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Office of Fair Housing and Equal Opportunity  
Department of Housing and Urban Development

SUBMITTED VIA ONLINE PORTAL at

<https://www.federalregister.gov/documents/2023/04/25/2023-08464/nondiscrimination-on-the-basis-of-disability-updates-to-huds-section-504-regulations>

**Re: Nondiscrimination on the Basis of Disability: Updates to HUD’s Section 504 Regulations**

On behalf of The Ability Center of Greater Toledo, please accept these public comments on Updates to HUD’s Section 504 Regulations.

The Ability Center is a Center for Independent Living (CIL) serving seven counties in Northwest Ohio. Our mission is to make our community the most disability friendly in the nation by increasing independence for people with disabilities, discovering true passions, and changing the community’s perception of disability.

**I. Question for Comment 1: Definitions**

**HUD should update its definition of disability to meet the definition under the ADA; update its definition of Auxiliary Aids; and update its definition of Federal Financial Assistance.**

HUD asks whether it should update the definition of “disability” to be consistent with the definition in the 2008 ADA Amendments Act. First, HUD should update the outdated language currently in the statute to use “disability” rather than “handicap.” “Handicap” is no longer considered an acceptable term for disability. Many people are not aware that the term is outdated and are more likely to use it if it is part of a law.

Second, HUD should adopt the definition of disability found in the 2008 Americans with Disabilities Amendments Act along with the rules of construction.<sup>1</sup> One main reason that the ADA was amended in 2008 was to update this very definition, as many courts interpreted the definition of disability more narrowly than the legislature intended.<sup>2</sup> While this has not been as large of an issue under HUD’s regulations, adopting the current ADA definition and rules of construction would ensure that the broad definition of disability intended under the ADA also applies in the housing context. It also ensures consistency between the two laws.

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<sup>1</sup> 42 U.S.C. 12102; 28 C.F.R. 35.

<sup>2</sup> 24 CFR 8.3.

We also recommend that the definition of Auxiliary Aids be updated to match the definition provided in the ADA.

We recommend that the definition of “federal financial assistance” and “recipient”<sup>3</sup> be updated to include recipients of federal tax credits designed to incentivize subsidized housing such as the Low-Income Housing Tax Credit (LIHTC) and recipients of Section 8 Vouchers. There is very little subsidized housing being built today with direct funding from HUD, which limits how much accessible housing is being developed. Most new subsidized housing is being built with LIHTC, and that housing should be required to include the additional accessibility provisions required under Section 504.

Likewise, Section 8 Voucher recipients have a lot of difficulty finding accessible housing, especially landlords with accessible units who will accept vouchers. At the same time, Voucher tenants are low income and often do not have the resources to update the premises to make it accessible. Landlords who accept Section 8 Vouchers should be subject to the enhanced reasonable modification requirements found under Section 504. HUD should update the definition of “recipient” to remove the prohibition on housing assistance payments programs.

## **II. Discrimination Faced by People with Disabilities in Housing. (Comment 2)**

**The Ability Center appreciates this opportunity to give input on types of disability discrimination in housing. Our main recommendations are:**

- **Create a requirement that landlords report what accessible units are available to a centralized website;**
- **Fund housing navigators to assist people with disabilities in moving from or avoiding institutional settings;**
- **Establish a prohibition on denials of rental applications based on criminal and rental history;**
- **Establish a wait list preference for disability, especially those transitioning out of institutions;**
- **Require a lease procedure that treats behavior that is the direct result of a disability differently than behavior that is not caused by a disability, i.e. behavior resulting from a disability should not be grounds for eviction.**

### **Question for Comment 2(a): Institutional Settings**

**HUD should attempt to update its regulations to address the shortage and cost of accessible housing and require recipients of funds to update the goSection8 website with open, accessible units to better let tenants know what is available.**

For many years, The Ability Center had staff members that assisted individuals with disabilities in transitioning out of institutional settings and into community-based housing through the

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Money Follows the Person Program -- in Ohio, the Home Choice Program.<sup>4</sup> The main barriers that our consumers faced were:

- 1) finding accessible housing;
- 2) finding accessible housing that was affordable, including accessible housing that accepted Section 8 Vouchers;
- 3) ensuring that nursing homes followed their duties in ensuring a safe discharge;
- 4) coordination of services, such as HCBS services, to align with transition into housing; and
- 5) finding providers, especially home care providers.

In Ohio, there is a serious lack of accessible housing, both in the single-family home market and in the multi-family market. While the Fair Housing Act and Section 504 require new and altered housing to be accessible, most housing was built pre-Fair Housing Amendments Act and pre-Section 504. New accessible housing is now in demand for our aging population, and thus, is often competitive and costly. Also, new housing is hard to find because there is no resource that lists all new housing. Many of our transition coordinators resorted to forming one-on-one relationships with our local housing authority, Habitat for Humanity, and individual subsidized complexes in order to find housing for their consumers.

HUD should include a reporting requirement for any federally subsidized housing provider. There is a website, Gosection8.com, but it requires landlords to opt into reporting new subsidized units. Any landlord receiving federal financial assistance should be required to supply how many units they have, how many accessible units, and update the website when a unit becomes available.

Additionally, people with disabilities transitioning out of institutions should have a waitlist preference that allows them to find housing when they need it. Often, they are given a limited period of time in which to leave a nursing home or other institution and must find housing in a short period.

