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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIFTH DISTRICT

PEGGY TROIANO,

Petitioner/Appellant,

v.

DCA Case No.: 15-3071

HERNANDO COUNTY
HOUSING AUTHORITY,

Respondent/Appellee.

_____ /

APPELLANT'S AMENDED APPENDIX TO THE INITIAL BRIEF

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APPENDIX A

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PEGGY TROIANO,

Petitioner,

v.

HERNANDO COUNTY HOUSING
AUTHORITY,

Respondent.

HUD Case No. 04-15-0032-8

FCHR Case No. 2015H0078

DOAH Case No. 14-6140

FCHR Order No. 15-049

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM A DISCRIMINATORY HOUSING PRACTICE**

Preliminary Matters

Petitioner Peggy Troiano filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2014), alleging that Respondent Hernando County Housing Authority committed a discriminatory housing practice on the basis of Petitioner's disability / handicap by denying Petitioner a tenant-based (Section 8) housing voucher in the instance in which Petitioner's daughter would serve as Petitioner's live-in aide, while both lived in a house owned by Petitioner's daughter.

The allegations set forth in the complaint were investigated, and, on December 4, 2014, the Executive Director issued a determination finding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioner filed a Petition for Relief from a Discriminatory Housing Practice and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Brooksville, Florida, on February 13, 2015, before Administrative Law Judge James H. Peterson, III.

Judge Peterson issued a Recommended Order of dismissal, dated May 22, 2015.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

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Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order, in a 46-page document, entitled "Exception," received by the Commission on or about June 3, 2015.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2014); see, also, Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014), McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012) and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

A review of Petitioner's exceptions document suggests that a large portion of the document does not comply with this statutory provision.

Petitioner's document does specifically identify alleged "misstatements" in Recommended Order, ¶ 6, 8, 10, 12, 13, 15, 17, 18, 25, 26, 29, 30, 31, 34 and 35, resulting in exceptions to facts found, facts not found and inferences drawn from the evidence presented. (The reference to Recommended Order, ¶ 25, identifies a faulty citation to the Code of Federal Regulations.) Petitioner's exceptions document also excepts to the credibility of the testimony presented.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005), Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011) and Taylor, *supra*.

In addition, it has been stated, "The ultimate question of the existence of discrimination is a question of fact." Florida Department of Community Affairs v.

Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010), Eaves, supra, and Taylor, supra.

Petitioner's exceptions are rejected.

Dismissal

The Petition for Relief and Housing Discrimination Complaint are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 31 day of July, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Michael Keller, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Sandra Turner

Filed this 31 day of July, 2015,
in Tallahassee, Florida.

Tommy Barton
Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Peggy Troiano
15141 Pomp Parkway
Weeki Wachee, FL 34614

Hernando County Housing Authority
c/o LaShawnda K. Jackson, Esq.
Rumberger, Kirk & Caldwell, P.A.
300 South Orange Avenue, Suite 1400
Orlando, FL 32835

James H. Peterson, III, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 31 day of July, 2015.

By: Tammy Barton
Clerk of the Commission
Florida Commission on Human Relations

APPENDIX B

State of Florida
Division of Administrative Hearings

Rick Scott
Governor

Robert S. Cohen
Director and Chief Judge

Claudia Lladó
Clerk of the Division



David M. Maloney
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

May 22, 2015

Tammy Barton, Agency Clerk
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399

Re: PEGGY TROIANO vs. HERNANDO COUNTY HOUSING AUTHORITY,
DOAH Case No. 14-6140

Dear Ms. Barton:

The Recommended Order has been transmitted in electronic format to the registered eALJ users and is enclosed for the non-registered parties in the referenced case. Also, enclosed is the two-volume Transcript, together with the Petitioner's Exhibits lettered P-A, P-D, P-F, P-H through P-L, P-N, P-Q, P-S, P-T, P-Y, and P-BB through P-FF; Respondent's Exhibits lettered R-A through R-GG; and a joint exhibit numbered Joint-1. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

As required by section 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order within 15 days of its rendition. Any exceptions to the Recommended Order filed with the agency shall be forwarded to the Division of Administrative Hearings with the Final Order.

Sincerely,

JAMES H. PETERSON, III
Administrative Law Judge

JHP/mp
Enclosures

cc: LaShawnda K. Jackson, Esquire (eServed)
Peggy Troiano (eServed)
Cheyanne Costilla, General Counsel

The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060
Administrative Law (850) 488-9675 * Fax Filing (850) 921-6847
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www.doah.state.fl.us

000162

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PEGGY TROIANO,

Petitioner,

vs.

Case No. 14-6140

HERNANDO COUNTY HOUSING
AUTHORITY,

Respondent.

_____ /

RECOMMENDED ORDER

A final hearing was conducted in this case on February 13, 2015, in Brooksville, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Peggy Troiano, pro se
15141 Pomp Parkway
Weeki Wachee, Florida 34614

For Respondent: LaShawnda K. Jackson, Esquire
Rumberger, Kirk & Caldwell, P.A.
300 South Orange Avenue, Suite 1400
Orlando, Florida 32835

STATEMENT OF THE ISSUE

Whether the Hernando County Housing Authority (Respondent) unlawfully engaged in a discriminatory housing practice against Peggy Troiano (Petitioner) on the basis of her disability by

refusing to provide Section 8 funding for a housing unit being occupied by Petitioner and the housing unit's owner, Petitioner's daughter, Julia Williams.

PRELIMINARY STATEMENT

On October 8, 2014, Petitioner filed a Housing Discrimination Complaint (Complaint) against the Hernando County Housing Authority with the U.S. Department of Urban Development (HUD). Thereafter, the Complaint was forwarded to the Florida Commission on Human Rights (Commission) for investigation. According to the Complaint, on August 21, 2014, Petitioner was issued a notice stating that her Housing Assistance Contract under the Section 8 program will be terminated, effective September 30, 2014, because the "unit is occupied by its owner or by a person with interest in the unit." The Complaint further states that on September 8, 2014, Petitioner submitted a reasonable accommodation request to have her voucher reinstated to her current residence [owned by her daughter] until Petitioner could locate a home that would meet her medical needs. The Complaint alleges that Respondent discriminated against Petitioner on the basis of her disability.

Following completion of its investigation, the Commission issued a Determination dated November 24, 2014, finding "that there is not reasonable cause to believe that a discriminatory housing practice occurred." On December 4, 2014, the Commission

mailed Petitioner a Notice of Determination of No Cause (Notice) on the Complaint noting that the Commission and HUD "administer the Fair Housing Act . . . [and that] [b]ased on the evidence obtained during the investigation, the [Commission] has determined that reasonable cause does not exist to believe that a discriminatory housing practice has occurred." The Notice referenced the Florida Fair Housing Act, as well as Florida Administrative Code Rule 60Y-8.001 and chapter 60Y-4, and advised Petitioner of her right to file a petition for relief for an administrative proceeding on her Complaint within 30 days from the date of service of the Notice, or a civil action within two years from the alleged discriminatory housing practice. Petitioner timely filed a petition (Petition for Relief) with the Commission on the Commission's form reiterating the allegations of her Complaint.

On December 29, 2014, the Commission filed a Transmittal of Petition with the Division of Administrative Hearings (DOAH) for assignment of an administrative law judge to conduct an administrative hearing on Petitioner's Petition for Relief.

At the administrative hearing held on February 13, 2015, with the help of her daughter, Julia Williams, Petitioner appeared by phone and presented the testimony of one witness, testified on her own behalf, and offered 18 pre-marked exhibits received into evidence as Exhibits P-A, P-D, P-F, P-H through

P-L, P-N, P-Q, P-S, P-T, P-Y, and P-BB through P-FF. Respondent presented the testimony of two witnesses and offered 33 pre-marked exhibits received into evidence as Exhibits R-A through R-GG. In addition, Exhibit Joint-1 was received into evidence. All exhibits were received into evidence with the caveat that, although hearsay in the exhibits could be used as corroborative evidence, hearsay, alone, could not be relied upon to support a finding of fact.

The hearing concluded on February 13, 2015. The proceedings were recorded and a transcript was ordered. The parties were given 30 days from the filing of the transcript within which to file their proposed recommended orders. A two-volume Transcript of the proceeding was filed March 13, 2014. The parties timely filed their respective Proposed Recommended Orders on April 13, 2015, both of which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all relevant times, Petitioner was an individual participant in a tenant-based voucher arrangement under the Section 8 Housing Program funded by HUD and administered by Respondent.

2. Petitioner is an individual claiming that she is disabled because of a toxic injury that requires her to live isolated in a non-toxic environment. Respondent does not

contest Petitioner's claim of disability and it is, therefore, found that Petitioner is disabled or handicapped within the meaning of applicable law.

3. Julia Williams is Petitioner's daughter who, at all relevant times, owned the house located at 15141 Pomp Parkway, Weeki Wachee, Hernando County, Florida ("15141 Pomp Parkway unit"). Ms. Williams is specially trained to deal with toxic injury and is paid through a federally-funded, consumer-directed program to provide assistance to Petitioner.

4. Respondent is a public housing agency that administers the Section 8 Housing Program as part of the Housing and Community Development Act of 1974, which recodified the U.S. Housing Act of 1937. As a recipient of funding from HUD for its Section 8 Program, Respondent is required to comply with HUD Section 8 regulations, as well as all Federal, State, and local fair housing laws and regulations.

5. In order to receive funding from HUD, Respondent is required to sign an annual contributions contract (ACC) wherein it agrees to follow the Code of Federal Regulations (C.F.R.). If Respondent does not follow the C.F.R. or HUD's guidelines, HUD has the right to terminate Respondent's Section 8 program funding. In addition, HUD could make Respondent repay any funding used for ineligible housing.

6. On March 17, 2014, during the annual reexamination for her Section 8 voucher, Petitioner signed, under the penalty of perjury, a summary report which identified her as the only household member permitted to live in any unit under her Section 8 voucher.

7. Around the time of the annual reexamination, Petitioner was living at a unit on Philatelic Drive with plans to move into and rent a unit at 15141 Pomp Parkway. The Pomp Parkway unit was owned, but not being occupied, by Petitioner's daughter Julia Williams.

8. In April of 2014, Petitioner asked Respondent for permission to rent the unit from her daughter. Petitioner and her daughter spoke with Respondent's officials about her request.

9. Generally, a public housing agency, such as Respondent, cannot approve a unit for participation in the Section 8 program if it is owned by a parent, child, grandparent, grandchild, sister, or brother of any member of the participant's family. See 24 C.F.R. § 982.306. Respondent, however, ultimately approved Petitioner's rental of the Pomp Parkway unit under the Section 8 program, even though it was owned by Petitioner's daughter, pursuant to a limited exception under 24 C.F.R. § 982.306(d), which provides an express exception to the rule if "the [public housing agency] determines that approving the unit

would provide reasonable accommodation for a family member who is a person with disabilities." 24 C.F.R. § 982.306(d).

10. Also, during April of 2014, Petitioner and Ms. Williams were working on constructing a caregiver suite for the 15141 Pomp Parkway unit and had discussions with Respondent's staff about it.

11. There are documents purportedly created during this time frame summarizing several conversations between Respondent, Petitioner, and Ms. Williams. The documents state that Respondent's officials had a conversation with Petitioner and her daughter wherein they discussed the requirements for a live-in aide and that Petitioner and Ms. Williams were warned that Ms. Williams could never live in the 15141 Pomp Parkway unit. Respondent also contends that Petitioner and Ms. Williams were warned that, even if Ms. Williams was approved as a live-in aide, Ms. Williams could not live in the 15141 Pomp Parkway unit.

12. On the other hand, Petitioner contends that the alleged conversations warning her that her daughter could not reside in the home did not occur during this time frame, and that she and her daughter continued to renovate the house to specifications suitable to accommodate Petitioner's disability with the expectation that her daughter would ultimately be able to reside in the home after renovations were complete.

13. Upon consideration of the credibility of the witnesses and timing of the purported documents, the undersigned finds that the testimony and documents regarding these alleged April conversations are unreliable and do not support a finding that the conversations and warnings actually occurred during the April time frame. The evidence is also insufficient to support Petitioner's contention that Respondent was somehow responsible for Petitioner's expectation that her daughter would be able to both act as Petitioner's caregiver and live in the home while Petitioner was receiving rent vouchers under the Section 8 program.

14. Petitioner was the only person that Respondent approved to live in the 15141 Pomp Parkway unit under her Section 8 voucher. In May of 2014, Petitioner's daughter entered into a one-year residential lease with Petitioner and a Housing Assistance Payment Contract (HAP Contract) with Respondent. According to the HAP Contract, Petitioner was the only person able to reside in the 15141 Pomp Parkway unit without the express, written consent of Respondent. At the time the HAP Contract was signed, Petitioner advised Respondent that she would be the only person living in the unit. Ms. Williams, as the landlord, signed a check cashing agreement with Respondent wherein she agreed Petitioner would be the only person occupying the 15141 Pomp Parkway unit. Also,

Petitioner's income verification summary report provides that Petitioner is the only person allowed to live in a unit covered by her Section 8 voucher.

15. In early May of 2014, Ms. Williams moved into the 15141 Pomp Parkway unit without notice to Respondent.

16. Petitioner has never received written approval from Respondent to have Ms. Williams live and occupy the 15141 Pomp Parkway unit under the Section 8 voucher program.

17. By letter dated June 17, 2014, Petitioner submitted an HCHA Live-in Aide Request Verification Form, along with letters from her doctor. Petitioner also requested that her daughter Julia Williams serve as her live-in aide.

18. Approval for a live-in aide is a different process than the approval process to have someone added to the household. While Petitioner's request for a live-in aide stated that Petitioner was living at 15141 Pomp Parkway, it did not mention that Petitioner's daughter was the owner of the dwelling, nor did it include a specific request that Ms. Williams be allowed to move into and occupy the 15141 Pomp Parkway unit that she owned.

19. Upon receipt of the written request for a live-in aide by Petitioner, Respondent began its investigation to determine whether Petitioner met the qualifications for a live-in aide and

whether Ms. Williams met the qualifications to serve as a live-in aide.

20. Respondent has implemented 24 C.F.R. § 5.403 into its written policy regarding live-in aides, which provides:

LIVE-IN ATTENDANTS

- A family may include a live-in aide provided that such live-in aide:
- Is determined by the [public housing agency] to be essential to the care and well-being of an elderly person, a nearly-elderly person, or a person with disabilities,
- Is not obligated for the support of the person(s), and
- Would not be living in the unit except to provide care for the person(s).

21. Under the C.F.R., a public housing agency is required to approve a live-in aide, if needed, as a reasonable accommodation for an elderly or disabled person. 24 C.F.R. § 982.316 ("The PHA must approve a live-in-aide if needed as a reasonable accommodation" to a family with an elderly or disabled person.).

22. By letter dated June 27, 2014, Respondent notified Petitioner of the approval of her request for her daughter to serve as her live-in aide. Although Respondent was aware that a home occupied by an owner was not eligible for a Section 8 voucher at the time it gave its permission for Petitioner's

daughter to serve as Petitioner's live-in aide, the letter did not speak to that issue. Rather, the June 27, 2014, letter, signed by Donald Singer, stated:

Pursuant to your letter dated June 17, 2014 requesting a reasonable accommodation for a live in aide. Your letter also ask [sic] that the live in aide be your daughter, Julia Williams based upon her qualifications as presented.

After reviewing the U.S. Department of Housing and Urban Development's (HUD) regulations for Live-in Aides and the Housing Authority's Section 8 Program Administrative Plan for Live in Aides our office has determined that your daughter, Julia Williams meets the program qualification(s) to act as your Live in Aide. Therefore our office is approving Julia E. Williams as your Live in Aide effective immediately.

Should you have any questions regarding this action/letter please contact our office at 352-754-4160.

23. By email on August 11, 2014, Petitioner notified Mr. Singer that she and her live-in aide, Julia Williams, intended to live at the 15141 Pomp Parkway unit.

24. On August 11, 2014, Petitioner's daughter Julia Williams was still the owner of the 15141 Pomp Parkway unit.

25. Under 24 C.F.R. § 892.352, a unit being occupied by its owner is deemed "ineligible" and a public housing agency is prohibited from providing funding for such unit. The C.F.R. provides a limited exception for shared housing that allows an

owner to occupy a unit funded by Section 8. Under that limited exception, however, the Section 8 participant cannot be a blood relative of the resident owner. 24 C.F.R. § 982.615(b)(3).

26. Based upon the prohibition under the C.F.R. which forbids a public housing agency from funding a unit occupied by an owner who is a blood relative of the Section 8 participant, by letters dated August 22, 2014, Respondent notified Petitioner and Ms. Williams that the 15141 Pomp Parkway unit was "ineligible housing" that could not be funded. The letters also informed Petitioner that Julia Williams' approval as a live-in aide did not supersede HUD regulations and that, because Julia Williams was occupying the unit, Respondent was terminating the HAP contract effective September 30, 2014.

27. The only reason Respondent terminated the funding for the 15141 Pomp Parkway unit was because the C.F.R. does not allow Respondent to continue funding a unit occupied by its owner.

28. Prior to the August 22nd letters, Respondent was advised by HUD that Respondent did not have any discretion in funding "ineligible housing." HUD approved the draft of the August 22nd letters.

29. The evidence does not support a finding that either Respondent or HUD waived or should otherwise be prevented from applying the limitations and requirements of the law that a

Section 8 participant cannot be a blood relative of the resident owner.

30. Respondent would have been willing to continue Petitioner's housing assistance as long as Petitioner met program requirements and the housing was deemed eligible housing under the C.F.R. through the issuance of a new three-bedroom voucher for a different unit, or by having Petitioner live in the 15141 Pomp Parkway unit without Ms. Williams both owning and occupying the unit.

31. By letter dated August 27, 2014, Respondent provided Petitioner with a new Section 8 voucher and voucher packet information so that Petitioner could start searching for a new rental unit where Ms. Williams could continue to serve as Petitioner's live-in aide under Petitioner's Section 8 voucher. The new voucher was required to be returned to Respondent by September 30, 2014.

32. There was no testimony that Petitioner returned the new Section 8 voucher to Respondent by September 30, 2014, or that Ms. Williams moved out of 15141 Pomp Parkway by that date.

33. On September 4, 2014, before the funding was terminated for the 15141 Pomp Parkway unit, Petitioner filed a complaint for discrimination.

34. Petitioner emailed a signed three-bedroom voucher on October 30, 2014, a month after funding under the new voucher

expired, for the rental of the 15141 Pomp Parkway unit that had already been deemed ineligible housing as defined by 24 C.F.R. § 982.316.

35. That voucher is not valid and the facts fail to support a finding that Respondent's refusal to allow Petitioner to participate in the Section 8 voucher program while occupying a unit owned and occupied by her daughter was because of Petitioner's disability.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. See §§ 120.569, 120.57(1), and 760.20-760.37, Fla. Stat.; see also Fla. Admin. Code R. 60Y-4.016 and 60Y-8.001.^{1/}

37. Although Petitioner's allegations are couched in terms of federal law,^{2/} the Notice of the Commission's determinations advising Petitioner of her right to file a petition for relief reference the Act, as well as Florida Administrative Code Rule 60Y-8.001 and chapter 60Y-4, which invoke the undersigned's jurisdiction for an administrative hearing under the Act. The analysis, whether under the Act or the federal fair housing act (FHA),^{3/} is the same. Bhogaita v. Altamonte Heights Condo. Ass'n, 765 F.3d 1277, 1285 (11th Cir. 2014) ("The FHA and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.").

38. Florida's Fair Housing Act (the Act) is codified in sections 760.20 through 760.37, Florida Statutes.

39. Among other things, as in the FHA, the Act makes certain actions "discriminatory housing practices." Under the Act, following an administrative hearing, the Commission has authority to make findings as to whether a "discriminatory housing practice" has occurred. If such a finding is made, the Act further authorizes the Commission to issue an order "prohibiting the practice" and providing "affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs." § 760.35(3)(b), Fla. Stat.

40. The "discriminatory housing practices" prohibited by the Act include those described in section 760.23(2), which provides:

(2) It is unlawful to discriminate against any person in terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion. (emphasis added).

41. The language in section 760.23(2) is identical to the prohibition in the federal Fair Housing Act (FHA), found at 42 U.S.C. § 3604(b). Because section 760.23(2) is patterned after a federal law on the same subject, "it [should] be

accorded the same construction as in federal courts to the extent the construction is harmonious with the spirit of the Florida legislation." Cf., Winn-Dixie Stores, Inc. v. Reddick, 954 So. 2d 723, 728 (Fla. 1st DCA) (discussing the same rule of construction in the context of the Florida Civil Rights Act of 1992, §§ 760.01-760.11, Fla. Stat.), rev. denied, 967 So. 2d 198 (Fla. 2007).

42. Petitioner, as the party asserting the affirmative in this proceeding, has the initial burden of proof. See Balino v. Dep't of Health & Rehab. Services, 348 So. 2d 349 (Fla. So. 2d 349).

43. Petitioner has the burden of establishing facts to prove a prima facie case of discrimination. U.S. Dep't of Hous. and Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990).

44. The three-part "burden of proof" pattern developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973), applies. Blackwell, 908 F.2d at 870. Under that test:

First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, nondiscriminatory reason" for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by a preponderance that the legitimate reasons asserted by [Respondent] are in fact mere pretext.

Id., citing Pollitt v. Bramel, 669 F. Supp. 172, 175 (S.D. Ohio 1987) (federal Fair Housing Act claim).

45. Discrimination under the Act and the FHA can occur upon "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a disabled person an] equal opportunity to use and enjoy a dwelling." § 760.23(9)(b), Fla. Stat.; 42 U.S.C. § 3604(f)(3)(B). In proving an alleged refusal to make a reasonable accommodation, Petitioner has the burden of showing that a proposed accommodation is reasonable. See Loren v. Sasser, 309 F.3d 1296, 1302 (11th Cir. 2002). To prevail on a failure to accommodate claim under either the Act or the FHA, Petitioner must establish that (1) she is handicapped within the meaning of the Act, (2) she requested a reasonable accommodation, (3) such accommodation was necessary to afford her an opportunity to use and enjoy her dwelling, and (4) Respondent refused to make the requested accommodation. See Philippeaux v. Apt. Inv. and Mgmt. Co., 598 Fed. Appx. 640, *6-*7 (11th Cir. 2015).

46. As explained by the Eleventh Circuit Court of Appeals in Schwarz v. City of Treasure Island, 544 F.3d 1201, 1226 (11th Cir. 2008):

The FHA's reasonable accommodation provision requires only those accommodations that "may be necessary . . . to afford equal

opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B) (emphases added). The word "equal" is a relative term that requires a comparator to have meaning. In this context, "equal opportunity" can only mean that handicapped people must be afforded the same (or "equal") opportunity to use and enjoy a dwelling as non-handicapped people, which occurs when accommodations address *the needs created by the handicaps*. If accommodations go beyond addressing these needs and start addressing problems not caused by a person's handicap, then the handicapped person would receive not an "equal," but rather a better opportunity to use and enjoy a dwelling, a preference that the plain language of this statute cannot support.

47. A review of the testimony and exhibits received into evidence, in light of the facts and law, demonstrates that Petitioner failed to meet her burden in this case.

