



24 CFR Parts 8 and 9

[Docket No. FR-6257-A-01]

RIN 2529-AB03

Nondiscrimination on the Basis of Disability: Updates to HUD's Section 504 Regulations

AGENCY: Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advanced notice of proposed rulemaking (ANPRM) seeks the public's input on changes that the Department of Housing and Urban Development (HUD or the Department) is considering to its implementing regulations for Section 504 of the Rehabilitation Act of 1973 (Section 504) for federally assisted and HUD conducted programs and activities. Section 504 prohibits discrimination on the basis of disability in all programs and activities receiving Federal financial assistance and in programs and activities conducted by executive agencies. After this ANPRM is published, the Department intends to draft a Notice of a Proposed Rulemaking (NPRM) that would propose the adoption of an updated Federal accessibility standard for purposes of compliance with HUD's Section 504 regulations. In addition, the Department intends for this NPRM to propose revisions to HUD's Section 504 regulations to clarify recipients' obligations, including how to account for advances in accessible design, information and communication technology, and assistive technologies that have become available since HUD's Section 504 regulations were originally published in 1988.

DATES: *Comment Due Date:* [Insert date 90 days from the date of publication in the Federal Register].

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Amy Gioletti, Senior Policy Advisor, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW, Room 5100, Washington, DC 20410, telephone 405-609-8561 (this is not a toll-free

number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities who would like to submit comments. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

Section 504 provides that “no otherwise qualified individual with a disability in the United States 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.” 29 U.S.C. 794(a). Through Section 504, Congress requires the head of each executive agency to promulgate regulations to implement the statute. *Id.* In 1988, HUD issued its Section 504 regulations for federally assisted programs and activities at 24 CFR part 8 and for federally conducted programs and activities¹ at 24 CFR part 9.²

All recipients and subrecipients of Federal financial assistance from the Department (HUD recipients) must comply with Section 504 and 24 CFR part 8. HUD’s Section 504 requirements apply broadly to any recipient of Federal financial assistance from the Department, including any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person that receives Federal financial assistance directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 24 CFR 8.3 and 8.50(a). In addition, HUD has enforced Section 504 requirements

¹ The statutory text of Section 504 explains that “program or activity” means “all of the operations of” entities, under the statute, that receive Federal financial assistance. 29 U.S.C. 794(b). The term “programs and activities” is intended to cover the same types of operations that are covered under Title II of the Americans with Disabilities Act (ADA).

² For purposes of federally conducted programs and activities new construction and alterations must comply with the standard set by HUD under the Architectural Barriers Act, 42 U.S.C. 4151-4157. Under HUD’s current regulations, the Uniform Federal Accessibility Standards are the architectural standards that are applicable to both federally assisted and federally conducted programs and activities.

against Tribal entities that receive Federal financial assistance from HUD. Federal financial assistance is also defined broadly as any assistance provided or otherwise made available by the Department through any grant, loan, contract, or any other arrangement in the form of funds, services, or property interest, excluding assistance through direct Federal procurement contracts or payments made under those contracts or any other contract of insurance or guaranty. 24 CFR 8.3.

HUD's Section 504 regulations at 24 CFR part 8 cover all programs and activities of recipients of funds from HUD, including, for example, eligibility criteria, application processes, site selection, admission to and continued participation in programs, tenancy, service delivery, and accessibility of programs and facilities. The regulations contain general prohibitions against discrimination and offer examples of discriminatory actions that either directly or indirectly result in discrimination against otherwise qualified individuals with disabilities. 24 CFR 8.4(a) and (b). Among other requirements, HUD's Section 504 regulations include an integration mandate, requiring recipients to administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities; reasonable accommodation requirements, which require recipients to adjust, modify, or make exceptions to policies or practices and structural modifications to facilities that may be necessary for an individual with a disability to equally participate in or benefit from programs and activities without discrimination; and the requirement to distribute accessible dwelling units throughout assisted projects and sites. 24 CFR 8.4(d), 8.20, 8.24(a), 8.26, and 8.33. Recipients must also take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public who have disabilities. 24 CFR 8.6.