The risk of institutionalization is a major concern for millions of Americans with disabilities due to being priced out of housing at rates higher than that of the general population, the location in which an individual with a disability resides, and the overall lack of accessible, affordable, and community-based housing options. At times, an institution is left as the only available option that can support a person's needs.

There are many factors that may put an individual at risk of institutionalization. Of those factors, the largest barriers to securing housing often occurs because the housing market has an extremely limited supply of accessible, affordable, community—integrated housing, the cost of that housing is not comparable to the wages of the population it is intended for, and rural areas continue to be underfunded and underdeveloped.

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<sup>4</sup> Ohio Department of Medicaid, "HomeChoice", <https://medicaid.ohio.gov/families-and-individuals/citizen-programs-and-initiatives/hc/hc> (accessed 7/18/2023).

## Question for Comment 2(b)

**To help address shortages for those with mental health disabilities, HUD must address the issue of rental bans based on criminal and rental history. Assistive technology in housing will also assist those with mental health disabilities. Finally, landlords must treat behavior that violates the lease which is the result of a disability differently than that which is unconnected to a disability.**

In Ohio, HCBS Waiver services are often less available for individuals who have mental health or substance use disorders. However, many individuals cannot manage their condition and remain independent without reminders to take their medication, engage in personal hygiene, and assistance in maintaining a home. Housing that includes assistive technology to coordinate with mental health agencies and assist with these tasks and fast access to peer support, could assist people with mental health or substance abuse disorders to remain independent.

Additionally, there is a strong correlation between criminal background and mental health or substance abuse. Many housing policies prohibit individuals with a criminal background from applying for housing, which makes it incredibly difficult to find housing at all. At times, the criminal background screening policies make no distinction between a one-time non-violent offense and a long history of criminal offenses. Regulations that prohibit this kind of general screening based on criminal background, require a differentiation between types of offenses, or ensure that tenants can challenge the policy based on good behavior or circumstances could assist an individual in getting housed.

Likewise, many leases will allow landlords to evict tenants based on behavior. However, some behavior is the direct result of a disability. Ensuring that tenants have access to reasonable accommodation requests based on disability or separate due process before an eviction when behavior is the result of a disability, could assist these tenants in maintaining housing.

For example, one Ability Center client had dual mental health and autism diagnoses who was a flight risk. When he became overwhelmed, he would run away – even though his behavior was a direct result of his disability, it acted as a barrier to his maintaining stable housing. Similarly, some clients will make loud noises due to their disability. If this violates their lease, they could have difficulty maintaining stable housing – even if they could technically request a reasonable accommodation. Right now, clients must have lawyers to assert a reasonable accommodation as a defense to evict them or to assist them in making a request. However, they may not have those resources available.

## Question for Comment 2(c).

**In support of HUD restructuring their Section 504 regulations, we ask HUD to consider in what ways individuals with cognitive, intellectual, or developmental disabilities experience housing discrimination, and how to combat the barriers they encounter when looking for affordable, accessible, and community—integrated housing.**

Many people with intellectual or cognitive impairments are still turned away from housing providers who do not believe they can live independently. According to a report released by

HUD on *Rental Housing Discrimination on the Basis of Mental Disabilities*, Individuals with cognitive or intellectual disabilities were less likely than those without a disability to be told that an advertised housing unit was available and less likely to be given a reason why it wasn't available.<sup>5</sup> In addition, the overall results of the report highlighted 5 more areas where individuals with a cognitive, intellectual, or developmental disability experience discrimination when looking for housing. The report's results are as follows:<sup>6</sup>

- They were less likely to receive a response to their inquiry about housing;
- They were less likely to be told an advertised unit was available;
- They were less likely to be invited to contact the housing provider;
- They were less likely to be invited to inspect the available unit;
- And they were more likely to be encouraged to look at a different unit than the one advertised.

From this report, it is evident that individuals with cognitive, intellectual, or developmental disabilities experience discrimination when looking for housing in a variety of ways. Landlords may not want to rent to someone with a cognitive, intellectual, or developmental disability because they hold false beliefs that they are not capable of living on their own, and thus not capable of paying rent. Despite these beliefs being inaccurate and solely based on societal bias, this type of housing discrimination occurs every single day.

When evaluating and updating HUD's Section 504 regulations, HUD should consider how individuals with cognitive, intellectual, or developmental disabilities are first and foremost discriminated against when they are inquiring about potential housing opportunities before they can even apply.

Some examples of housing accommodations and discrimination are:

- Allowing a family member to co-sign a lease or pay the rent;
- Contacting the tenant and a family member or friend when it is time to pay a bill or make repairs to an apartment;
- Allowing coordinated services from a Medicaid provider like aids or assistive technology to assist a tenant;
- Ensuring that there is space for public transit, like a paratransit vehicle, to pick someone up at the door.
- Neighbor harassment, i.e. a neighbor who consistently calls the police when a paratransit vehicle comes to pick someone up or continuously calls CCS if the person has a child.

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<sup>5</sup> Study finds that people with mental disabilities experience rental housing discrimination. National Low Income Housing Coalition. (2017, September 11). <https://nlihc.org/resource/study-finds-people-mental-disabilities-experience-rental-housing-discrimination>

<sup>6</sup> Study finds that people with mental disabilities experience rental housing discrimination. National Low Income Housing Coalition. (2017, September 11). <https://nlihc.org/resource/study-finds-people-mental-disabilities-experience-rental-housing-discrimination>

## Question for Comment 2(d).

**In support of HUD restructuring their Section 504 regulations, we ask HUD to consider in what ways individuals with physical or mobility disabilities experience housing discrimination, and how to combat the barriers they encounter when looking for affordable, accessible, and community—integrated housing.**

Individuals with physical disabilities, or mobility disabilities, experience housing discrimination in similar ways to individuals with other types of disabilities. However, due to the physical nature of the disability, there are a few situations where individuals with mobility disabilities experience housing discrimination that is unique to their disability.

- Individuals with disabilities often need a second room for an aid or exercise equipment;
- Those on SSI sometimes need the payment date adjusted for their benefits check;
- Landlords often refuse to allow someone who is not on the lease a key or access code, and people who rely on aids need their aid to have access to their apartment.

Individuals with physical disabilities may have a service animal that is trained to aid them with daily tasks. Landlords who have a no pet policy are legally required to allow service animals; however, people with mobility disabilities often report that landlords are not eager to accommodate their service animal, or even rent to them in the first place when they find out they have a service animal.<sup>7</sup> In addition, individuals with mobility disabilities often report that reasonable accommodations and modifications can be difficult to obtain, even though they are also required by law.<sup>8</sup>

Landlords may believe that an individual with a mobility disability will be “too costly” to rent to, because of an inaccurate assumption that accommodations and modifications will cost an unreasonable amount of money. However, this is not the case; often the cost of the accommodation or modification is not expensive and is reasonable, hence the name “reasonable accommodation/reasonable modification.”

Other forms of housing discrimination that are experienced by individuals with physical or mobility disabilities are as follows:<sup>9</sup>

- “Steering” a blind person to a downstairs unit
- Charging late fees to a resident whose government-issued disability check arrives late.
- Not advertising the accessible units that are available;
- Requiring extra fees for service animals;
- Insisting the individual has to pay for the reasonable accommodation;

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<sup>7</sup> *Disability*. Fair Housing Law Project. (2016, September 29). <https://www.gblafairhousing.org/disability/>

<sup>8</sup> *Disability*. Fair Housing Law Project. (2016, September 29). <https://www.gblafairhousing.org/disability/>

<sup>9</sup> *Disability*. Fair Housing Law Project. (2016, September 29). <https://www.gblafairhousing.org/disability/>



- And insisting an individual with a mobility disability has to stay on the first floor when accessible units are available on other floors.

### III. Effective Communication and Auxiliary Aids and Services

#### Question for Comment 3: Effective Communication

**HUD should include a requirement that recipients of federal financial assistance provide auxiliary aids and services to tenants and other housing recipients with disabilities. All housing provider websites should be required to comply with Section 508 of the Rehabilitation Act.**

In our experience, housing providers do not know how to communicate with people with disabilities, even though the ADA requires them to provide effective communication. 28 C.F.R. 36.303. We recommend that HUD incorporate the ADA’s section on “auxiliary aids and services” into Section 504, 28 C.F.R. 36.303 (a-c). While housing providers are already required to follow it, many are not familiar with or following the ADA.

Additionally, HUD should specifically instruct federally funded housing providers that they need to provide auxiliary aids and services to people with disabilities in the application, interview, leasing, and rental payment process and ensure that they are “effectively communicating” with tenants with disabilities. *Id.* For example, if a tenant who is blind may need braille or electronic notices and need to pay rent over the phone. A tenant who has an intellectual disability may need to have their guardian contacted when rent is due. Even if this is not the normal process of a housing provider, they need to provide notices and allow rental payments through alternative means that allow for effective communication.

Additional auxiliary aid and services not mentioned specifically in the ADA but that are often used today are cell phone and e-mail communication. Many people who are deaf and hard of hearing or those with intellectual disabilities may need to communicate via text message or e-mail. Cell phone, text, and e-mail communication should be included in HUD’s list of auxiliary aids and services that housing providers are required to allow.

One area that deaf individuals report housing discrimination occurring is when they utilize assistive technology to communicate to a realtor, agent, or landlord. According to the Equal Rights Center, Deaf individuals using IP Relay faced significantly longer hold times and were more likely to be disconnected from a call than were hearing people when they were inquiring about an available unit.

Section 508 sets out the requirements for accessible websites and other technology for federal agencies. Housing providers are already required under the ADA to have accessible websites, apps, and other mobile devices. *Id.* Section 504 should ensure that all housing provider technology complies with Section 508.

### IV. Shortage of Accessible Units (Comment 4)

#### Question for Comment 4(a):

**HUD should double the number of required Mobility Impaired and Sensory Impaired Units and mandate that these be separate units, not combined. HUD should also establish visitability requirements for single-family housing created by organizations that received federal financial assistance.**

It is common knowledge that, even after over a decade after the Fair Housing Act was amended to include universal design guidelines, there is still a serious shortage of accessible housing available to individuals with disabilities. 62.9% of rental units in Ohio are inaccessible.<sup>1012</sup> While our community discusses the need for additional accessible housing, landlords complain that they cannot find tenants for the accessible units that they have.

Accessibility can act as a barrier to participation in HUD programs for some individuals with disabilities. Some people with disabilities cannot move out of institutional settings without an accessible home to move into. Some Voucher Recipients with disabilities cannot use the vouchers if they are unable to find a landlord with an accessible unit that will accept the vouchers or if the rental limit is above what a voucher can cover.