48. First, Petitioner's claim fails because applicable regulations prohibit the use of a Section 8 housing voucher to pay her rent for a unit being occupied by its owner.

49. Federal regulations pertaining to the tenant-based program of Section 8 prohibit the rental family from having any interest in the dwelling unit. This prohibition states that "[t]he family must not own or have any interest in the unit." 24 C.F.R. § 982.551(j). A similar restriction is found at 24 C.F.R. § 982.352, pertaining to eligibility of a housing unit. Specifically, the regulation deems ineligible "[a] unit

occupied by its owner or by a person with any interest in the dwelling unit." 24 C.F.R. § 982.352(6).

50. Respondent has no authority to waive the rule requirements or otherwise accommodate Petitioner who wishes to receive assistance in a family owner-occupied unit. While the "shared housing" provision of 24 C.F.R. § 982.615 permits a Section 8 participant to share an owner-occupied unit, the provision expressly provides "[a]n assisted person may not be related by blood or marriage to a resident owner." 24 C.F.R. § 982.615(b)(3). Because Petitioner and Julia Williams are blood relatives, the regulations do not provide a means for Respondent to permit Petitioner to live in the 15141 Pomp Parkway unit with owner Julia Williams, even as a live-in aide.

51. In addition, the evidence does not support a finding that the accommodation requested by Petitioner is reasonable. "The Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act" provides that a request for accommodation cannot require a "fundamental alteration" of a public housing agency's operation or an undue financial or administrative burden.

52. Respondent has no discretion in complying with 24 C.F.R. § 982.352(6). Under its ACC Contract with HUD, Respondent must comply with the C.F.R.'s prohibition against

funding "ineligible" units. Respondent's failure to comply could jeopardize federal funding of its Section 8 program.

53. Further, Petitioner is requesting an accommodation that would put her in a better position than all of Respondent's other Section 8 clients. Preferential treatment is not what a reasonable accommodation is designed to do. See Philippeaux, 598 Fed. Appx. 640 at *8 (where tenant's request would have put him in a better position than other residents, the request is not for a reasonable accommodation).

54. Petitioner has also failed to establish that the requested accommodation is necessary to afford Petitioner the equal opportunity to use and enjoy Respondent's Section 8 program. Before terminating funding for the 15141 Pomp Parkway unit, Respondent issued Petitioner a three-bedroom Section 8 voucher for Petitioner to locate and rent a different unit that was not owned and being occupied by Ms. Williams. Alternatively, Ms. Williams could have moved out and continued to provide services to Petitioner at the 15141 Pomp Parkway unit for which Petitioner was receiving payment under the two-bedroom voucher. Petitioner could also submit a request for a live-in aide who did not own and could occupy the 15141 Pomp Parkway unit under a three-bedroom voucher. Under any of those options, Respondent was willing to provide Section 8 funding to

Petitioner without violating applicable regulations and its contractual obligations to HUD.

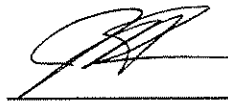
55. In sum, Petitioner failed to prove her claim of discrimination^{4/} based upon her disability.^{5/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Complaint and Petition for Relief.

DONE AND ENTERED the 22nd day of May, 2015, in Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of May, 2015.

ENDNOTES

^{1/} Unless otherwise indicated by context, citations to all statutes, rules, and regulations are to current versions, the substantive provisions of which have not changed since the pertinent facts in this case.

^{2/} In particular, the Complaint alleges violations of "[s]ections 804a, 804(f)(2), and 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988." The Complaint also references section 504 of the 1973 Rehabilitation Act.

^{3/} The FHA, enacted as Title VIII of the Civil Rights Act of 1968, amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988), is codified at 42 U.S.C. § 3601, et. seq.

^{4/} This conclusion is based upon an analysis under the Act and pertinent case law under the FHA. Although beyond the scope of an analysis under the Act, in addition to her claim of discrimination under the FHA, Petitioner's Complaint also alleges a violation of section 504 of the Rehabilitation Act of 1973. Section 504, codified at 29 U.S.C. § 794, provides in pertinent part:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) [29 USC § 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

The facts do not support a claim under section 504. Petitioner failed to show that her disability played any role whatsoever in Respondent's decision to decline a Section 8 voucher for the 15141 Pomp Parkway unit occupied by Petitioner's daughter who owned the unit.

In addition, although Petitioner makes reference to the Americans with Disabilities Act, an analysis under that law is not appropriate. Rather, FHA case law and standards are applicable to this case involving residential housing, as opposed to the Americans with Disabilities Act (ADA) case law and standards which are applied to discrimination claims involving public accommodations. See, e.g., Harding v. Orlando Apts., LLC, 748 F.3d 1128 (11 Cir. 2014) (discussing FHA standards in context of alleged residential housing discrimination) and Thompson v. Sand Cliffs Owners Assoc.,

No. 3:96cv270/RV, 1998 U.S. Dist. Lexis 32632 (N.D. Fla. Mar. 30, 1998) (explaining that ADA standards are applicable to discrimination with regard to public accommodations, not residential housing).

^{5/} Both the Act and the FHA prohibit discriminating against a person on the basis of a "handicap," by refusing to make reasonable accommodations when necessary to afford the person equal opportunity to use and enjoy a dwelling. § 760.23(2), Fla. Stat.; 42 U.S.C. § 3604(f)(3)(B). In applicable case law and this Recommended Order, the terms "handicap" and "disability" are used interchangeably. As noted by the Eleventh Circuit Court of Appeal:

The FHA refers to discrimination based on "handicap" rather than disability. 42 U.S.C. § 3604(f). Disability scholars, however, generally prefer the term "disability" to handicap, and the Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12101-12213) ("ADA"), reflects that preference. For this reason, we treat the terms interchangeably and elect to use "disability" and the preferred possessive construction. See *Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1146 n.2 (9th Cir. 2003) (using the terms interchangeably and stating the same rationale for doing so); Michelle A. Travis, *Impairment as Protected Status: A New Universality for Disability Rights*, 46 Ga. L. Rev. 937 (2012) (referring throughout to persons "with disabilities" rather than "disabled persons").

Bhogaita, 765 F.3d at 1285, n.2.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

APPENDIX C



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



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

Washington, D.C.
May 17, 2004

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

*REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT*

Introduction

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

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

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

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. What is a "fundamental alteration"?

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

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

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

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

burden.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX D

APPENDIX D-1



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

SPECIAL ATTENTION OF:

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

NOTICE PIH 2006-13 (HA)

Issued: March 8, 2006

Expires: March 31, 2007

Cross Reference: Notice
PIH 2003-31 (HA)

Subject: Non-Discrimination and Accessibility for Persons with Disabilities

1. **PURPOSE:** The purpose of this Notice is to remind recipients of Federal funds of their obligation to comply with pertinent laws and implementing regulations which mandate non-discrimination and accessibility in Federally funded housing and non-housing programs for persons with disabilities.

Additionally, this Notice provides information on key compliance elements of the relevant regulations and examples and resources to enhance recipients' compliance efforts. However, specific regulations must be reviewed in their entirety for full compliance.

2. **APPLICABILITY:** This Notice applies to all programs and activities receiving federal financial assistance either directly or indirectly from the Office of Public and Indian Housing.

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

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

3. **BACKGROUND:** Although the Department is aware that many HUD recipients are doing an excellent job of providing accessibility in their programs for persons with disabilities, it has been brought to the Department's attention that other HUD recipients may not be in compliance with the subject laws and implementing regulations. As part of an effort to achieve maximum compliance, this Notice will serve to emphasize the importance of compliance.

4. **NOTIFICATIONS:** It is recommended that public housing agencies (PHAs) and other recipients of Federal PIH funds provide this Notice to all current and future contractors, agents and housing choice voucher program owners participating in covered programs/activities or performing work covered under the above subject legislation and implementing regulations.

I. STATUTORY/REGULATORY REQUIREMENTS

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

A. SELF-EVALUATIONS/NEEDS ASSESSMENTS/TRANSITION PLAN

1. Section 504 of the Rehabilitation Act of 1973 (Section 504)¹; Title II of the Americans with Disabilities Act of 1990 (ADA)²:
Initially, with the issuance of the Section 504 implementing regulations at 24 CFR Part 8 on June 2, 1988, PHAs were required to conduct needs assessments and develop transition plans to address the identified needs of residents and applicants with disabilities. The transition plan and the needs assessment are required to be available for public review pursuant to 24 CFR § 8.25(c). *See also* 24 C.F.R. § 8.51.

The Department's Office of Fair Housing and Equal Opportunity (FHEO) will continue, as a matter of routine, to request copies of any self-evaluations, needs assessments or transition plans in every compliance review and complaint investigation conducted of a HUD recipient. These documents may also be reviewed by other HUD offices in conjunction with funding applications and addressing non-compliance issues that may arise. In addition, effective January 26, 1992, Title II of the ADA required PHAs to conduct a self-evaluation of their current services, policies and practices. *See* 28 CFR §§ 35.105 and 35.150 (d).

PHA-Plan regulations pursuant to the U.S. Housing Act of 1937 at 24 CFR § 903.7(a)(1)(ii) require the submission of a statement addressing the housing needs of low-income and very low-income families, including such families with disabilities, who reside in the jurisdiction served by the PHA and families who are on the public housing and housing choice voucher program waiting list.

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

¹ 29 U.S.C. § 794; 24 C.F.R. Part 8.

² 42 U.S.C. §§ 12101 *et seq.*; 28 C.F.R. Part 35.

B. SECTION 504/24 CFR 8 – MAJOR PROVISIONS

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

See also http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr8_00.htm]

1. New Construction [24 CFR § 8.22 (a) and (b)]. A minimum of 5 percent of the total dwelling units, or at least one unit (whichever is greater), must be made accessible for persons with mobility impairments, unless HUD prescribes a higher number or percentage pursuant to 24 C.F.R. § 8.23 (b)(2). An additional minimum of 2 percent of the units, or at least one unit (whichever is greater) must be made accessible for persons with hearing or vision impairments. In circumstances where greater need is shown, HUD may prescribe higher percentages than those listed above. [See 24 CFR 8.22(c).] Accessible units must be on an accessible route from site arrival points and connected by an accessible route to public and common use facilities located elsewhere on the site. Also, see visitability recommendations in Section I. of this Notice.
2. Substantial Alterations [24 CFR § 8.23 (a)]. If alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22 (a) and (b) for new construction apply, with the sole exception that load bearing structural members are not required to be removed or altered.
3. Other Alterations [24 CFR § 8.23 (b)]. When other alterations are undertaken, including, but not limited to modernization, such alterations are required to be accessible to the maximum extent feasible, up until a point where at least 5 percent of the units in a project are accessible unless HUD prescribes a higher number or percentage pursuant to 24 CFR § 8.23 (b)(2). PHAs should also include up to 2 percent of the units in a development accessible for persons with hearing and vision impairments. See 24 CFR. § 8.32 (c) for exception regarding removing or altering a load-bearing structural member. (Note: these exceptions do not relieve the recipient from compliance utilizing other units/buildings/developments or other methods to achieve compliance with Section 504.)
4. Adaptable Units: Section 504 permits recipients to construct or convert adaptable units. A dwelling unit that is on an accessible route, as defined by Section 504 and UFAS, and is adaptable and otherwise in compliance with the standards set forth in 24 C.F.R. § 8.32 is “accessible”. Adaptable or adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks and grab bars to be added to, raised, lowered, or otherwise altered to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disabilities. An accessible route is defined as a continuous, unobstructed UFAS-compliant path as prescribed in 24 C.F.R. §§ 8.3 and 8.32; UFAS. § 4.3. See 24 C.F.R. §§ 8.3 & 8.32; UFAS §§ 4.34.3-4.34.6.

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

5. Uniform Federal Accessibility Standards (UFAS) 24 C.F.R. § 8.32 –
[See <http://www.access-board.gov/ufas/ufas-html/ufas.htm>]

The applicable accessibility standards for purposes of complying with Section 504 are the Uniform Federal Accessibility Standards (UFAS). See 24 C.F.R. §§ 8.3; 8.32 and Appendix A to 24 C.F.R. § 40. Under 24 C.F.R. § 8.32, compliance with UFAS shall be deemed to comply with the accessibility requirements of 24 C.F.R. §§ 8.21, 8.22, 8.23 and 8.25. Departures from the technical and scoping requirements of UFAS are permitted where substantially equivalent or greater access and usability of the building is provided. See 24 C.F.R. § 8.32 (a). The Federal Access Board promulgates the UFAS. See <http://www.Access-Board.gov>. See also Section I.C., below.

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

6. Reasonable Accommodations [24 CFR §§ 8.20, 8.21, 8.24 and 8.33]. PHAs and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the PHA and/or recipient. When a family member requires a policy modification to accommodate a disability, PHAs must make the policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden. If providing such an accommodation would result in an undue financial and administrative burden, the PHA is required to take any other action(s) that would not result in an undue burden financial and administrative burden. (See also discussion of reasonable accommodation on Screening/Reasonable Accommodations in Section 2F(6) and reasonable accommodation under the Fair Housing Act in Section 1E(3). Note: A recipient is not required to accommodate an individual with a disability by modifying a rule or policy that is required by statute. Such a change would be a fundamental alteration of a program.
For example:

A PHA that does not allow residents to have pets must modify its policies and allow a tenant with a disability to have an assistance animal if the animal is needed to provide the resident with a disability an equal opportunity to use and enjoy the housing

- If the recipient provides transportation to PHA sponsored/funded functions or activities then a recipient must ensure that accessible transportation is provided to accommodate person with disabilities and their aides including the reasonable accompaniment of relative(s) or acquaintance(s).

PHAs and other recipients of Federal financial assistance are also required to provide reasonable accommodations to tenants and applicants with disabilities who need structural modifications to existing dwelling units and public use and common use areas in order to make effective use of the recipient's program. Under the regulations, this obligation may be met either by making and paying for requested structural modifications or by using other equally effective methods. See 24 CFR §§ 8.20, 8.21(c), 8.24. However, when the PHA is accommodating a resident's disability-related needs without making structural changes, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. See 24 CFR §§ 8.21 (c), 8.24 (b) for a variety of suggested, but not all inclusive compliance methods.

As with other requested reasonable accommodations, PHAs and other recipients are not required to provide requested structural modifications if doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. However, the PHA or other recipient is required to provide any other reasonable accommodation that would not result in an undue financial and administrative burden on the particular recipient and/or constitute a fundamental alteration of the program

. For example:

A PHA may be required to pay for and install a ramp to allow a resident who is a wheelchair user to have access to a dwelling unit that has a step at the front door if the resident cannot be accommodated by relocation to a different unit that meets the resident's needs.

- A PHA may be required to pay for and install grab bars in the resident's dwelling unit in order to accommodate a resident who has a mobility disability.
- A PHA may be permitted to transfer a resident with disabilities who needs an accessible unit to an appropriate available accessible unit or an appropriate accessible unit that can be modified in lieu of modifying the tenant's current inaccessible unit. .

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

7. Distribution of Accessible Dwelling Units (24 CFR § 8.26). Required accessible dwelling units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that persons with disabilities have choices of living arrangements comparable to that of other families eligible for assistance under the same program.

8. Occupancy of Accessible Dwelling Units (24 CFR § 8.27). PHAs shall adopt suitable means including providing information in its application packets, providing refresher information to each resident during annual re-certifications and posting notices in its Admissions & Occupancy Offices to ensure that information regarding the availability of accessible dwelling units reaches eligible persons with disabilities. The PHAs shall also modify its Admissions, Occupancy and Transfer policies and procedures in order to maximize the occupancy of its accessible units by eligible individuals whose disability requires the accessibility features of the particular unit.

PHAs shall also take reasonable non-discriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the PHA shall:

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

Note: A PHA may not prohibit an eligible disabled family from accepting a non-accessible unit for which the family is eligible that may become available before an accessible unit. The PHA is required to modify such a non-accessible unit as needed, unless the modification would result in an undue financial and administrative burden.

9. PHA Requirements for the Housing Choice Voucher Program (24 CFR § 8.28).
[See Notice PIH 2005-05: New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the Housing Choice Voucher Program]

In carrying out the requirements of 24 CFR § 8.28, the PHA or other recipient administering a Housing Choice Voucher Program shall:

- (1) In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt a suitable means to ensure that the notice reaches eligible individuals with disabilities and that they can have an equal opportunity to participate in the application process for the Housing Choice Voucher Program;
 - I. In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;
 - II. When issuing a Housing Voucher to a family which includes an individual with disabilities, include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;
 - III. Take into account the special problems of locating an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers; and
 - IV. In order to ensure that participating owners do not discriminate in the recipient’s Federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.
10. Non-housing Facilities (24 C.F.R. § 8.21). Newly constructed non-housing facilities shall be designed to be readily accessible to and usable by people with disabilities. Alterations to existing facilities shall be accessible to the maximum extent feasible – defined as not imposing an undue financial and administrative burden on the operations of the recipient’s program or activity. For existing non-housing facilities, PHAs shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. There are a number of methods included in the regulation at 24 CFR § 8.21(c)(2) which may be used to accomplish accessibility in existing non-housing programs and activities. For example:

A PHA operates a community center. The PHA wishes to provide a tutoring program and the only available space available after school is on an

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

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

11. Accessibility Standards (24 CFR § 8.32). The design, construction or alteration of buildings in conformance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with accessibility requirements of 24 CFR §§ 8.3, 8.21, 8.22, 8.23 and 8.25 with respect to those buildings. This does not require building alterations to remove or alter a load-bearing or structural member.
12. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. *See* 24 C.F.R. § 8.24(a) and 28 C.F.R. § 35.150 (a).

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

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

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

Accessibility Standards for Design, Construction and Alteration of Publicly Owned Residential Structures (24 CFR § 40.4) - The Architectural Barriers Act (ABA) provides that residential structures that are (1) constructed or altered by or on behalf of the United States; (2) leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans or specifications of the United States; or (3) financed in whole or in part by a grant or loan made by United States after August 12, 1968; shall be constructed to ensure that persons with physical disabilities have access to and use of these structures. Buildings constructed with Federal funds are subject to the ABA. *See* 24 C.F.R. § 40.2.

All residential structures designed, constructed or altered that covered by the ABA must comply with the accessibility requirements of the Uniform Federal Accessibility Standards (UFAS).

UFAS Notes:

- Under the Architectural Barriers Act, four standard setting agencies—the General Services Administration, HUD, the Department of Defense, and the United States Postal Service (USPS) are responsible for development of the standards for Federal facilities, currently the UFAS.
- Figure 47(a) in UFAS does not permit the water closet to encroach on the clear, unobstructed (*see* UFAS §3.5) floor space required to provide an unobstructed 60” turning circle. *See* UFAS § 4.34.2(2).
- UFAS includes a definition of structural impracticability that does not require changes if such changes would result in the removal or alteration of a load-bearing structural member and/or an increased cost of 50 percent or more of the value of the element of the building or facility. *See* UFAS § 3.5. This does not alleviate the recipient’s responsibility for making its programs and housing units accessible to persons with disabilities.
- The exception for bathrooms found at Section 4.22.3 of UFAS is not applicable to dwelling unit bathrooms.
- UFAS Section 4.34.2(15)(c) requires at least two bedrooms in dwelling units with two or more bedrooms to be accessible and located on an accessible route. PHAs need to be mindful that new construction or substantial rehabilitation of multistory dwelling units must be in compliance with this requirement. Further, the Department wishes to encourage designs that provide persons with disabilities access to all parts of their dwelling units, and therefore encourages PHAs to take advantages of the strategies outlined in the PIH guidebook, *Strategies for Providing Accessibility and Visitability for Hope VI and Mixed Finance Homeownership*.” This guidebook may be found at the following link: <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm>.
- Because UFAS does not fully address accessibility of units for persons with impaired hearing, for the 2% units that are required to be accessible for persons with hearing impairments, it is recommended that PHAs follow either the 1998 or 2003 edition of ICC/ANSI A117.1 Standard for Accessible and Usable Buildings and Facilities. The 1998 edition includes criteria for such dwelling units in Chapter 10, Section 1004, Dwelling Units with Accessible Communication Features. The 2003 edition includes these criteria in Chapter 10, Section 1005. These Standards are available through the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041-3405.

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

D. AMERICANS WITH DISABILITIES ACT OF 1990/28 CFR 35 FOR TITLE II (*SEE* [WWW.ADA.GOV](http://www.ada.gov)) –

1. Applicability. Title II of the ADA prohibits discrimination on the basis of disability by public entities. Public entity means any state or local government; or any department, agency, special purpose district or other instrumentality of a State or States or local government, including a PHA. *See* 28 CFR §§ 35.102 and 35.104.
2. Maintenance of Accessible Features. A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities (28 CFR § 35.133).
3. Non-discrimination. A public entity shall operate each service, program or activity so that when viewed in its entirety, each service, program or activity is readily accessible to and usable by individuals with disabilities (28 CFR § 35.150).
4. Design and Construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such a manner that the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992 (28 CFR § 35.151(a)).
5. Alterations. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that effects or could effect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities if the alteration was commenced after January 26, 1992. (28 CFR § 35.151(b)).
6. Accessibility standards. Design, construction, or alteration of facilities in conformance with the UFAS or with the ADA Accessibility Standards (ADA Standards) shall be deemed to comply with requirements of 28 CFR § 35.151 except that the elevator exemption contained at §§ 4.1.3(5) and 4.1.6(1)(j) of the ADA Standards shall not apply. (28 CFR § 35.151(c)). (Note: The title II regulations at 24 CFR Part 35 contain extensive requirements that apply to public entities, including PHAs, and should be reviewed in their entirety to ensure compliance with the ADA.).
7. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. *See* 24 C.F.R. § 8.24(a) and 28 C.F.R. § 35.150 (a).

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

recreational centers, are accessible to individuals with disabilities. In the alternative, the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

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

E. THE FAIR HOUSING ACT/24 CFR PART 100

[*See* <http://www.usdoj.gov/crt/housing/title8.htm>;
see also http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr100_00.html]

1. Illegal Inquiries (24 CFR § 100.202) – The Fair Housing Act makes it unlawful for a housing provider to:

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

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

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

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

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

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

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

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

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

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

Under the Fair Housing Act, it is unlawful for an owner to refuse to permit a person with a disability, at their own expense, to make reasonable modifications of existing premises occupied or about to be occupied by a person with a disability if such modification may be necessary to afford the person with a disability full enjoyment of the premises. Under certain circumstances the owner may require the tenant to pay into an escrow account funds necessary to restore the interior of the unit to its original condition if the modification would interfere with the owner or next resident’s full enjoyment of the premises (see regulation for further requirements and guidance.) An owner may require that a resident restore modifications to the interior of the unit.

Note: PHAs must follow the more stringent reasonable accommodation requirements of 24 CFR §§ 8.4, 8.20, 8.24 and 8.33, which require PHAs to pay the cost of structural changes to facilities unless the PHA can accommodate the individual with a disability by equally effective means, or unless such structural changes would result in an undue financial and administrative burden (in such cases, the PHA must provide other alternative reasonable accommodation(s).) See also, discussion of reasonable accommodation under Section 504 above.

