmative marketing to groups least likely to apply for the owner's housing even if this group is different from the religious or ethnic group generally served by the owner organization. HUD conducts periodic compliance reviews in accordance with 24 CFR 108.40 to determine if owners are meeting these requirements and implementing their Affirmative Fair Housing Marketing Plans. The Affirmative Fair Housing Marketing Plan (AFHMP) is described in paragraph 4-12 B and the form is found in **Appendix 1**.
 - a. HUD does not require subsidized multifamily projects built prior to February 1972 to have an Affirmative Fair Housing Marketing Plan, unless the property has been substantially rehabilitated

subsequent to February 1972 or the plan is required by a housing assistance contract. However, these owners are required to affirmatively market their units to those least likely to apply.

- b. In addition, item 8 on the form HUD-935.2A, *Affirmative Fair Housing Marketing AFHM Plan – Multifamily Housing*, requires the owner to update the plan as the property's circumstances change. (See paragraph 4-12 F for more information.)

E. Fair Housing Poster

Owners of HUD-subsidized multifamily housing must also display the Fair Housing poster required by the Fair Housing Act and HUD regulations at 24 CFR, part 110.

2-6 Title VI of the Civil Rights Act of 1964

- A. Title VI prohibits all recipients of federal financial assistance from discriminating based on race, color, or national origin. Title VI applies to any program or activity receiving federal financial assistance, not just housing. Each federal agency has its own Title VI regulations. Thus, owners must remember that if they receive funds from any other federal agency, they will be subject to those agencies' Title VI rules, in addition to HUD's Title VI regulations, which are found at 24 CFR, part 1.
- B. In housing, Title VI and the Fair Housing Act apply to many of the same types of activities. However, HUD has broader investigative authority in complaints related to violations of Title VI and the authority to impose different types of remedies than it does in cases involving violations of the Fair Housing Act.
- C. Title VI regulations require that recipients have an affirmative obligation to take reasonable steps to remove or overcome any discriminatory practice or usage that subjects individuals to discrimination based on race, color, or national origin. The regulations also require that, even in the absence of prior discrimination, recipients should take affirmative steps to overcome the effects of conditions that results in limiting participation by persons of a particular race, color, or national origin.
- D. Title VI regulations also require that owners maintain racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federal financial assistance.

2-7 Age Discrimination Act of 1975

- A. This Act prohibits discrimination based upon age in federally assisted and funded programs or activities, except in limited circumstances.
- B. It is not a violation of the Act to use age as screening criteria in a particular program if age distinctions are permitted by statute for that program or if age distinctions are a factor necessary for the normal operation of the program or the

achievement of a statutory objective of the program or activity. Thus, a Section 202 PRAC project that only admitted elderly families would not be considered to be operating in violation of the Age Discrimination Act.

2-8 Section 504 of the Rehabilitation Act of 1973

- A. Section 504 prohibits discrimination based upon disability in all programs or activities operated by recipients of federal financial assistance. Although Section 504 often overlaps with the disability discrimination prohibitions of the Fair Housing Act, it differs in that it also imposes broader affirmative obligations on owners to make their programs as a whole, accessible to persons with disabilities. These obligations include the following:
1. Making and paying for reasonable structural modifications to units and/or common areas that are needed by applicants and tenants with disabilities, unless these modifications would change the fundamental nature of the project or result in undue financial and administrative burdens;
 2. Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;
 3. Providing auxiliary aids and services necessary for effective communication with persons with disabilities;
 4. Developing a transition plan to ensure that structural changes are properly implemented to meet program accessibility requirements; and
 5. Performing a self-evaluation of the owner's program and policies to ensure that they do not discriminate based on disability.
 6. Operating their programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- B. Furthermore, the Section 504 regulations establish affirmative accessibility requirements for newly constructed or rehabilitated housing, including providing a minimum percentage of accessible units. In order for a unit to be considered accessible, it must meet the requirements of the Uniform Federal Accessibility Standards (UFAS).
- C. The Section 504 regulations also require that recipients not discriminate in employment based upon disability.

2-9 Civil Rights Related Program Requirements

- A. HUD-subsidized multifamily housing properties are subject to Civil Rights Related Program Requirements developed under civil rights authorities. These requirements reflect HUD's obligation to ensure that the programs and activities that receive federal funds comply with federal civil rights laws.
- B. Some of the Civil Rights Related Program Requirements include, but are not limited to, the items listed below.
 - 1. Occupancy policies, which include the following:
 - a. Application requirements;
 - b. Waiting list requirements; and
 - c. Tenant selection requirements.
 - 2. Use of residency preferences in a manner that does not have a disparate impact on members of any class of individuals protected by federal civil rights laws.
 - 3. Consistent maintenance requirements; and
 - 4. Consistent policies across properties owned by the same owner to ensure against steering, segregation, or other discriminatory practices.
- C. ****Improving Access to Services for Persons with Limited English Proficiency (LEP).** Executive Order (E.O.) 13166 requires Federal agencies and grantees to take affirmative steps to communicate with persons who need services or information in a language other than English.
 - 1. Housing owners must take reasonable steps to ensure meaningful access to the information and services they provide for persons with LEP. This may include interpreter services and/or written materials translated into other languages.
 - 2. HUD specific LEP Guidance, "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" was published in the Federal Register on January 22, 2007."

2-10 Title VI, Subtitle D of the Housing and Community Development Act of 1992 (42 U.S.C. 13641)

- A. Title VI, Subtitle D of the Housing and Community Development Act of 1992 (Title VI-D) authorizes owners of certain HUD multifamily assisted developments

to elect to serve elderly families, limit the numbers of disabled families residing in the projects or to adopt preferences for elderly families, depending upon the type of project and whether certain requirements are met. While owners must comply with all relevant sections pursuant to Title VI-D, owners should pay close attention to Sections 651 and 658 with respect to eligibility and tenant selection. See paragraph **3-18** for more information about an owner's responsibilities under these sections of the statute

- B. While this statute is not a civil rights law, it is referenced in this chapter because if it is applied incorrectly, an owner may be in violation of federal civil rights laws, as well as program requirements.

2-11 Required Data and Record-Keeping

A. Required Data

1. Owners must collect and maintain various types of information regarding prospective and current tenants to help establish compliance with program requirements. (See Chapter 4.)
2. For subsidized multifamily housing, HUD requires owners to gather data about the race and ethnicity of applicants and tenants so that HUD can easily spot possible discrimination, track racial or ethnic concentrations, and focus enforcement actions on owners with racially or ethnically identifiable properties. For example, the Department might investigate a situation in which there is a sizable eligible population of a given race or ethnicity in the area, but a particular property does not house any members of that population. Ethnicity and Race of applicants and tenants is determined by self certification rather than an observation of the owner. The Department also requires that owners report the numbers of persons with disabilities served by their programs.
3. To avoid the risk of violating civil rights and nondiscrimination requirements when seeking to gather such data, owners should consistently ask the same questions of all prospective and current tenants. Also, owners should avoid asking for information only from certain populations and not others. For example, instead of asking only some applicants about their race, owners should have a means of seeking this information from all applicants.

B. Record-Keeping

1. Records. Owners must keep civil rights related records in accordance with 24 CFR 1.6, 8.55(b), and 107.30. The civil rights related records include race and ethnicity data, compliance with 504, and compliance with Executive Order 11063.
2. Access to Records. Owners are required to allow HUD staff and Contract Administrators access to the relevant records for their properties and

other sources of information, as necessary, for determining compliance with civil rights and nondiscrimination requirements.