The limited required percentage of mobility and sensory accessible units under Section 504 limits a person with a disabilities' ability to participate in and reap the benefits of living independently in their community. Lack of accessibility is a major barrier to the participation in various HUD-assisted housing programs by persons with disabilities because if there are no accessible units, it is likely that a person with a disability will not even consider living there. Accessibility is not just a feature, but rather it is the difference between being able to live on one's own and being forced to live somewhere else.

There are many challenges that households face in finding available affordable and accessible housing in their respective communities. Three areas where challenges present greater barriers to securing adequate affordable and accessible housing are as follows:<sup>11</sup>

- No centralized place exists to find and apply for accessible and affordable housing;
- Older buildings lack sufficient resources for adequate maintenance and reasonable accommodations;
- And the reasonable accommodation process is burdensome to administer and requires knowledge and persistence from residents.

When HUD is examining and updating their Section 504 requirements, the data they should be relying on should come from common sources, but also from Centers for Independent Living (CILs) and other disability rights related organizations. Because of the limited and accurate data on how much accessible, affordable, and community—integrated housing exists in America's

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<sup>10</sup> Ohio Housing Finance Agency, FY21 Housing Needs Assessment, "How Ohio Compares," available at <https://ohiohome.org/research/howohiocompares-hna.aspx#demographics>.

<sup>11</sup> *Three obstacles federally assisted housing programs need to overcome to better serve residents with disabilities*. Urban Institute. (2022, February 4). <https://www.urban.org/urban-wire/three-obstacles-federally-assisted-housing-programs-need-overcome-better-serve-residents-disabilities>



communities, it is difficult to determine a true percentage of people affected by the accessible housing shortage. However, there are enough reports and data based off lived experiences from disability related organizations that could further aid HUD in its ability to identify why and how they can combat barriers to securing such housing.

## **V. Housing Choice Vouchers (Comment 5)**

### **Question for Comment 5(a): Housing Choice Voucher Programs, 28 C.F.R. 8.28**

**HUD should incentivize landlords to accept Section 8 Vouchers and require those landlords to meet other Section 504 requirements. That said, mainstreaming, NED I, and NED II Vouchers are an incredible resource for individuals with disabilities seeking accessible, affordable housing, especially those transitioning out of institutional living.**

HUD makes quite a few vouchers available for people with disabilities, which is the largest help of any other subsidy in finding affordable, accessible housing for people with disabilities – especially those transitioning out of institutions. Often, those transitioning out of institutional settings need affordable housing but do not want to live in traditional public housing authority subsidized housing. Much PHA housing is old and has conditions issues, is riddled with crime, and is centered in the inner city. Many people transitioning out of institutions want to live in the suburbs or a rural area that is safe and in good condition. The best way to transition people out of institutions and into community- based housing was through mainstreaming, NED 1, and NED II Vouchers.

However, it was also incredibly difficult to find landlords who would accept Section 8 Vouchers, especially those who had accessible housing. As noted above, because good quality, accessible housing is in short supply and high demand, it tends to be above market price, and landlords do not need to accept Vouchers in order to get tenants. We also operate a home modification program, and despite the legal requirement that landlords allow home modifications, many landlords would still refuse to allow us to install a ramp on the property or would demand that it be removed at the conclusion of the tenancy.

Because we had sophisticated housing navigators and an educated PHA, our transition coordinators were often successful in requesting extensions to search for accessible housing; seeking exception rent under the exception payments standard; and asking for a second bedroom for a PCA or exercise equipment. These tools were extremely helpful in assisting us in finding housing for consumers. However, the ordinary consumer is not going to have a housing advocate assisting them in finding housing and requesting those accommodations. Most tenants would need assistance in understanding and using these tools.

## **V. Availability of housing in Rural Communities (Comment 5(b))**

### **Question for Comment 5(b): Affordable Accessible Units in Rural Areas**

**In support of HUD restructuring their Section 504 regulations, we ask HUD to consider how rural communities experience challenges to securing affordable, accessible, community-integrated housing based on the population density, lack of funding and**

**services, and lack of basic infrastructure. We also ask HUD to consider how residents with disabilities of urban and suburban communities with a shortage of accessible, affordable, and community integrated housing experience housing insecurity due to inflated costs of renting.**

There are many fewer accessible units in rural areas, as those areas have built even less new housing than Ohio's urban areas. Even for those built with government subsidy programs, like USDA housing, much of the housing was built before accessibility was mandated and reasonable modifications require a fight with the landlord. Legal aid and fair housing programs are also less common in rural areas, so USDA housing needs a better method of enforcement of reasonable modification requests for tenants who do not have the resources to hire an attorney.

Rural communities, areas that are geographically isolated, and remote areas have an even greater shortage of accessible, affordable, and community—integrated housing than urban and suburban areas. Not only is the infrastructure in rural communities old and difficult or impossible to modify, but the funding they receive to build new multifamily units is far less than in urban areas.<sup>12</sup> In addition, most publicity, program initiatives, and funding for housing for persons with a disability has been directed at urban and suburban areas.<sup>13</sup> Because of the lack of funding geared towards rural and geographically isolated communities for housing assistance, most individuals who live in a rural community with a disability will be subjected to inadequate living conditions and settings that do not meet their needs to live independently in their community. In addition to an incredible lack of accessible housing in rural communities, density is another challenge. Even though more people live in metropolitan areas, the percentage of individuals with disabilities in rural areas comprise a greater population.<sup>14</sup> Therefore, in rural areas the need for accessible housing is higher than in metropolitan areas due to the percentage of the population with a disability.

For urban and suburban areas, the lack of accessible, affordable, and community—integrated housing is still very much a large barrier to being able to live independently in one's community. In the last two decades, advocacy efforts for accessible/affordable housing have increased because the new multifamily units being built in urban and suburban areas still lack basic accessibility features, and the rent for those buildings is pricing out low-income tenants with disabilities.<sup>15</sup> Due to these high inflated costs of rent in urban and suburban areas, residents with

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<sup>12</sup> Housing Resources Strengthen Rural Communities - national low income ... (n.d.-a). [https://nlihc.org/sites/default/files/CHCDF\\_BBB-Rural\\_Final\\_030322.pdf](https://nlihc.org/sites/default/files/CHCDF_BBB-Rural_Final_030322.pdf)

von Reichert, C., & Berry, E. H. (2019, October). *Rural-urban patterns of disability: The Role of Migration*. Population, space and place. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7985984/>

von Reichert, C., & Berry, E. H. (2019, October). *Rural-urban patterns of disability: The Role of Migration*. Population, space and place. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7985984/>

Bryant, M., 28, T. T. on M., & Threadgill, T. (2022, March 23). *For renters with disabilities, many homes aren't accessible*. Big If True. <https://www.bigiftrue.org/2022/03/23/accessible-affordable-housing/>

disabilities often are forced to move out of the communities they have lived for a large majority of their life, or are forced to seek housing in inadequate settings.

As far as we are aware, there are no proven strategies to get landlords to participate in the Section 8 Voucher program. Outreach and removing red tape, as well as mandating voucher acceptance, are strategies to try.

#### **VI. Discrimination on the Basis of Accessibility in Design (Comments 6-9):**

**The Ability Center thanks HUD for its requests for input on the current Section 504 Design & Construction Standards. Answers to specific questions are below. Our main recommendations are:**

- **Update the current Section 504 Design and Construction standards to meet updated accessibility based on current technology (including larger durable medical equipment) and current design standards;**
- **Ensure that existing buildings have a duty to update their premises for accessibility over time;**
- **Most common and public use areas should be required to meet the standards of the Americans with Disabilities Act, even if they are not open to the public;**
- **Ensure that accessibility standards apply to single family housing, including individual homes, condominiums and tiny homes;**
- **Double the percentage of mobility and sensory units required for new construction;**
- **Work with the DOJ to create one, common accessibility standard for developers that adopts the most extensive level of accessibility.**

#### **Question for Comment 6: Competing Architectural Accessibility Standards**

First, HUD should adopt accessibility standards for single family homes that receive federal financial assistance or LIHTC. More and more, we are seeing subsidized single-family homes, tiny homes, and condos being built in addition to multi-family housing. Any housing that is subsidized and receives federal financial assistance or tax credits should be required to meet accessibility requirements. There are a number of visitability and aging in place standards that could be adopted for HUD's purposes.<sup>16</sup>

Second, HUD should require that existing buildings be updated for accessibility over time. Under current regulations, if alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75% more of the replacement cost, the provisions of 8.22 shall apply. 24 C.F.R. 8.23. With the current shortage of accessible units, this standard is too high. Rather than just "alterations," HUD should require accessibility updates during all major renovations to projects.

Too many landlords claim that building renovations are only maintenance that do not trigger updates for accessibility. HUD should ensure that updates, even those that do not count as "alterations," trigger accessibility updates to federally financed apartment complexes. The

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Andrew Kochera, "In Brief: Accessibility and Visitability Features in Single-family Homes: A Review of State and Local Activity," AARP Public Policy Institute, March 2002 (available at <https://www.aarp.org/home-garden/housing/info-2002/aresearch-import-796-INB48.html>)(accessed 7/24/2023).

Americans with Disabilities Act provides a “readily achievable barrier removal” standard that requires updates for accessibility over time for existing buildings, incorporated into a buildings maintenance and update schedule. 28 C.F.R. 36. The ADA also contains a list of priorities for accessibility updates, beginning with an accessible entrance to a building. HUD should include a similar standard as part of Section 504.

### **Question for Comment 7: HUD’s Deeming Notice**

**We ask HUD to work with the DOJ to release a common standard that incorporates the additional accessibility of the UFAS.**

We do not have any input on additional UFAS provisions that provide enhanced accessibility beyond the ADA Standards. However, we urge HUD to ensure that the standards it requires for recipients of federal financial assistance do not meet a lesser accessibility standard than the UFAS.

In fact, we urge HUD to work with the DOJ to create one common accessibility standard for state and local government housing that receives federal financial assistance that combines the requirements of the UFAS and 2010 ADA Standards for Accessible Design in a way that enhances the accessibility of all new construction.

We are concerned that HUD’s recent deeming notice will only create confusion among developers of housing – confusion that will ultimately result in fewer accessible housing units. Often, when a housing provider fails to follow the correct code, even an enforcement action can fail to create the additional accessibility required by code, as it is too late to renovate housing appropriately, and instead, developers are often required to create accessibility funds for future accessible housing. Confusion, then, often results in less accessibility overall.

