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Office of General Counsel, Rules Docket Clerk  
Department of Housing and Urban Development  
451 7th Street SW, Room 10276  
Washington, DC 20410-0500

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

To Whom it May Concern,

As the largest provider of legal services for people with disabilities in the country, Disability Rights California (DRC) thanks the Department for providing the opportunity to submit feedback prior to initiating rulemaking to update HUD's Section 504 Regulations. DRC is the federally and state designated protection and advocacy agency for California.<sup>1</sup> In 2022 alone, DRC responded to 20,425 requests for assistance, conducted 1,324 outreaches and trainings, analyzed 430 bills directly impacting people with disabilities, and obtained over \$800.1 million in anticipated economic benefits for Californians with disabilities. It is based on our extensive advocacy and experience that we offer the following comments. We also

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<sup>1</sup> Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001, Pub. L. No. 106-402; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. § 10801, Pub. L. No. 102-173; the Rehabilitation Act, 29 U.S.C. § 794e, Pub. L. No. 106-402; the Assistive Technology Act, 29 U.S.C. § 3011-3012, Pub. L. No. 105-394; the Ticket to Work and Work Incentives Improvement Act, 42 U.S.C. § 1320b-20, Pub. L. No. 113-128; the Children's Health Act of 2000, 42 U.S.C. § 300d-53, Pub. L. No. 115-377; and the Help America Vote Act of 2002, 42 U.S.C. § 15461-62, Pub. L. No. 107-252; as well as under Cal. Welf. & Inst. Code § 4900 et seq.

make numerous recommendations to eliminate barriers to the coordination of services and housing, increase and modernize accessibility, ensure individuals with disabilities can obtain and maintain housing through vigorous and clear assertion and enforcement of their rights, and recognize the unique ways in which barriers to access manifest when people have intersecting identities.

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## **I. HUD Should Review and Revise its Section 504 Regulations with the Goal of Increasing Access, Equity, and Inclusion.**

Section 504 of the Rehabilitation Act of 1973 was enacted, among other things, to “empower individuals with disabilities to maximize . . . independence, and inclusion and integration into society, through . . . the guarantee of equal opportunity . . .” and to “initiate and expand services to groups of [disabled] individuals (including those who are homebound or institutionalized) who have been underserved in the past.”<sup>2</sup> Though Section 504’s mandate 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” has existed for decades, many recipients still fail to make their programs accessible for disabled people. 29 U.S.C. § 794(a).

Section 504’s promise is inclusion. Too often, HUD recipients view their obligations as solely reactive or technical – the duty to respond to a reasonable accommodation or ensure a minimum level of physical accessibility. And even then, hurdles are placed before disabled individuals who need reasonable accommodations and accessible units are scarce. To align with Section 504’s broader purpose, we urge the Department to emphasize that HUD recipients must ensure that disabled individuals and households are gaining true, meaningful access to their programs, in addition to Section 504’s more technical requirements.

To facilitate assessments of whether such inclusion is real, we urge the Department to renew the requirement for HUD recipients to engage in a self-evaluation<sup>3</sup> and transition plan<sup>4</sup>, and to add periodic reporting requirements, with the related information made available to the public. Such plans should also align and cross-reference the duty to affirmatively further fair housing and Equity Plans once the Department’s AFFH rule is finalized. This is especially important to ensure that HUD recipients consider how accessibility can require additional and unique solutions when considering intersecting identities. Further, the Department should ensure that its regulations also align with rules designed to facilitate

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<sup>2</sup> Rehabilitation Act of 1973, 87 Stat. 355, Pub. L. No. 93–112.

<sup>3</sup> 24 C.F.R. § 8.51.

<sup>4</sup> 24 C.F.R. § 8.24.

inclusion, like the minimum standards of the Medicaid Home and Community-Based Services (HCBS) settings rule, which recognized that not all settings receiving HCBS funds were truly *home and community-based*, but instead resembled institutions, exercising control over and isolating residents with disabilities.<sup>5</sup> Coordinating across agencies to ensure these are minimum principles for providing accessible, affordable, inclusive, and supportive housing is critical.

Ensuring that people with disabilities have access to affordable, accessible, inclusive housing that includes appropriate supports if needed requires centering access, equity, and inclusion through a cross-sector and cross-identity lens.

## **II. HUD Should Clarify the Scope of Section 504**

The Civil Rights Restoration Act of 1987 makes clear that Section 504 applies to “all the activities” of a recipient of federal financial assistance.<sup>6</sup> In other words, if a local or state housing department receives HUD funding, Section 504 applies to all of their housing activities, and those of their subgrantees and contractors, regardless of whether a particular project or development received federal funds. In 24 C.F.R. § 8.23, HUD correctly defines the broad scope of “program or activity” to include all the operations of recipients. However, other portions of the regulations are ambiguous or incorrectly imply that only the specific project getting direct HUD funds has Section 504 obligations. As a result, some state agencies, cities, developers, and others insist that they are not covered by Section 504, reducing housing access for people with disabilities. HUD should revise the

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<sup>5</sup> *Administration for Community Living, HCBS SETTINGS R.*, <https://acl.gov/programs/hcbs-settings-rule#:~:text=The%20Home%20and%20Community%20Based,in%20the%20most%20integrated%20setting> (requiring that settings must be integrated in the community, support access to the greater community, and be selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting) (Mar. 23, 2023); *The Home and Community Based Services Settings Rule*, ACLU, [https://www.aclu.org/wp-content/uploads/legal-documents/aclu\\_faq\\_-\\_hcbs\\_settings\\_rule-final\\_1-10-18.pdf](https://www.aclu.org/wp-content/uploads/legal-documents/aclu_faq_-_hcbs_settings_rule-final_1-10-18.pdf) (Jan. 10, 2018); Press Release, Joint Statement from the Centers for Medicare & Medicaid Services (CMS) and the Administration for Community Living (ACL): Implementation of the Home and Community-Based Services Settings Regulation (Mar. 17, 2023).

<sup>6</sup> Civil Rights Restoration Act of 1987, 102 Stat. 28, Pub. L. No. 100-259. The Act was enacted in response to a 1984 the U.S. Supreme Court issued a key decision that considerably narrowed the scope of the “program and activities” language. *Grove City College v. Bell*, 465 U.S. 555 (1984). Prior to *Grove City*, federal agencies charged with enforcing the civil rights act consistently interpreted the protections of those statutes to apply institution-wide. Congress reacted by adopting the Act to “restore Title IX, Section 504, the Age Discrimination Act, and Title VI to the broad, institutionwide application which characterized coverage and enforcement from the time of initial passage until the *Grove City* decision.” S. Rep. No. 100-64, at 4-11 (1988).

regulations to capture the appropriate scope of the regulation as intended by the Civil Rights Restoration Act. See Attachment A for a legal analysis and proposed revisions.

### **III. ANPRM Questions**

#### **A. Question 1: Definitions**

*The Department anticipates revising the definition of “individual with disabilities” consistent with the ADA Amendments Act of 2008<sup>7</sup> and DOJ’s 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.*

DRC generally supports aligning the definition of “individual with disabilities” with the ADA Amendments Act of 2008, so that it encompasses a broader scope of disabilities, and to change references of “handicap” to “disability”. Importantly, prior to the ADAAA, some lower courts held that episodic or intermittent impairments, such as epilepsy or post-traumatic stress disorder were not covered by the law, but the ADAAA specifically states that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. The Department should ensure that Section 504 regulations are similarly clear in covering these temporary or episodic disabilities. Additionally, the Department should not import the ADA’s exclusions, found at 42 U.S.C. § 12211, of “transvestism,” “transsexualism” and “gender identity disorders not resulting from physical impairments” to the Section 504 regulations.

Further, the Section 504 regulations would benefit from further elaboration on various definitions. For example, the Department should explain that, consistent with the Fair Housing Act, an “individual with disabilities” includes a person associated with a person with a disability.<sup>8</sup> We

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<sup>7</sup> ADA Amendments Act of 2008, 122 Stat. 3553, Pub. L. No. 110-325.

<sup>8</sup> 42 U.S.C. § 3604(f)(1-2).

recommend adding subsections to the definition, similar to the definition in the Dept. of Education's Section 504 Regulations at 34 C.F.R. § 104.3(j)(iii) and (iv), for individuals with a record of a disability or a person who is regarded as having a disability. The definition of "an individual with a disability" should also include organizations representing or comprised of disabled people.

The Department should also change the definition of "Qualified individual with a disability" to make clear that individuals with disabilities can meet eligibility requirements with the help of a reasonable accommodation or modification and/or supports. Further, the Department should remove the example of a "chronically mentally ill person" who may pose a threat to health and safety absent supportive services and who may not be qualified for a project lacking such services. This example reinforces stigma and misperceptions about people with mental disabilities as dangerous.

The Department should clarify that the definition of disability applies to disabilities that could be characterized as either physical or mental or a combination of both (often mental disabilities caused by physical factors) without needing to determine which category such disabilities are in. These disabilities can include Acquired Brain Injury (which includes traumatic brain injury, strokes, tumors, Alzheimer's Disease, Parkinson's Disease, etc.), intellectual, and/or developmental disabilities. This would prevent confusion and barriers that occur when pigeonholing disabilities as either physical or mental.

Though not currently in 24 C.F.R. § 8.3, to effectuate Section 504, HUD should also ensure that its definitions of homelessness include people who are institutionalized and/or who lost housing as a result of institutionalization. Currently, HUD's definition only encompasses individuals *exiting* an institution.<sup>9</sup> By adding individuals currently institutionalized who have lost their housing, but have not yet exited an institution, HUD can make this long-neglected population eligible for a variety of programs.