Recipients of Federal financial assistance from HUD must ensure that their programs and activities are readily accessible to and usable by individuals with disabilities. 24 CFR 8.20. This includes physical accessibility requirements for newly constructed and altered multifamily housing projects and non-housing facilities. This requirement also includes alterations to

existing facilities that are necessary to comply with program accessibility requirements for all facilities. 24 CFR 8.20-8.25. Providers of existing assisted housing must operate such housing so, when viewed in its entirety, it is readily accessible to and usable by individuals with a disability. HUD recipients must comply with HUD's Section 504 regulations that incorporate the applicable Federal accessibility standard³ adopted by the Department for purposes of Section 504 compliance.

The Uniform Federal Accessibility Standards (UFAS) is currently the Department's Section 504 Federal accessibility standard for compliance with HUD's Section 504 requirements. 24 CFR 8.32. However, in 2014, HUD published a Notice, commonly referred to as HUD's "Deeming Notice," allowing HUD recipients to use the U.S. Department of Justice's (DOJ) accessibility standard under Title II of the Americans with Disabilities Act (ADA) – referred to as the 2010 ADA Standards for Accessible Design (2010 ADA Standards) – with identified exceptions, as an alternative accessibility standard in lieu of UFAS for purposes of Section 504 compliance. 79 FR 29671 (May 23, 2014). HUD provided this flexibility through the Deeming Notice because of a recognition that many facilities are designed, constructed, or altered by entities that are subject to HUD's Section 504 regulations, which are also subject to Title II and/or Title III of the ADA and, therefore, are also required to comply with the 2010 ADA Standards. This option exists until HUD formally revises its Section 504 regulations to adopt an updated accessibility standard.

HUD recipients must also ensure that designated accessible dwelling units are dispersed throughout projects and sites, are available in a sufficient range of bedroom sizes and amenities, and are tenanted to maximize the utilization of such units by individuals who need the accessibility features of the units. 24 CFR 8.26 and 8.27.

³ HUD uses the term "Federal accessibility standard" to refer to the architectural standard with which recipients of Federal financial assistance from HUD must comply under its Section 504 regulation. Under HUD's existing Section 504 regulation, HUD recipients may use one of two Federal accessibility standards—the Uniform Federal Accessibility Standards or HUD's Deeming Notice, as more fully explained below.

HUD's existing Section 504 regulations also set forth a compliance and enforcement mechanism. 24 CFR 8.50 through 8.58. HUD's Office of Fair Housing and Equal Opportunity (FHEO) investigates individual complaints alleging disability-related discrimination and conducts compliance reviews of recipients of HUD assistance to determine whether they are complying with these requirements. 24 CFR 8.56(a). The regulations set out the procedures used when FHEO finds noncompliance with Section 504 requirements. 24 CFR 8.56, 8.57, and 8.58.

II. The Need to Update HUD's Section 504 Regulations and Section 504 Federal Accessibility Standard for HUD Programs and Activities

The Department's Section 504 regulations, as a whole, have not been significantly updated since their initial publication in 1988. Since that time, HUD has continued to find widespread discrimination on the basis of disability in HUD-assisted programs and activities and an ongoing need for affordable, accessible, and integrated housing opportunities for individuals with disabilities who are eligible for the programs and activities administered by recipients of Federal financial assistance from HUD. As the agency with primary responsibility for administering the Nation's federally assisted housing programs, HUD has a responsibility to ensure that its Section 504 regulations account for these needs.

In fiscal year 2020, HUD received four hundred and sixty-one (461) complaints from individuals and organizations alleging disability discrimination under Section 504. In fiscal year 2021, HUD received five hundred and ninety-seven (597) complaints from individuals and organizations alleging disability discrimination under Section 504. In fiscal year 2022, HUD received five hundred and eighty-two (582) complaints from individuals and organizations alleging disability discrimination under Section 504. To date, in fiscal year 2023, HUD has received two hundred and two (202) complaints from individuals and organizations alleging disability discrimination under Section 504. Section 504 complaints are the most common type

of civil rights related complaint⁴ received with respect to the administration of HUD programs and account for more than half of such complaints.