Instead of deeming the 2010 ADA Standards for Accessible Design a safe harbor, we urge HUD to work with the DOJ to create one standard that adopts the most accessible pieces of each code in order to enhance the accessibility of new housing and iron out any confusion among housing developers.

### **Question for Comment 8(a): Accessibility Barriers in Public and Common Use Areas**

Barriers that individuals with disabilities face in public and common use areas of housing and non-housing facilities vary based on the type and layout of the public and common use area. Below are a few examples of barriers faced in public and common use areas and solutions to those barriers:

- Common Rooms or Club Rooms

Housing complexes that have common rooms should be required to meet the requirement of the 2010 ADA standards for accessible design regarding seating and any other specifically designed purposes such as kitchens, etc.

- Playgrounds

Housing complexes that provide playgrounds or play areas should also be required to meet the 2010 ADA Standards for Play Areas, Section 1008, and have a certain percentage of play equipment be adaptable play equipment.

- Recreation and Fitness Facilities:

HUD should adopt the requirements for fitness areas found in the 2010 ADA Standards for Accessible Design, which are more detailed than the UFAS. 2010 Standards for Accessible Design at 236. However, HUD should also provide regulations that require adaptive equipment. Gyms and recreation centers meant for fitness purposes should ideally have an adaptive version of each type of machine. If it is not feasible, the gym should at least have adaptive versions of those most used machines, such as bicycles, or have a certain percentage of machines accessible to those with disabilities.

- Laundry Rooms:

Laundry Rooms, when not provided in units in a multifamily complex, are often located in areas such as the basement, or are far from the units. For an individual with a mobility disability, commuting to the laundry room with laundry baskets can be a challenge. Though it is not feasible in every case, having the laundry in unit for the accessible units could aid individuals with mobility disabilities by not requiring them to commute long distances with their laundry.

- Building Entrances

Above and beyond what is currently required, we recommend that all doors to a common or public use area be automatic and be wider than what is currently required, 36 rather than 32 inches. No matter the door hardware or weight, automatic doors are much more accessible to individuals with disabilities than manual doors, and one of the most common calls we receive as a Center for Independent Living involve automatic doors.

- Parking

Parking requirements should match that of the 2010 ADA Standards for Accessible Design, Chapter 5. Currently, Fair Housing parking requirements only require one accessible parking spot. However, accessible parking is one of the most common requests that we receive for reasonable accommodation. Accessible parking requirements for housing providers should match that of the ADA.

Housing that uses on-street parking should meet the Public Right of Way Guidelines developed by the U.S. Access Board and should allow for designated accessible parking for those tenants who need it.

### **Question for Comment 8(b): Units for those with Mobility Impairments**

Section 504 still offers a good, standard accessibility standard. However, there are a few updates that can be made to make it more effective:

- The width of doors and hallways should be expanded to 36". Over the years, wheelchairs have gotten larger either due to more electric wheelchairs or people getting larger. Thus, door widths and hallway widths need to be widened to allow extra mobility for the room.
- Regulations should offer guidance for accessibility when there are kitchen islands. Kitchen islands were not a common feature when the regulations were passed, but they are now popular and a common situation that causes difficulty accessing kitchens.
- Similarly, any seating for kitchen islands should be mandated to meet an accessible design, rather than allowing for barstools, which are not accessible;
- Mobility units, if on a higher floor, should be the closest unit to an elevator.
- HUD-funded town-house style housing should not fall under an exception to accessibility requirements due to the lack of an elevator. Townhouse style housing should be required to have a first- floor bedroom and first- floor full bathroom in order to be accessible to those with disabilities.
- Removing impediments to safety can cause anxiety, stress, and promote easy access to all features and elements. For example, consider building units that do not have center kitchen islands, and have plans that are uniformly open.
- Limiting the number of doors in the unit and ensuring the pressure it takes to open the door(s) is minimized.

### **Question for Comment 8 (c): Units for those with Vision and Hearing Disabilities**

For individuals who are blind or experience low vision, certain design features and assistive technology not required by ADA regulations could improve the accessibility in designated accessible units. Features and assistive technology to consider are as follows:<sup>17</sup>

- Keep hallways, stairs, and entrances well lit;
- Ensure lighting that does not result in glares;
- Most, if not all, rooms in the unit should have windows that provide plenty of natural light. In addition, they should be equipped with blind-fold curtains to adjust the amount of light over the course of the day;
- All lights in the house should be at the same height to avoid unnecessary shadow formations that can confuse the perception of a person with low vision;
- Lights should be installed in cupboards and closets;
- Screens such as televisions should have designated areas where light does not directly reflect off of them;
- Doorknobs should be of contrasting color with the door;
- Edges of every step of stairs should be painted with a contrasting color;
- Handrails should be added along the wall to any stairs or changes in elevation within the unit;
- And showers, bathtubs, and toilets should be of a different color than the bathroom wall;

<sup>17</sup> Alokita. (2021, October 5). *Making a house accessible for a visually impaired person*. WeCapable. <https://wecapable.com/adaptations-house-office-visually-impaired-person/>



- Avoid designs that have full walls made of glass or windows.

For individuals who are Deaf, assistive technology in particular can increase the accessibility of designated accessible units. Recommendations for additional features are as follows:<sup>18</sup>

- Soft lighting and colors;
- Replacing auditory alarms with visual alarms;
- Motion activated lights;
- Carpeting instead of wood floors, as carpet has echo-dampening properties;
- And implementing other assistive technology such as a hearing loop.