3. Reasonable Accommodation (24 CFR § 100.204) - Applies to private owners participating in Housing Choice Voucher programs, PHAs and all housing providers that are recipients of Federal financial assistance. PHAs are also covered under Section 504. (See Section I.B. above.) The Fair Housing Act makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (see regulation for further requirements and guidance). See HUD and DOJ *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).
<http://www.hud.gov/utilities/intercept.cfm?/offices/fheo/library/huddojstatement.pdf>.
4. Design & Construction Requirements (24 CFR § 100.205) - applies to housing regardless of whether it receives federal financial assistance. The Fair Housing Act requires that covered multifamily dwellings, available for first occupancy after March 13, 1991 shall be designed and constructed so that:

- a. At least one building entrance is on an accessible route unless impractical due to terrain [24 CFR § 100.205(a)],
- b. Public and common use areas are accessible [24 CFR § 100.205(c)(1)],
- c. All doors into and within all premises are wide enough for passage by persons using wheelchairs [24 CFR § 100.205(c)(2),
- d. All premises within covered multifamily dwelling units contain the following features of adaptable design:
 - (i) An accessible route into and through the dwelling unit [24 CFR § 100.205(c)(3)(i)]
 - (ii) Light switches, outlets, electrical outlets, thermostats and other environmental controls, etc. are in accessible locations [24 CFR § 100.205(c)(3)(ii)]
 - (iii) Reinforcements in bathroom walls for later installation of grab bars [24 CFR § 100.205(c)(3)(iii)]
 - (iv) Usable kitchens and bathrooms for people using wheelchairs [24 CFR § 100.205(c)(3)(iv)]

The Act defines “covered multifamily dwelling” as:

- a. dwellings in buildings with four or more units served by one or more elevators, and
- b. ground floor units in other buildings with four or more units except townhouses without internal elevators.

On March 6, 1991, the Department published Fair Housing Accessibility Guidelines to give the building industry a safe harbor for compliance with the accessibility requirements of the Act. *See* 56 Federal Register 9472-9515, March 6, 1991. [*See* <http://www.hud.gov/offices/fheo/disabilities/fhefhag.cfm>.] These Guidelines were supplemented by the following notice, “Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines”, published in the Federal Register on June 28, 1994 (59 Federal Register 33362-33368, June 28, 1994). These Guidelines and the Supplemental Notice apply ONLY with respect to the accessibility requirements of the Fair Housing Act.

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

1. HUD’s March 6, 1991 Fair Housing Accessibility Guidelines (the Guidelines) and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines;

2. ANSI A117.1-1986 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s regulations and the Guidelines;
3. CABO/ANSI A117.1-1992 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s regulations, and the Guidelines;
4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s regulations, and the Guidelines;
5. HUD’s Fair Housing Act Design Manual;
6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000;
7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes; and
8. 2003 International Building Code (IBC), with one condition.

Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchases of the 2003 IBC stating, “ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.”

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

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

- An elevator building constructed with Federal financial assistance would be required to have 100% of the dwelling units meet the Fair Housing Act design and construction requirements (24 CFR 100.205), and of this 100%, 5% would also need to comply with the stricter accessibility requirements of Section 504 and 24 CFR 8.22. .

Note: Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. 24 C.F.R. § 8.22 (b).

- Section 504 would require that a newly-constructed 100-unit two-story walk-up apartment building with no elevator that is constructed with Federal financial assistance is required to have a total of five accessible units for persons with mobility disabilities (5% of 100 units = 5 accessible units). If half of the 100 units were on the ground floor and half on the second floor, all 5 units would be required to be on the ground floor and built to comply with the Section 504 accessibility requirements at 24 CFR §§ 8.22 and 8.32. In addition, since all of the ground floor units are subject to the Fair Housing Act's design and construction requirements, all of the units on the ground floor would need to meet these requirements. For the most part, the 5% units designed to comply with Section 504 will meet the Fair Housing Act requirements, however, as noted above, there are a few Fair Housing Act requirements that are not required under Section 504.

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

- A development consisting entirely of multi-story dwelling units is not a covered multifamily dwelling for purposes of the design and construction requirements at 24 CFR § 100.205 unless any of the multistory dwelling units have an internal elevator. If any of the multistory dwelling units has an internal elevator, that dwelling unit and any public and common use spaces would be required to be accessible. However, Section 504 would require that the development provide 5% of the units accessible for persons with mobility disabilities and an additional 2% accessible for persons with hearing or vision impairments. This can be accomplished by making 5% of the multi-story units accessible or by making building 5% of the development as single-story accessible units. See 24 CFR § 8.22. (A single story townhouse development of 4 or more units would also have to comply with the Fair Housing Act design and construction requirements).
- ICC Interprets Section 1104.1 and, specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances unless site impracticability applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any "Type B" dwelling units because site impracticability is addressed under Section 1107.7.

F. UNIVERSAL DESIGN

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

availability of affordable housing for all, regardless of age or ability. *See* <http://www.design.ncsu.edu/cud>.

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

II. PROGRAM SPECIFIC COMPLIANCE/ACTIVITIES

A. HOUSING CHOICE VOUCHER PROGRAM

[*See Notice PIH 2005-05: New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program*]

1. PHAs may give preference in admission to applicants with disabilities based on local needs and priorities. However, the PHA may not give a preference for admission of persons with a specific disability. *See* 24 CFR § 982.207(b)(3).
2. A person with disabilities may choose a suitable unit from among units available for rent in the local rental market.
3. The HUD field office may approve an exception payment standard amount within the upper range (between 110-120% of the Fair Market Rent) if required as a reasonable accommodation for a family that includes a person with disabilities. Any exceptions to the payment standards would be granted as a reasonable accommodation after the family with a person with disabilities locates a unit if needed as a reasonable accommodation. *See* 24 CFR § 982.503(c)(2)(ii). Requests for exception rents above 120% that are needed as a reasonable accommodation to a person with a disability to allow the person to rent an appropriate unit must be submitted to HUD headquarters for regulatory waiver and approval.
4. A PHA may approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. This provision does not apply to shared housing. *See* 24 CFR §§ 982.306(d), 982.615 (b)(3).
5. Owners of private rental units leased with voucher assistance must make reasonable accommodations in rules, policies, practices or services if necessary for a person with disabilities to use the housing and must allow the person with a disability to make reasonable modifications in accordance with 24 C.F.R. § 100.203. *See also* 24 CFR § 100.204 (a).

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

1. A disabled family meets the first-time homeowner requirement even if the family owned a home within the last three years if use of the homeownership option is needed as a reasonable accommodation so that the housing choice voucher program is readily accessible to and usable by the family member with a disability. 24 CFR § 982.(b)(3).

2. The PHA must count welfare assistance for a disabled family in determining whether the family meets the minimum annual income used to determine if a family member qualifies for commencement of home ownership assistance. *See* 24 CFR § 982.627(c)(2)(ii).
3. The full-time employment eligibility requirement does not apply to a family with a disability. 24 CFR§ 982.627(d)(3).
4. The limit on the length of time a family may receive homeownership assistance does not apply to families with disabilities. 24 CFR§ 982.634(c).
5. Covered homeownership expenses may include principal and interest on mortgage debt incurred by the family to finance the cost of making the home accessible for a family member with a disability if the PHA determines the allowance of such costs is needed as a reasonable accommodation. 24 CFR § 982.635(c)(vii).
6. HUD published an interim rule on June 22, 2001, to implement the three-year pilot program authorized by section 302 of the American Homeownership and Equal Opportunity Act of 2000. Under the pilot program, PHAs may admit families with disabilities whose annual income is greater than 80 percent of the area median into the pilot program. (However, if the annual income of a family with a disability participating in the pilot program exceeds 80 percent of the area median income, the amount of assistance the family would normally receive under the subsidy formula for the basic homeownership option is reduced.) Under the pilot, the PHA may also permit the family to move to a new unit with continued homeownership assistance if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a Federally declared major disaster or emergency.

C. PROJECT-BASED VOUCHER PROGRAM

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

NOTE: 24 CFR § 982.207(b) states that PHAs may adopt a preference in their project-based voucher program for admission of families that include persons with disabilities, but may not adopt a preference for admission of persons with a specific disability. PIH may waive this regulation, if, and only if the proposed preference meets the requirements of 24 CFR § 8.4(b)(1)(iv) which states that a recipient of Federal funds may not, solely on the basis of disability, provide different or separate housing, aid, benefit, or services to individuals with disabilities or to any class of individuals with disabilities from that provided to others, unless *such action is*

necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others.

D. CAPITAL FUND PROGRAM

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

- a. Substantial Alterations. The requirements for new construction at 24 CFR § 8.22(a) and (b) are applicable for all units that are substantially altered. [See definition of *substantial alteration* at 24 CFR § 8.23(a)].
- b. Other Alterations. If alterations are not substantial, then PHAs are required to provide accessible units up to 5 percent of the units in the development or replace the elements being modernized with accessible elements in all units of the project. PHAs should provide an additional 2 percent of the units for persons with hearing or vision impairments. See 24 C.F.R. § 8.23 (b).
- c. Reasonable Accommodations. PHAs should include in their projections of modernization needs amounts to cover known and projected alterations to units and facilities to address reasonable accommodation requests on a case-by-case basis.
- d. Residents/Advocacy Consultation. PHAs are encouraged to ensure that, at least yearly, residents with disabilities and advocates for persons with disabilities have an opportunity to provide input on modernization plans and activities.

The housing needs of persons with disabilities, accessible units and compliance with Section 504, the ADA, and the FHA are required to be addressed in accordance with 24 CFR § 903.7. Also, see 24 CFR Part 903 for additional related requirements.

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

E. HOPE VI

1. HOPE VI Notice of Funding Availability (NOFA) Accessibility Requirements. The design of proposed new construction and/or rehabilitation of housing must conform to the civil rights statutes and regulations delineated in each Grantee's Grant Agreement.
2. Accessible For-Sale Units. The HOPE VI Program encourages PHAs to include 5 percent of for-sale units accessible for persons with mobility impairments and 2 percent for persons with hearing and vision impairments.

3. Visitability. The HOPE VI Program strongly encourages making as many “visitable” units as possible. Visibility standards recommended by HUD apply to units that are not otherwise covered by accessibility requirements. The elements of visitability are also described in the Glossary of HOPE VI terms, which is posted to the HOPE VI website. See <http://www.hud.gov/hopevi>.
4. Advocacy Consultation/Participation. The HOPE VI Program encourages PHAs to work with local advocacy groups that represent persons with disabilities, the elderly and other special needs populations in developing HOPE VI plans.
5. Relocation Units. HOPE VI funds can be used to modify units to be occupied by families in the housing choice voucher program to make them accessible for residents with disabilities. The Department has determined that the costs of accessibility modification in rental units which are necessary for persons with disabilities who receive tenant-based relocation assistance under the voucher program in connection with a HOPE VI project are eligible HOPE VI expenditures. The method of implementation is to be determined by each individual locality.
6. Homeownership Design Handbook. To order a copy of strategies for providing accessibility and visitability for HOPE VI and mixed finance homeownership, go to the publications and resources page of the HOPE VI website at <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm>.
7. Designated Housing Plans. All allocation plan applications for designated housing are now published on HUD’s web site at www.hud.gov/pih.
8. Single People with Disabilities. The HOPE VI program encourages 1 bedroom units for single people with disabilities.
9. Accessible Townhouse Design. In addition to the designs already available and in use, HOPE VI will continue to explore design alternatives for townhouse dwellings.

F. ADMISSION/OCCUPANCY

1. Application Process. PHAs must ensure that all employees who are involved in the application process understand how to conduct tenant selection and screening without discriminating on the basis of any protected class, in particular applicants with disabilities. All application offices must be accessible. The PHA must provide accessible materials for persons with sight and hearing impairments and otherwise provide effective communication, upon request. See 24 C.F.R. § 8.6.. A PHA must make special arrangements to take the application of persons who are unable to come to the PHA’s offices because of a disability. At the initial point of contact with each applicant, the PHA must inform all applicants of alternative forms of communication. See 24 C.F.R. § 8.6.
2. Effective Communication/Provision of Auxiliary Aids & Services:

The PHA shall provide appropriate auxiliary aids and services, where necessary, to afford an individual with disabilities an equal opportunity to participate in the PHA’s

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

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

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

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

3. Live-in-Aides. In some cases, individuals with disabilities may require a live-in-aide. A PHA should consider a person a live in aide if the person: (1) is determined to be essential to the care and well being of a family member with a disability; (2) is not obligated to support the family member; and (3) would not be living in the unit except to provide the supportive services. A live-in-aide should not be required to share a bedroom with another member of the household. *See* 24 CFR §§ 966.4(d)(3) and 982.316], 982. 402(b).
4. Verification. The PHA may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the housing for which they are applying; that applicants are qualified for deductions used in determining adjusted income; that applicants are entitled to any preference they may claim; and that applicants who have requested a reasonable accommodation have a need for the requested accommodation. A PHA may not require applicants to provide access to confidential medical records in order to verify a disability nor may a PHA require specific details as to the disability. A PHA may require documentation of the manifestation of the disability that causes a need for a specific reasonable accommodation or accessible unit. A PHA may not seek the individual's specific diagnosis, nor may the PHA seek information regarding the nature, severity or effects of the individual's disability.

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

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

Reminder – As noted previously in Paragraph B. 7 – “Occupancy of Accessible Dwelling Units” – Section 504 requires that accessible units must be offered first to a current PHA resident in need of the accessible features of the available accessible unit and second, to a qualified applicant with a disability on the PHA's waiting list who requires the accessibility features of the vacant, accessible unit. *See* 24 C.F.R. § 8.27.

6. Screening/Reasonable Accommodations. Many applicants with disabilities will pass screening, will not need a reasonable accommodation, will not need special accessibility features, and will be admitted in exactly the same manner as applicants without disabilities. Applicants who fail screening will receive a rejection letter. This letter must provide all applicants with information concerning the PHA's informal review process and their right to request a hearing. The letter must also state that applicants with disabilities have the right to request reasonable accommodations to participate in the informal hearing process. The PHA is obligated to provide such reasonable accommodation unless doing so would result in a fundamental alteration in the nature of the PHA's program.

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

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require the PHA to reduce or waive essential eligibility or residency requirements. Examples of reasonable accommodations

include, but are not limited to: physical alteration of units; making services and programs currently located in an inaccessible location in an alternate, accessible location; and revising the PHA's policies and procedures. The PHA should focus on finding a reasonable accommodation that will permit the applicant with a disability to comply with the essential obligations of tenancy. A PHA is not required to excuse the applicant from meeting those requirements. The PHA should provide all applicants with information regarding the PHA's Reasonable Accommodation Policy and Procedures at the time they apply for admission and at every annual re-certification. Each PHA must have a reasonable accommodation policy. The PHA's responsibility to provide reasonable accommodations for applicants and residents is present at all times, including during lease enforcement. See discussion in Section I.B.(6).

7. Unit Size. In public housing, a family with a disability may need a unit that is larger than the PHA's permitted occupancy standards. It is unlawful to fail to provide a reasonable accommodation which denies such a family the opportunity to apply for and obtain a larger unit if the disability of the family member requires this type of accommodation.
8. Unit Location. In public housing, a family applying for a unit or requesting a transfer may need a first floor unit due to a disability.

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

9. Pets: Regular PHA pet policies do not apply to animals that are used to assist persons with disabilities and are necessary as a reasonable accommodation. [An "Assistance Animal" is an animal that is needed as a reasonable accommodation for persons with disabilities. An assistance animal is not considered a "pet" and thus, is not subject to the PHA's pet policy. Assistance animals are animals that work, provide assistance, perform tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability.]

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

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

I. VISITABILITY

1. Visitability Concept. Although not a requirement, it is recommended that all

design, construction and alterations incorporate, whenever practical and economical, the concept of visitability in addition to the requirements under Section 504, the Architectural Barriers Act, Title II of the Americans with Disabilities Act and the Fair Housing Act.

Visitability is a design concept, for very little or no additional cost, that enhances the ability of persons with disabilities to interact with their neighbors, friends and associates in the community. *See* www.huduser.org/publications/pubasst/strategies.html

2. Design Considerations. Visitability design incorporates the following in all new construction or alterations, in addition to other requirements, whenever practical and possible for as many units as possible within a development:
 - a. Provide a 32" clear opening in all bathroom and interior doorways.
 - b. Provide at least one accessible means of egress/ingress for each unit.
3. Benefits of Visitability. Visitability also expands the availability of housing options for individuals who may not require full accessibility. It will assist PHAs in making reasonable accommodations and reduce, in some cases, the need for transfers when individuals become disabled in place. Visitability will also improve the marketability of units.

J. ACCESSIBILITY FUNDING SOURCES

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

For further information about this Notice, contact the nearest HUD Office of Public Housing within your State. Locations of these offices are available on HUD's website at <http://www.hud.gov/>.

_____/s/
Orlando J. Cabrera, Assistant Secretary for
Public and Indian Housing

APPENDIX D-2



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

Special Attention of:
Directors of HUD Regional and Field
Offices of Public Housing;
Agencies that Administer the
Housing Choice Voucher Program.

Notice PIH 2008-13 (HA)

Issued: March 10, 2008

Expires: March 31, 2009

Cross References: 24 CFR 982.505(d)
CFR 982.503(c)(2)(ii)

Subject: Requests for Exception Payment Standards for Persons with Disabilities as a Reasonable Accommodation

1. Purpose. The purpose of this notice is to facilitate the process for review and approval of special payment standards under the Housing Choice Voucher program as a reasonable accommodation for a family with a person with disabilities. It clarifies the calculation of the payment standard and the type of supporting documentation that should be included in the waiver request.

2. Background. As stated in Notice PIH 2005-5 (recently extended indefinitely by PIH Letter L-2007-1), one of the purposes of an exception payment standard is to ensure that a family with a person with disabilities can rent a unit that meets the disabled person's needs.

On a case-by-case basis, as a reasonable accommodation, a PHA may approve a payment standard up to 110 percent of the fair market rent (FMR) if its payment standards are set below 110 percent of the FMR in accordance with 24 CFR Section 982.505(d). Such higher payment standards must be requested by the family and subsequently approved, as necessary, by the PHA **after** a family with a disabled person or an individual person with disabilities locates a unit.

The HUD Field Office Public Housing Director can approve exception payment standards above 110 percent to 120 percent of the FMR as a reasonable accommodation in accordance with 24 CFR Section 982.503(c)(2)(ii). Headquarters must waive 24 CFR Section 982.505(d) to allow the PHA to approve any exception payment standards higher than 120 percent of the FMR as a reasonable accommodation.

3. Calculation Process. Since the family's rent share is capped at 40 percent of monthly adjusted income at initial occupancy when the gross rent exceeds the payment standard, the difference between 40 percent of monthly adjusted income and 30 percent of monthly adjusted income (i.e. 10% of monthly adjusted income) is subtracted from the gross rent (contract rent plus utility allowance) to determine the adjusted gross rent. Please note that the 40 percent cap will also be applied to families that need an exception payment standard to remain in their assisted units.

The adjusted gross rent is divided by the FMR for the unit size to determine its percentage of the FMR. If the adjusted gross rent is no more than 110 percent of the FMR, the PHA can review and approve

the request. If the adjusted gross rent is not more than 120 percent of the FMR, the review and approval may be done by the Field Office. If the adjusted gross rent is above 120 percent of the FMR, the request must be submitted to Headquarters. In all cases the approved exception payment standard should equal the adjusted gross rent. An example of the calculation process is attached.

4. Documentation for Exception Payment Standard Requests. To facilitate the review for a payment standard as a reasonable accommodation, the PHA should include the following documentation in its request:

- A.** A statement from a health care provider regarding the need for the reasonable accommodation and the features of the unit (which may include its location) which meet that person's needs.
- B.** The contract rent and utility allowance for the unit.
- C.** A statement from the PHA that it has determined the rent for the unit is reasonable, and that the unit has the feature/s required to meet the needs of the person with disabilities as noted in the statement from the health care provider.
- D.** The household's monthly adjusted income.
- E.** The FMR for the unit size for which the family is eligible.
- F.** Proposed effective date of the new lease or actual effective date of the lease renewal.

5. Application of Approved Exception Payment Standard. Exception payment standards may remain in effect until or unless a higher exception payment standard is warranted, requested, and subsequently approved.

6. Headquarters Review. For those requests submitted to Headquarters for review and approval, the Department will ensure that they will be handled as expeditiously as possible. To expedite the process, Field Offices should either email scanned requests to Phyllis.A.Smelkinson@hud.gov or fax them to Ms. Smelkinson at 202-401-7974. For any faxed requests, please notify Ms. Smelkinson by email when the request has been faxed. Hard copies should be transmitted by regular or express mail to the Assistant Secretary for Public and Indian Housing.

7. Information Contact. Inquiries about this notice should also be directed to Ms. Smelkinson, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138.

8. Paperwork Reduction Act. The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C 3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The following active information collections contained in this Notice have been approved under the Paperwork Reduction Act (PRA) - OMB Control Number 2577-0169.

/s/

Paula O. Blunt, Deputy Assistant Secretary
for Public and Indian Housing

Attachment

EXAMPLE CALCULATION PROCESS

Fair Market Rent for Unit Size	\$1,041
Family's monthly adjusted income:	823
30% of adjusted gross income:	247
40% of adjusted gross income	329
Difference between 30% and 40%:	82
Contract Rent	1,505
Utility Allowance	40
Gross Rent	1,545
Adjusted Gross Rent (1,545 – 82)	1,463
Percentage of FMR (1,463/1,041)	141%

APPENDIX D-3



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

Special Attention of: Directors of HUD Regional and Field Offices of Public Housing; Agencies that Administer the Housing Choice Voucher Program	Notice	PIH 2014-25 (HA)
	Issued: October 16, 2014	
	Expires: This notice remains in effect until amended, superseded or rescinded.	
	Cross References: Notice PIH 2008-20, PIH 2009-22, PIH 2010-51	

Subject: Over Subsidization in the Housing Choice Voucher Program

1. Purpose. On September 28, 2007, the Office of Inspector General (OIG) issued a report on over subsidization in the Housing Choice Voucher (HCV) program due to the issuance of vouchers with unit sizes greater than the number of family members in the household. Pursuant to the recommendation of the OIG, the Department issued clarifying guidance on the matter of categorization of live-in aides, other reasonable accommodation issues and corresponding data entry into the Inventory Management System (IMS)/Public and Indian Housing Information Center (PIC) through the notices cited above. Notice PIH 2010-51 extended and revised Notice PIH 2009-22 to explain subsidy standards in regard to live-in aides and their PHA-approved family member/s and data entry in IMS/PIC for family members of live-in aides.

On September 23, 2013, the OIG issued a follow-up report on over subsidization in the HCV program. Although it was noted that vast improvement had been made, there was still an amount in over-payments due to over subsidization. The OIG recommended that PIH provide guidance to the public housing authorities (PHA) on the data analytic tools available and the specific procedures to help detect and monitor over subsidized households, improper payment standards, and reporting errors to put at least \$1,128,000 to better use annually. The following section will address that issue. In all other respects, this notice is consistent with the guidance PIH previously provided in Notice PIH 2010-51.

2. Detection and Monitoring of Over subsidized Households.

There are ad hoc reports in the IMS/PIC system that may enable PHAs to monitor the factors that would indicate over subsidization and other improper payments:

- (1) Ad hoc reports may be accessed from the PIC main menu screen.

- (2) "Form 50058 Ad hoc Report" should be selected under "*ADHOC*" on the left side of that screen. All of the information from the Family Report (Form HUD-50058) is available in an ad hoc report.
- (3) Next, select "Tenant-based Voucher."
- (4) The action types selected should be limited to: new admissions (1); annual reexamination (2); interim reexamination (3); portability move-in (4); and other change of unit (7); and Historical Adjustment (14).
- (5) Then, the PHA should establish a date range for "Effective Date of Action" of at least 16 months to capture the majority of Family Reports in the current database.
- (6) At the next screen, at a minimum, the PHA should select the following data elements: head of household (3b); number of members in the household (3t); the number of bedrooms in the unit (5d); the number of bedrooms on the voucher (12a); and the payment standard for the family (12j). Additional items can be selected as needed.

From the information on the ad hoc report, a PHA can ensure that the voucher size and payment standard are correct for each family and make corrections where necessary. A sample ad hoc report is attached. PHAs are encouraged to review these reports on a regular basis (e.g. monthly, quarterly) to ensure families are not being mistakenly over subsidized.

In performing quality control, the PHA should further review cases where the following "Red Flags" appear: (1) if the number of bedrooms on the voucher exceeds the total number in the household and (2) if the payment standard for the family does not match the number of bedrooms on the voucher or the unit size, if smaller. These are just red flags for possible overpayments. However, there may be a justified reason, e.g. an exception payment standard or an exception to the subsidy standards. To assist with corrective actions, please review section 3.A. through 3.E. below.

3. Programmatic Explanations.

A. Live-in Aides. The primary reason PHA issued vouchers with more bedrooms as recorded on line 12a of the Family Report than the number of family members recorded on line 3t is related to live-in aides. Although a health care provider must document the need for a live-in aide (which would result in the issuance of an additional bedroom size voucher), the live-in aide must be identified by the family and approved by the PHA first.

The definition of a live-in aide is recorded in 24 CFR § 5.403 which states that a live-in aide is a person who resides with one or more elderly persons, near-elderly persons or persons with disabilities and who is: (1) determined to be essential to the care and well-being of the persons; (2) is not obligated for the support of the persons; and (3)

would not be living in the unit except to provide the necessary supportive services. It should be noted that the definition applies to a specific person (i.e., identified live-in aide). In accordance with this definition, a live-in aide is not a member of the assisted family and is not entitled to the HCV as the remaining member of the tenant family.

In accordance with 24 CFR § 982.316, the PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by a family member with a disability. The PHA may disapprove a particular person as a live-in aide if s/he has: (1) committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; (2) committed drug-related criminal activity or violent criminal activity; or (3) currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act. Additionally, under 24 CFR § 982.402(a), the PHA must establish subsidy standards to determine the number of bedrooms needed for families of different sizes and compositions. Consequently, PHAs may not approve an unidentified live-in aide, nor a larger unit than the family qualifies for under the PHA's subsidy standards for an unidentified live-in aide. The guidance outlined in this Notice is in accordance with these regulatory provisions.

Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom should not be approved for a live-in aide under these circumstances.

B. Reasonable Accommodation Issues. A family may always request a reasonable accommodation to program rules, policies, practices, or services, including to the live-in aide policy, to permit program participation by individuals with disabilities. A family's composition or circumstances may warrant the provision of an additional bedroom to permit disability-related overnight care and allow the family equal use and enjoyment of the unit. Such limited exceptions to the established subsidy standards are permitted under 24 CFR § 982.402(b)(8). The PHA must consider requests for an exception to the established subsidy standards on a case-by-case basis and provide an exception, where necessary, as a reasonable accommodation. A reasonable accommodation request may only be denied if it would impose an undue financial and administrative burden on the housing provider or fundamentally alter the nature of the provider's operations. The PHA shall document the justification for all granted exceptions.

C. Subsidy Standards. A PHA may only approve one additional bedroom for a live-in aide. Although a live-in aide may have PHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The PHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

D. Medical Equipment. Although PHAs may approve an additional bedroom for medical equipment if the need is documented by a health care provider, the actual equipment in the extra bedroom should be verified by the PHA during the annual inspection of the unit. If the extra bedroom is not being used for the intended purpose, the PHA must reduce the subsidy standard and corresponding payment standard at the family's next annual recertification. However, the PHA may take further action, if it believes any family obligations under 24 CFR § 982.551 were violated.

E. Other Causes. The secondary cause of over subsidization was the failure of the PHA to change the voucher unit size after changes in family composition. Although families are not required to move from an assisted unit when the number of bedrooms in the unit exceeds the number of bedrooms for which the family is eligible, the payment standard must conform to the PHA's subsidy standards at the family's next annual recertification after the change in family composition.

4. PIC Data Entry. PHAs are expected to ensure that data on the Family Report is correct when entered in IMS/PIC. Whenever there is a change in the subsidy standard and corresponding payment standard for which the family is eligible, lines 12a and 12j of the Family Report must be adjusted accordingly. All live-in aides and, if applicable, their family members, must be entered on the report and coded L (live-in aide) in section 3h.

5. Effective Date. This notice is effective upon publication.

6. Information Contact. Inquiries about this notice should be directed to the staff in your local field office.

7. Paperwork Reduction Act. The information collection requirements contained in this letter have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The following active information collections contained in this Notice have been approved under the PRA - OMB Control Number 2577-0083.

/s/

Jemine A. Bryon, Acting Assistant Secretary
for Public and Indian Housing

Attachment

APPENDIX E

2006 WL 897984

Only the Westlaw citation is currently available.

United States District Court,
D. Oregon.

Robert GARCIA, Plaintiff,

v.

WASHINGTON COUNTY DEPARTMENT
OF HOUSING SERVICES et al., Defendants.

No. CV 05-1780-MO.

|
March 31, 2006.

Attorneys and Law Firms

Edward Johnson, Spencer M. Neal, Portland, OR, Ellen E. Johnson, Legal Aid Services of Oregon, Hillsboro, OR, for Plaintiff.

Douglas R. Andres, Bullivant Houser Bailey, PC, Portland, OR, for Defendants.

OPINION AND ORDER

MOSMAN, J.

*1 Robert Garcia, a disabled Section 8 voucher holder, brought this action pursuant to the Fair Housing Act ("FHA"), 42 U.S.C. § 3604, and the Rehabilitation Act ("RA"), 29 U.S.C. § 794, claiming he was unlawfully denied a reasonable accommodation because he was not allowed to use his voucher at a house owned by his brother. Before the court is defendant Washington County Department of Housing Services' (WCDHS) Rule 12(b)(6) motion to dismiss. WCDHS argues that Mr. Garcia's claims arising under the FHA and RA should be dismissed for two reasons: (1) the FHA and RA do not provide a private right of action against state or local housing agencies; and (2) WCDHS was mandated to comply with HUD regulations and, as a result, it has no power or authority to accommodate Mr. Garcia. The law supports neither argument. WCDHS also offers a motion to strike plaintiff's claims for compensatory damages and attorney fees. For the reasons that follow, this court denies WCDHS's motion to dismiss and motion to strike.

I. BACKGROUND

Robert Garcia suffers from schizoaffective disorder and other related disabilities. He began receiving rental assistance by way of a Section 8 voucher in 1994. Mr. Garcia was allowed to continue using this voucher when he moved into a home owned by his brother in 1997. The voucher is Mr. Garcia's only means by which he can compensate his brother for his housing and care. Mr. Garcia claims that rental assistance is necessary because without it his brother cannot afford to let Mr. Garcia reside in his home and under his care, and Mr. Garcia, though he needs a caregiver, does not have the resources to obtain one. However, the assistance was terminated by WCDHS on December 1, 2005 at the direction of U.S. Housing and Urban Development ("HUD") pursuant to 24 C.F.R. § 982.615(b)(3), which prohibits usage of a housing voucher at a dwelling owned by a person related by blood where the relative also resides in the dwelling. Mr. Garcia submitted a request for accommodation so that he could continue to live with his brother and receive assistance, but HUD denied this request. Mr. Garcia contends that this denial was the result of two letters sent by WCDHS to HUD recommending that HUD deny Mr. Garcia's request for accommodation. Additionally, Mr. Garcia alleges that WCDHS intentionally failed to enter into a dialogue or interactive process with him to determine whether any alternative means to accommodate his disability existed. Thus, Mr. Garcia claims that WCDHS failed to reasonably accommodate his disability.

II. LEGAL STANDARD

In ruling on a motion to dismiss for failure to state a claim, "the court must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party." *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir.1987). "[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim." *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). Rather, a complaint need only provide " 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* Accordingly, "[a] motion to dismiss for failure to state a claim may not be granted unless it appears beyond doubt that the [nonmovant] can prove no set of facts in support of his claim which would entitle him to relief." *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 984 (9th Cir.2000) (internal quotation omitted). However, in reviewing the sufficiency of the complaint, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims."

Jackson v. Carey, 353 F.3d 750, 755 (9th Cir.2003) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)). “Nonetheless, conclusory allegations without more are insufficient to defeat a motion to dismiss for failure to state a claim.” *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir.1988).

*2 This standard is not altered in cases involving claims under the FHA or the RA. *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (“heightened pleading standard[s] in employment discrimination cases conflict[] with Federal Rule of Civil Procedure 8(a)(2)”; *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1062 (9th Cir.2004) (“*Swierkiewicz* [’s] ... reasoning applies to any claim to which the *McDonnell Douglas* framework is applicable, and courts have readily applied *Swierkiewicz* to FHA claims.”). Thus, “[t]he threshold for pleading discrimination claims under the FHA[] is low.” *McGary v. City of Portland*, 386 F.3d 1259, 1262 (9th Cir.2004). Moreover, this liberal pleading standard “contains a powerful presumption against rejecting pleadings for failure to state a claim.” *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir.1997) (internal quotations and citation omitted).

III. DISCUSSION

24 CFR § 982.615(b)(3) prohibits an individual from receiving Section 8 voucher assistance if the individual lives in a home and is related by blood or marriage to the resident owner. Notwithstanding this prohibition, the FHA states that “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling” is unlawful discrimination. *McGary*, 386 F.3d at 1261 (quoting 42 U.S.C. § 3604(f)(3)(B)). Furthermore, the Ninth Circuit has “repeatedly interpreted this language as imposing an ‘affirmative duty’ on ... public agencies to reasonably accommodate the needs of disabled individuals.” *Id.* (citing *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1146-47 (9th Cir.2003); *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416 (9th Cir.1994); *City of Edmonds v. Wash. State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir.1994)). This duty to reasonably accommodate requires public agencies, upon a request for accommodation, to “undertake a fact-specific investigation to determine what constitutes a reasonable accommodation.” *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir.2001). “It is well-settled” that the affirmative duty on public agencies to reasonably accommodate disabled individuals includes

“modifying administrative rules and policies.” *McGary*, 386 F.3d at 1264. 24 CFR § 982.306(d), in restating the prohibition found in § 982.615(b)(3), adds that a public housing authority (“PHA”) may approve of such a living condition if the “PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.” Similarly, the RA provides that “[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

A. Private rights of action under the FHA and RA

*3 In support of its first contention, WCDHS string cites five cases, four of which originate out of the district courts of New York and the fifth from the DC Circuit.¹ These cases, however, do not support the proposition that the FHA and RA do not provide a private right of action against state or local housing agencies. In fact, none of them address the ability of a plaintiff to file suit under § 3613 of the FHA, as Mr. Garcia does here, against a public agency or a public housing agency for a failure to accommodate or for other discriminatory housing practices under §§ 3605, 3606, or 3617. In addition, none of the cases reference the RA at all with regard to private rights of action against housing agencies. Instead, the holdings deal with the lack of a private right of action (1) against HUD in its capacity as an investigative body, such as in the way it handles discrimination complaints against others, and (2) to enforce § 3608(e)(5) of the FHA, which requires HUD to “administer programs ... in a manner” that furthers fair housing policies. Neither of these holdings is relevant to the case at hand.

