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

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

NOTICE PIH 2010-26 (HA)

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

Subject: Non-Discrimination and Accessibility for Persons with Disabilities

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

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

2. APPLICABILITY: This Notice applies to all public housing programs and activities receiving Federal financial assistance either directly or indirectly from the Office of Public and Indian Housing. This Notice is not applicable to ONAP programs, Tribes or TDHEs.

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

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

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

achieve maximum compliance, this Notice will serve to emphasize the importance of compliance.

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

I. STATUTORY/REGULATORY REQUIREMENTS

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

A. SELF-EVALUATIONS/NEEDS ASSESSMENTS/TRANSITION PLAN

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

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

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

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

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[1] 29 U.S.C. § 794; 24 CFR Part 8

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

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

B. SECTION 504/24 CFR 8 – MAJOR PROVISIONS

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

1. New Construction [see 24 CFR § 8.22 (a) and (b)]. A minimum of 5 percent of the total dwelling units, or at least one unit (whichever is greater), must be made accessible for persons with mobility impairments. An additional minimum of 2 percent of the units, or at least one unit (whichever is greater) must be made accessible for persons with hearing or vision impairments. In circumstances where greater need is shown, HUD may prescribe higher percentages than those listed above. [see 24 CFR 8.22(c).] Accessible units must be on an accessible route from site arrival points and connected by an accessible route to public and common use facilities located elsewhere on the site. Also, see visitability recommendations in Section I. of this Notice.

2. Calculating the Required 5% and 2%. PHAs and all other HUD recipients must calculate and provide the proper number of accessible units consistent with the applicable requirements of Section 504. As noted above for New Construction, 24 CFR § 8.22 (b), requires a minimum of 5 percent of the total dwelling units be made accessible for persons with mobility impairments. An additional 2 percent of the total units must be made accessible for persons with hearing or vision impairments.

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

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

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

3. Substantial Alterations [see 24 CFR § 8.23 (a)]. If alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75 percent or more

of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22 (a) and (b) for new construction apply, with the sole exception that load bearing structural members are not required to be removed or altered. If alterations of single elements or spaces of a dwelling unit when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once 5 percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units or entire dwelling units are required to be accessible under this paragraph.

4. Other Alterations [see 24 CFR § 8.23 (b)]. When other alterations are undertaken, including, but not limited to modernization, such alterations are required to be accessible to the maximum extent feasible, up until a point where at least 5 percent of the units in a project are accessible unless HUD prescribes a higher number or percentage pursuant to 24 CFR § 8.23 (b)(2). PHAs should also include up to 2 percent of the units in a development accessible for persons with hearing and vision impairments. See 24 CFR. § 8.32 (c) for exception regarding removing or altering a load-bearing structural member. (Note: these exceptions do not relieve the recipient from compliance utilizing other units/buildings/developments or other methods to achieve compliance with Section 504.)

5. Adaptable Units: Section 504 permits recipients to construct or convert adaptable units. A dwelling unit that is on an accessible route, as defined by Section 504 and UFAS, and is adaptable and otherwise in compliance with the standards set forth in 24 C.F.R. § 8.32 is "accessible". Adaptable or adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks and grab bars to be added to, raised, lowered, or otherwise altered to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disabilities. An accessible route is defined as a continuous, unobstructed UFAS-compliant path as prescribed in 24 CFR §§ 8.3 and 8.32; UFAS. § 4.3. *See* 24 CFR §§ 8.3 & 8.32; UFAS §§ 4.34.3-4.34.6.

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

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

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

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

7. Reasonable Accommodations [see 24 CFR §§ 8.20, 8.21, 8.24 and 8.33]. PHAs and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the PHA and/or recipient. When a family member requires a policy modification to accommodate a disability, PHAs must make the policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue hardship on the PHA's programs. Factors to be considered include:

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

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

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

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

PHAs and other recipients of Federal financial assistance are also required to provide reasonable accommodations to tenants and applicants with disabilities who need

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

For example:

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

- A PHA may be required to pay for and install grab bars in the resident's dwelling unit in order to accommodate a resident who has a mobility disability.