### **Question for Comment 8(d): Units for Aging Individuals**

The Ability Center serves all people with disabilities, including those whose disabilities are due to aging. Many of the recommendations above also apply to units for aging individuals. However, many people who are aging wish to stay in their own homes, to age in place.

Aging in place is a priority of many Americans who do not want to leave the current location and home in which they live. The idea of having to move out of a unit or home that one has lived for many years can be stressful and incredibly challenging, especially when there is an immense shortage in accessible, affordable, and community—integrated housing available in the housing market. Additional accessibility recommendations that would help individuals age in place are as follows:<sup>19</sup>

- Reduce fall hazards, place slip resistant material or mats on wood floors or surfaces that may be slippery.
- Install carpet flooring instead of wood flooring to avoid surfaces that may result in falling or injury;
- Replace handles on all doors and faucets with ones that do not require twisting, tight grasping, or pinching of the wrist;
- Install grab bars near toilets and in the shower;
- Enhanced lighting and windows for natural light;
- Ensure cabinets and closets are equipped with lighting;
- Add additional outlets so extension cords can be eliminated;
- And consider auditory or visual alarms for all appliances.

### **Question for Comment 8(f): The Failure to Maintain Accessible Features**

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Staff, P. by E. (2019, May 9). *How to create an accessible home for deaf and hard of hearing people*. Hearing Like Me. <https://www.hearinglikeme.com/accessible-home-for-deaf-and-hard-of-hearing-people/#:~:text=Echo%2DDampening%20Flooring%2C%20Ceilings%20and,has%20excellent%20echo%2Ddampening%20properties.>

U.S. Department of Health and Human Services. (n.d.). *Aging in place: Tips on making home safe and accessible*. National Institute on Aging. <https://www.nia.nih.gov/health/infographics/aging-place-tips-making-home-safe-and-accessible>

The failure of housing providers to maintain accessibility features is a large issue in providing accessible housing. The most common issue that we hear of are broken elevators. For a person with a disability living on a higher level, a broken elevator can mean the difference between being able to go to work or not for the day, and there have been lawsuits against buildings with regular elevator breakages or where repairs took unreasonable periods of time. The failure to maintain accessible features can be a major barrier to accessing housing for those with disabilities.<sup>20</sup>

### **Question for Comment 9(b): Design Approaches in Disaster Response Situations**

#### **The P—CEP design approach enables communities and individuals to support and understand the needs of individuals with disabilities in different emergency situations.**

An approach denoted as Person—Centered Emergency Preparedness (P—CEP) has gained considerable traction in recent years as a design approach in disaster response, mitigation, and recovery situations. P—CEP was co-designed and tested with people with disabilities, and enables people to self-assess their preparedness, capabilities and support needs and develop a personal emergency plan for how they will: (a) manage their support needs in emergencies; and (b) act together with their support network before, during and after a disaster.<sup>21</sup>

P—CEP is being utilized to advance individual and shared responsibilities for communities through the incremental development of awareness about and responsiveness to the support needs that people with disabilities have in emergencies.<sup>22</sup> When considering issues of accessibility within the context of disaster relief, HUD should investigate the P—CEP design approach, as it addresses ways to combat issues to accessibility in emergency situations.

## **VII. Reasonable Accommodations and Modifications (Comment 10)**

### **Question for Comment 10: Reasonable Accommodation Examples**

The Ability Center is in full support of HUD updating 504 regulations to include examples of common reasonable accommodations. Despite the length of time that this law has been in effect, many housing providers will not provide accommodations without official action.

Reasonable accommodations vary from person to person depending on need. Below are examples of the most common reasonable accommodations that individuals with disabilities may request depending on their specific needs:

#### **Individuals who are blind:**

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<sup>20</sup> <https://www.disabilityrightspa.org/wp-content/uploads/2021/06/Final-Copy-Elevator.pdf>

<sup>21</sup> Home. Collaborating 4 Inclusion. (n.d.). [https://collaborating4inclusion.org/home/pcep/#:~:text=Co%2Ddesigned%20and%20tested%20with,b\)%20act%20together%20with%20their](https://collaborating4inclusion.org/home/pcep/#:~:text=Co%2Ddesigned%20and%20tested%20with,b)%20act%20together%20with%20their)

<sup>22</sup> Villeneuve, M. (2022, February 24). *Disability-inclusive emergency planning: Person-centered emergency preparedness*. Oxford Research Encyclopedia of Global Public Health. <https://oxfordre.com/publichealth/display/10.1093/acrefore/9780190632366.001.0001/acrefore-9780190632366-e-343;jsessionid=519610243FB9418F7B8C51191B71B216>

- Permitting an applicant to submit a housing application via a different means. IE: using technology or braille printed documents.
- An individual who is blind may want an alarm on their door to know when it is opening and closing. (Especially if they have children who come and go).
- An individual who is blind may want visual alarms to be replaced with auditory alarms.

#### **Deaf individuals:**

- A deaf individual may not be able to hear the doorbell, fire alarm, or other sound alerts in their home. They may request visual alarms to replace all auditory alarms.
- A deaf individual may request an ASL interpreter when meeting with the housing provider or attending any activities/meetings held by the housing provider.
- Permitting an applicant to submit a housing application via a different means other than in-person; such as electronically.
- Communicating with the landlord via text or a cell phone.