- a. In the following situations, HUD or the Contract Administrator may request information from owners: when an individual complains to HUD that he/she has been the subject of discrimination; when HUD FHEO staff performs a review of an owner's overall compliance with civil rights and nondiscrimination requirements; or when HUD Multifamily Housing staff looks for indicators of noncompliance on behalf of FHEO as part of a management review. (See Handbook 4350.1, *Multifamily Asset Management and Project Servicing* for more information.)
- b. When performing limited reviews of civil rights and nondiscrimination requirements as part of a management review, HUD Multifamily Housing staff should use the checklists and operating procedures developed between the Office of Fair Housing and Equal Opportunity and the Office of Multifamily Housing to determine the relevant information needed from the owner to conduct the review. (See paragraph 1-7 for information about technical resources such as websites for FHEO checklists and guidance for HUD staff.)

2-12 Principles for Addressing Overlapping Federal, State, and Local Requirements

Refer to the principles described in paragraph 1-5.

Section 2: Nondiscrimination Requirements Under the Fair Housing Act

2-13 Key Regulation

This paragraph identifies the key regulatory citation pertaining to Section 2: Nondiscrimination Requirements Under the Fair Housing Act. The citation and its title are listed below:

- 24 CFR, part 100 – Discriminatory Conduct under the Fair Housing Act

2-14 General

The Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin. Owners are responsible for ensuring that the policies and practices used in properties covered by this handbook do not incorporate prohibited practices. This section provides an overview of these requirements. Owners are fully responsible for understanding and complying with the requirements applicable to their properties.

2-15 Unlawful Refusal to Rent or Negotiate for Rental

- A. Owners may not refuse, either directly or indirectly, to rent or negotiate for rental of a dwelling based on an individual's race, color, religion, sex, disability, familial status, or national origin, or those of a person associated with the individual.
- B. Examples of prohibited activities based on race, color, religion, sex, disability, familial status, or national origin include, but are not limited to, the following:
 - 1. Setting different rental fees for a person;
 - 2. Not applying the screening criteria outlined in the tenant selection plan uniformly to all applicants;
 - 3. Restricting selection of persons with disabilities in housing when this is in violation of program rules or the owner's contract with HUD; and
 - 4. Preventing a household with children under age 6 from occupying a unit even if there are lead hazards in the unit. The owner must advise the household of the hazards, but the choice to occupy the unit is the household's.

NOTE: Owners may affirmatively market lead-hazard-free units to families with children under the age of 6. For further information, refer to 24 CFR, part 35, and Federal Register Vol. 64, No. 178, p. 50158.

2-16 Other Prohibited Rental Activities

- A. Owners must not engage in activities that steer potential tenants away from or toward particular units by words or actions based on race, color, religion, sex, disability, familial status, or national origin.
- B. Owners must not make housing units and related services unavailable to any potential tenants based upon race, color, religion, sex, disability, familial status, or national origin.
- C. Such prohibited actions include the following:
 - 1. Discouraging anyone from inspecting or renting a unit in a community, neighborhood, or property;
 - 2. Discouraging anyone from renting a unit by exaggerating the problems of a unit or failing to inform a person of the good points of the unit in a community, neighborhood, or property;

3. Assigning any person to a particular section of a community, neighborhood, or project, or to a particular floor of a building, because of race, color, religion, sex, disability, familial status, or national origin, except when assigning an accessible unit to a person with a disability who needs the features of the unit; and
4. Denying or delaying the processing of an application made by a renter.

2-17 Discrimination in the Representation of Available Dwellings

- A. Owners must not purposely provide false information to applicants about the availability of units that limits the living options of prospective tenants based on race, color, religion, sex, disability, familial status, or national origin of the applicant or persons associated with the applicant.
- B. Examples of such prohibited actions include, but are not limited to, the following:
 1. Indicating by words or actions that an available unit has already been rented;
 2. Using deeds, trusts, or other lease requirements to keep a potential tenant from renting an available unit;
 3. Refusing to inform interested individuals, either verbally or through actions, that suitably priced units are available to be rented; and
 4. Providing false or inaccurate information about the availability of units to anyone, (including discrimination testers), regardless of whether the person is actually looking for housing.

2-18 Discrimination in Terms, Conditions, Privileges, Services, and Facilities

- A. Owners must not deny or limit services based on race, color, religion, sex, disability, familial status, or national origin of the applicant, tenant, or a person associated with the applicant or tenant.
- B. Prohibited activities include, but are not limited to, the following:
 1. Using different requirements in leases. Examples include charging different rents, charging different security deposits, or requiring persons with disabilities who use electric wheelchairs or motorized scooters to have personal liability insurance. (For more information about lease requirements, see paragraph 6-5);

NOTE: This prohibition includes the use of different house rules for different tenants. For instance, owners must not have more stringent noise requirements for families with children than for families without children.

2. Failing to provide or delaying maintenance on rental units;
 3. Failing to process a rental offer;
 4. Limiting the use of privileges, services, or facilities associated with renting a unit; and
 5. Denying or limiting services because the renter failed or refused to provide sexual favors, or providing extra benefits to an individual in exchange for the provision of sexual favors.
- C. Federal discrimination laws generally prohibit housing providers from implementing policies or practices that appear to be neutral on their face but have a significant adverse or disproportionate impact on persons based on race, color, religion, sex, national origin, familial status, or disability.

2-19 Discrimination in Marketing, Statements, and Notices

- A. Owners must market available units in a nondiscriminatory manner.
1. This requirement covers printed or published notices, statements, or advertisements. Examples of notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or other documents used to market available units. For additional information about advertising requirements, please refer to paragraph 4-12 D.
 2. The marketing requirement also covers oral notices or statements.
- B. Actions prohibited by this requirement include, but are not limited to, the following:
1. Using words, phrases, photographs, illustrations, symbols, or forms that suggest that units are available or not available to certain people based on race, color, religion, sex, disability, familial status, or national origin;
 2. Expressing to agents, brokers, employees, prospective renters, or any other person a preference for or limitation on any renter based on race, color, religion, sex, disability, familial status, or national origin;
 3. Selecting media or locations for advertising the renting of units that are unlikely to attract particular people to apply for occupancy at the property because of race, color, religion, sex, disability, familial status, or national origin; and
 4. Refusing to advertise for the rental of units or requiring different charges or terms for such advertising based on race, color, religion, sex, disability, familial status, or national origin.

- C. For additional information on marketing and Affirmative Fair Housing Marketing Plans, see Chapter 4, Section 2.

2-20 Retaliatory Occupancy Practices, Coercion, Intimidation, and Interference

- A. It is unlawful to coerce, intimidate, threaten, or interfere with any person's exercise or enjoyment of any Fair Housing right described in this chapter. It is also unlawful to take such action on account of a person's actions to aid or encourage any other person in the exercise or enjoyment of any Fair Housing rights described in this chapter.
- B. Some examples of threatening activities based on race, color, religion, sex, disability, familial status, or national origin include, but are not limited to, the following:
1. Intimidating or threatening a person verbally, in writing, or in some other way that results in that person being denied the benefits of living in a unit (including creating an environment hostile to applicants or tenants with respect to one or more of the prohibited bases listed above);
 2. Threatening, intimidating, or interfering with a person's enjoyment of a dwelling because of the race, color, religion, sex, disability, familial status, or national origin of such person, or of visitors or associates of such person (including sexual harassment);
 3. Threatening an employee or agent with firing or other negative action for any legal, nondiscriminating, pro-regulatory, effort to help someone rent a unit;
 4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of Fair Housing rights, or encouraging such other persons to exercise their Fair Housing rights as described in this chapter;
 5. Failing to investigate and address allegations that a tenant or group of tenants is harassing or threatening another tenant because of that tenant's race, color, national origin, sex, religion, disability, or familial status.
 6. Retaliating against a person who has made a complaint, testified, or in any way assisted with proceedings under the Fair Housing Act.