- A PHA may be permitted to transfer a resident with disabilities who needs an accessible unit to an appropriate available accessible unit or an appropriate accessible unit that can be modified in lieu of modifying the tenant's current inaccessible unit.

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

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

9. Occupancy of Accessible Dwelling Units (see 24 CFR § 8.27). PHAs shall adopt suitable means including providing information in its application packets, providing refresher information to each resident during annual re-certifications and posting notices in its Admissions & Occupancy Offices to ensure that information regarding

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

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

a. First, offer the unit to a current occupant with disabilities in the same development that requires the accessibility features of the vacant accessible unit and occupying a unit not having those accessibility features. The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability.

b. Second, if there is no current resident in the same development who requires the accessibility features of the vacant, accessible unit, the PHA will offer the unit to a current resident with disabilities residing in another development that requires the accessibility features of the vacant, accessible unit and occupying a unit not having those accessibility features.

c. Third, if there is no current resident who requires the accessibility features of the vacant, accessible unit, then the PHA will offer the vacant, accessible unit to an eligible, qualified applicant with disabilities on the PHA's waiting list who can benefit from the accessible features of the available, accessible unit.

d. Fourth, if there is not an eligible qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible unit, then the PHA should offer the available accessible unit to an applicant on the waiting list who does not need the accessible features of the unit. However, the PHA may require the applicant to execute a lease that requires the resident to relocate, at the PHA's expense, to a non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. *See* 24 CFR § 8.27. Although the regulation does not mandate the use of the lease provision requiring the nondisabled family to move, as a best practice, the Department strongly encourages recipients to incorporate it into the lease. By doing so, a recipient may not have to retrofit additional units because accessible units are occupied by persons who do not need the features of the units. In addition, making sure that accessible units are actually occupied by persons who need the features will make recipients better able to meet their obligation to ensure that their program is usable and accessible to persons who need units with accessible features. See 24 CFR 8.20.

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

10. Most Integrated Setting Appropriate (see 24 CFR Part 8 and 28 CFR Part 35). Section 504 regulations at 24 CFR § 8.4(d) require that recipients administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The regulations provide that a specific class of individuals with disabilities may not be excluded from a program unless the program is limited by Federal statute or executive order to a different class of individuals. Section 504 regulations (see 24 CFR § 8.4(b)(1)(iv)) also state that recipients cannot limit benefits to a particular category of people with disabilities unless it is necessary in order to provide housing services that are as effective as those provided to others. Further, the regulations (see 24 CFR § 8.4(5)(i)) state that in determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would exclude qualified individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance.

11. While Section 504 requires such integration only in programs that are Federally-assisted, Title II of the ADA similarly requires public entities to provide **all** their services in the most integrated setting appropriate to the needs of qualified individuals with disabilities regardless of Federal assistance. The concept of community integration is at the heart of Section 504 and the ADA. Consistent with the standards of Section 504 and the ADA, in most instances, separate programs for individuals with disabilities will not be permitted.

12. PHA Requirements for the Housing Choice Voucher Program (see 24 CFR § 8.28). [*see* Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program.]

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

    (1) In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt a suitable means to ensure that the notice reaches eligible individuals with disabilities and that they can have an equal opportunity to participate in the application process for the Housing Choice Voucher Program;

        I. In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;

        II. When issuing a Housing Choice Voucher to a family which includes an individual with disabilities, include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;

III. Take into account the special problems of locating an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers; and

IV. In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.

V. If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception payment standard under Sec. 982.505(d) for a regular tenancy under the Section 8 voucher program so that the program is readily accessible to and usable by persons with disabilities.

13. Non-housing Facilities (see 24 CFR § 8.21). Newly constructed non-housing facilities shall be designed to be readily accessible to and usable by people with disabilities. Alterations to existing facilities shall be made accessible to the maximum extent feasible – defined as not imposing an undue financial and administrative burden on the operations of the recipient's program or activity. For existing non-housing facilities, PHAs shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. There are a number of methods included in the regulation at 24 CFR § 8.21(c)(2) which may be used to accomplish accessibility in existing non-housing programs and activities.