HUD-initiated Section 504 compliance reviews also underscore ongoing discrimination faced by individuals with disabilities. Significant noncompliance has been found with respect to physical accessibility requirements within public housing and other HUD-assisted affordable housing programs. Compliance reviews have demonstrated that newly constructed and substantially altered multifamily housing developments frequently do not meet the accessibility requirements under UFAS. Furthermore, compliance reviews often reveal that HUD-assisted programs and activities do not meet other Section 504 requirements such as the provision of reasonable accommodations, establishment and maintenance of grievance procedures, ensuring effective communication, appropriate tenancing policies to ensure maximum use of accessible housing by individuals with disabilities, occupancy preferences, or physical dispersal of accessible units. Designated accessible units are often not appropriately tenanted by individuals who have a disability-related need for the accessibility features of the unit. Other examples of common violations include the imposition of inappropriate disability verification requirements, the imposition of requirements beyond what is required in a lease, the failure to protect the confidentiality of applicants' or tenants' disability-related information, discrimination against individuals with intellectual and developmental disabilities and behavioral health conditions, and policies for the admission of elderly residents that exclude persons with a disability.

In the over thirty years since HUD implemented its Section 504 regulations, the percentage of the U.S. population who are individuals with disabilities has continued to increase and diversify. In addition, as a larger share of the population increases in age, HUD will continue to play a critical role in providing affordable housing opportunities to allow older adults to age in place. This is particularly important given the significant population of older adults

⁴ Civil rights authorities include Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, and the Age Discrimination Act of 1975.

with disabilities, who will require accessible and affordable housing to age in place. Likewise, the mobility devices, personal aids, and other forms of assistive technology available for use by individuals with disabilities have also diversified. The characteristics of equipment that individuals with disabilities use have changed in ways that impact the design and usability of living space and methods of communication.

Significant advances have also occurred in building practices since 1988. Various accessibility codes have been developed and additional features and elements have been researched based on study of how persons use, or cannot use, facilities because of inaccessible design and construction. Many design features that make the home more usable and accessible have become readily available and widely used in residential construction, such as additional or modified environmental controls, security hardware, cabinetry, and plumbing fixtures. Also, housing models have continued to emerge that focus on identifying and mitigating barriers to accessibility and safety hazards in the home to promote healthy aging and enhance health outcomes for older adults. In addition, the severe lack of affordable housing has caused communities across the country to explore new and innovative approaches to providing housing. Examples of emerging single family and multifamily housing include tiny homes, portable homes, manufactured or prefabricated homes, 3D printed homes, townhomes, multifamily with townhome facades, and even housing developed using shipping containers and other pre-existing structures. The Department seeks to respond to these environmental, societal, and technological changes in its revised rule.

The United States is also experiencing an immediate and increasing need for affordable, accessible, and integrated housing opportunities. In particular, since the Supreme Court's *Olmstead* decision in 1999, there have been increased efforts to assist individuals in transitioning from institutional and other segregated settings into integrated, community-based settings.⁵ As a

⁵ *Olmstead* refers to the 1999 Supreme Court decision, *Olmstead v. L.C.*, 527 U.S. 581 (1999), wherein the Supreme Court affirmed that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the Americans with Disabilities Act.

result of *Olmstead* enforcement and implementation efforts by public entities, there is a crucial need for affordable and integrated housing where individuals with disabilities are able to live and interact with individuals without disabilities.⁶ Individuals with disabilities cannot be subject to discrimination in their housing search.

HUD is considering how to more effectively address these significant and emerging issues and seeks public comment as it updates its Section 504 regulations.

III. Request for Public Comments

The Department seeks input from the public, including individuals with disabilities, HUD recipients, such as public housing agencies, States, or local governments, Tribes, housing providers, and social service providers, before proposing regulatory text for comment. The Department is posing overarching questions and areas for particular comment below regarding effective communication, program accessibility, adopting an updated Federal accessibility standard, and enforcement mechanisms. The Department is also considering clarifying certain subsections of the regulations and providing further examples to enhance compliance.

When providing responsive comments, the Department requests that commenters indicate the specific question number that corresponds with the responsive comments. If providing comments not associated with a question number, please label the comment as such or identify the comment by the existing regulatory provision to which it relates. The Department also welcomes general comments on any aspect of its Section 504 regulations or how the Department can improve the administration of its federally assisted and federally conducted programs to ensure its own compliance with Section 504.