Section 3: Additional Nondiscrimination and Accessibility Requirements for Persons with Disabilities

Subsection 1: Overview and General Requirements

2-21 Key Regulations

This paragraph identifies key regulations pertaining to Section 3: Additional Nondiscrimination and Accessibility Requirements for Persons with Disabilities. The citations and their titles are listed below.

- A. 24 CFR, part 8 – Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development. (Section 504 of the Rehabilitation Act of 1973)
- B. 24 CFR, part 100 – Discriminatory Conduct under the Fair Housing Act.
- C. 24 CFR, part 108 – Compliance Procedures for Affirmative Fair Housing Marketing.

2-22 Introduction

- A. As discussed in Paragraph 2-5 above, the Fair Housing Act establishes specific nondiscrimination and accessibility requirements for housing sold and rented in the United States for nearly all housing, regardless of whether the housing receives any federal financial assistance.
- B. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities and establishes accessibility requirements by recipients of federal financial assistance in both housing and nonhousing programs. Although there is significant overlap between the Fair Housing Act nondiscrimination requirements with respect to disability and Section 504, Section 504 imposes additional broader obligations on recipients of federal financial assistance. Properties covered by this handbook are subject to the requirements of Section 504 and therefore, owners of such properties have

affirmative obligations to establish and implement nondiscrimination policies and to ensure required accessibility to persons with disabilities.

- C. Section 504 establishes certain affirmative accessibility standards that owners must meet regardless of whether or not an applicant or tenant has made an individual request for a reasonable accommodation. (For information on reasonable accommodations, refer to Subsection 4 of this section.)
1. The owner's obligations include making the property physically accessible as well as operating and administering the property to enable persons with disabilities to have equal access to participate in the program.
 2. This means not only that units and common areas must be physically accessible, but that owners also must ensure effective communications with applicants, tenants, and the public, and that policies regarding how the property is operated do not adversely affect applicants, tenants, and the public.
 3. Under both the Fair Housing Act and Section 504, housing providers are obligated to provide reasonable accommodations to allow applicants with disabilities to meet the requirements of tenancy. The requirement to provide a reasonable accommodation is present at all times throughout the tenancy of a person with disabilities, including during lease enforcement. See discussion in Subsection 4.
 4. In all discussions of accessibility under Section 504, a unit cannot be considered fully accessible unless it meets the requirements of the Uniform Federal Accessibility Standards, 24 CFR 8.32. Note that UFAS does not consider a unit to be fully accessible if it is not on an accessible route.
- D. This section discusses how Section 504 and the disability/accessibility provisions of the Fair Housing Act apply to housing, and it addresses situations where both laws apply. In this respect, where a property is subject to more than one law or nondiscrimination or accessibility standard, it is necessary to comply with all applicable requirements. In some cases, it may be possible to do this by complying with the stricter requirement. Section 504 and the Fair Housing Act overlap, but in many ways Section 504 is the more stringent of the two.
- E. For purposes of this section, the requirements and procedures described refer to Section 504, unless the Fair Housing Act is specifically referenced.

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- F. This section continues with an overview of key requirements regarding nondiscrimination and accessibility and then covers the following topics in more detail.
1. Subsection 2: Policies and Procedures to Ensure Nondiscrimination and Promote Accessibility.
 2. Subsection 3: Physical Accessibility.
 3. Subsection 4: Reasonable Accommodations.
 4. Subsection 5: Additional Fair Housing Act Requirements.

2-23 Definition of Persons with Disabilities for Civil Rights Protections versus Program Eligibility Purposes

A. Definitions with Respect to Civil Rights Protections

1. Section 504 establishes definitions for “**persons with disabilities**” and “**disability**” that differ from the definitions established in multifamily subsidized housing program regulations for purposes of determining program eligibility.
2. The complete Section 504 definition of these terms is included in the Glossary and identified as:
 - a. “Persons with disabilities;” and
 - b. “Disability.”
3. When the handbook uses these terms with respect to civil rights protections, it is usually in the context of nondiscrimination or accessibility requirements, such as a discussion of requests for reasonable accommodations by applicants or tenants. In this context, the civil rights-related definitions apply.

Note: A person who meets the definition of a person with disabilities as defined for civil rights protections may or may not meet the definition of a person with disabilities as defined for program eligibility purposes.

B. Definitions for Program Eligibility Purposes

1. In determining eligibility for admission to HUD-subsidized multifamily properties, owners must use the definitions for disabled family, disabled household, persons with disabilities, and nonelderly disabled family as presented in Chapter 3, Figure 3-6 and also presented in the Glossary.

2. When the handbook uses these terms with respect to program eligibility, it is usually in the context of an applicant's eligibility for a specific type of project, such as Section 202/8 or Section 811 PRAC project, or for a specific set-aside within a property for persons with disabilities.

2-24 Applicability

This section covers the nondiscrimination and accessibility requirements applicable to the occupancy of existing housing for which the owner receives federal financial assistance.

NOTE: For the related accessibility requirements that apply to the development of new properties, refer to the HUD Handbooks and other HUD guidance specific to the program providing assistance to the project, the Section 504 regulations and program regulations.

2-25 Overview of Key Requirements

A. Nondiscrimination and Accessibility Requirements

Under Section 504, owners must operate each existing housing project so that, when viewed in its entirety, it is readily accessible to and usable by persons with disabilities. This includes the following actions by owners:

1. Making modifications to policies and practices so they do not discriminate against persons with disabilities. (See Subsection 2.)
2. Taking appropriate steps to ensure effective communication with applicants, tenants, and the public. Owners must use requests by persons with disabilities to determine which alterations and auxiliary aids are necessary. (See Subsection 2.)

NOTE: HUD encourages owners to provide auxiliary aids, as necessary, as a routine property expense. HUD assumes that requests for auxiliary aids will not normally result in undue financial and administrative burden.

3. Taking required steps to meet the 5% threshold for units fully accessible to persons with mobility impairments and the 2% requirement for units accessible for persons with visual and hearing impairments. (See Subsection 3.)
4. Making public spaces and dwelling units accessible, provided that the changes do not result in an undue financial and administrative burden or require fundamental alterations in the nature of their programs. (See Subsections 3 and 4.)

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5. Responding to reasonable accommodations requests from tenants or applicants with disabilities for adjustments to policies or physical alterations. (See Subsection 4.)

B. Projects with Multiple Contracts

When a project is covered by more than one assistance contract, it is considered to be one project as long as it meets the definition of a project shown below as defined in 24 CFR 8.3.

“Project” means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots that are covered by a single contract for federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site. [24 CFR 8.3]

C. Allowable Methods of Compliance

Owners may comply through such means as reassigning services to accessible buildings, providing housing services or related services at alternate sites, or altering existing facilities. Also, owners may use any other methods that result in making the project and its activities readily accessible to and usable by persons with disabilities.

Examples of such other methods include offering an alternate rental office location; putting up signs identifying facilities for persons with disabilities; relocating/enlarging a parking space for persons with disabilities in compliance with UFAS; installing a visual smoke detector; installing a ramp; or making curb cuts or modifying curbs.

D. Prioritizing Methods

In deciding on ways to achieve accessibility for persons with disabilities, owners must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with disabilities and persons without disabilities to interact to the fullest extent possible).