¹ *Boykin v. Key Corp.*, 2005 WL 711891, at *8 (W.D.N.Y., March 28, 2005); *Weisberg v. Leon*, 1999 WL 1216663, at *2 (S.D.N.Y., December 20, 1999); *Marinoff v. U.S. Dept. of Hous. & Urban Dev.*, 892 F.Supp. 493, 496 (S.D.N.Y.1995); *Pleune v. Pierce*, 697 F.Supp. 113, 119-20 (E.D.N.Y.1988); *Godwin v. Sec’y of Hous. & Urban Dev.*, 356 F.3d 310, 312 (D.C.Cir.2004).

The relevant case law and statutory provisions, on the other hand, suggest private rights of action against public housing agencies under the FHA and RA. Under the FHA an “aggrieved person may commence a civil action ... not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice” and “if

the court finds that a discriminatory housing practice has occurred” it may award actual damages and attorneys’ fees. 42 U.S.C. § 3613(a)(1)(A), (c)(1)-(2). The statute defines a “discriminatory housing practice” to include acts unlawful under § 3604 such as the “refusal to make reasonable accommodations in rules [or] policies” for disabled persons. 42 U.S.C. § 3602(f). Furthermore, the Ninth Circuit has held that public agencies have an affirmative duty to reasonably accommodate the disabled. *McGary*, 386 F.3d at 1261. Because this duty, upon a request for accommodation, requires a public agency to “undertake a fact-specific investigation to determine what constitutes a reasonable accommodation,” it is reasonable to believe that the express right of action provided for in the statute allows individuals to sue public agencies, including housing agencies, when they refuse to reasonably accommodate the disabled. Moreover, there is no language to the contrary, in the FHA or case law, that would suggest public housing agencies are exempt from suit when they engage in discriminatory housing practices.

Likewise under the RA “[t]he remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 ... shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance ... under section 794 of this title.” 29 U.S.C. § 794a(a)(2). Because it is “beyond dispute that private individuals may sue to enforce § 601” of Title VI, private individuals may also sue to enforce the RA.² *Alexander v. Sandoval*, 532 U.S. 275, 280, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001). Moreover, there is no language, in the RA or case law, suggesting public housing agencies, as recipients of federal financial assistance, are exempt from suit when they engage in discrimination against the disabled. As a result, WCDHS’s argument that Mr. Garcia’s claims should be dismissed because the FHA and RA do not provide for a private right of action against public housing agencies is incorrect and the claims should not be dismissed for that reason.

² Section 601 of Title VI states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d.

B. Public housing agencies power or authority to accommodate the disabled

*4 WCDHS claims that as a public housing agency, it has no power, authority, or discretion to decline to follow HUD

regulations, directives, or determinations. Thus, once HUD directed WCDHS to terminate Mr. Garcia’s assistance and declined Mr. Garcia’s request for accommodation, WCDHS was powerless to accommodate Mr. Garcia’s disability. WCDHS also argues that there is no statutory requirement that WCDHS recommend to HUD that it grant a Section 8 recipient’s request for accommodation of a disability. This argument, however, fails.

WCDHS has an independent duty to “undertake a fact-specific investigation to determine what constitutes a reasonable accommodation.” *Duvall*, 260 F.3d at 1139. This duty does not necessarily entail an administrative waiver or require WCDHS to decline to follow HUD regulations, directives, or determinations. Rather, it does require WCDHS to modify its own rules and policies if necessary to reasonably accommodate a disabled individual or, in the alternative, to determine whether there are any other ways to accommodate him. In other words, there is no conflict between the requirement that PHAs comply with HUD regulations and the affirmative duty they have to accommodate the disabled. Actions taken to hinder accommodation are in direct contrast to the affirmative duties placed on public agencies by FHA requiring them to reasonably accommodate the needs of disabled individuals.

C. The sufficiency of the complaint

Because WCDHS’s legal arguments for dismissal for a failure to state a claim have failed, Mr. Garcia’s claim should only be dismissed if “it appears beyond doubt that [he] can prove no set of facts in support of his claim which would entitle him to relief.” *Knevelbaard Dairies*, 232 F.3d at 984 (internal quotation omitted). Here, that is not the case. Mr. Garcia has valid claims against WCDHS under both the FHA and the RA. Under the FHA, Mr. Garcia claims unlawful discrimination because WCDHS failed to make a reasonable accommodation in its “rules [or] policies” to enable Mr. Garcia to live with his brother in his brother’s home. 42 U.S.C. § 3604. Under the RA, Mr. Garcia claims unlawful discrimination because he has been excluded from participation in the Section 8 voucher program because of his disability. Moreover, Mr. Garcia complains that WCDHS sent letters to HUD recommending Mr. Garcia’s request for accommodation be denied and failed to comply with its affirmative duty to make a fact-specific investigation in order to determine what would constitute a reasonable accommodation for Mr. Garcia. In “presum[ing] all factual allegations of the complaint to be true and draw[ing] all reasonable inferences in favor of the nonmoving party” this

court finds that Mr. Garcia's complaint is sufficient to state a claim. *Usher*, 828 F.2d at 561.

Finally, because the FHA and the RA have damages provisions that include attorney fees, this court denies WCHDS's motion to strike.

IV. CONCLUSION

*5 In this case, WCDHS's legal argument that the FHA and RA do not provide a cause of action against public housing authorities is incorrect. Equally unavailing is its

argument that it should be dismissed from the suit because has no power, authority, or discretion to decline to follow HUD regulations, directives, or determinations, and thus is not responsible for any possible discrimination against Mr. Garcia. Consequently, this court denies WCHDS's motion to dismiss and motion to strike.

IT IS SO ORDERED.

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APPENDIX F

SOME OF WHAT IS INVOLVED IN RELOCATING ME

The home must be:

A three bedroom, 2 bath, split floor plan with a separate entrance for the Live in Aide.

The home must have:

All electric Appliances including Water Heater, Air Conditioning and Heat.

Non-chlorinated water supply.

Ceramic Tile, Terrazzo or Real Hardwood Floors.

Safe non polluted outdoor space to get fresh air and exercise.

The home must not:

Be in close proximity to another residence(s).

Have any neighboring dryer vents or neighboring garage doors close to my windows/living area.

Have any neighboring Pool close to my windows/living area.

Have had previous smokers.

Have had Toxic Air Fresheners in the home.

Have been recently painted unless a zero VOC paint was used.

Have been recently Sprayed/Treated for termites, insects or bugs inside or out.

Have Mold issues.

Be in a Flood Zone.

Be in or near Dense Populations.

Be near or downwind of an Airport, or Agricultural site.

Be in close proximity to a Fire Station.

Be in close proximity Gas Station.

Be in close proximity to a Storage site.

Be in close proximity to any Industry.

Be in close proximity to a Health Care Facility, School, Daycare, or Church.

Be in close proximity to any Traffic Congestion.

Be on a Corner.

Have a Blacktopped road or driveway.

Have Electric Meters on the living area walls of the house.

(Must be on garage and as far away from living area as possible.)

Searching for a home with just the above criteria to accommodate my special needs requires a lot of extra time, energy, and money.

Once this point is reached the potential home and the surrounding area must be thoroughly investigated to ascertain if any hidden or unknown toxins/dangers exist which would disqualify the home as a safe living environment.

Once a "Doable" home for me is located the pressure, frustration and stress levels continue to rise with the hurdles of trying to convince a prospective landlord to:

- Accept a Housing Voucher as few will ~ some won't.

- Allow a Live in Aid.

- Agree to long term rental agreement.

- Accommodate my medical required need for no use of pesticides, termiticides, herbicides, fungicides, etc. throughout my lease.

- Accommodate my medical need of them using non-toxic products if/when the property needs inside and or outside painting, roofing, repairs, etc.

- Install medically necessary high rise commodes, safety bars, etc.

If/when a doable property and area is located and the lease is signed, then I wait and see if the home and asking rent will pass the HUD approval process.

During the house search and approval process, the extremely expensive, time consuming and heavy work load of unloading and repacking the contents in all the cabinets, drawers, closets, garage, etc. (which we just unpacked at my current address) demands more energy and health then I have to give, as well as money.

Once a new place is secured, we must deal with the deposits and reconnection appointments for the electric, water, trash, phone, lifeline, cable, etc., and all with the utmost precaution, which means, Julia once again must be present as I am physically unable.

Next Social Security, Medicare, Medicaid, Food Stamps, my oxygen company, the diabetic testing supply company, numerous other agencies, my doctor, family and friends all must be notified of my new address, phone number, etc.

Now, all surfaces, nooks and crannies must be thoroughly cleaned, and sanitized to avoid exposure and cross contamination which includes:

The refrigerator, range, oven, dishwasher and washer and dryer.

The air conditioning and heating unit vents and filter areas must be washed repeatedly and ran with the windows open and air purifiers running to remove any lingering toxic residue.

The bathrooms, walls, ceilings, ceiling fans, windows, window screens, floors, door handles, switch plates, wall light fixtures and/or chandeliers.

Next is the expense and work of renting, cleaning and purifying a moving truck. Then in order to protect my belongings from contamination, we must endure the expense and chore of finding a couple people who are willing to accommodate my special needs and assist my daughter in moving the furniture on and off the truck and into the entrance of the home. Finally, we would have to painstakingly unpack . . . again.

On top of all of this, since I am unable to go to restaurants or eat fast food, all my meals for at least a few weeks of the move must be cooked and frozen in advance.

Of course, each house that I vacate must also be cleaned, yard work done and pass the Landlord/Managers inspection.

So it's not like I just pack a bag and a toothbrush and say "Julia, please drive me over to the new place" and Walla, I am all moved in. I am 72 years of age and moving me is not something to be take lightly, it is serious business, very time and energy consuming, extremely stressful and extremely physically as well as monetarily costly. My health and limited finances cannot handle moving every few years, and certainly not twice in less than a year. Unfortunately due to the severity of my disabilities, most of this work load has fallen on my daughter Julia's shoulders for many years and she can no longer be expected to interrupt her entire life, disregard her own health and continue the grueling process of searching, cleaning and all the above mentioned criteria on each home again and again to no avail.

For the Hernando County Housing Authority (HCHA) to forcefully tell me to move again, let alone give me a mere thirty days to accomplish this is unconscionable. Julia painstakingly and diligently searched for over two years to find, and purchase this home specifically for me to rent for the rest of my life. Julia spent her life savings on this home, has gone into debt and endured months of grueling work to remodel this home to specifically meet my Medically Required Needs. No other landlord has ever agreed to make such repairs/structural changes to meet my Medically Required Accommodations so I could have full use

and enjoyment of the dwellings and outdoor spaces. Both Julia and I had numerous discussions with and received advice from Hernando County Housing Authority throughout this undertaking. HCHA has known for over 4 years that Julia E. Williams is my daughter and knew she was the owner of the property located at: 15141 Pomp Parkway, Weeki Wachee, Florida 34614, before they inspected, and approved this property. When it became medically necessary for me to have a Live in Aide, they approved her knowing all the facts. For them to later do a complete about face and rescind their own decisions is unprofessional, abusive and cruel, not to mention discriminatory and retaliatory on the very basis of my disability.

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