Question for Comment 1: The Department anticipates revising the definition of “individual with disabilities” consistent with the ADA Amendments Act of 2008⁷ and DOJ’s

⁶ See HUD’s Statement on the Role of Housing in Accomplishing the Goals of *Olmstead*, <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>.

⁷ Pub. L. No. 110-325 (Sept. 25, 2008).

Title II ADA regulations. The ADA Amendments Act of 2008 revised the definition of “individual with disabilities” for purposes of the ADA and made conforming amendments to Section 504. In view of the ADA Amendments Act of 2008’s change to the definition of disability, the Department is also considering whether the other definitions, currently provided at 24 CFR 8.3 should be revised to clarify how the term “disability” is used in connection with certain HUD programs, which have statutory authorizations to serve specific populations. The Department seeks general comments on updating its definitions contained at 24 CFR 8.3.

Question for Comment 2: HUD’s Section 504 regulations at 24 CFR 8.4 contain general prohibitions on discrimination and include examples of discriminatory application processes, admissions policies, and service provision, as well as physical inaccessibility, eligibility, and site selection, that would either directly or indirectly result in discrimination against otherwise qualified individuals with disabilities. 24 CFR 8.4(a) and (b).

(a) To what extent are individuals with disabilities at serious risk of entering institutional settings or being unable to transition from institutional or group home settings, including skilled nursing facilities, correctional institutions and inpatient rehabilitation for substance misuse, settings because they are unable to find affordable, accessible, and integrated housing opportunities in community-based settings? Please describe any challenges faced and solutions identified with locating affordable, integrated, and accessible housing, including issues such as ensuring housing is available when an individual is ready to transition from an institutional setting, coordinating housing and services, identifying available housing programs that individuals may be eligible for, the referral and/or application process, the use of preferences, the operation of waitlists, insufficient accessible and integrated housing opportunities, etc.

(b) Are there specific examples of discrimination that individuals with mental health or substance use disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing, such as rental policies eligibility or exclusion criteria, that meets disability-related needs that HUD should consider addressing in its Section 504 regulations?

(c) Are there specific examples of discrimination that individuals with intellectual, cognitive, or developmental disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing that meets the disability-related needs that HUD should consider addressing in its Section 504 regulations?

(d) Are there specific examples of discrimination that individuals with physical disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing that meets the disability-related needs that HUD should consider addressing in its Section 504 regulations?

Question for Comment 3: Recipients must take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public who have disabilities and are required to provide appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance. Because of technological advances, methods of enabling effective communication have significantly changed since HUD issued its Section 504 regulations in 1988 and recipients and individuals with disabilities communicate in different ways. What types of auxiliary aids and services do individuals with disabilities need in housing and community development programs and activities? What information should the Department consider with respect to the accessibility of recipients' websites and devices, mobile applications, etc.?

Question for Comment 4: Section 504 requires that newly constructed housing and non-housing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities. HUD's existing Section 504 regulations require that in new construction multifamily housing projects, currently a minimum of five (5) percent of the total dwelling units in each multifamily housing project (or at least one unit, whichever is greater) must be made accessible for persons with mobility impairments. An additional two (2) percent of the total 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 demonstrated, HUD may prescribe higher percentages or numbers. 24 CFR 8.20 through 8.22. Physical accessibility requirements also apply to any alterations of housing and non-housing facilities. 24 CFR 8.21.

Additionally, recipients must operate each housing and non-housing-related program and 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. 24 CFR 8.20, 8.21, and 8.24. This may require alterations to comply with program accessibility obligations in older facilities that were built before HUD's Section 504 regulations became effective. This may also require alterations in addition to and separate from meeting the affirmative physical accessibility requirements described above.

(a) To what extent does the lack of accessible units and other facilities in assisted housing discourage applications from eligible persons with a disability? To what extent is the lack of accessibility a barrier to the participation in various HUD-assisted housing programs by persons with a disability? What challenges do households face in finding available affordable and accessible housing in their respective communities? What factors or sources of data should HUD and its recipients use to determine the level of need for accessible housing?

(b) Is there information that HUD should consider to clarify, strengthen, and encourage compliance by recipients' with program accessibility obligations?