    For example:

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

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

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

15. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. *See* 24 CFR § 8.24(a) and 28 CFR § 35.150 (a).

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

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

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

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

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

UFAS Notes:

- Under the Architectural Barriers Act, four standard setting agencies—the General Services Administration, HUD, the Department of Defense, and the United States Postal Service (USPS) are responsible for development of the standards for Federal facilities. UFAS is HUD's current standard. See Note in Section I.B.5. The UFAS is available at http://www.access-board.gov/ufas/ufas-html/ufas.htm.

- Figure 47(a) in UFAS does not permit the water closet to encroach on the clear, unobstructed (*see* UFAS §3.5) floor space required to provide an unobstructed 60º turning circle. *See* UFAS § 4.34.2(2).

- UFAS includes a definition of structural impracticability that does not require changes if such changes would result in the removal or alteration of a load-bearing structural member and/or an increased cost of 50 percent or more of the value of the element of the building or facility. *See* UFAS § 3.5. This does not alleviate the recipient's responsibility for making its programs and housing units accessible to persons with disabilities. Recipients instead should look to HUD's regulations for Section 504 at 24 CFR Part 8 in order to ensure compliance.

- The exception for bathrooms found at Section 4.22.3 of UFAS is not applicable to dwelling unit bathrooms.

- UFAS Section 4.34.2(15)(c) requires at least two bedrooms in dwelling units with two or more bedrooms to be accessible and located on an accessible route. PHAs need to be mindful that new construction or substantial rehabilitation of multistory dwelling units must be in compliance with this requirement. Further, the Department wishes to encourage designs that provide persons with disabilities access to all parts of their dwelling units, and therefore encourages PHAs to take advantages of the strategies outlined in the PIH guidebook, *Strategies for Providing Accessibility and Visitability for Hope VI and Mixed Finance Homeownership*." This guidebook may be found at the following link: http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm.

- Because UFAS does not fully address accessibility of units for persons with impaired hearing, for the 2 percent units that are required to be accessible for persons with hearing impairments, it is recommended that PHAs follow the July 2004 ADA/ABA Accessibility Guidelines, Section 809.5, Residential Dwelling Units with Communication Features. The ADA/ABA Accessibility Guidelines are available from the U.S. Access Board. See http://www.access-board.gov/ada-aba/. PHAs may also follow the 2003 edition of ICC/ANSI A117.1 Standard for Accessible and Usable Buildings and Facilities, Chapter 10, Section 1005. These Standards are available through the International Code Council, 500 New Jersey Avenue NW, Washington, DC 20001. See also ICC's Website at http://www.iccsafe.org.

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

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

1. Applicability. Title II of the ADA prohibits discrimination on the basis of disability by public entities. Public entity means any state or local government; or any department, agency, special purpose district or other instrumentality of a State or States or local government, including a PHA. *See* 28 CFR §§ 35.102 and 35.104.

2. Maintenance of Accessible Features. A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. (*see* 28 CFR § 35.133).

3. Non-discrimination. A public entity shall operate each service, program or activity so that when viewed in its entirety, each service, program or activity is readily accessible to and usable by individuals with disabilities. (*see* 28 CFR § 35.150).

4. Design and Construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such a manner that the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992 (*see* 28 CFR § 35.151(a)).

5. Alterations. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that effects or could effect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities if the alteration was commenced after January 26, 1992. (*see* 28 CFR § 35.151(b)).

6. Accessibility standards. Design, construction, or alteration of facilities in conformance with the UFAS or with the ADA Accessibility Standards (ADA Standards) shall be deemed to comply with requirements of 28 CFR § 35.151 except that the elevator exemption contained at §§ 4.1.3(5) and 4.1.6(1)(j) of the ADA Standards shall not apply. (*see* 28 CFR § 35.151(c)).

7. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity, including those receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. *See* 24 CFR § 8.24(a) and 28 CFR § 35.150 (a). (**Note**: The title II regulations at 28 CFR Part 35 contain extensive requirements that apply to public entities, including PHAs, and should be reviewed in their entirety to ensure compliance with the ADA.).