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<sup>9</sup>*Homeless Definition*, HUD EXCHANGE, [https://files.hudexchange.info/resources/documents/HomelessDefinition\\_RecordkeepingRequirementsandCriteria.pdf](https://files.hudexchange.info/resources/documents/HomelessDefinition_RecordkeepingRequirementsandCriteria.pdf) (last visited June 13, 2023).

## **B. Question 2: Disabilities and Discriminatory Application Processes, Admissions Policies, Service Provision, Inaccessibility, Eligibility, and Site Selection**

*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).*

Fifty years after the passage of the Rehabilitation Act, people with disabilities continue to face housing insecurity and risk becoming unhoused at higher rates than people without disabilities.<sup>10</sup> People with disabilities are more likely to rent than to own, and renters with disabilities report having higher chances of eviction, being further behind on rent, and having less confidence in their ability to pay future rent than people without disabilities.<sup>11</sup> And, In 2021, disability discrimination accounted for 57.7% of complaints received by HUD.<sup>12</sup> This is not an anomaly, and advocates argue that discrimination based on disability status is the most common because it is so readily apparent.<sup>13</sup> And affordable housing, let alone accessible and integrated housing, is scarce. In California, for example, the average waiting period for affordable housing is more than 2.5 years.<sup>14</sup> In larger cities, individuals wait many years longer (even up to 12 years) for a chance to receive a voucher or public housing.<sup>15</sup> A number of jurisdictions also place barriers to siting housing that would serve people with disabilities, often having inadequate reasonable accommodation zoning ordinances, placing additional burdens on supportive and/or transitional housing not imposed on other multifamily housing, or restricting such

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<sup>10</sup> Jaboa Lake, Valerie Novack & Mia Ives-Rublee, Recognizing and Addressing Housing Insecurity for Disabled Renters, CTR. <sup>10</sup> Jaboa Lake, Valerie Novack & Mia Ives-Rublee, *Recognizing and Addressing Housing Insecurity for Disabled Renters*, CTR. FOR AM. PROGRESS (May 27, 2021) <https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters/>.

<sup>11</sup> *Id.*

<sup>12</sup> National Fair Housing Alliance, 2022 Fair Housing Trends Report (2022), <https://nationalfairhousing.org/wp-content/uploads/2022/11/2022-Fair-Housing-Trends-Report.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> Sonya Acosta & Erik Gartland *Families Wait Years for Housing Vouchers Due to Inadequate Funding*, CTR. ON BUDGET & POL'Y PRIORITIES (July 22, 2021), <https://www.cbpp.org/sites/default/files/7-22-21hous.pdf>.

<sup>15</sup> See, e.g., Jenna Kagel & Danielle Chiriguayo, *30,000 Section 8 Housing Vouchers hit LA. Will Stigma Disappear?*, KCRW (Sep. 27, 2022), <https://www.kcrw.com/news/shows/greater-la/housing-vouchers-less-parking-transit/section-8-open-waitlist>.

housing to industrial zones, or concentrating affordable and/or supportive housing in communities with a legacy of toxicity. Maximizing accessibility for people with all types of disabilities is essential.

*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?*

DRC has long advocated for the rights of people with disabilities as established by the ADA's integration mandate and *Olmstead v. L.C. et al*, 527 US 581 (1999), the landmark Supreme Court case finding that the Americans with Disabilities Act ensures the right of people with disabilities to live and receive services in the most integrated setting appropriate, including to live in their homes and communities instead of in institutions, and to have greater independence, autonomy, and opportunities to participate fully in civic life. HUD's Section 504 regulations should strive to incorporate *Olmstead* principles throughout.

1. The lack of affordable, accessible and integrated community-based housing places individuals at risk of losing existing housing, as well as preventing transitions out of skilled nursing facilities.

DRC works with state officials, providers, and consumers on transitioning individuals with disabilities out of facilities with the supports and services needed to live in the home and community. Disabled individuals who can live at home with appropriate services regularly remain in skilled nursing facilities because of a lack of affordable, accessible, and integrated housing. In our experience, the link between federally subsidized housing and institutionalization often presents in one of two ways: (1) individuals with disabilities who possess federally subsidized housing or rental assistance lose access to their housing after temporarily entering an institutional setting for treatment, or (2) individuals with disabilities who qualify for, but have not secured, federally subsidized housing enter an institutional setting for treatment, and cannot leave for lack of accessible affordable housing with appropriate supports.

- a. *Individuals lose access to housing when temporarily institutionalized.*

Institutionalization often causes people to miss rental payments, and in turn their housing or rental assistance.<sup>16</sup> However, most people who enter skilled nursing facilities in California stay for less than three months.<sup>17</sup> Such a stay should not result in eviction and/or homelessness if an individual fails to pay rent or miss other housing obligations during this time. Moreover, for individuals who receive Supplemental Security Income (SSI), temporary institutionalization benefits are available.<sup>18</sup> These benefits provide that SSI recipients who are temporarily institutionalized for medical care can get benefits during the first three full months of institutionalization to pay expenses to maintain their home or living arrangement where they may return upon discharge.

**Recommendations:** The Department should require that HUD recipients have policies and practices in place that ensure individuals can maintain their homes when temporarily institutionalized. These should include that HUD recipients coordinate to ensure the temporary institutionalization SSI benefit is in place. The regulations should also prohibit evicting, or terminating subsidy, for a time period that allows an individual with a disability who enters an institution to coordinate services to transition and reside back at home. Additionally, the Department should ensure institutionalization does not count as an absence from the unit for the purposes of continued occupancy in subsidized housing and/or voucher usage. HUD recipients should also permit delays in recertifications or inspections if an individual is in an institution, without them having to request a reasonable accommodation.

*b. Lack of affordable housing traps people in institutions.*

In the second scenario, the lack of affordable housing in general and the lack of affordable, accessible, *and* integrated housing for people with disabilities creates a barrier to exiting institutions. For example, DRC litigated *Davis, et al. v. California Health and Human Services Agency, et al.*, against various state agencies' and the City and County of San Francisco's for their failure to inform individuals, with a range of disabilities, about, assess for, or offer or provide home and community based services instead of placing them at Laguna Honda, a large skilled nursing and acute

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<sup>16</sup>Jesse Bedayn, *No way out: How the poor get stranded in California nursing homes*, CALMATTERS (Jan. 20, 2022), <https://calmatters.org/health/2022/01/california-nursing-homes-transition/>.

<sup>17</sup> *Id.*

<sup>18</sup> Social Security Act § 1611(e)(1)(G-H).

care facility.<sup>19</sup> The lawsuit resulted in a settlement that, among other things, required San Francisco to set up a Targeted Case Management Program to screen, assess, and develop individual service/discharge plans for class members. It turned out, based on these assessments, that approximately 80% of residents could be served in the community if services and housing were offered to them, and that at least half of residents would prefer to live in the community.

But many residents remained at Laguna Honda because of a lack of affordable, accessible housing. Even after subsequent litigation<sup>20</sup>, which mandated that San Francisco secure and subsidize scattered site, accessible, independent housing for approximately 500 class members who are eligible for community-based services, this remains a persistent problem for residents of Laguna Honda and facilities throughout the state. Other studies bear this out: in California, for example, more than 9% of nursing home residents have low care needs and could live in community-based settings, but remain institutionalized.<sup>21</sup> And, in our *Independent Living Center of Southern California et al v. City of Los Angeles et al* lawsuit, discussed in detail in the response to Question 4 below, one of our first clients placed in an accessible housing unit built under the Settlement was a person who had been unable to move from a nursing home because of a mobility disability. Increasing accessible, affordable, and integrated housing is critical to exiting institutions.

To ensure that individuals who need skilled nursing services, personal care, equipment, home health care, medical supplies, and/or accessible home modifications can exit institutions, it is critical that we eliminate barriers to aligning services provided by Medicaid programs to government-subsidized housing. California has, for example, required the state's primary housing agency to offer incentives to supportive housing developers to set aside units for people eligible for three Medicaid

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<sup>19</sup> See *Mark Chambers v. City and County of San Francisco*, DISABILITY RIGHTS CALIFORNIA (Oct. 11, 2006), <https://www.disabilityrightsca.org/cases/mark-chambers-v-city-and-county-of-san-francisco>, for case documents and related reports.

<sup>20</sup> *Id.*

<sup>21</sup> Jesse Bedayn, *No way out: How the poor get stranded in California nursing homes*, CALMATTERS (Jan. 20, 2022), <https://calmatters.org/health/2022/01/california-nursing-homes-transition/>; Susan Reinhard et al., *Long-Term Services and Supports State Scorecard*, AARP PUB. POL'Y INST. 60 (2020), <https://www.longtermscorecard.org/~media/Microsite/Files/2020/LTSS%202020%20Reference%20Edition%20PDF%20923.pdf>.

programs for home and community-based care.<sup>22</sup> In California, these include: the Home & Community-Based Alternatives Waiver (HCBA), which provides care management services to Nursing Facility eligible individuals of any age; the Assisted Living Waiver (ALW), which enables people to receive personal care services care coordination and other benefits in either a Residential Care Facility for the Elderly or Subsidized Housing; and the Program for All-Inclusive Care for the Elderly (PACE), which allows people 55 and older to receive all healthcare through a PACE provider, including a package of home and community-based services that support people to live independently. By aligning these Medicaid programs, which largely serve people with disabilities, with capital programs, more people with disabilities who would benefit from home and community-based services will be able to secure affordable, accessible, and integrated housing.<sup>23</sup> California's housing agency is also now required to work with its health care services department to further reduce barriers to aligning Medicaid-funded services with housing services.