Question for Comment 5: Tenant-based housing choice voucher (HCV) and other tenant-based rental assistance programs are crucial to enable individuals with disabilities to secure affordable, accessible, and integrated housing opportunities of their choice. HUD's regulation at 24 CFR 8.28 provides examples of specific safeguards to ensure individuals with disabilities have access to these programs.

(a) What challenges exist in using an HCV or other tenant-based rental assistance in the private rental market to secure a unit that meets a household's disability-related needs? For example, is the process for households with members with disabilities to seek an extension of the

search term due to the lack of accessible housing effective or is the process for seeking exception rent under the exception payments standard for accessible housing units effective, and/or what other difficulties exist for individuals with disabilities in securing a suitable unit? Do households with members with disabilities encounter issues using HCVs or other tenant-based rental assistance due to the need for live-in caregivers? Is there information that HUD should consider on various methods or approaches that have proven effective in helping individuals with disabilities access these types of programs in order to provide equal access?

(b) Please provide details about the availability of affordable accessible units in different areas of the United States (e.g., urban areas, suburban areas, and rural areas, including geographically isolated and remote areas) in the private rental market and any proven strategies that encourage landlords to participate in the tenant-based HCV program.

Question for Comment 6: Most entities are subject to more than one Federal accessibility law and architectural standard in the operation of their housing services, programs, and activities. For example, a public housing agency receiving HUD funding and operating public housing and voucher programs may be subject to the design and construction requirements of the Fair Housing Act,⁸ Section 504 as a recipient of Federal financial assistance, and Title II of the ADA as a public entity. This may require applying multiple accessibility laws and architectural standards, e.g., the Fair Housing Act's Accessibility Guidelines, the 2010 ADA Standards under Title II of the ADA, and HUD's Section 504 accessibility standard. In addition, State and local laws and building codes will also apply. Most States and localities now use the International Building Code (IBC) and the accessibility standard it references, the ICC A117.1 Standard for Accessible and Usable Buildings and Facilities.

The Department seeks input on ways to harmonize, to the extent possible, the requirements among the various standards and achieve greater consistency in the design and construction of buildings and facilities that are covered by multiple Federal accessibility laws.

⁸ 42 U.S.C. 3601 et seq.

The Department also seeks to ensure, however, that accessibility for persons with disabilities is not reduced and opportunities for modernization of accessibility requirements are considered.

The Department notes that recipients of HUD funding must be aware of and comply with the accessibility requirements of all applicable laws, including Section 504, the ADA, and the Fair Housing Act. Compliance with one of these statutes does not ensure compliance with other Federal disability nondiscrimination laws. HUD's adoption of an updated Section 504 Federal accessibility standard for purposes of compliance with its own Section 504 regulations does not change an entity's obligation to comply with all applicable laws.

What standards should the Department consider for purposes of an updated accessibility standard for its recipients? HUD requests information to assist the Department in determining whether other specific guidelines provide sufficient or insufficient accessibility in the context of housing or other residential facilities funded by HUD. In addition, please provide information on scoping and other technical provisions the Department should consider to further accessibility for individuals with disabilities in the context of housing.

Question for Comment 7: HUD's Deeming Notice allowed HUD recipients to use the 2010 ADA Standards under Title II of the ADA – with identified exceptions, as an alternative accessibility standard in lieu of UFAS for purposes of Section 504 compliance. The Deeming Notice identified eleven (11) exceptions where UFAS provides greater accessibility than the 2010 ADA Standards and must continue to be utilized.⁹ Are there other UFAS provisions that HUD did not identify in its Deeming Notice that should be retained to further accessibility in HUD-assisted programs?

⁹ (1) Section 35.151(a)(2) Exception for structural impracticability; (2) Section 35.151(b) Alterations; (3) Section 202.2 Additions; (4) Exception to Section 202.4 Alterations Affecting Primary Function Areas; (5) Section 203.8 General Exceptions—Residential Facilities; (6) Employee Work Areas: Sections 203.9 (General exception for employee work areas), 206.2.8 (Circulation paths in employee work areas), and the Exceptions to 403.5 (Clearances within employee work areas) and 405.8 (Handrails within employee work areas); (7) Exception 2 to Section 206.2.1 Site Arrival Points; (8) Exception to Section 206.2.2 Within a Site; (9) Exception 1 to Section 206.2.3 Multi-Story Buildings and Facilities; (10) Section 214—Scoping of Washing Machines and Clothes Dryers; (11) Exception to Section 215.1 Visible Alarms.