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

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

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

E. THE FAIR HOUSING ACT/24 CFR PART 100

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

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

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

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

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

   Note: PHAs must follow the more stringent reasonable accommodation requirements of 24 CFR §§ 8.4, 8.20, 8.24 and 8.33, which require PHAs to pay the cost of structural changes to facilities unless the PHA can accommodate the individual with a disability by equally effective means, or unless such structural changes would result in an undue financial and administrative burden (in such cases, the PHA must provide other alternative reasonable accommodation(s).) See also the discussion of reasonable accommodation under Section 504 above. For further information about the reasonable modifications provisions of the Fair Housing Act, see the HUD and DOJ Joint Statement on Reasonable Modifications Under the Fair Housing Act, issued May 5, 2008. This statement is available at: http://www.hud.gov/officies/fheo/disabilities/reasonable_modifications_mar08.pdf.

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

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

4. Design and Construction Requirements (see 24 CFR § 100.205) - applies to housing regardless of whether it receives Federal financial assistance. The Fair Housing Act requires that "covered multifamily dwellings" (see definition below) built for first occupancy after March 13, 1991, shall be designed and constructed so that:

   a. At least one building entrance is on an accessible route unless it is impractical due to terrain or unusual characteristics of the site [see 24 CFR § 100.205(a)],
   b. Public and common use areas are accessible [see 24 CFR § 100.205(c)(1)],
   c. All doors into and within all premises are wide enough for passage by persons using wheelchairs [see 24 CFR § 100.205(c)(2),
   d. All premises within covered multifamily dwelling units contain the following features of adaptable design:

      (i) An accessible route into and through the dwelling unit [see 24 CFR § 100.205(c)(3)(i)]
      (ii) Light switches, electrical outlets, thermostats and other environmental controls, are in accessible locations [see 24 CFR § 100.205(c)(3)(ii)]
      (iii) Reinforcements in bathroom walls for later installation of grab bars [see 24 CFR § 100.205(c)(3)(iii)]
      (iv) Usable kitchens and bathrooms for people using wheelchairs [see 24 CFR § 100.205(c)(3)(iv)]

   The Act defines covered multifamily dwelling as:

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

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

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

1994). These Guidelines and the Supplemental Notice apply ONLY with respect to the accessibility requirements of the Fair Housing Act.

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

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

2. ANSI A117.1-1986 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations and the Guidelines;

3. CABO/ANSI A117.1-1992 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations, and the Guidelines;

4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations, and the Guidelines;

5. HUD's Fair Housing Act Design Manual;

6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000;

7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes; and

8. 2003 International Building Code (IBC), with one condition. Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."

9. ICC/ANSI A117.1-2003 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations and the Guidelines; and

10. 2006 International Building Code, with a January 31, 2007, erratum to correct the text missing from Section 1107.7.5 and interpreted in accordance with the relevant 2006 IBC Commentary.

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

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

- A new construction project consisting of a building with a central public elevator is constructed with Federal financial assistance from HUD is required to have 100 percent of the dwelling units meet the Fair Housing Act design and construction requirements (see 24 CFR 100.205), and of this 100 percent, 5 percent, or at least one unit, whichever is greater, is also required to comply with the stricter accessibility requirements of Section 504 and 24 CFR 8.22. In addition, Section 504 requires that an additional 2 percent of the units, or at least one unit, whichever is greater, be made accessible for persons with visual or hearing impairments. *See* 24 CFR § 8.22 (b).

- In a newly-constructed 100-unit two-story walk-up apartment building with no elevator that is constructed with Federal financial assistance, Section 504 requires a total of five accessible units for persons with mobility disabilities (5 percent of 100 units = 5 accessible units). Further, these 5 units must be located on the ground floor, and be built to comply with the Section 504 accessibility requirements at 24 CFR §§ 8.22 and 8.32. In addition, if half of the 100 units are on the ground floor, all 50 of these ground floor units must comply with the Fair Housing Act's design and construction requirements. In addition, Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. *See* 24 CFR § 8.22 (b). These units can be located on either floor.