**Recommendations:** The Department should ensure that HUD recipients meet minimum requirements to access HCBS funds and require that HUD recipients similarly reduce barriers to ensure that Medicaid home and community-based service programs and affordable housing programs can align, while ensuring integration in these programs. Further, though 24 CFR Part 8 refers to HUD recipients' responsibilities, the Department should ensure its own guidelines for capital programs eliminate barriers to coordination with Medicaid programs and other services.

2. The lack of affordable, accessible and integrated community-based housing places and keeps individuals in correctional facilities, psychiatric institutions, inpatient rehabilitation.

DRC investigations have found that people with mental health disabilities, particularly those with serious mental illness and/or co-occurring Substance Use Disorder, are at serious risk of institutionalization and/or being unable

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<sup>22</sup> Assemb. B. No. 2483, 2021-2022 Leg., Reg. Sess. (Cal. 2022); while this bill is illustrative of incentives to align Medicaid and housing programs, DRC supports lower percentages of units set aside for people with disabilities.

<sup>23</sup> See Medicaid and CHIP Payment and Access Commission, *Medicaid's Role in Housing* (June 2021), [www.macpac.gov/wp-content/uploads/2021/06/Medicoids-Role-in-Housing-1.pdf](http://www.macpac.gov/wp-content/uploads/2021/06/Medicoids-Role-in-Housing-1.pdf); see also Mary Lou Breslin, *OakDays: A Case Study: Permanent Affordable Housing with Healthcare and Home-and-Community-Based Services for Unhoused Disabled People* (Dec. 2022), <https://heller.brandeis.edu/community-living-policy/publications/pdfs/case-studies/oakdays.pdf>.

to transition out of institutions due to the lack of affordable, accessible housing with appropriate voluntary supports. Instead of providing such housing, local authorities rely on involuntary commitment and misdemeanor criminal laws to move individuals off the street and into psychiatric institutions, emergency departments, or jails and juvenile detention facilities.<sup>24</sup> This often leaves people with mental health disabilities and/or SUD either institutionalized and/or houseless.

*a. A lack of affordable, accessible and integrated community-based housing keeps people in institutions or houseless.*

DRC engages in extensive investigation and advocacy related to deinstitutionalization and decarceration of people with mental health disabilities. A few of our cases highlight common issues:

In *Disability Rights California v. County of Alameda*,<sup>25</sup> DRC challenged the unnecessary segregation of people with mental health disabilities in psychiatric institutions and the failure to ensure people with disabilities are provided the housing and services they need. DRC found that the County institutionalized people at a rate more than three-and-a-half times California's statewide average. DRC also found significant racial disparities in the behavioral health and housing systems. For example, even though Black residents make up 11% of Alameda County's population, DRC found that half of the homeless and jail populations are Black, and more than half of the people psychiatrically institutionalized ten or more times over a two-year period were Black. Thus, unnecessary institutionalization resulted in greater segregation of Black disabled individuals. Accordingly, the lawsuit seeks an expansion of community-based mental health services, including supported housing.

In *Hart v. Clendenin*, a lawsuit filed against one of the largest psychiatric hospitals in the country, plaintiffs alleged that the crowded, congregate nature of Patton State Hospital's facilities and state hospital policies put vulnerable patients at risk of serious illness or death from the

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<sup>24</sup> State and local agencies often attempt to rationalize institutionalization as an entry into service systems; in reality, institutions and carceral settings do not reliably provide needed housing and behavioral health services.

<sup>25</sup> *Disability Rights California Lawsuit against Alameda County*, DISABILITY RIGHTS CALIFORNIA (Sep. 9, 2021), <https://www.disabilityrightscalifornia.org/cases/disability-rights-california-lawsuit-against-alameda-county>.

COVID-19 virus.<sup>26</sup> In the lawsuit, two experts, Elizabeth Jones and Heather Leutwyler, explained how people in a number of individuals locked in institutions could thrive in the community with appropriate supported housing. See Attachment B. For example, Elizabeth Jones notes that “as of January 2020, a state audit found that at least 138 individuals being treated at [Department of State Hospitals] facilities under the Lanterman-Petris-Short Act were ready for discharge, but had not yet been discharged to lower levels of care.” *Id.* at Jones Declaration ¶18. Unfortunately, as described below, not enough community-based, affordable, accessible, integrated housing exists.

DRC’s investigations into California counties’ behavioral health systems have further revealed that people with mental health disabilities are held in locked, acute-level inpatient psychiatric hospitals longer than clinically necessary due to a lack of housing and services in the community. In one investigation, DRC found that Lanterman-Petris-Short Act conservatees were being housed in inpatient psychiatric hospitals due to a lack of supported housing options, even though they did not meet medical criteria for an inpatient hospital stay.

*b. A lack of affordable, accessible, and integrated community-based housing funnels people into institutions.*

Strikingly, the lack of affordable, accessible, and integrated housing is leading to calls for reinstitutionalization. Threats of institutionalization are increasing as a misguided, or sometimes cynical, response to the homelessness crisis. California, in 2022, enacted the CARE Act, establishing a new court system, touted as a solution to homelessness, that will impose a court-ordered regime of involuntary outpatient treatment that will affect thousands of Californians with serious mental illness. The Act authorizes a wide range of people—including family, police, and psychotherapists—to file petitions against Californians diagnosed with schizophrenia and other related psychotic disorders. Failure to abide by court orders creates penalties that increase the likelihood of an involuntary commitment order. And, because the CARE Act focuses on schizophrenia, it is bound to disproportionately impact Black individuals: “African

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<sup>26</sup> *Hart v Clendenin*, DISABILITY RIGHTS CALIFORNIA (Jun. 30, 2021), <https://www.disabilityrightscalifornia.org/cases/hart-v-clendenin#:~:text=Clendenin,-Settlement%20Reached%20in&text=Following%20months%20of%20litigation%2C%20Aldo,psychiatric%20facilities%20in%20the%20nation.>

Americans are disproportionately diagnosed with Schizophrenia with estimates ranging from three to five times more likely in receiving such a diagnosis . . . .”<sup>27</sup><sup>28</sup> For unhoused LGBTQIA+ people of color, the intersecting identities can result in even more significant mental health struggles and intensified discrimination.<sup>29</sup> Notably, the Act did not provide for more housing resources or services. The state continues to put forth legislation that would expand who could be institutionalized.<sup>30</sup>

Unfortunately, in response to overburdened jails and emergency departments, counties are choosing to invest resources in institutional settings such as inpatient mental health hospital beds, crisis residential facilities, and board and cares, instead of permanent housing with wrap-around voluntary supports that will allow people to live stably in community settings. When individuals are discharged from institutions, waitlists for housing combined with the policy-driven “demand” for institutional beds results in DRC constituents lacking connections to appropriate housing, often leading to houselessness.

When released from psychiatric emergency rooms or jails, clients are often discharged with nothing but a small supply of prescription drugs and/or an Uber ride to a homeless encampment. For people in longer-term hospitals and residential institutions, we see discharges to room and board or board and care, which can be just a step up from a shelter – clients complain of congregate living conditions, bedbugs, and other conditions that prevent healing. This is counter to federal deinstitutionalization mandates and instead reinforces exceptionally costly institutional structures solely because alternative settings and housing options are unavailable.

*c. A lack of care coordination in housing leads to institutionalization.*

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<sup>27</sup> Robert C. Schwartz & David M. Blankenship, *Racial disparities in psychotic disorder diagnosis: A review of empirical literature*, 4 WORLD JOURNAL OF PSYCHIATRY 133, 133-140 (Dec. 22, 2014).

<sup>28</sup> DRC petitioned for a writ of mandate in the California Supreme Court to block implementation of the CARE Act. Though the petition was denied without an opinion, the briefing and amicus letters contain valuable data and can be found here: <https://www.disabilityrightsca.org/cases/drc-v-newsom>. Information about the Act can be found here: [https://www.disabilityrightsca.org/latest-news/disability-rights-california-advocates-urge-assembly-appropriations-committee-to-vote#footnote13\\_eqf0yhr](https://www.disabilityrightsca.org/latest-news/disability-rights-california-advocates-urge-assembly-appropriations-committee-to-vote#footnote13_eqf0yhr)

<sup>29</sup> Brodie Fraser et al., *LGBTIQ+ Homelessness: A Review of the Literature*, INT. J. ENVIRON. RES. PUB. HEALTH at 1 (Jul. 26, 2019).

<sup>30</sup> See, e.g., S.B. 43, 2023-2024 Leg., Reg. Sess. (Cal. 2023).

In addition, for DRC constituents who do have stable housing, mental health service teams are often unwilling to extend services into the community and meet people where they are. As a result, some DRC constituents are forced to leave their housing to receive behavioral health services in institutional settings. Our investigations, for example, have revealed that individuals experiencing crisis in the community often receive law enforcement responses and are taken to or instructed to seek care in emergency departments. Engagement with these systems greatly increases the risk of institutionalization, the loss of housing, and criminalization for individuals with mental health disabilities.

On the other end, lack of care coordination between discharging institutions, county behavioral health agencies, and housing providers leads to individuals falling through the cracks. For example, county behavioral health hotlines, intended to be the entry point into behavioral health services, are often not able to connect people to services in real-time; applications and assessments for service eligibility can take days or even weeks; local governments do not hire staff to carry out the needed coordination. As our investigation found, the most appropriate setting for individuals under mental health conservatorships might be a less restrictive placement, but, often, they languish in locked facilities due to the lack of appropriate, integrated housing stock and staff to move forward coordination efforts.

The above-described practices cause immediate and long-term harm to people with mental health disabilities, including increased anxiety and distress, decompensation, and lasting distrust of, and disengagement from, government systems and disengagement with mental health services, making the provision of housing through government-funded programs more challenging. This failure to provide appropriate housing and voluntary support services causes DRC clients to be cycled through houselessness, psychiatric institutions or emergency departments, and jails and juvenile detention facilities, with tragic outcomes for individuals living with mental disabilities that also compound existing racial inequalities.

**Recommendation:** The Department should mandate that HUD recipients coordinate their housing programs, including supported housing, with community-based, voluntary mental health services to increase the inventory of housing accessible to people with mental health disabilities.

3. The lack of affordable, accessible and integrated community-based housing pushes individuals into group homes and similar congregate settings.

Institutional biases frequently push people with intellectual, cognitive, or developmental disabilities into congregate settings like group homes. These biases include stereotypes about individuals with I/DD's ability to live independently, the profitability of group homes, and inertia. For example, in a group home, the state's developmental disabilities service system pays a person's room and board, but rarely subsidizes rent for living independently. DRC has worked with individuals who have been able to transition out of these settings when provided more individualized supports and appropriate housing. People with I/DD have the right to live in the setting that best suits their preferences rather than being pushed into a group home out of convenience for the system.

**Recommendation:** HUD's regulations should ensure coordination so that case management teams better evaluate an individual with I/DD's needs for living independently, especially people leaving institutions.

*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?*

Individuals with mental health or substance use disabilities experience numerous challenges in securing affordable housing. These include denials of reasonable accommodations, onerous crime-free policies, criminal records screening policies, credit screening policies, problems with CES programs, and requiring treatment for substance use disorder before entering housing.

4. Tenants with mental health disabilities face barriers to obtaining reasonable accommodations.

Tenants with mental health disabilities experience unique barriers to obtaining reasonable accommodations. Because mental health disabilities are often not readily apparent, many housing providers demand a doctor letter or onerous verifications of their disabilities and need for accommodations, leading to numerous problems. First, many people,

especially those who are unhoused or unstably housed, or who simply do not have adequate health insurance, do not have a regular medical provider who can draft such a verification. HUD recipients often request far more verification than the law allows, often as a way to deny the accommodation in practice. Further, housing providers view many requested accommodations with skepticism due to their lack of understanding of mental health disabilities, and therefore deny them.

One critical admissions issue for people with mental health disabilities is emotional support animals. Housing seekers with emotional support animals have asked for advice about whether to disclose their emotional support animals when applying for housing because applications sometimes ask about animals in the household. One DRC case exemplifies these issues. In *Hayer v. Liverant*, Case No. 22-cv-05420-VC (N.D. Cal.), a tenant with a mental health disability provided a therapist letter with her request for an emotional support animal. Rather than responding to the tenant, the landlord's lawyer sent a letter to their therapist, demanding, among other things, six peer-reviewed articles about the benefits of "so-called emotional support animals." These unreasonable demands for verification, and hostility toward emotional support animals are common.

**Recommendations:** HUD should incorporate language like that contained in the Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations Under the Fair Housing regarding verifications for reasonable accommodation into its regulations, and clarify that insisting on verification beyond what is required constitutes a denial of a reasonable accommodation. California's fair housing regulations similarly includes such language.<sup>31</sup>

HUD regulations should include specific examples of common reasonable accommodations and could explicitly advise they applicants do not need to disclose information about Assistance Animals at the application stage. California's fair housing regulations provide an example of such language.<sup>32</sup>

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<sup>31</sup> 2 California Code of Regulations § 12178.

<sup>32</sup> 2 California Code of Regulations § 12185.

5. Individuals with mental health disabilities disproportionately face nuisance allegations.

Individuals with mental health disabilities are disproportionately subject to allegations of nuisance that put their housing at risk. This is often due to stereotypes that individuals with mental health disabilities, especially those who are people of color, are dangerous. For example, one tenant with a mental health disability living in property owned by a HUD recipient received a notice to vacate the property due to alleged nuisance activity. The HUD recipient alleged that the tenant was dangerous, even though the tenant explained that the alleged nuisance activity occurred when they were triggered due to their disability, and the property manager used communication methods that exacerbated that response. While in that case, DRC was able to obtain a transfer to another subsidized unit, most tenants are not represented. Often, individuals in these circumstances, instead of receiving appropriate supports or interfacing with property management trained in trauma-informed communication, are evicted, creating a cycle in which they can no longer gain admission into other housing.

Additionally, individuals with disabilities, including mental health and substance use disabilities, often require emergency services to get assistance with medical issues that result from their disability.<sup>33</sup> But a number of cities still require both denial of admission and/or eviction on the basis of nuisance or use of emergency services, disproportionately impacting Black and Latinx renters<sup>34</sup> and people with disabilities, including mental health disabilities.<sup>35</sup> “[Chronic nuisance ordinances] thus force people with physical or mental disabilities to make an impossible choice

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<sup>33</sup> Alisha Jarwala et al., *When Disability Is a “Nuisance”: How Chronic Nuisance Ordinances Push Residents with Disabilities Out of Their Homes*, 54 HARV. C.R.-C.L. L. REV. 875 (2019).

<sup>34</sup> Liam Dillon, Ben Poston & Julia Barajas, *Black and Latino renters face eviction, exclusion amid police crackdowns in California*, LOS ANGELES TIMES (Nov. 19, 2020), <https://www.latimes.com/homeless-housing/story/2020-11-19/california-housing-policies-hurt-black-latino-renters>; Deborah N. Archer, *Racial Exclusion Through Crime-Free Housing Ordinances*, AM. CONST. SOC’Y (Nov. 2019), [https://www.acslaw.org/issue\\_brief/briefs-landing/racial-exclusion-through-crime-free-housing-ordinances-2/wp-content/uploads/2019/11/Racial-Exclusion-Through-Crime-Free-Housing-Ordinances.pdf](https://www.acslaw.org/issue_brief/briefs-landing/racial-exclusion-through-crime-free-housing-ordinances-2/wp-content/uploads/2019/11/Racial-Exclusion-Through-Crime-Free-Housing-Ordinances.pdf); *California Task Force to Study and Develop Reparation Proposals for African Americans*, STATE OF CAL. DEP’T OF JUST., <https://oag.ca.gov/system/files/media/ab3121-interim-report-executive-summary-2022.pdf>.

<sup>35</sup> Alisha Jarwala et al., *When Disability Is a “Nuisance”: How Chronic Nuisance Ordinances Push Residents with Disabilities Out of Their Homes*, 54 HARV. C.R.-C.L. L. REV. 875 (2019).

between calling 911 and risking eviction or foregoing medical assistance in a crisis.”

**Recommendations:** The Department should require HUD recipient staff that interface or make decisions regarding potential or actual tenants be trained in trauma-informed case and/or property management, that they engage with tenants to determine if accommodations may help address alleged nuisance behavior, and that evictions should always be a last resort in an escalation continuum.

The Department should also make clear 1) that nuisance ordinances cannot apply to HUD recipient’s admission/eviction/termination policies and 2) that those municipalities that are HUD recipients cannot impose such ordinances.<sup>36</sup>

6. Tenant screening policies disproportionately impact people with mental health disabilities.

Individuals with mental health and substance use disabilities are over-represented in the criminal legal system. It is estimated that 18% of the general population has a mental illness; however, an estimated 44% of those in jail and 37% of <sup>37</sup>those in prison have a mental illness.<sup>38</sup> It is estimated that 11% of 18-25 year olds, and 6% of those over 25 years old have a substance use disorder; however, about 63% of people in jail and 58% in prison have a substance use disorder.<sup>39</sup> The over-representation in the criminal legal system means that individuals with mental health and substance use disabilities are more likely to have a criminal history.<sup>40</sup>

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<sup>36</sup> See, e.g., Assemb. B. No. 1418, 2022-2023 Leg., Reg. Sess. (Cal. 2023); see, e.g., 2 California Code of Regulations § 12162.

<sup>37</sup> *Id.*

<sup>38</sup> *About Criminal and Juvenile Justice*, SUBSTANCE ABUSE AND MENTAL HEALTH SERV. ADMIN., <https://www.samhsa.gov/criminal-juvenile-justice/about> (last updated Mar. 2, 2022).

<sup>39</sup> *Id.*

<sup>40</sup> Victoria Law, *People With Mental Illness Face Acute Dangers During and After Police Encounters*, TRUTHOUT (July 11, 2021), <https://truthout.org/articles/people-with-mental-illness-face-acute-dangers-during-and-after-police-encounters/#:~:text=Prisons%20%26%20Policing-,People%20With%20Mental%20Illness%20Face%20Acute%20Dangers%20During%20and%20After,killed%20during%20encounters%20with%20police>; Jamelia N. Morgan, *Policing Under Disability Law*, 73 STAN. L. REV. 1401 (June 2021); Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 NAT’L LIBR. OF MED. 1977 (Dec. 2017); Alex Emslie & Rachael Bale, *More Than Half of Those Killed by San Francisco Police Are Mentally*

Therefore, restrictive criminal records screening policies harms their ability to secure and maintain housing.

According to the National Disability Institute (NDI), individuals with disabilities are less likely to have a credit card, more likely to use nonbank borrowing (such as pawn shops and payday lenders) and less likely to have common types of credit (such as auto loans or mortgages).<sup>41</sup> One consequence of not having access to affordable credit is that more than half (55 percent) of people with disabilities could not come up with \$2,000 in an emergency, compared with 32 percent of those without disabilities.<sup>42</sup> Notably, credit reporting also has unique impacts on transgender individuals, who as a group have higher rates of disability (see Section M). “After a legal name change, many transgender and nonbinary consumers end up with multiple credit files in different names and suffer a loss of credit history and score as a result. Additionally, credit reports out trans and nonbinary people to landlords, employers, and lenders when they apply for loans, jobs, and housing because the report still includes their deadname.”<sup>43</sup> Further, many individuals with mental health disabilities who have been unhoused or in institutions lack a rental history, which is often run with credit history.

Despite disabled individuals, and disproportionately Black and Latinx, as well as transgender individuals, being over-represented in the justice system and being less likely to have common types of credit, criminal history and credit history are common factors considered when deciding

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III, KQED (Sep. 30, 2014), <https://www.kqed.org/news/147854/half-of-those-killed-by-san-francisco-police-are-mentally-ill>; *Breaking the School-to-Prison Pipeline for Students with Disabilities*, Nat'l Council on Disability (Jun. 18, 2015), <https://www.ncd.gov/publications/2015/06182015>; Lily Robin & Evelyn F. McCoy, *The Criminal Legal System Fails to Address Black Disabled People's Intersectional Identities*, URB. INST. (Aug. 29, 2022), <https://www.urban.org/urban-wire/criminal-legal-system-fails-address-black-disabled-peoples-intersectional-identities>; Laurin Bixby, Stacey Bevan & Courtney Boen, *The Links Between Disability, Incarceration, And Social Exclusion*, 41 HEALTH AFFS. 1460. (Oct. 2022).

<sup>41</sup> Nannette Goodman, Bonnie O'Day & Michael Morris, *Financial Capability of Adults with Disabilities: Findings from the National Financial Capability Study*, NAT'L DISABILITY INST. AND FINRA INV. EDUC. FOUND. (2017), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/01/ndi-finra-report-2017.pdf>.

<sup>42</sup> *Id.*

<sup>43</sup> *Credit Issues After Transgender and Nonbinary Individuals File a Legal Name Change*, CTR. FOR RESPONSIBLE LENDING (Feb. 24, 2022), <https://www.responsiblelending.org/media/credit-issues-after-transgender-and-nonbinary-individuals-file-legal-name-change>.

whether to rent to a tenant.<sup>44</sup> We see the consequences of tenant screening factors used by HUD recipients such as criminal history, credit history, and rental history in our work. For example, one HUD recipient denied the rental application of a tenant with a mental health disability because the tenant did not have a consecutive, two-year rental history. The reason that the tenant lacked such a rental history was because he was formerly experiencing homelessness. This trifecta of criminal records screening, credit history, and rental history requirements have significant impacts on people with disabilities, particularly people with mental health disabilities who have been institutionalized and should be prohibited.

**Recommendation:** HUD should ban onerous criminal records screenings, credit checks, and requirements for rental history.<sup>45</sup>

7. Exclusions or limitations related to substance use disorder harm people with mental health disabilities.

Exclusions or limitations related to substance use disorder can disproportionately impact people with co-occurring mental health disabilities by reducing the housing stock available to them. Substance use disorder treatment and mental health treatment are often siloed, and clients are told they must address the substance use disorder before entering housing for people with mental health disabilities. However, these conditions are often inextricably intertwined and must be addressed concurrently through a Housing First model.<sup>46</sup>

8. Individuals with mental health disabilities who reside in permanent supportive housing are often not provided appropriate supports and are evicted for disability-related reasons.

Too often, we hear from individuals who reside in permanent supportive housing who have requested that they be connected to supports or who have requested particular accommodations, only for those requests to be

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<sup>44</sup> See *Group Letter Urging Credit Bureaus to Fix Credit Reporting Problems for Transgender and Nonbinary Customers*, <https://www.nclc.org/resources/group-letter-urging-credit-bureaus-to-fix-credit-reporting-problems-for-transgender-and-nonbinary-customers/> for information regarding the negative impacts of credit reporting on transgender people.

<sup>45</sup> See, e.g., 2 California Code of Regulations §§ 12264 *et seq* and §12162 for criminal history information in housing regulations.

<sup>46</sup> In addition to HUD's Housing First resources, California codified the Housing First model at California Welfare & Institutions Code § 8255.

ignored or accommodations denied. When the person then struggles to manage their disability, they then face potential eviction/termination.

**Recommendations:** The Department should make clear that individuals in supportive housing should only be evicted as a last resort, with clear examples of what that means, and as the last in an escalation continuum. The Department should mandate that supportive housing projects report the types and number of supports that they connected residents with, the turnover rates in their housing, and eviction data, all layered with data regarding race, ethnicity, family size, and other intersecting identities.

*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?*

In California, less than 16% of adults with developmental disabilities own or rent their own homes; the overwhelming majority live with an aging caregiver – usually a parent or guardian.<sup>47</sup> Few have options or plans in place for when those parents or guardians die. Several institutional biases and barriers prevent individuals with intellectual, cognitive, or developmental disabilities from securing affordable housing that meets their needs. These include onerous paperwork requirements, a lack of accessible and/or affordable housing, barriers to successful housing navigation, impediments to supportive services in rental housing.

9. Individuals with I/DD face particular barriers in applying for affordable housing that meets their disability-related needs.

First, we have served many individuals with I/DD who struggle with paperwork that is rarely in plain language. We regularly request reasonable accommodations for more time to complete recertifications and must still go back and forth with HUD recipient staff to complete recertifications. Staff either do not inform tenants or do not know that they may be able to provide alternative documents. For example, we had one client who was

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<sup>47</sup> The Kelsey, Cal. State Council on Dev'al. Disabilities, and the Lanterman Housing Alliance, *A Crisis within a Crisis: Housing for Californians with Developmental Disabilities*, (Nov. 2019), [https://static1.squarespace.com/static/545b86d0e4b06a5e5743ebe9/t/5dd6e816f377441ea97bc884/1574365207677/191120\\_Data+Sheet\\_DDHousing+%28TheKelsey%29.pdf](https://static1.squarespace.com/static/545b86d0e4b06a5e5743ebe9/t/5dd6e816f377441ea97bc884/1574365207677/191120_Data+Sheet_DDHousing+%28TheKelsey%29.pdf).

asked to provide bank account information where her SSI was deposited, but her mother had been her rep payee and the bank refused to grant access after the mother passed away. This was complicated and the client lost their Section 8 housing choice voucher. Fortunately, we were able to get it reinstated, but most individuals are unrepresented.

Second, housing navigation plays a critical role in ensuring people with I/DD can obtain housing. We have heard reports from housing navigators that discrimination combined with a lack of affordable housing makes it difficult for people with I/DD to find housing in the community. And, recently, we learned of a housing authority adding barriers to using such navigators. For example, the Housing Authority of the City of Santa Barbara changed its system in June 2023 to now require individual, unique email addresses for each applicant. This means that nonprofits, case managers, or family members cannot easily assist a person with I/DD with their housing application without creating a unique email for each person they assist, which they must then check. The alternative – paper applications – does not provide equal access.

**Recommendations:** HUD should require that HUD Recipients utilize plain language in all forms and communications.

HUD should require that all waiting list systems are accessible and allow for facile third-party assistance with applications, including by allowing that third party to use their contact information for their housing navigation clients.

#### 10. Individuals with I/DD face restricted choice in housing options.

Although project-based housing can fulfill the needs of some people with I/DD, these units are rarely available at the time when an individual is transitioning out of an institution. This results in prolonged institutional stay and escalated crises and trauma. Further, because California serves people with I/DD regionally, individuals are not referred to units outside that region, raising fair housing concerns.

Further, many individuals with I/DD highly value routine and familiarity. These values mean that remaining in one's own home is preferable for some to moving into new, project-based units. While usually more cost-effective, few opportunities to support someone through rental assistance exist. And, as discussed above, this can cause turmoil when an aging

caregiver dies. We had one situation where a sibling caregiver passed away, leaving two siblings, both with disabilities, but only one eligible for I/DD services, in the unit. Finding a way for both to remain housed required enormous advocacy and creativity that most people do not have access to.

We also have concerns about rental subsidies from the I/DD service delivery system potentially counting as income for the Section 8 Housing Choice Vouchers. This rental subsidy is often quite small. So, if, like many people with I/DD, their sole source of income is SSI, and they receive a \$500 rental subsidy, their total tenant payment could increase significantly. This rental subsidy is a service to help people live in the community, *not* income. Funding streams for people with I/DD should be able to work in combination with federal subsidies rather than in opposition. In today's reality, multiple subsidies are necessary to have affordable units – for example, low income housing tax credit units are often only affordable when the tenant uses a Section 8 voucher. By allowing subsidy layering in the private market, the Department would open up choice for independent, community-based and integrated living.

Some services, such as supported living services, are only available to people living in their own homes, not in the family home. This means that only those who can afford to live in their own home can access the service, creating significant disparate impact based on race. When independent housing is a prerequisite to receiving services, barriers to housing access become even more dire.

**Recommendation:** First, the Department should exclude small rental subsidies for people with I/DD from income. Second, the Department should require HUD recipients to better coordinate with service providers and others working with people with I/DD to quickly access project-based units and rental subsidies through better waitlists, referral systems, and case management. Third, the Department should include as an example that vouchers may be used at a home owned by a family member and should allow blanket accommodation for individuals referred through an I/DD service delivery system or other qualified referral agency. Further, the Department should affirmatively allow rental subsidies to be used in family homes for people with disabilities where they act as caregivers, without requiring a request for reasonable accommodation. Finally, the Department should work with other agencies, and require HUD recipients to coordinate with such agencies, to eliminate barriers to using supported living services in family homes.