E. Accessible Unit Requirements

To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

1. Distributed throughout the project and site; and
2. Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

See Exhibit 2-1 for an explanation of reasonable requirements

NOTE: Any housing constructed for first occupancy after March 13, 1991, must be designed in accordance with the design and construction requirements of the Fair Housing Act in addition to the Section 504 requirements on accessibility. See paragraph 2-45.

2-26 Technical Resources

- A. Regulation implementing Section 504 of the Rehabilitation Act of 1973 [24 CFR, part 8] and preamble [FR Vol. 53, No. 106, 10216].
- B. Regulation implementing the Fair Housing Amendments Act of 1988 [24 CFR, part 100] and preamble [FR Vol. 54, No. 13, 3232].
- C. Uniform Federal Accessibility Standards (UFAS). Individual copies are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, D.C. 20004-1111, Telephone: 202-272-0080, TTY: 202-272-0082, email address: info@access-board.gov. Orders of 25 or more copies will be referred to the publisher.
- D. Adaptable Housing, Marketable Accessible Housing for Everyone, November 1987 (HUD-1124-PD4).
- E. Listing of ADA Regulations and Technical Assistance Materials, Department of Justice, available on the Web at [*http://www.usdoj.gov/crt/ada/publicat.htm*](http://www.usdoj.gov/crt/ada/publicat.htm).
- F. Title II Technical Assistance Manual, Department of Justice, available on the Web at <http://www.usdoj.gov/crt/ada/taman2.html>.

NOTE: This manual addresses not only Title II, but also Title III of the ADA, which applies to public accommodations and commercial facilities. Although this publication is written for ADA requirements, its principles are also applicable to Section 504 compliance.

Subsection 2: Policies and Procedures to Ensure Nondiscrimination and Promote Accessibility

2-27 Nondiscrimination in Owner Policies

- A. Both Section 504 and the Fair Housing Act prohibit owners from following policies or practices that discriminate overtly on the basis of disability.

Example – Discriminatory Policies and Practices

An owner may not have a policy requiring tenants with disabilities to carry personal liability insurance, when it does not require tenants without disabilities to carry such insurance.

An owner may not have a policy which prohibits tenants from having live-in-aides or using assistive devices in certain parts of the premises.

- B. Owners are also obligated to modify any neutral policies which have the effect of discriminating on the basis of disability.

Example – Neutral Discrimination Policies

An owner must modify a “no animals” policy to allow a tenant with a disability who needs an assistance animal as a result of his or her disability, to have that animal.

NOTE: Housing policies that owners can demonstrate are essential to the project will not be regarded as discriminatory under this requirement if modifications to such policies would result in a fundamental alteration in the nature of the housing program or activity or undue financial and administrative burden. (See paragraph 2-42.)

- C. Owners must not fail to provide reasonable accommodations when such accommodations may be necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling unit and the public and common areas. (Refer to Subsection 4: Reasonable Accommodations for more information about reasonable accommodations.)

- D. Owners must ensure that their policies and procedures do not have a disparate or impact on persons with disabilities. Refer to paragraph 2-18 C for a discussion of “disparate impact.”
- E. Owners are not required to provide supportive or other services (e.g., counseling, medical or social services) that fall outside the scope of the applicable housing program for the property. The test for what the owner must provide is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered, not whether the applicant/tenant could benefit or obtain results from some other program that the owner does not offer.

NOTE: Applicants who need services not provided by the project must be allowed to arrange for those services on their own.

2-28 Coordinating Efforts to Comply with Section 504 Requirements

When an owner, managing entity, or project employs 15 or more people, regardless of their location or duties, the owner or managing entity must also designate one person for the property to coordinate efforts to comply with Section 504 requirements. This does not exempt owners, managing entities, or projects with fewer than 15 employees from complying with Section 504 requirements, but merely exempts the owner from having to designate a person to coordinate compliance efforts. At the owner’s discretion, this person may handle Section 504 matters for more than one property.

2-29 Communications with Persons with Disabilities

A. Overview

1. Owners must take steps as described under this paragraph to ensure effective communication with applicants, tenants, and members of the public.

IMPORTANT: The owner has the same obligation to provide effective communication to interested persons, applicants, and residents, regardless of whether it is ultimately determined that a particular individual is in fact income-eligible or otherwise qualified for admission to the project. (See paragraph 2-23 or the Glossary)

2. Owners are not required to take any actions under this paragraph that the owner can demonstrate would result in a fundamental alteration in the property or program or in an undue financial and administrative burden.

3. Owners must take steps to the maximum extent feasible to accommodate requests under this subsection for effective communication with persons with disabilities. This means that owners must make alternate accommodations up to the point at which further accommodations would result in either a fundamental alteration in the nature of the project or program or in undue financial and administrative burden.

B. Providing Auxiliary Aids to Ensure Effective Communication with Hearing- and Speech-Impaired Individuals

1. Owners must provide auxiliary aids where necessary to give tenants and applicants with disabilities equal opportunity to receive and enjoy the benefits of the project/assistance. See also Exhibit 2-2 for examples.
2. In furnishing auxiliary aids needed by persons with disabilities, owners should give primary consideration to the types of aids requested by the individual.

Example - Reasonable Requests for Auxiliary Aids

Requests for auxiliary aids may include the following: visual alarms; tactile signs; visual doorbell; reader; interpreter; applications, leases, and other information/ communications in large print or Braille; recordings of such information; and a television, in a public area, that provides closed-captioning service.

3. Appropriate auxiliary aids do not include individually prescribed devices.

Example - Auxiliary Aids that Owners Are Not Required to Provide

Requests for auxiliary aids that owners are not required to provide include reading machines, hearing aids, or personal items (e.g., an alarm clock with visual signal, computer, wheelchair, assistance animals, readers for personal use, TTY in tenant's unit, and eyeglasses).

C. Written Communications

1. Owners must accommodate requests by persons with disabilities to have written materials presented in a manner which can be understood by those individuals. However, requests for provision of written materials in a specific form may not have to be fulfilled if to do so would result in an undue financial and administrative burden.

Example - Written Communications that Owners Must Make Available to Persons with Disabilities

Written communications include applications, leases, **HUD-50059s**, tenant/applicant letters, and responses to inquiries.

2. If such a determination is made, owners must seek alternative ways of presenting written communications to meet the individual's needs that, to the maximum extent possible, ensure that persons with disabilities receive the benefits and services of the program or activity.
3. Written communications must state that the owner does not discriminate against persons with disabilities. (See suggested language in Exhibit 2-3.)
4. Owners, managing entities, or projects with 15 or more employees must ensure that written communications identify an employee named to coordinate compliance with nondiscrimination requirements. (See Exhibit 2-3.)
5. Owners must ensure that any fact sheets, brochures, notices, literature, or publicity of any kind accomplish the following:
 - a. Give information concerning the existence and location of services, activities, and facilities that have features that make them accessible to persons with disabilities.

Example - Communicating Accessibility Features

When an owner lists a telephone number, he/she must also list a TTY number or an equally effective system.

When a property is fully accessible, that fact must be stated or the universal symbol for accessibility should be used.

- b. State that the owner does not discriminate on the basis of disability in admission or access to the project.
- c. Give the name (or position), address, and telephone number of the employee designated to coordinate the owner's efforts to comply with Section 504. (This subparagraph applies to owners, managing entities, or projects employing 15 or more people.)

NOTE: Affirmative fair housing marketing must meet the requirements in 24 CFR, part 108 – Fair Housing Advertising. Prohibitions related to discriminatory advertising are described in 24 CFR 100.75. Consult with the Office of Fair Housing and Equal Opportunity for further information.