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

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

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

F. UNIVERSAL DESIGN

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

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

II. PROGRAM SPECIFIC COMPLIANCE/ACTIVITIES

A. HOUSING CHOICE VOUCHER PROGRAM

[*see* Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program.]

1. PHAs may give preference in admission to applicants with disabilities based on local needs and priorities. However, the PHA may not give a preference for admission of persons with a specific disability. *See* 24 CFR § 982.207(b)(3).

2. A person with disabilities may choose a suitable unit from among units available for rent in the local rental market.

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

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

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

4. Owners of private rental units leased with voucher assistance must make reasonable accommodations in rules, policies, practices or services if necessary for a person with disabilities to use the housing and must allow the person with a disability to make reasonable modifications in accordance with 24 CFR § 100.203. *See also* 24 CFR § 100.204 (a).

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

1. A disabled family meets the first-time homeowner requirement even if the family owned a home within the last three years if use of the homeownership option is needed as a reasonable accommodation so that the housing choice voucher program is readily accessible to and usable by the family member with a disability. See 24 CFR § 982.627 (b)(3

2. The PHA must count welfare assistance for a disabled family in determining whether the family meets the minimum annual income used to determine if a family member qualifies for commencement of home ownership assistance. *See* 24 CFR § 982.627(c)(2)(i).

3. The full-time employment eligibility requirement does not apply to a family with a disability. See 24 CFR§ 982.627(d)(3).

4. The limit on the length of time a family may receive homeownership assistance does not apply to families with disabilities. See 24 CFR§ 982.634(c).

5. Covered homeownership expenses may include principal and interest on mortgage debt incurred by the family to finance the cost of making the home accessible for a family member with a disability if the PHA determines the allowance of such costs is needed as a reasonable accommodation. See 24 CFR § 982.635(c)(vii).

C. PROJECT-BASED VOUCHER PROGRAM

1. PHAs, at their discretion, may choose to use up to 20 percent of their tenant-based assistance for project-based subsidies to encourage the development of projects for persons with disabilities.

2. Under the new law governing project-based assistance, only 25 percent of the units in a project may be subsidized. However, the law allows an exception for units for families with disabilities**,** elderly families and for families who receive supportive services.

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

D. CAPITAL FUND PROGRAM

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

a. Substantial Alterations. The requirements for new construction at 24 CFR § 8.22(a) and (b) are applicable for all units that are substantially altered. [s*ee* definition of *substantial alteration* at 24 CFR § 8.23(a)].

b. Other Alterations. If alterations are not substantial, then PHAs are required to provide accessible units up to 5 percent of the units in the development or replace the elements being modernized with accessible elements in all units of the project. PHAs should provide an additional 2 percent of the units for persons with hearing or vision impairments. *See* 24 CFR § 8.23 (b).

c. Reasonable Accommodations. PHAs should include in their projections of modernization needs amounts to cover known and projected alterations to units and facilities to address reasonable accommodation requests on a case-by-case basis.

d. Residents/Advocacy Consultation. PHAs are encouraged to ensure that, at least yearly, residents with disabilities and advocates for persons with disabilities have an opportunity to provide input on modernization plans and activities.

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

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

E. HOPE VI

1. HOPE VI Notice of Funding Availability (NOFA) Accessibility Requirements.

The design of proposed new construction and/or rehabilitation of housing must conform to the civil rights statutes and regulations delineated in each Grantee's Grant Agreement.

2. Accessible For-Sale Units. The HOPE VI Program encourages PHAs to include 5 percent of for-sale units accessible for persons with mobility impairments and 2 percent for persons with hearing and vision impairments.

3. Visitability. The HOPE VI Program strongly encourages making as many "visitable" units as possible. Visibility standards recommended by HUD apply to units that are not otherwise covered by accessibility requirements. The elements of visitability are also described in the Glossary of HOPE VI terms, which are posted to the HOPE VI website. *See* http://www.hud.gov/hopevi.

4. Advocacy Consultation/Participation. The HOPE VI Program encourages PHAs to work with local advocacy groups that represent persons with disabilities, the elderly and other special needs populations in developing HOPE VI plans.