*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?*

Finding an accessible, affordable housing unit is incredibly difficult. For HUD recipients who own and/or operate subsidized housing, waitlists for accessible units are incredibly long. Moreover, because HUD multifamily, continuum of care, and other programs are run by many different entities, a person with a physical disability will almost always have no way to know how many available, accessible units exist in their community. And many people will take a unit with the promise of being the next to move into an accessible unit when it becomes available, but this promise is frequently broken. Also, finding an accessible unit on the private market with a Section 8 voucher is nearly impossible, especially within the search times allotted by PHAs, as discussed more fully in the response to Question 5. Finally, local Coordinated Entry Systems (CES) create barriers to ensuring individuals obtain accessible housing by completely ignoring physical disability.

11. A lack of accessible housing, and the ability to obtain reasonable modifications, creates challenges in securing affordable housing.

Individuals with a broad range of physical disabilities, or those with multiple disabilities report difficulty obtaining reasonable modifications. For example, individuals with I/DD, 15-20 percent of whom in California have a physical disability<sup>48</sup>, report having a hard time getting accessible home modifications if they rent, rather than own, their home. They both report a refusal of our developmental disability service delivery system to pay for such modifications, as well as landlord refusal to authorize modifications. Additionally, local independent living centers reported that a lack of accessible housing made it difficult to making housing placements using Section 811 transition grants. Similarly, independent living centers have also reported that a lack of accessible housing proved to be a major barrier to helping people transition out of skilled nursing facilities. Further, we see low income housing tax credit properties that also have funds from HUD programs refuse to pay for modifications under the erroneous belief that

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<sup>48</sup> The Kelsey, *Together We Can Do More: Organizing Communities, Exploring Strategies, and Defining Frameworks to Build Inclusive Communities* (2019), [https://docs.wixstatic.com/ugd/022fd0\\_57b53938d23f4e42ada70851ea7e497a.pdf](https://docs.wixstatic.com/ugd/022fd0_57b53938d23f4e42ada70851ea7e497a.pdf)

they are not covered by Section 504, or that only certain units are covered. See Section A above and Attachment A.

**Recommendations:** In addition to the recommendations in response to Question 4, the Department should incorporate concrete information and examples, like those in the Joint Statement of the Department of Housing and Urban Development and the Department of Justice Reasonable Modifications Under the Fair Housing Act, into the Section 504 regulations, while also making explicit the obligation to pay for modifications under Section 504. California regulations also provide a good example.<sup>49</sup> Clarifying the scope of Section 504 is also critical, as discussed in Section II above. Further, the Department should require HUD recipients to maintain funds that pay for accessible modifications where the rental assistance is being used in the private market or with tax credits. Finally, the Department should incorporate visitability standards into its regulations, so that people with disabilities can visit friends and family, reducing isolation.

12. A lack of monitoring of physically accessible units and lack of a correlated database of such units creates challenges in securing affordable housing.

Our response to Question 4 explains in depth the need for HUD recipients to monitor and catalogue affordable, accessible units, and make that available to the public, so that individuals can be matched and prioritized for units that meet their needs.

13. A lack of appropriate accessible unit waitlist management and transfer policies creates challenges in securing affordable housing.

In addition to our response to Question 4 regarding waitlist management, we note that clients have accepted an inaccessible unit based on the property management's explicit promise to transfer them or to modify the unit after move-in. These clients contacted DRC after constant delays for the transfers/modifications. The unit transfer process is opaque, so clients regularly complain about seeing an accessible unit open only for it to be given to someone else. Sometimes this is due to staff turnover, sometimes intentional discrimination, and sometimes other reasons. We understand

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<sup>49</sup> 2 California Code of Regulations §§ 12176 *et seq.*

another tenant might have had a superseding need for the unit, but the opaqueness of the process makes proving discrimination difficult.

14. The private market provides few accessible units for individuals participating in federal rental subsidy programs.

The private market has few accessible units, making it extremely difficult for voucher holders to find housing within allotted timeframes, if at all, as discussed in Question 5.

15. The Coordinated Entry System fails to address accessibility.

Placing unhoused individuals and families, including those exiting institutions, into supported housing, or housing in general, is made difficult by the widespread failure of the Continuum of Care/ Coordinate Entry System programs to comply with 24 CFR Part 8, despite their obligations to do so.<sup>50</sup> In our experience in California, almost no CES programs: 1) identify accessibility needs of individuals in their system; 2) identify accessible units in housing; 3) pay attention to the needs for accessibility when implementing their acuity index (assessment of needs) system; 4) or make any attempt to match un-housed people who need accessible features with units with such features.

This was a major problem during the earlier stages of implementing the *ILCSC v. City of Los Angeles* settlement (described in Section 2.D). Large sections of Los Angeles's housing inventory consist of supported housing that was and is required under state or federal funding to lease many of their units only through the CES. But the Los Angeles CES did not have any inventory of accessible units, did not have any way of identifying people's accessibility needs, and did not prioritize that need in any way. In one instance, a client came to the top of the CES list and was offered a unit that was inaccessible for her wheelchair. She was told that was her only choice. She took the unit, but soon faced eviction because her wheelchair was damaging the doorways. When she went back to CES for an accessible unit, they told her she was no longer homeless so they could do nothing. Only with our advocacy, she transferred to an accessible unit, but one that was more expensive and hard to afford on her fixed income. Most individuals do not have a lawyer to advocate for them in that circumstance.

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<sup>50</sup> 24 C.F.R. § 578.92(d), requiring compliance with 24 C.F.R. Part 8, including sections 8.24 and 8.27.

**Recommendation:** Over the last several years, we have worked with the City of LA and the CES program to: 1) ensure that the individuals screening and placing people into units are aware of accessible units; 2) develop policies that require screeners to identify people's needs for accessible features; 3) prioritize people who need the features for the accessible units, and then apply the acuity index to select from among those the people with the most acute need; 4) develop policies that prevent the placement of people who don't need the features into accessible units; 5) assist owners with accessible units to identify homeless individuals who need the features so that they can be placed through the CES; and 6) train people in the CES program on these issues. We are still actively working to improve all these components to reduce mismatches and delays in filling accessible units. The Department should do the same nationally. Disability Rights Education and Defense Fund has a manual that can serve as excellent guidance.<sup>51</sup>

16. Many HUD recipient municipalities have improper reasonable accommodation zoning ordinances.

DRC engages in land use advocacy and has seen numerous reasonable accommodation zoning ordinances that 1) charge fees; 2) do not maintain confidentiality; 3) explicitly refuse to make changes to local policies, or otherwise make it difficult to obtain such accommodations. This is both a barrier to building accessible housing, as well as for individuals to make modifications. For example, we have had a mobilehome owner request an accommodation to put in a ramp who was told that they needed to go through the City's variance process.

**Recommendation:** The Department should make clear that HUD recipients that are localities should have appropriate reasonable accommodation zoning ordinances.<sup>52</sup>

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<sup>51</sup> For additional information about the barriers and problems in the CES system, and related recommendations, see Disability Rights Education and Defense Fund (DREDF), *Legal Obligations, Model Policies, and Practices to Support Persons with Disabilities in the Coordinated Entry System Process*, (May 2018), <https://dredf.org/wp-content/uploads/2019/08/Materials-Homeless-DREDF-LegalObligationsPoliciesPracticesForCoordEntryProcess-May-2018.pdf>.

<sup>52</sup> One of California's better reasonable accommodation zoning ordinances is found in the City of Oakland's Municipal Code at Chapter 17.131.

### **C. Question 3: Effective Communication**

*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?*

1. Communication disabilities are varied and a wide range of options now exist to ensure effective communication.

Communication disabilities are diverse and varied and include, for example: vision and hearing disabilities, speech disabilities, neurodiversity, learning disabilities which affect communication, traumatic brain injuries or stroke, cognitive disabilities, or a physical impairment that limits writing or typing. And individuals may have multiple types of communications disabilities. To address the variety of needs this diverse community has, a variety of communication aids exist for people who cannot rely on speech alone to be heard and understood. Auxiliary aids and services used by people with speech-related disabilities are generically described as “augmentative and alternative communication (AAC) tools, supports, and strategies.” AAC includes all forms of communication other than speech, including gestures, eye gaze, vocalizations, taking someone by the hand, facial expressions, and body positioning.

These tools and strategies can include: providing a notetaker, magnification devices, live interpreters, readers, videotext displays, open and closed captioning, television enlargers e.g. CCTV, zoom, text messaging, talking calculators, electronic readers e.g., Kurzweil, voice synthesizers, assistive listening devices, remote/virtual participation, CART, alternative media like taped texts, braille, e-documents, and audio documents, and/or augmentative and alternative communication tools and supports, including high-tech text-to-speech apps, low-tech alphabet boards, handwriting, sign

language, additional time to communicate, and a human aide or support person that may be necessary to support the person's use of AAC, including revoicers for someone with unclear speech, and a person who can support both receptive and expressive communication for someone with aphasia. An individual, depending on their need and disability or disabilities may need one or multiple of these tools. And people who are limited English proficient require AAC tools, supports, and strategies in their primary language, and/or may need translation from English to another language as well as AAC.

Further, while advancements in technology have expanded how people can communicate, housing providers' refusal to ensure effective communication remains a significant barrier to housing for disabled people. Housing providers often refuse to provide lease agreements and other documents in alternative formats like braille or large print for people who are blind or have low vision, or to arrange ASL interpreting for deaf/hard of hearing applicants. Many housing providers use form leases produced by industry groups that contain inapplicable or unenforceable terms and use complex, legalistic language that can be difficult to decipher. Housing providers will often point to the length and complexity of the document as the reason why they cannot provide alternative formats, arguing that it is too cumbersome and expensive to translate.

**Recommendation:** Regardless of the disability, HUD recipients should ask all applicants what method of communication works best for them at the outset, and then provide communication in that format. This question should be asked to everyone, as people may have disabilities and related communication needs that are not apparent. HUD should consider promulgating regulations that require leases and legal documents be in plain language and to omit provisions that are inapplicable or unenforceable. Plain language promotes effective communication by making information easy to understand for people with intellectual or cognitive disabilities and facilitates interpretation into other languages (including ASL) and alternative formats like braille.

## 2. HUD Recipients need training on new technologies to ensure effective communication.

New technology is valuable, but HUD recipients may need training on how it works. For deaf/hard of hearing people, finding and applying for housing by phone can be challenging because of housing providers' lack of

familiarity with VRS or VRI. Few deaf/hard of hearing people use TTYs today, opting instead for videophones and VRS or VRI. A VRS call typically begins with the relay interpreter giving their identification number and asking the hearing person to wait while the deaf/hard of hearing person signs their message. Hearing people who are unfamiliar with this script often assume the call is a telemarketer or robocall and hang up. Housing providers who use automated phone trees to receive calls create additional barriers to housing access for deaf/hard of hearing people using VRS. Many phone trees have a short time limit in which to enter a selection. If the caller does not select an option before the time runs out, the automated message starts again or drops the call entirely. This is a problem for people calling with VRS because the time provided to make a selection is often too short for the interpreter to sign the information to the caller and wait for the caller to sign back their selection.

**Recommendation:** While older assistive technologies should not be thrown out, the Department should require HUD recipients to stay up to date and receive training on the newer and most widely used forms of technological communication, as well as how to obtain and use appropriate auxiliary aids.

*What information should the Department consider with respect to the accessibility of recipients' websites and devices, mobile applications, etc.?*

Websites and mobile apps are often incompatible with screen-reading devices continues, a major barrier to access for people who are blind or have low vision. When housing providers insist on using inaccessible websites to collect rental applications, it places people who use screen-readers and people who have difficulty using a computer at a disadvantage to securing housing. Some housing providers will accept paper rental applications if the applicant requests it as a reasonable accommodation, but others do not. Even when paper applications are accepted, they place the applicant at a disadvantage in competitive rental markets because a housing provider is unlikely to wait for a paper application to arrive in the mail and take the time to manually process it when other applications are coming in faster and being processed more quickly online.

**Recommendation:** The Department should mandate that recipient websites and mobile apps be accessible and compatible with screen-reading devices. The Department should also require that housing providers provide and accept rental applications in a variety of formats,

particularly when the housing is designed to serve a population with limited access to high-speed internet (e.g., rural communities) or a population that may not be familiar with or comfortable using new technology (e.g., senior housing).

#### **D. Question 4: Mobility and Sensory Accessibility**

*(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?*

DRC advocates extensively with people with disabilities to increase the availability of affordable, accessible housing. The lack of accessible units and features is among the biggest barriers to individuals with disabilities participating in housing programs operated by HUD recipients. The challenges include:

1. A large need for affordable, accessible housing;
2. Lack of affordable accessible units and units with accessible features;
3. Lack of funding for accessibility features and accommodations/modifications;
4. Little to no oversight, reporting, and enforcement regarding accessibility and fair housing compliance;
5. 24 CFR Part 8 and other accessibility regulations lack clarity and specificity and HUD Recipients and others lack familiarity with legal obligations, resulting in widespread noncompliance;
6. Failure to rent the few accessible units that do exist to people with disabilities who need the features;
7. The Coordinated Entry System's failure to address physical accessibility.

We discuss each of these barriers and related recommendations below.

In January 2012, DRC represented three nonprofit disability and fair housing advocacy groups, filing a lawsuit in federal court against the City of

Los Angeles and the Los Angeles Redevelopment agency, alleging that the City's housing programs were inaccessible to people with disabilities. *Independent Living Center of Southern California et al. v. the City of Los Angeles, et al.*, Central District of California, Case No. 2:12-cv-000551-FMO-PJW ("*ILCSC*"). In 2016, the case settled against the City, with a separate settlement against the Redevelopment Agency.<sup>53</sup> It is one of the largest affordable housing accessibility victories, if not the largest, in the country. The agreement, among other things, requires the City to ensure that at least 4,000 of its affordable housing units meet the highly accessible standards required by federal law<sup>54</sup> and to enforce policies that those units are rented to people who need their specific accessibility features. In August 2019, HUD entered into a Voluntary Compliance Agreement with the City based on similar allegations, with additional obligations, resulting in additional accessible units and policies.<sup>54</sup>

In the last several years, under the *ILCSC* Settlement, the City has implemented a robust and effective program for ensuring full required accessibility in new construction and substantial rehabilitation projects. It has also implemented an Enhanced Accessibility Program that awards competitive points for City funding if developers provide additional accessibility features. The City is currently monitoring approximately 782 affordable projects (960 sites) for compliance with fair housing, nondiscrimination, and accessibility policy. Monitored projects submit quarterly reports regarding their compliance with tenanting of accessible units; waitlists and transfer lists; provision of reasonable accommodations, reasonable modifications, and auxiliary aids and services for effective communication, and; grievances. The City also maintains a web-based tenant registry to match applicants who need accessible units to projects who have accessible features, allowing for on-line pre-applications.

This is one of the most robust accessibility programs in the country, and may be the only one where affordable housing projects must provide frequent, detailed compliance reporting. Settlement implementation and

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<sup>53</sup> Plaintiffs were represented by Relman Colfax (lead counsel – Michael Allen), Disability Rights California (counsel Dara Schur and Autumn Elliott), Disability Rights Legal Center and David Geffen. *Indep. Living Ctr. of Southern California, et al. v. the City of Los Angeles, et al.*, 973 F. Supp. 2d 1139 (C.D. Cal. 2013). More information about the lawsuit and key case and settlement documents are available at <https://www.disabilityrightsca.org/cases/independent-living-center-of-southern-california-et-al-v-the-city-of-los-angeles-et-al> and at <https://www.relmanlaw.com/cases-ilcsc-v-los-angeles>.

<sup>54</sup> *Voluntary Compliance Agreement between HUD and City of Los Angeles*, (Aug. 2, 2019), <https://www.hud.gov/sites/dfiles/Main/documents/HUD-City-of-Los-Angeles-VCA.pdf>.

monitoring has taught us about the extent and nature of accessibility barriers, fair housing and program access, and how to improve compliance.<sup>55</sup> We have built on those lessons through further advocacy with state agencies such as the Division of the State Architect's Access Codes Collaborative, the Department of Housing and Community Development, the state Tax Credit Allocation Committee, and others. We also work with impacted community members on these issues. This experience informs the following.

1. Challenge One: A large need for accessible, affordable housing exists.

Given the scarcity of accessible housing units, any analysis of need cannot be based on data about disabilities alone. Determination of accessibility requirements has to consider the combination of the need and the lack of availability (see data below), and the extent of the gap between need and availability. The gap makes apparent our need to greatly increase both the number of required accessible units and the availability of programs to fund accessibility and accessibility modifications.

*ILCSC* provides a snapshot into the extraordinary need for accessible, affordable units. Since its inception in 2018, best estimates indicate that close to 100,000 people have visited the City of LA's tenant registry in search of accessible, affordable housing, and there are currently over 66,000 registered applicant accounts on the registry. As of March 2023, more than 70,000 people are on waiting lists for accessible units according to project quarterly reports.<sup>56</sup> In addition, many people in Settlement-covered properties reside in inaccessible units and are waiting to transfer to accessible ones. Current estimates are that over 678 households are on individual project transfer lists. And, as explained in the response to Question 2, a lack of accessible housing is a major barrier to transitioning individuals out of institutional settings.

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<sup>55</sup> Unfortunately, the City's data collection system is still being developed, so exact numbers on some pieces of information are not available.

<sup>56</sup> Note this includes some duplication and not all of these individuals will qualify for the units, but even after accounting for those factors the numbers are enormous. Unfortunately, we cannot obtain an exact count because people are desperate for affordable housing, so many individuals request to be on the waitlist without qualifying. Owners are not required to screen for eligibility at the application stage, but only once units become available, given that there are often changes in people's situations during the years they are on the waitlists.

## 2. Challenge Two: Affordable accessible units and features are scarce.

Unfortunately, limited data exists about the accessibility of the housing stock. As noted above, at the inception of *ILCSC*, the City could not identify a single accessible housing unit. As of June 2023, out of tens of thousands of units, only 434 have been certified as fully accessible. As new buildings come online and retrofits are made, hundreds more will be certified accessible in the next few years. But most older buildings will continue to lack mobility and hearing/vision units necessary for accessibility.

Further, in California, we know that nearly 75 percent of the state's housing stock was built prior to 1990 and the enactment of the ADA, the earliest federal mandate on accessible development.<sup>57</sup> A minimum of two-thirds of California's housing stock is inaccessible for people with mobility and/or sensory disabilities. Nationally, the situation is similar. According to 2011 American Housing Survey Data, fewer than .25 percent of housing units built prior to 2000 had level 3 accessibility (Wheelchair Accessible), and even after 2000, the percentage of level 3 accessibility only rose to .35 percent. And, not a single type or age of housing has wheelchair accessibility in over half a percent of the units.<sup>58</sup> This means that constructing new accessible units at the current percentages still results in a massive accessibility gap. We are beginning from well behind the starting line.

Accessibility levels are likely lower for lower-cost housing, given that that stock tends to be older, and was thus not subject to accessibility requirements. Because the long-standing lack of accessible affordable housing and high need has led to a huge gap in units, California's Low Income Housing Tax Credit program now requires 15% mobility and 10% hearing/vision for new construction, 10% mobility and 4% hearing/vision in rehabilitation projects, and 50% in senior housing. The tax credit program also encourages and provides extra points in competitive funding applications for additional universal design and accessibility features. It also requires that these features be confirmed by an architect with

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<sup>57</sup> *Final 2020 Analysis of Impediments to Fair Housing Choice*, CAL. DEP'T OF HOUS. AND CMTY. DEV (2020), <https://www.hcd.ca.gov/policy-research/plans-reports/docs/final2020ai.pdf>.