Question for Comment 8: As the Federal agency with primary responsibility for administering the Nation's federally assisted housing programs, the Department has a unique role in considering how residential and connected spaces (e.g., spaces for laundry, mail, telecommunications, office, maintenance, parking, recreation, service, and community functions) must be made accessible. HUD is looking at the accessibility and usability of spaces and elements within one's own home and connected spaces that will impact daily living, which is different than considering accessibility in places of public accommodation or other settings. HUD is considering how the development of various enhanced accessibility features can be incorporated or incentivized into the design and construction of affordable housing developments.

Advances in the types of accessibility features can assist individuals with various types of disabilities obtain, remain in, and receive the full benefits of their housing. For example, for individuals with mobility disabilities, such features may include: power operated or other keyless proximity-based entry at entrances and exits from buildings and passageways through the building; light weight or low resistance doors; detachable shower-heads; smart, remotely adjustable thermostats; adjustable shelves in closets and storage; full extension pull-out drawers, shelves, and racks; roll-in showers; avoiding swinging interior doors within individual accessible dwelling units; faucets with touch or motion sense water controls; and reinforced ceilings to accommodate a track and harness system. For individuals who are blind or have low vision, examples of such features may include: audible elevator indicators; innovative entry systems that do not solely rely on an individual's ability to see in order to gain access; controls with audio feedback as opposed to or in addition to touch screens; and enhanced lighting. For individuals who are deaf or hard of hearing, examples of such features may include: innovative entry systems that do not solely rely on an individual's ability to hear in order to gain access; doorbells with light alerts; activated close captioning on televisions located in public areas; and video phones or other video connections for communications.

In addition, specific accessibility features assist individuals to remain in their homes and to age in place, such as vertical and angled grab bars to get up and down from toilets and for stepping in and out of bathing fixtures. Examples to assist individuals who are blind or have low vision include contrasting surfaces, enhanced lighting, tactically discernible controls, and elimination of tripping hazards. Examples to assist individuals who are deaf or hard of hearing include innovative entry systems, doorbells with light alerts, and emergency alarms for fire and carbon monoxide leaks that can accommodate personal notification devices.

(a) What barriers do individuals with disabilities face in public and common use areas of housing and non-housing facilities (e.g., building entrances, building entry systems, recreation and fitness facilities, mail and package rooms, coworking facilities, parking structures, laundry rooms)? What accessibility features or advanced technology can help overcome these barriers?

(b) What accessibility features or advanced technology should the Department be aware of that improve accessibility in designated accessible units for individuals with mobility disabilities?

(c) What accessibility features or advanced technology should the Department be aware of that improve accessibility in designated accessible units for individuals with vision and hearing disabilities?

(d) Given the increasing aging population, the Department is considering its role in providing affordable housing opportunities to this population and how to enable households to remain in their housing. Are there specific accessibility features that can help individuals to age in place?

(e) There are alternative accessibility provisions in accessibility standards that address the more limited reach ranges and need for lower seat heights and dining surfaces for children with disabilities that are different than accessibility features configured for adult use. The Department is interested in any comments related to dimensions for children.

(f) To what extent does the failure to maintain accessible features, including elevators and lifts, limit individuals with disabilities access to affordable housing?

Question for Comment 9: HUD is considering how advances in the design and construction field impact accessible housing developments. There are various types of single family and multifamily housing, as well as a variety of materials and structural components to construct different types of housing, such as shipping containers or other emerging building components. In all instances, federally assisted housing must provide accessible housing opportunities for beneficiaries with disabilities.

(a) Are there specific emerging design approaches, or specific construction materials that HUD should consider?

(b) The Department is interested in comments related to emerging design approaches in disaster response, mitigation, and recovery situations. Are there specific design types or other issues specifically within the context of disaster relief that HUD should consider addressing to ensure accessibility for individuals with disabilities?

Question for Comment 10: A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces, or to participate in a HUD-assisted program or activity. For purposes of Section 504, this also includes recipients providing structural changes to a unit or public or common use area when they may be needed as a reasonable accommodation. Generally, the failure to provide reasonable accommodation is a form of discrimination under Section 504. HUD anticipates further addressing the concept of what constitutes a reasonable accommodation in its Section 504 regulations. HUD is aware that it may be useful to its recipients to understand the broad array of the types of accommodations that may be useful to individuals with different types of disabilities, such as individuals who are blind or have low vision, individuals who are deaf or hard of hearing, individuals with intellectual, cognitive, or developmental disabilities,

individuals with mental health disabilities or substance use disabilities, and individuals with mobility disabilities. The Department is interested in comments on these issues.

Question for Comment 11: HUD undertakes two types of investigations under its Section 504 regulations – complaint-based investigations and compliance reviews. Any person, or their authorized representative, who believes that they have been subjected to discrimination by a recipient of HUD financial assistance may file a Section 504 complaint with HUD. Similarly, persons may file a complaint with HUD on behalf of specific classes of individuals who have been subjected to discrimination by a recipient.

HUD may conduct periodic compliance reviews of recipients that include a review, including an on-site review of recipients' policies, practices, and procedures, to determine whether recipients are complying with HUD's Section 504 regulations. Recipients are also subject to program compliance reviews and monitoring procedures by HUD in its oversight of program requirements designed to further compliance with HUD's Section 504 regulations. 24 CFR 8.56. Are there any clarifications or changes HUD should consider in procedures for initiating and conducting investigations and/or enforcement mechanisms with respect to individual complaints or compliance reviews?

Question for Comment 12: HUD has enforced Section 504 requirements against Tribes and Tribal entities that receive HUD Federal financial assistance. While the Department recognizes Section 504 obligations are consistent across all recipients of HUD Federal financial assistance, the Department also recognizes the unique relationship between the Federal Government and Tribes and seeks comment from Tribes and Tribal entities in accordance with HUD's Government-to-Government Tribal Consultation Policy.

(a) Are there tribal specific circumstances that HUD should consider regarding Tribes and tribal entities, particularly with respect to the construction of accessible facilities?

(b) Are there unique types of discrimination members of Tribes with disabilities experience, particularly with respect to non-Tribal grantees or other entities covered by Section 504?

(c) Are there unique types of discrimination members of Tribes with disabilities experience with respect to the provision of reasonable accommodations, the provision of appropriate auxiliary aids and services necessary to ensure effective communication, access to accessible facilities, or accessing services and programs in the most integrated setting appropriate to the needs of members of Tribes with disabilities?

Question for Comment 13: The Department recognizes that individuals with disabilities who are also members of other protected class groups (e.g., race, color, national origin, sex (including sexual orientation and gender identity), familial status, religion, age, etc.) may be uniquely impacted by revisions to HUD's Section 504 regulations and is interested in receiving public comment on unique considerations related to intersectionality.

(a) Are there unique barriers or other forms of discrimination in housing or HUD assisted programs against individuals with disabilities who are also members of other specific protected class groups?

(b) In particular, is there information that HUD should consider regarding how disability discrimination affects persons of color, LGBTQ+ persons, families with children, older adults, and individuals with limited English proficiency who also require appropriate auxiliary aids and services necessary to ensure effective communication?

IV. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to

analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to, “identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.”

HUD’s Section 504 regulations have not been significantly updated since originally published in 1988; whereas significant advances in building practices and assistive technologies have been made during the preceding decades. Additionally, since HUD’s Section 504 regulations were first published, the percentage of the U.S. population with disabilities has continued to increase and diversify and, during this time, a larger share of the population has increased in age. Given these changes in the availability and improvement of accessibility design and technologies and the changes in the makeup of the American population that require or benefit from the improvements in accessibility and design and technologies, this ANPRM is necessary to avoid HUD’s Section 504 regulations from becoming outmoded, ineffective, and insufficient.

This ANPRM has been reviewed by OMB. As a result of this review, OMB determined that this ANPRM will likely result in a “significant regulatory action,” as defined in section 3(f) of Executive Order 12866 but not an “economically significant” action.

Environmental Review

This ANPRM sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), it is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321-4347).

Demetria McCain,
Principal Deputy
Assistant Secretary for Fair Housing and
Equal Opportunity