#### **Individuals with cognitive, intellectual, or developmental disabilities:**

- If the disability causes sensitivity to sound, an individual may request a unit on the top floor to be above the sound from below.
- Granting assistance in filling out the rental application.
- Allowing a co-signer on the lease and co-communicating with that person for all notices associated with the tenancy;
- Allowing aids and county workers to have a key or fob to the apartment.

#### **Individuals with mental health or substance use disabilities:**

- Relaxing standards for an applicant's employment, rental, and criminal history.
- Granting assistance in filling out the rental application.
- Allowing an individual to transfer to a quieter unit if noise exacerbates his or her mental illness.
- Enabling the use of a separate entrance to the building to limit interactions with other tenants.

#### **Individuals with mobility disabilities:**

- An individual may request that in unit laundry be side by side and not stacked upon each other. Or they may ask for an assistive device to aid with reach if stacked laundry units are the only feasible option.
- An individual may request the carpet to be removed with appropriate flooring, as carpet can make it difficult to maneuver a wheelchair or other mobility aids.
- There is no accessible parking spaces close to the specific unit of someone with a mobility disability. They may ask for an accommodation that would provide them with a spot closer to their unit so they can limit the length of their commute to the car and vice versa.

- A person with a mobility disability may feel it is dangerous to walk on sidewalks that are covered by snow or ice. The person may request that the housing provider ensure that after a weather event the sidewalks are properly cleared.
- Maintaining a lease during periods where a person needs to go to a nursing home;
- Allowing aids to have keys or fobs to get into the building.
- Allowing service and emotional support to animals.

## VIII. Intersectionality and Disability Discrimination (Comment 13)

### Question for Comment 13(a): Intersectional Discrimination

**While there is not much data available, persons of color who also have disabilities are even more likely to face housing discrimination than white individuals with disabilities.**

Many individuals with disabilities that are also people of color—especially Black, Indigenous, and Latinx people—are disproportionately likely to have low incomes and face greater challenges finding housing they can afford.<sup>23</sup> Federal, state, and local governments carried out a range of policies that increased segregation, such as refusing mortgages in Black neighborhoods (redlining) and funding development of suburban housing for white families only.<sup>24</sup> Such practices and laws affected the areas in which a person of color could live, effectively ensuring most people of color would reside in low-opportunity neighborhoods. Because housing segregation was an intentional practice, policymakers devalued and disinvested in these communities by denying them equal access to quality housing, adequate funding, good job opportunities, and healthcare access.<sup>25</sup>

Historical laws and practices that resulted in housing discrimination have lasting effects in society. Therefore, the barriers and housing discrimination faced by people of color with disabilities are rooted in more than one area of injustice and will require systemic approaches from multiple avenues to combat. Because advocacy in these areas is often done in silos, data regarding intersectionality can be difficult to find.

Anecdotally, discriminatory zoning policies that keep out group homes are more likely to be applied to group homes with residents who are of color or who are run by a person of color than those run by white individuals and where residents are white individuals with disabilities.

There is some data regarding the intersection of discrimination on the basis of a hearing disability and on being a person of color. There is considerable data that demonstrates how Deaf individuals are discriminated against in the housing market, and it is reasonable to assume that when a Deaf person is also a member of another protected group, they may be even more susceptible to experiencing housing discrimination because of societal biases surrounding

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*Disability justice isn't possible without housing justice.* Urban Institute. (2023, March 1). <https://www.urban.org/urban-wire/disability-justice-isnt-possible-without-housing-justice>

Park, S. (2023, May 8). *Why Fair Housing is key to systemic equality*: ACLU. American Civil Liberties Union. <https://www.aclu.org/news/racial-justice/why-fair-housing-is-key-to-systemic-equality>

*Racial inequities in housing.* Opportunity Starts at Home. (2020, November 4). <https://www.opportunityhome.org/resources/racial-equity-housing/>

intersectionality. For example, Black Deaf people experience double prejudice against them in terms of their lease and can request it to be given to them in a different format. ([https://www.hud.gov/sites/dfiles/FHEO/documents/RA-RM\\_Website\\_Examples.pdf](https://www.hud.gov/sites/dfiles/FHEO/documents/RA-RM_Website_Examples.pdf)) racial discrimination and communication barriers.<sup>26</sup>

## IX. Conclusion

Updates to HUD's Section 504 regulations will be beneficial to millions of Americans with disabilities who currently struggle to find affordable, accessible, and community—integrated

housing and who experience housing discrimination. For too long individuals with disabilities have experienced unfair and unequal access to securing adequate housing in their communities, and we look forward to the commitment HUD has made to tackle barriers to housing access by updating their Section 504 regulations.

On behalf of The Ability Center of Greater Toledo, thank you for this opportunity to submit comments.

Sincerely,

Katie Hunt Thomas  
Attorney and Director of Advocacy

Sally Fish  
Disability Rights Advocate

Jordan Slutsky  
Disability Rights Intern

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*Black deaf history.* Black History Month - Gabriel Cardenas - Texas School for the Deaf. (n.d.).  
[https://www.tsd.state.tx.us/apps/pages/Deaf\\_Black\\_History](https://www.tsd.state.tx.us/apps/pages/Deaf_Black_History)