D. Telecommunications

Where an owner uses a telephone to communicate with members of the public, applicants, and tenants, the owner must use a telecommunications device suitable for the hearing-impaired (TTY) or equally effective communication system (such as a TTY relay service). Owners must provide TTY, unless the phone company offers it. Exhibit 2-4 presents an optional checklist to determine whether a communication system is an equally effective alternative to the TTY.

NOTE: Small properties, where the owner relies on face-to-face communications only and does not use a telephone to communicate with tenants or the public, are exempt from the requirements of this paragraph. However, the owner must provide alternative effective means of communication with persons with disabilities.

2-30 Information about Availability of Accessible Units

- A. Owners must have policies and practices to ensure that information about the availability of accessible units reaches eligible persons with disabilities. (See Chapter 4, Section 2, for information about marketing.)
- B. HUD also encourages owners to maintain contact with sources/agencies in the community who provide services to persons with disabilities so that, when accessible units become available, persons in need of these units may have the opportunity to live in them.

2-31 Determining Eligibility of Applicants for Admission and Assistance

- A. In applying the nondiscrimination requirements of Section 504 and the Fair Housing Act regarding persons with disabilities, owners must ensure that the policies used at properties covered by this section are consistent with the requirements in this paragraph and paragraphs 2-32 and 2-33 below.
- B. Owners must determine the eligibility of each applicant on a case-by-case basis.
- C. Owners must admit applicants in accordance with the eligibility requirements of the particular program/project. (See Chapter 3.)
- D. Owners must uniformly apply the eligibility and tenant selection criteria to all applicants. (See Chapter 4.)

- E. Owners must not make certain inquiries to determine eligibility.
1. The Fair Housing Act regulations state that it is unlawful for an owner to inquire:
 - a. Whether an applicant for a dwelling, a person intending to reside in a dwelling after it becomes available, or anyone associated with an applicant or resident, has a disability; or
 - b. As to the nature or severity of a disability of such person(s).
 2. Owners may, however, make the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities:
 - a. Inquiry into an applicant's ability to meet the requirements of tenancy; and
 - b. Inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance.
 3. Some properties may be lawfully restricted to persons with disabilities in general, or to persons that fall within one or more of three categories of disability (i.e., physical disability, developmental disability, chronic mental illness), such as Section 811 PRAC properties or Section 202 Direct Loan properties. Owners of such properties may make inquiries of all applicants to determine whether:
 - a. An applicant qualifies for the housing that is available only to persons with disabilities, or to members of the category of disability served by the project; and
 - b. An applicant qualifies for a priority available to persons with disabilities or to persons with a particular category of disability.
 4. It is unlawful for an owner to make inquiries designed to determine whether an applicant may live independently.
 5. It is a good practice for a property's rental application to define "disability" per program requirements and then ask if the applicant qualifies as a person with disabilities under that definition. The application should also advise all tenants that if they have a disability, and need a reasonable accommodation in order to participate in the application process or to make effective use of the housing program, they have the right to request such an accommodation. The application should define reasonable accommodation and explain the process by which the housing provider will consider requests for reasonable accommodations.

6. For a discussion of applicable marketing, application, and screening practices, see Chapter 4.

Example – What Owners May Ask or Must Not Ask Applicants Applying for Accessible Units

An owner offers accessible units to persons needing the features of these units on a priority basis. The provider may ask applicants whether they have a disability such that they will benefit from the features of the units, but may not in such circumstances ask applicants whether they have other types of impairments.

- F. Owners may verify a person's disability but must adhere to certain verification guidelines.
1. The owner may verify a person's disability only to the extent necessary to document that applicants:
 - a. Are qualified for the housing for which they are applying ^{**}(see Figure 3-5 on determining project eligibility and Figure 3-6 for applicable disability definitions by program type):^{**}
 - b. Are qualified for deductions used in determining adjusted income;
 - c. Are entitled to any preference they may claim;
 - d. Who have requested a reasonable accommodation have a disability-related need for the requested accommodation or modification; and
 - e. Need the design features of the unit.
 2. Owners may not require applicants to provide access to confidential medical records in order to verify a disability.
 3. Additional information on verifying eligibility of persons with disabilities can be found in paragraph ^{**}3-28^{**} B and in ^{**}Appendix 6^{**}.

2-32 Assigning Accessible Units

A. Applicability

The requirements of this paragraph apply to the following projects and dwelling units:

1. Projects with five or more units.

NOTE: HUD recommends that owners of projects with fewer than five units follow these policies to the extent practicable.

2. Units made accessible under Section 504 as described in Subsection 3 and units designed for disabled families/households when the project was approved for funding.

B. Eligibility for Accessible Units

1. A percentage of units in most properties contain accessible features. Eligibility for these accessible units may be limited to a specific population (e.g., persons with mobility impairments). (See Chapter 3, Section 2, for more information about project eligibility.)
2. Owners must place applicants eligible for an accessible unit on the waiting list in accordance with the property's waiting list procedures. (See Chapter 4, Section 3, for more information about waiting list management.)
3. Owners may not prohibit an eligible family with a member who has a disability from accepting a suitable nonaccessible unit if no accessible unit is available when the family reaches the top of the waiting list. Owners must make physical alterations to the nonaccessible unit as a reasonable accommodation, unless the alterations would result in an undue financial and administrative burden.
4. If an appropriate-size accessible unit is not available, owners may house an applicant needing an accessible unit in a larger accessible unit in order to maximize the use of the accessible features.

C. Order When Assigning Accessible Units

Section 504 requires that owners 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, owners must assign available accessible units to tenants/applicants in the following order:

1. When there is a current tenant or qualified applicant with a household member requiring accessibility features of the unit:
 - a. Current Tenants. Owners must first offer the unit to an individual with disabilities currently residing in a nonaccessible unit in the same project or comparable project under common control, who requires the features of the unit;

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- b. Applicants with Disabilities. If no current tenants require the special features of the accessible unit, the owner 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.
 2. When neither a current tenant nor a qualified applicant requires the features of the available accessible unit:
 - a. Owners may offer the unit to another tenant or applicant in a manner consistent with the property's tenant selection policy and should incorporate into the lease an agreement that the tenant will move to a nonaccessible unit of the proper size within the same property when one becomes available. The lease should state whether the tenant or the owner will pay for the cost of such moves. (See paragraph **3-23** on occupancy standards and overcrowded and underutilized units, and paragraph 4-4 C on tenant selection plans.)
 - b. In the case where the members of the tenant household who required the special features of the accessible unit no longer reside in the unit, and where the lease permits, owners should require the remaining members of the household to move to a unit without accessibility features. The Department strongly suggests that owners incorporate this provision as an addendum to the lease to avoid placing themselves in a situation of having to retrofit additional units.

2-33 Moving Tenants Who Require Special Features into Accessible Units

- A. If a member of a tenant household becomes disabled with an impairment that requires special accessibility features and the tenant requests an accessible unit, an owner may move that tenant into an accessible unit in lieu of making the tenant's existing unit accessible and usable. (See Chapter 4 for more information.) However, if a tenant needs only minor modifications to his or her unit, and does not need a fully accessible unit, the landlord should make the modifications and leave the project's fully accessible units available for tenants who need such units.
- B. If a member of a tenant household is a person who does not need specific accessible features, but whose disability requires that they live on a particular floor or location on the floor, the owner must move that tenant household to the new unit. If such a unit is not available, the owner should assign the tenant to the next available unit that meets the need of the tenant. This accommodation must be based on the tenant's disability-related need for the particular floor or location on the floor, and not based on the tenant's personal preferences.