5. Relocation Units. HOPE VI funds can be used to modify units to be occupied by families in the Housing Choice Voucher Program to make them accessible for residents with disabilities. The Department has determined that the costs of accessibility modification in rental units which are necessary for persons with disabilities who receive tenant-based relocation assistance under the voucher program in connection with a HOPE VI project are eligible HOPE VI expenditures. The method of implementation is to be determined by each individual locality.

6. Homeownership Design Handbook. To order a copy of strategies for providing accessibility and visitability for HOPE VI and mixed finance homeownership, go to the publications and resources page of the HOPE VI website at http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm.

7. Designated Housing Plans. All allocation plan applications for designated housing are now published on HUD's web site at www.hud.gov/pih.

8. Single People with Disabilities. The HOPE VI program encourages 1 bedroom units for single people with disabilities.

9. Accessible Townhouse Design. In addition to the designs already available and in use, HOPE VI will continue to explore design alternatives for townhouse dwellings.

F. CHOICE NEIGHBORHOOD PROGRAM

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

G. ADMISSION/OCCUPANCY

1. Application Process. PHAs must ensure that all employees who are involved in the application process understand how to conduct tenant selection and screening without

discriminating on the basis of any protected class, in particular applicants with disabilities. All application offices must be accessible. The PHA must provide accessible materials for persons with sight and hearing impairments and otherwise provide effective communication, upon request. *See* 24 CFR § 8.6 and § 8.54(c). A PHA must make special arrangements to take the application of persons who are unable to come to the PHA's offices because of a disability. At the initial point of contact with each applicant, the PHA must inform all applicants of alternative forms of communication. *See* 24 CFR § 8.6.

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

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

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

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

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

3. Live-in-Aides. In some cases, individuals with disabilities may require a live-in-aide. A PHA should consider a person a live-in-aide if the person: (1) is determined to be essential to the care and well being of a family member with a disability; (2) is not obligated to support the family member; and (3) would not be living in the unit except to provide the supportive services. A live-in-aide should not be required to share a bedroom with another member of the household. *See* 24 CFR §§ 966.4(d)(3) and 982.316, 982.402(b).

4. Verification. The PHA may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the housing for which they are applying; that applicants are qualified for deductions used in determining adjusted income; that applicants are entitled to any preference they may claim; and that applicants who have requested a reasonable accommodation have a need for the requested accommodation. A PHA may not require applicants to provide access to confidential medical records in order to verify a disability nor may a PHA require specific details as to the disability. A PHA may require documentation of the manifestation of the disability that causes a need for a specific reasonable accommodation or accessible unit. A PHA may not seek the individual's specific diagnosis, nor may the PHA seek information regarding the nature, severity or effects of the individual's disability.

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

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

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

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

the informal hearing process. The PHA is obligated to provide such reasonable accommodation unless doing so would result in a fundamental alteration in the nature of the PHA's program.

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

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

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

8. Unit Location. In public housing, a family applying for a unit or requesting a transfer may need a first floor unit due to a disability.

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

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

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

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

H. VISITABILITY

1. Visitability Concept. Although not a requirement, it is recommended that all design, construction and alterations incorporate, whenever practical and economical, the concept of visitability in addition to the requirements under Section 504, the Architectural Barriers Act, Title II of the Americans with Disabilities Act and the Fair Housing Act.

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

2. Design Considerations. Visitability design incorporates the following in all new construction or alterations, in addition to other requirements mandated by the accessibility laws discussed in this Notice, whenever practical, for as many units as possible within a development:

   a. Provide at least one entrance grade (no steps) approached by an accessible route such as a sidewalk; and
   b. Provide an entrance door, and all interior passage doors, that are at least 2 feet 10 inches wide allowing 32 inches of clear passage space.

3. Benefits of Visitability. Visitability also expands the availability of housing options for individuals who may not require full accessibility. It will assist PHAs in making reasonable accommodations and reduce, in some cases, the need for transfers when individuals become disabled in place. Visitability will also improve the marketability of units.

I. ACCESSIBILITY FUNDING SOURCES

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

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/.

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Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing