



July 24, 2023

Regulations Division  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 7th Street S.W.,  
Washington, DC 20410

**RE: Docket No. FR-6257-A-01, RIN 2529-AB03 Nondiscrimination on the Basis of Disability: Updates to HUD's Section 504 Regulations**

To Whom It May Concern:

The National Disability Rights Network (NDRN)\* thanks the U.S. Department of Housing and Urban Development (HUD) for the opportunity to submit comments for the Notice of Proposed Rulemaking (NPRM) regarding regulations of section 504 of the Rehabilitation Act of 1973 (Rehab Act).

Below are NDRN's comments to several of the questions in the request for comments. We are thankful and excited that HUD is providing this opportunity to comment on an issue that deserves new discussion after many years and is impacted by modern technology and the growing number of Americans with disabilities.

**NDRN Comment On Question 1:**

NDRN supports aligning the definition of "individual with a disability" with the definition provided by the Americans with Disabilities Amendments Act of 2008. As a result of numerous Supreme Court rulings in the 1990s and

early 2000s, it became apparent that a more expansive definition of disability was necessary to accommodate the growing population of Americans with disabilities. NDRN supports this expanded definition to ensure coverage of all persons with disabilities who can benefit from the coverage of section 504. Furthermore, a uniform definition used consistently among parallel laws makes the process of analyzing qualifications for accommodations easier and straight forward.

## **NDRN Comment On Question 2:**

(A)

Depending on the region an individual lives in, procuring housing can be like a race. When a unit becomes available, a tenant must rush to apply. For individuals with disabilities living in an institutional setting, they likely will not have ready access to technology or assistance to submit an application. As a result, they struggle to compete with other tenants applying for the available units. Tenants in institutional or congregate settings will need social workers to assist in the process so they have a better chance in competing with the numerous other individuals applying for the same limited number of units. If some kind of assistance is not provided, they will not be able to keep up with the race to apply.

We reached out to Protection and Advocacy (P&A) agencies to understand the first-hand situations they have observed in these circumstances. Disability Rights Vermont believes case management for potential tenants with certain disabilities is necessary to help find and retain housing. Multiple P&A agencies explained that residents with disabilities are indefinitely left in nursing homes and other institutional settings because they struggle to access housing in the community.

Relatedly, most multi-family housing providers now require the application process to be carried-out online. However, websites are often inaccessible to people with disabilities. The updated Section 504 regulation must ensure that recipients of federal funds create accessible websites and require ongoing review and remediation of their websites for accessibility.

Additionally, many tenants with disabilities simply do not have the technology to access the Internet. Thus, alternative ways to apply are always needed. For example, a housing provider should be willing and able to walk through the application over the phone or take paper applications

that can be filled out by individuals without computer access and submitted by mail. To make things truly accessible, a multi-modal approach is always best.

Finally, an example of financial burden is the cost of retrofitting a privately owned housing unit to be accessible, especially in the case of a person who is a tenant-based subsidy holder (such as a person with a Housing Choice Voucher). The Arizona Center for Disability Law explained that many clients face barriers in making modifications to their apartments because of the financial burden. Under the Fair Housing Act (FHA), tenants have the right to make housing modifications but are responsible for the financial costs to do so. Many residents simply do not have the funds to do so, thus there is no ability to make an inaccessible housing unit accessible. While it is possible for tenants to reach out to insurance providers for such assistance, as the Arizona P&A explained, this process is cumbersome and difficult and often dissuades tenants from moving forward with the process.

(B)

Persons who have previously been incarcerated also face significant difficulty obtaining housing, especially because many housing applications have a question that asks about a tenant's criminal history. Individuals with disabilities who have been incarcerated face the double barrier of a lack of accessible housing and housing providers that impose "blanket bans" without taking into consideration mitigating factors, such as the specific type of criminal activity, the possible mitigating factors of a disability and the passage of time. Then you add on the requirement to provide an application fee and the financial burden to apply to multiple places while being denied housing because of their criminal background it becomes an insurmountable financial hurdle.

(C)

NDRN advocates for the inclusion of plain language options in all housing advertisements and instructions on how to apply. The process to apply can already be confusing for applicants. Additional efforts should be taken to explain the process in plain language for tenants with intellectual and developmental disabilities.

(D)

As discussed in this notice, the current Section 504 regulations require newly constructed housing to include five percent of units that are

accessible for tenants with physical disabilities and two percent of units be accessible for tenants with hearing or vision impairments. NDRN does not believe this percentage is sufficient. All P&A agencies polled vehemently stressed that the five percent and two percent requirements are not enough based on the numerous situations they have observed, including Hawaii, the District of Columbia, Arizona, and Vermont.

More research needs to be done to discover what the more accurate and current percentage would be because there is a significant mismatch between the need for accessibility and the number of accessible rental homes. An analysis of the 2019 American Housing Survey found about 5 percent of households reported that they experienced difficulty navigating or using their homes, amounting to a total of 6.8 million households. According to the Harvard Joint Center for Housing Studies, homes that include universal design features or are designed to be easily adapted to resident needs are more likely to fit the needs of residents without major interventions, but the US housing stock does not regularly incorporate accessibility and includes very few housing units that offer multiple accessibility features.

An analysis of the 2011 American Housing Survey home accessibility module found that less than 4 percent of US homes offered a combination of a no-step entry into the home, single-floor living, and wide halls and doors that could accommodate a wheelchair. Only 1 percent of units have these features plus lever-style handles and electrical controls reachable from a wheelchair. Using the same data, [other researchers] found that only 0.15 percent of housing units in the US were fully wheelchair accessible, under 4 percent of housing units could be considered livable by people with moderate mobility difficulties, and only a third of units were potentially modifiable (having some structural features necessary for accessibility but in need of additional modifications).

The need for higher percentages of physical accessible and hearing and vision accessible units is also evidenced in the remedies obtained by HUD's Office of Fair Housing and Equal Opportunity's (FHEO) enforcement work where FHEO and the City of Los Angeles entered into a Voluntary Consent Agreement in 2019 that required fifteen percent of new units be accessible (11 percent mobility and 4 percent with hearing/vision features).

The gap for affordable, accessible homes is even wider. A 2022 Urban Institute report found that 84 percent of disabled people with low incomes in the United States—nearly 18 million people across 15.6 million households—were eligible for housing assistance but did not receive it. The group of 18 million disabled people with low incomes who are not receiving housing assistance may face other significant financial barriers to accessing housing. For example, 14 percent of this population receives Supplemental Security Income (SSI), but SSI payments are not enough for recipients to afford rent in any US housing market. Without housing assistance, this group will continue to struggle to meet their housing needs.

As the Department considers what percentage should be adopted in the next iteration of this requirement, we provide this example of the need to increase the percentage from Disability Rights Vermont. They estimate that in their state up to 34 percent of housing units must be accessible to meet the need of Vermonters with disabilities. The agency has looked closely at the number of residents with all forms of disabilities to land at this number. This is just one example from the nationwide network of P&A agencies that shows the five percent and two percent requirements need to be increased.

***Comment on Question 3:***

The accessibility of websites and smartphone applications continues to be a barrier for persons with disabilities when accessing electronic materials. When such technology is designed poorly, individuals cannot independently use the technology. As a result, potential tenants cannot apply for housing online or peruse options online. As discussed earlier, the process for applying for multi-family housing is almost exclusively done online now.

HUD needs to do more to instruct housing entities that are recipients of federal funds on how to comply with Section 508 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act (ADA). There is strong support for the Web Content Accessibility Guidelines (WCAG) as the standard to make websites and applications accessible for users with disabilities. See, *Andrews v. Blick Art Materials, LLC*, 286 F. Supp. 3d 365 (E.D.N.Y. 2017); *Hindel v. Husted*, No. 2:15-CV-3061, 2017 WL 432839, at \*7 (S.D. Ohio Feb. 1, 2017); *Robles v. Domino's Pizza LLC*, No. CV 16-6599 JGB (EX), 2021 WL 2945562, at \*10 (C.D. Cal. June 23, 2021) (after remand from 9th Cir.)

Finally, as previously mentioned, the inclusion of plain language to accommodate applicants with intellectual and developmental disabilities must also be included. Information that is provided both electronically or in hard copy form must include plain language versions to make the process more understandable for all potential tenants.

#### **NDRN Comment On Question 4:**

(A)

Because of a general lack of knowledge on the number of, and availability of, accessible units, tenants with disabilities are less likely to apply for numerous housing options. If they do not know that such options exist, they will not apply. More education about and promotion of opportunities for accessible units must be encouraged. Again, this could be an area where a case management system, as Disability Rights Vermont advocated for, could be of assistance.

NDRN urges HUD to conduct a study on the number of persons with various kinds of disabilities living in different forms of housing. As discussed above, the five percent and two percent requirements are outdated. It is unclear if the percentage is anywhere close to the general population who need such housing accommodations. NDRN stresses the need for HUD to survey communities to see what percentage of residents live in different housing settings and have various kinds of disabilities. Surveys could be conducted with the help of major disability advocacy organizations such as the American Council of the Blind, the National Association of the Deaf, and Paralyzed Veterans of America. Such organizations can connect the disability community with HUD to collect data. HUD could also partner with the Census Bureau to gather more reliable data.

As a precursor to the more in-depth study mentioned in the paragraph above, we recommend HUD review the data sources listed below in determining need. We urge HUD not to rely on any single source but to secure as much data as possible:

- review of the waiting lists for accessible units in public and HUD-assisted housing and LIHTC properties in the same region
- review of the state-funded housing search databases used by many

state housing agencies, and which include accessible housing (assisted and unassisted)

- review the U.S. Census, ACS data
- review Coleman Institute State of the States in Development Disability; Technical Assistance Collaborative's Priced Out; NRI
- identify whether there are any outstanding complaints or lawsuits regarding residential accessibility.

Additionally, many tenants with disabilities who can afford it regularly live in newly constructed buildings that are more likely to be accessible. The difficulty with this reality is that such newly designed and constructed buildings are often more expensive to reside in than older buildings. This HUD study we are calling for in this comment needs to track this information too as it is important to capture if people with disabilities must pay more to gain equitable services.

Finally, HUD needs to compile data on the age of available housing units. A number of states reported to us that they simply do not have enough newer housing units. For example, Vermont reported that a small fraction of their available housing units have been built since the passage of the Rehabilitation Act, the Fair Housing Amendments Act and the ADA. As a result, even the more expensive compliant buildings simply do not exist.

#### **NDRN Comment On Question 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)

Many apartment listings typically do not provide any information about accessible features or may not accurately describe whether a unit is accessible. So, voucher holders who need accessible units need time to contact the housing provider to ask questions to determine whether some available units clearly would not meet their needs. Voucher holders who need accessible units then need to visit the units that potentially would be accessible. Those visits must be of the exact unit they would be renting and

not just a model or “comparable” or “similar” unit to be sure it would be accessible to them because small differences in dimensions can make a difference in access and usability. Some people with mobility disabilities also use mobility devices that may be larger or have larger turning circles than a typical wheelchair, so actual use of their individual mobility device in the actual unit they seek to rent is critical in determining whether the unit would be accessible to them.

Voucher holders with disabilities, particularly mobility disabilities, will routinely need a longer search term to locate an accessible unit. Housing authorities should consider automatically granting longer search terms for voucher holders with mobility disabilities and should freely grant extensions.

Voucher holders with other disabilities that may have other disability related needs for certain features may similarly need additional time and housing authorities should freely grant extensions if voucher holders with disabilities are unable to find a unit that meets their needs.

In the past, we have heard of some housing authorities that flatly refused to grant extensions for voucher search terms. Other housing authorities would only grudgingly extend search terms if advocates contacted the housing authority on behalf of voucher holders with disabilities. That seems to happen less often in recent years but remains a concern.

Voucher holders, particularly those with mobility disabilities, often need units in buildings with elevators and those buildings in most markets tend to be newer and thus have higher rents.

Voucher holders with disabilities commonly are not aware of, or are not informed about, the availability of exception payment standards. Housing Authorities need to provide clear and understandable information (in alternative formats) to voucher holders about the availability of exception rents. Housing authorities also need to simplify the process for applying for and approving exception rents when there is a disability need for the exception rent to obtain a unit that meets the disability needs of a voucher holder with a disability.



## **NDRN Comment On Question 8:**

(A)

Technology has greatly advanced for common appliances since the last issuance of HUD 504 regulations. For example, many appliances use touch screens and electronic menus now. These appliances are inaccessible for blind and low vision users who cannot interact with the touch screen. Similarly, tenants with dexterity and mobility disabilities cannot independently interact with the machines. To enable tenants with disabilities to independently interact with such machines, the machines need to be designed with text to speech technology and voice input technology.

For instance, technology exists that allows blind users to interact with a touch screen. Software can be installed that reads aloud what is seen on the screen when the people touch that part of the screen. The blind individual can then use a series of finger swipes to move throughout menus. Similarly, software can be used to enable a person with a physical disability to talk directly to the appliance. The voice activated technology can then listen to the voice of the user and perform the requested task.

Along with the various types of technology to increase accessibility, simple accommodations can be implemented to make appliances accessible. Washers and dryers can be labeled with tactile and large print labels to allow blind and low vision users to engage with the appliances independently. The same thing can be done with any other self-service machines or devices provided in a housing complex.

Along the same lines, many types of housing are now using electronic key fob technology to choose a floor in an elevator or unlock an apartment door. Such technology can be more accessible since bringing an electronic key fob to a reader can be easier and more usable for a tenant with a dexterity disability than using a traditional key. However, electronic key fob readers can be difficult to find for someone who is blind or has low vision. Consequently, the addition of things like tactile identifying marks and large or bright colors should be included.

Many housing units also include gyms for tenants to use. The accessibility of the gym equipment must be ensured. Like other devices discussed previously, touch screens and other panels are often inaccessible for blind

or low vision tenants. Housing units should be required to purchase equipment that is accessible, if possible, for all tenants. Similarly, the structure of some exercise equipment makes their use by persons with physical disabilities impossible. Again, housing providers must be required to seek out the most accessible exercise equipment.

#### **NDRN Comment On Question 10:**

The legal requirement that HUD-funded programs provide reasonable accommodations for people with disabilities is fundamental to ensuring equal access to those programs. Reasonable accommodation policies are the key to the proverbial door to housing, ensuring people with disabilities can access and participate in HUD programs, services, and activities.

Currently, many housing providers include occupancy limits. However, if a tenant has a significant disability that requires a 24 hour live-in personal care attendant, an accommodation to the policy is necessary. The tenant should not be penalized for having a live-in aid in the dwelling place. A number of P&A agencies have received numerous calls on this occurrence. HUD needs to make clear going forward that the above situation is considered a reasonable accommodation.

#### **NDRN Comment On Question 13:**

(B)

Potential tenants of intersecting identities are more likely to face barriers when accessing housing. For instance, ethnic minorities who do not speak English and also have an intellectual disability are likely to have a far more challenging time reading applications and other documentation when trying to procure a place to live. As a result, when making websites more accessible, such as including plain language documents, additional steps including instructions in other commonly spoken languages should be considered.

NDRN appreciates the opportunity to comment on these questions and hopes that HUD can quickly issue a Notice of Proposed Rulemaking to update these critical regulations that have not been revised in decades.

Please reach out to Claire Stanley, Public Policy Analyst, if you have any questions or need additional clarification on our comments. She can be reached at [Claire.stanley@ndrn.org](mailto:Claire.stanley@ndrn.org), or 202 567-3501.

Sincerely,

A handwritten signature in blue ink that reads "Marlene Sallo". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Marlene Sallo**  
**Executive Director**  
**National Disability Rights Network**

\*NDRN is the non-profit membership association of Protection and Advocacy (P&A) agencies located in all 50 States, the District of Columbia, and the United States Territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest.

P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally based advocacy services for persons with disabilities. NDRN and the P&A Network advocate for many individuals with disabilities around housing related discrimination.