- C. **If a tenant household is being moved to a different unit as a reasonable accommodation to a household member's disability, then the owner must pay for the move unless doing so would constitute an undue financial and administrative burden.**

Example – When Owners Should Move Tenants to Accessible Units

The head of household's grandmother, who is a member of the household, cannot climb the two flights of stairs to the unit because she has arthritis in her knees. The head of household requests that they be moved to a unit on the ground floor. The owner must move the household to the next available ground floor unit. If there are no ground floor units of the correct bedroom size expected to be available within a reasonable time (e.g., 30 days), the owner may make a unit available by requiring a tenant in a ground floor unit who is overhoused or underhoused to move to a unit within the project that is the correct size for the household.

2-34 Owner Self-Evaluation

- A. The Section 504 regulations required recipients of federal financial assistance to conduct a self-evaluation of their policies and practices to determine if they were consistent with the requirements of this section of the Rehabilitation Act of 1973. The regulations required owners to have completed their self-evaluations no later than July 11, 1989.
- B. The Section 504 regulations establish owners' ongoing responsibility to operate their programs so that they are, when viewed in their entirety, accessible to and usable by persons with disabilities [24 CFR 8.24]. Although the regulatory deadlines for completing self-evaluations have now passed, the self-evaluation continues to be an excellent management tool for ensuring that the owner's current policies and procedures comply with the requirements of Section 504.
- C. HUD strongly recommends that owners periodically update their self-evaluations as one way to help ensure compliance. Updates are particularly important if there have been alterations to units or units have been added or demolished. When updating the self-evaluation and implementing its results, owners should take the following steps.
1. Evaluate current policies and practices, and analyze them to determine if they adversely affect the full participation of individuals with disabilities in the owner's programs, activities, and services.

NOTE: Information on technical resources regarding Section 504 accessibility requirements can be found in paragraph 2-26.

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2. Modify any policies and practices that are not or may not be in compliance with Section 504.
 3. Take appropriate corrective steps to remedy those policies and practices that are either discriminatory or have a discriminatory effect.
 4. Document the process and activities used to update the self-evaluation.

NOTE: Under Section 504 regulations, owners were required to complete one self-evaluation. HUD does not review or approve any subsequent self-evaluations that owners may wish to complete.

- D. Owners, managing entities, or projects employing 15 or more persons were required to maintain on file, make available for public inspection, and provide to the Office of Fair Housing and Equal Opportunity upon request the information below for at least three years following completion of the evaluation:
1. A list of the interested persons consulted;
 2. A description of areas of the project the owner examined and any problems identified; and
 3. A description of any modifications the owner made and of any remedial steps taken.
- E. Section 504 also required owners to develop a transition plan for completing structural changes needed to make the property readily accessible to and usable to persons with disabilities by July 11, 1991. Owners were required to prepare the plan by January 11, 1989.
1. Although the deadlines for preparing and implementing the plan have passed, transition plans are an excellent management tool for ensuring continued compliance when structural alterations to a property (e.g., building additional units) require further action to continue meeting the physical accessibility requirements of Section 504.
 2. Owners were expected to develop the plan with the assistance of interested persons. HUD recommends that transition plans include the following items that were originally required for inclusion in these plans.
 - a. Identify physical obstacles in the property that limit accessibility to persons with disabilities.
 - b. Describe in detail the methods that will be used to make the project accessible.

- c. Specify the schedule for taking steps to achieve compliance with the requirements for structural changes, including making a minimum of 5% of the units accessible to persons with mobility impairments. If the time period covered by the transition plan is longer than one year, the plan must identify steps that will be taken during each year of the transition period.
- d. Indicate the person (and his/her title) responsible for implementing the plan.
- e. Identify persons or groups who helped the owner prepare the plan.

Subsection 3: Physical Accessibility

2-35 Owners' Requirements for Providing Physical Accessibility

A. General

In addition to ensuring that projects are operated in a manner that protects against discrimination and promotes accessibility for persons with disabilities to enable them to participate fully in the program, there are also requirements regarding the physical accessibility of properties.

B. Federally Assisted Multifamily Properties Built after July 11, 1988

Federally assisted multifamily properties built after July 11, 1988 were required to be constructed to comply with the Section 504 accessibility requirements contained in 24 CFR 8.22. This regulation requires that a minimum of 5% of the units in newly constructed multifamily housing be fully accessible in accordance with the Uniform Federal Accessibility Standards (UFAS) and an additional 2% be accessible to persons with visual and hearing impairments. This obligation is an absolute requirement and should have been met during construction. For buildings that fall within this category, an owner may not justify a failure to have met these requirements because of an undue financial and administrative burden.

C. Accessible Routes

Owners must provide accessible routes to and throughout the property (curb cuts or modifications, i.e., ramps) and provide accessible parking spaces in an accessible location as long as such improvements would not result in an undue financial and administrative burden.

D. Common Use Facilities

Owners must make common use facilities, or parts of facilities, and public spaces accessible to persons with disabilities, as long as such improvements would not result in an undue financial and administrative burden. This responsibility means that owners must do everything feasible to make these areas accessible up to the point at which any further modifications or improvements would result in an undue financial and administrative burden.

1. Public spaces include but are not limited to community rooms, laundry and trash rooms, parking spaces, entrances, sidewalks, public restrooms, and the management office.

NOTE: If the common use facilities are rented to the public or a business operates out of this space, Title II and/or Title III of the Americans with Disabilities Act may also apply to these facilities. For further information on this subject, please refer to the Department of Justice website at www.usdoj.gov/crt/ada/taprog.htm.

2. Owners do not have to make each location of an amenity or facility accessible to persons with mobility impairments (e.g., each laundry room, each trash room, each entrance).
 - a. An owner may decide to make one laundry room in a central location accessible to tenants with mobility impairments, or make the main entrance accessible but not the side entrances. However, if only one entrance or amenity is accessible, it must be accessible to tenants with mobility impairments who live in any part of the development. For example, it would not be appropriate to make only one laundry room accessible if the property had multiple buildings, and only tenants with mobility impairments had to go out in inclement weather to do their laundry.
 - b. The owner must make one-of-a kind amenities or facilities accessible and usable to persons with disabilities or provide an alternative means for accessibility (management office, community space, public restroom).

E. Physical Alterations to Existing Housing

1. Substantial alterations.

If an owner undertakes physical alterations to a property that has 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed property, then the owner must follow the new construction provisions of 24 CFR 8.22 (a) and (b) which requires that a minimum of 5% of the units be made accessible for persons with

mobility impairments, and 2% of the units be made accessible for persons with visual and hearing impairments.

2. Other alterations.

- a. When an owner undertakes any other alterations to a multifamily property covered by this handbook that do not qualify as “substantial alterations” as described above in subparagraph D.1, such alterations must be accessible, to the maximum extent feasible, until at least 5% of the units are accessible for persons with mobility impairments, and 2% of the units are accessible for persons with visual and hearing impairments unless HUD prescribes a higher number pursuant to 24 CFR 8.23 (b) (2).
 - b. If alterations of single elements of a dwelling unit, when considered together, amount to an alteration of the dwelling unit, the owner must make the entire dwelling unit accessible.
 - c. When the owner is not altering the entire unit, 100% of single elements being altered must be made accessible until 5% of the units in the property are fully UFAS accessible.
 - (1) However, HUD strongly encourages owners, when undertaking alterations, to make 5% of the units in a property accessible up front, as that will avoid the necessity of making every element altered accessible, which may result in having partially accessible units of little or no value for persons with mobility impairments, and is likely to be more costly overall.
 - (2) HUD recommends owners include up to 2% of the units for persons with hearing and vision impairments.
 - d. See paragraph 2-43 and 24 CFR 8.23 (b) (1) for exceptions due to undue financial and administrative burden and 24 CFR 8.32 (c) for exceptions regarding alterations that require removing or altering load-bearing structural members.
3. Under Section 504, owners are not required to make structural changes in existing housing facilities where other methods, which may not cost as much, are effective in making federally assisted housing programs or activities readily accessible to and usable by persons with disabilities.

2-36 Building Standards

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- A. In making physical changes to dwelling units or to common areas, facilities, and parking, owners:
 - 1. Must follow the Uniform Federal Accessibility Standards (UFAS). (See paragraph 2-26.); or
 - 2. May depart from particular technical and scoping requirements of UFAS, if they use other methods that provide substantially equivalent or greater access to and usability of the building.
 - B. Tenant modifications to units must be done in accordance with paragraph 2-47.

2-37 Limitations on Owners' Obligations to Make Their Housing Physically Accessible to Persons with Disabilities

- A. Owners are not required to make structural changes where other methods are effective in achieving compliance with paragraph 2-35.
- B. Owners are not required to make alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. See 24 CFR 8.32(c).
- C. In some cases, an accessible building entrance cannot be provided without triggering one of the actions in subparagraph B above or resulting in undue financial and administrative burden. In such cases, an owner will have to take other reasonable steps to insure program accessibility, including in some cases, making additional units accessible in other buildings operated by the owner.
- D. Owners do not have to make mechanical rooms and other spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities.
- E. Owners are not required to install an elevator solely for the purpose of making units accessible.

Subsection 4: Reasonable Accommodations

2-38 General

- A. In addition to owners' affirmative obligations to operate their properties in a nondiscriminatory manner and the specific requirements to make properties physically accessible to persons with disabilities, owners must also consider requests for reasonable accommodations from applicants and tenants with disabilities.

- B. An owner's responsibility to consider requests for reasonable accommodations is separate and distinct from the nondiscrimination and accessibility requirements discussed above in Subsections 2 and 3.
- C. It is strongly recommended that owners include statements about the right of individuals with disabilities to request reasonable accommodations in all written notices given to applicants and tenants.

2-39 What Are Reasonable Accommodations?

- A. A reasonable accommodation is a change, exception, or adjustment to a program, service, building, dwelling unit, or workplace that will allow a qualified person with a disability to:
 - 1. Participate fully in a program;
 - 2. Take advantage of a service;
 - 3. Live in a dwelling; or
 - 4. Perform a job.
- B. Reasonable accommodations include, for example, those that are necessary for a person with a disability to use and enjoy a dwelling.
- C. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

2-40 Key Principles Regarding Reasonable Accommodations

- A. When a family member requires an accessible feature(s), policy modification, or other reasonable accommodation to accommodate a disability, the owner must provide the requested accommodation unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is a modification that is so significant that it alters the essential nature of the provider's operations.
- B. If providing such accommodation(s) would result in an undue financial and administrative burden, the owner must take any other action that would not result in an undue burden. See Section 2-46 B.

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- C. If a provider refuses a requested accommodation because it is not reasonable, the provider should engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the provider must grant it.
 - D. Under both Section 504 and the Fair Housing Act, a tenant or applicant for housing makes a reasonable accommodation request whenever he or she makes it clear to the housing provider that a request is being made for an exception, change, or adjustment to a rule, policy, practice, service, or physical structure because of his or her disability. A request can be made by the person with the disability, a family member, or someone else acting on the individual's behalf.
 - E. Although a request can be made orally or in writing, it is usually helpful for both the individual with the disability and the housing provider if the request is reduced to writing. If the individual with a disability requires assistance in providing a written reasonable accommodation request, the housing provider should assist the individual with a disability with this request.
 - F. Providers have an obligation to provide prompt responses to reasonable accommodations requests.

2-41 Reasonable Accommodations – Property Operations

Owners must make reasonable adjustments to their rules, policies, practices, and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit and the common areas of a dwelling, or to participate in or have access to other activities conducted or sponsored by the owner.

2-42 Reasonable Accommodations – Physical Alterations

- A. Generally, owners subject to Section 504 requirements must make and pay for structural modifications to dwelling units and common areas when needed as a reasonable accommodation based on a request by a tenant or applicant with a disability

NOTE: Alterations and structural changes must be made in conformance with paragraph 2-36 A, Building Standards.

- B. If the owner provides a reasonable accommodation by making a requested structural modification to a unit, this does not mean that the unit can automatically be counted as a fully accessible unit that meets the UFAS standard, unless the modifications made by the owner actually bring the unit into compliance with that standard.

Example – When Owners Must Make Reasonable Accommodations

An owner has a policy of updating its waiting list by sending out letters to applicants to see if they are still interested in being on the waiting list. If a person does not respond within a certain amount of time, the owner removes the individual from the waiting list. Because of an individual's disability, he is unable to understand the nature of this communication and therefore does not respond to the letter. If requested, the owner would have to reinstate the person to the original place on the waiting list as a reasonable accommodation to that individual's disability.

An owner that does not allow residents to have animals must modify the property's policies and allow a tenant with a disability to have an assistance animal if the animal is needed as a reasonable accommodation. (See paragraphs 2-44, **3-29** and 4-24 B for more information about assistance animals as a reasonable accommodation.)

An owner has a policy of only sending rent notices and other documents to tenants. An applicant with a disability that periodically results in temporary memory loss requests as a reasonable accommodation that a copy of all rent notices and requests for information also be sent to a relative who lives in the community. The owner should modify this policy and send the notices to the designated individual in order to give the resident an equal opportunity to use her dwelling and comply with her lease obligations.

An owner requires tenants to pay rent by personal check. One resident has a disability and is unable to manage a personal checking account. The owner must allow that resident's request for an accommodation to pay rent in cash or by money order, as this is a reasonable adjustment to the property's procedures that will allow this resident to have an equal opportunity to participate in the housing program.

Example – Requests for Reasonable Accommodations or Housing Adjustments

An applicant who is hearing impaired has been determined to be otherwise qualified under program requirements and the owner's tenant selection plan. The applicant asks that her unit be fitted with a visual smoke detector. The owner must accommodate the request unless it would result in undue financial and administrative burden. This limitation applies to all of the examples.

An individual with a mobility impairment requests that grab bars be installed in the bathroom.

A visually impaired tenant requests a name plate/unit number in Braille on mailbox.

A hearing-impaired tenant requests visual intercom to know when guests have arrived and to receive notice that he has messages at the office. If owner already provides some type of intercom service to all tenants, he must accommodate this request. However, if the owner provides no such service, he can deny the request if he determines that it would represent a support service not provided by the project and providing this request would result in a fundamental alteration of the program.

2-43 Limits on Obligations to Provide Reasonable Accommodations

- A. **Fundamental Alteration.** Owners are not required to take any action that would result in a fundamental alteration in the nature of the program. A fundamental

alteration is a change so significant that it alters the essential nature of a provider's operations. For a detailed explanation of fundamental alteration, see Exhibit 2-5.

- B. **Undue Financial and Administrative Burden.** The determination of undue financial and administrative burden must be made on a case-by-case basis, involving various factors, such as the cost of the reasonable accommodation, the financial resources of the provider, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's disability-related needs. For examples of undue financial and administrative burden, see Exhibit 2-6.
- C. Owners are not required to make structural changes that would impose an undue financial and administrative burden, even if alternatives to making housing programs or activities readily accessible to and usable by persons with disabilities are not effective.
 - 1. HUD Field Offices will consider a request to use the residual receipts account to pay for alterations under Section 504.
 - 2. Under HUD requirements, the reserve for replacement account is to be used for replacing existing items. (See Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.) If HUD approval is received for using the reserve for replacement account for any other purpose (e.g., Section 504 alterations), then the account must be replenished through property rental income, generally within one year.
- D. When a request for a reasonable accommodation will result in an undue financial and administrative burden, the owner must provide all other needed accommodations up to the point at which further accommodations would result in an undue financial and administrative burden.

Example – Reasonable Accommodation that Creates an Undue Financial and Administrative Burden

Project A is a 100-unit HUD assisted project. A tenant in this project needs more than \$5,000 in structural changes for his unit to be accessible to him. The owner of Project A could not cover the costs of such extensive structural changes without a rent increase. Residual receipts are insufficient to cover the changes, and the replacement reserve cannot be replenished within one year. The project does not have sufficient administrative staff to explore numerous possibilities for obtaining funding for such structural changes. Generally an owner would not be required to make such extensive structural changes because of the burden involved. Note that the amount an owner is required to spend to make units accessible could vary based on the size of the project – what the owner of a large project may be able to spend in making units accessible may be an undue burden on smaller projects.

Example – Reasonable Accommodation that Does Not Create an Undue Financial and Administrative Burden

An applicant with a mobility impairment wants to live in a dwelling unit in a particular rental housing property. The owner requires all tenants to hand-deliver their rent to the rental office. The unit is almost a block away from the rental office, but there is a mailbox located just a few yards from the unit entry door. Under 24 CFR 100.204, the owner or manager of an apartment complex must permit the applicant to mail the rent payment to the rental office. This policy accommodation would not pose an undue financial and administrative burden on the owner and allows the applicant to have equal opportunity to use and enjoy the unit.

- E. For other guidance on how to determine whether a reasonable accommodation would result in an undue financial and administrative burden, refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.

2-44 Assistance Animals as a Reasonable Accommodation

- A. Assistance animals are not pets. They are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as “service animals,” “assistance animals,” “support animals,” or “therapy animals” – perform many disability-related functions, including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.
- B. A housing provider may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the disability-related assistance or provides the disability-related benefit needed by the person with the disability.
- C. A housing provider’s refusal to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to use and live with an assistance animal would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless:
1. The animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation,

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2. The animal would cause substantial physical damage to the property of others,
 3. The presence of the assistance animal would pose an undue financial and administrative burden to the provider, or
 4. The presence of the assistance animal would fundamentally alter the nature of the provider's services.
- D. The fact that a person has a disability does not automatically entitle him or her to an assistance animal. There must be a relationship between the person's disability and his or her need for the animal.
- E. A housing provider may not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance animal. However, if the individual's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, at that time, the housing provider may charge the individual for the cost of repairing the damage if the provider regularly charges tenants for any damage they cause to the premises.

Subsection 5: Additional Fair Housing Act Requirements

2-45 Fair Housing Act Basic Accessibility Requirements

The Fair Housing Act requires that all buildings designed and constructed for first occupancy after March 13, 1991 meet certain basic accessibility requirements. This requirement applies to all new construction, regardless of the presence of federal financial assistance. See 24 CFR 100.205. Owners of properties that should have been constructed in accordance with these requirements but were not, are obligated to retrofit their units to bring them into compliance with the Act. If a tenant in one of these properties requests modifications to a unit that should have been made at the time of construction, the owner has an affirmative obligation to make and pay for those modifications as part of its original obligation to conform to the Fair Housing Act design and construction requirements.

2-46 Additional Fair Housing Act Requirement to Allow Tenant Modification of the Premises

- A. A person with disabilities has the right under the Fair Housing Act to make reasonable modifications to any part of his or her unit or the related common areas at his or her own expense.
- B. In HUD subsidized multifamily housing, the Section 504 requirements placing the responsibility on the owner to pay for requested reasonable accommodations, including structural changes to the premises, **supersede** the Fair Housing Act provisions placing the burden of paying for structural changes on the tenant. In the circumstance where the requested structural modification to a HUD-funded property does constitute an undue financial and administrative burden, and the tenant still wanted that particular modification to be made, the Fair Housing Act would then authorize the tenant to make and pay for the accommodation.

2-47 Owner and Tenant Responsibilities When Tenant Modifies Unit in Accordance with the Fair Housing Act

- A. Owners must permit the modifications if they are reasonable and may be necessary to afford a person with a disability full enjoyment of the premises.
- B. Owners may, where it is reasonable to do so, impose the condition that when vacating the unit, the tenant will restore the interior of the premises to the state that existed before the modification, reasonable wear and tear excepted. The owner should not require the tenant to restore the unit to the state that existed before the modification if the modification benefits the property or is needed by another tenant.

Example – Owners Requiring Tenants to Restore Units to Their Original Condition

For marketing reasons or operational considerations, the owner may require the tenant to raise cabinets that have been lowered or replace roll-under lavatories with the previously existing vanity/sink combination.

- C. Owners may not require any increased security deposits for persons with disabilities. However, where it is necessary in order to ensure that funds will be available to pay for restorations at the end of the tenancy, the Fair Housing Act allows the owner to negotiate as part of a restoration agreement, a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest of such an account must accrue to the benefit of the tenant.

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- D. Owners may condition permission for a modification on the tenant's providing reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

Section 4: Housing Discrimination Complaints and Compliance Reviews

2-48 Housing Discrimination Complaints

- A. HUD is responsible for responding to complaints involving the Fair Housing Act, Section 504 requirements, and other civil rights requirements.
- B. Anyone who believes that he or she has been subject to discriminatory treatment from the owner of a particular property may file a housing discrimination complaint.
- C. If applicants or tenants indicate to an owner that they want to file a housing discrimination complaint, the owner should:
1. Refer the individual to HUD;
 2. Provide the individual with FHEO's pamphlet, *Fair Housing – It's Your Right* (HUD-1686-FHEO, March 2001); and/or
 3. Review his/her property's policies and procedures to determine whether the individual's assertions have any merit and make corrections as necessary to ensure compliance with Fair Housing requirements.
- D. Housing discrimination complaints should be directed to the HUD Regional Office of Fair Housing and Equal Opportunity responsible for the location in which the complaint occurred. FHEO staff will respond to complaints in accordance with established HUD procedures.

2-49 Compliance Reviews

Compliance reviews are conducted by FHEO staff in accordance with Departmental procedures. The procedures for FHEO reviews of Title VI requirements are discussed in HUD FHEO Handbook 8040.1, *Compliance and Enforcement Procedures for Title VI of the Civil Rights Act of 1964*. The procedures related to compliance with the Fair Housing Act are covered in HUD FHEO Handbook 8024.1, *Title VIII Complaint, Intake, Investigation, and Conciliation Handbook*.

Chapter 2 Exhibits

- 2-1 Examples of Undue Distribution of Accessible Units
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e2-1HSGH.pdf>
- 2-2 Examples of Requests for Auxiliary Aids and Reasonable Accommodations by Persons with Disabilities
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e2-2HSGH.pdf>
- 2-3 Sample Notification of Nondiscrimination on the Basis of Disability Status
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e2-3HSGH.pdf>
- 2-4 Suggested Checklist to Determine Whether a Communication System Is an Equally Effective Alternative to the TTY
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e2-4HSGH.pdf>
- 2-5 Examples of Fundamental Alterations
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e2-5HSGH.pdf>
- 2-6 Financial and Administrative Burden
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e2-6HSGH.pdf>