<sup>58</sup> *Accessibility Of America's Housing Stock: Analysis Of The 2011 American Housing Survey (AHS)*, U.S. DEP'T OF HOUS. AND URB. DEV. OFFICE OF POL'Y DEV. AND RSCH. (2016), at 2. We recommend that HUD commission research updates this valuable but dated report.

specialized training in accessibility (Certified Access Specialists, or CASps).<sup>59</sup> Developers have successfully incorporated these requirements.

Extensive research justifies such increases in accessibility. California's Final 2020 Analysis of Impediments to Fair Housing Choice<sup>60</sup> lists lack of accessible housing stock as the tenth major impediment to fair housing in the state. It explained, for example, that 62% of respondents could not find accessible units with accessibility/handicapped features regardless of price.<sup>61</sup> We also know that most subsidized housing built prior to the last few years does not include the required accessible units.<sup>62</sup> Key takeaways in the Analysis of Impediments included:

“California has over 4 million Californians with disabilities, many of whom face extreme challenges finding housing that is affordable, accessible, and located near transit and supportive services.

Nearly 75 percent of the state's housing stock was built prior to 1990 and the enactment of the Americans with Disabilities Act (ADA), the earliest federal mandate on accessible development. This means that the majority of California's housing stock is inaccessible for people with disabilities.

Lower-income households are more likely to include members with disabilities than higher-income households. Extremely low-income households are more than twice as likely to include an individual with a disability than households earning above moderate-income.”<sup>63</sup>

Because most housing programs serve a broad cross-section of people, and because people with many kinds of disabilities also have mobility and/or hearing/vision disabilities, increasing accessibility requirements does not have a segregating effect. Given that most existing housing is not

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<sup>59</sup> See, e.g., 4 C.C.R. §§ 10325(c)(8)(B), (f)(7)(K), (g)(2)(B) and (C), [https://www.treasurer.ca.gov/ctcac/programreg/regulations\\_committee.pdf](https://www.treasurer.ca.gov/ctcac/programreg/regulations_committee.pdf).

<sup>60</sup> <sup>60</sup> *Final 2020 Analysis of Impediments to Fair Housing Choice*, CAL. DEP'T OF HOUS. AND CMTY. DEV (2020), at 433.

<sup>61</sup> *Id.* at 40 (62% of respondents could not find an accessible units with accessibility/handicapped features regardless of price). *Id.* at 54 (23% of persons 65 and older have an ambulatory disability). *Id.* at 57 (12.8 percent of income eligible households include someone with a hearing or visual disability, 17.9 percent of income eligible households includes someone with an ambulatory disability). *Id.* at 381 (noncompliance with FEHO physical accessibility requirements frequently found in FEHO reviews of 19 California jurisdictions).

<sup>62</sup> *Id.* at 18.

<sup>63</sup> *Id.*

accessible, meaningfully increasing accessibility requires increasing accessibility in new construction.

Percentages of units with accessible features are also low. These features can include stairless entries to buildings and units, wider doorways and halls, lowered cabinets, and/or maneuvering spaces in kitchens and bathrooms. Only 3.8% of all units are livable for people with moderate mobility disabilities. And only about a third are potentially modifiable for some mobility access.<sup>64</sup> Some buildings do have accessible features, such as stairless entry, although in parts of the state with hilly terrain or dense housing, even those are scarce.

**Recommendations:** The Department should modify 24 C.F.R. § 8.22(b) to require higher percentages of accessible units. We believe the gap between stock and need justify percentages similar to or higher than those adopted by the California Tax Credit program discussed above (15% mobility and 10% hearing/vision for new construction, 10% mobility and 4% hearing/vision in rehabilitation projects, and 50% in senior housing.)

The Department should continue to impose higher mandatory accessibility limits above the required minimum in most jurisdictions. For example, under the HUD Voluntary Compliance Agreement (VCA) with the City of Los Angeles dated 8/2/19, HUD has approved and is requiring 15% accessible units in New Construction (11% mobility and 4% Hearing/Vision features.)

The Department should require recipients to identify and inventory adaptable FHA units and units with accessible features, in addition to fully accessible units, (particularly in new construction projects) and give some priority for those units should be given to individuals who need those features, given the lack of fully accessible mobility units.

The Department should encourage localities to consider requiring additional accessible units or additional accessible features as an incentive in competitive funding programs or as requirements for funding.

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<sup>64</sup> *Accessibility Of America's Housing Stock: Analysis of The 2011 American Housing Survey (AHS)*, U.S. DEP'T HOUS. AND URB. DEV. OFF. OF POL'Y DEV. AND RSCH. (2016), at 2.

3. Challenge Three: There is a lack of funding for accessibility features and accommodations/modifications.

While we understand that funding is not primarily within HUD's control, money is needed for accessible features modifications. Adding accessibility features and complying with regulations is not disproportionately expensive in new construction, and is far more affordable if included in initial design and construction, but it does add some cost. Because of limited budgets for affordable housing, these costs create some resistance from both policymakers and developers, who fail to see accessibility as a priority.

Similarly, little funding for reasonable modifications exists for individuals with vouchers (See Section III.E below) or people who do not reside in housing covered by Section 504. And in older projects covered by 504, there can be a tendency to assume that modifications are an undue burden. "Grants for ramps" programs for aging populations of low income individuals are scarce.

Also, overseeing compliance with accessibility requirements does have some staff and administrative costs. We understand that the HOME program caps administration funding at 10% and the CDBG program caps those costs at 20%. Because local governments have competing demands for needed public services, enforcing accessibility takes a lower priority.

**Recommendations:** The Department should consider seeking more funding for accessibility-related programs. CDBG and HOME programs should make clear that such programs are covered expenses. Recipients, including public housing authorities, should be allowed to use administrative funds to cover modifications and accessibility requirements, and those funds should be increased to cover such costs.

HUD should make it explicit in its program guidelines that expenditures for reasonable accommodations/modifications and maintenance and restoration of accessible features are allowable operational expenses.

4. Challenge Four: Little to no oversight, reporting, and enforcement regarding accessibility and fair housing compliance exists.

In California, we have witnessed widespread noncompliance with accessibility standards in housing covered by Section 504 as well as with accessibility and fair housing obligations. We understand that this

noncompliance is common elsewhere in the country.<sup>65</sup> In California, with the exception of the Settlement in *ILCSC*, most state and local agencies or other entities conduct minimal, if any, review or oversight of accessibility standards during or after construction. Developing housing is a complex process with many stakeholders, including government officials, multiple funding agencies, lenders, insurers, building code staff, developers, architects, contractors, owners and managers. Reporting, monitoring, consequences, and education are all necessary to reach intended goals.

Most California localities rely on their building code enforcement departments to conduct plan reviews and inspections during construction and at completions. However, a state Attorney General decision<sup>66</sup> prohibits local code enforcers from enforcing federal standards like Section 504; they may only enforce the California Building Codes. Furthermore, most jurisdictions' housing departments that fund or oversee Section 504-covered housing projects do not communicate well with the building code enforcement agencies. In most instances, code enforcement agencies have no way of knowing if a project is covered by Section 504 or ADA standards.

In Los Angeles, the City created and implemented new detailed procedures under the Settlement to ensure that the code enforcement agency knows when higher accessibility standards apply. The City conducts review of projects for accessibility compliance under a separate division of the Housing Department, which must constantly coordinate with the building codes department for plan review and construction inspections. As far as we can ascertain, few if any housing departments in other California jurisdictions engage in such a comprehensive review. While a few may require an architect's certifications at the plan review stage, they do not do onsite inspections at any stage of construction or after. This creates a significant barrier to enforcement of Section 504 accessibility standards.

Further, though HUD requires extensive periodic reporting on rents and income levels, we know of no detailed accessibility-reporting requirement.

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<sup>65</sup> See *Access Living of Metropolitan Chicago, Inc. v. City of Chicago*, No. 1:18-cv-03399 (N.D. Ill.) For complaint, rulings and other information, see <https://www.relmanlaw.com/cases-access-living>. See also recent update at <https://www.accessliving.org/newsroom/press-releases-and-statements/breaking-chicago-has-failed-to-enforce-key-housing-accessibility-laws-for-people-with-disabilities-for-34-years/>.

<sup>66</sup> 76 Ops. Cal. Atty. Gen. 130 (Cal.A.G.), 1993 WL 261158 (July 14, 1993, Opinion 93-203, by Attorney General Daniel Lungren.)

Generalized certifications of compliance with fair housing laws are too often misunderstood or not accurate. State agencies have just begun, in recent years, to require developers to submit information and verification of compliance with federal standards. Only one state agency has begun to collect annual information about whether accessible units are occupied by people with disabilities who need the features. Similarly, we are unaware of HUD having specific reporting or oversight requirements for fair housing compliance. Grievances and discrimination complaints are the only mechanisms for oversight, and they are not adequate.

**Recommendations:** The Department should consider regulations requiring regular detailed reporting from recipients and subrecipients of compliance with accessibility standards, of appropriate tenanting of accessible units, and of compliance with reasonable accommodation/modification requirements. This should be built into the same cycle/process of reporting as income and rent reporting.

The Department should preempt state and local rules that bar local building code enforcers from enforcing Section 504, to ensure better coordination and oversight.

5. Challenge Five: 24 CFR Part 8 and other accessibility regulations lack clarity and specificity and HUD Recipients and others lack familiarity with legal obligations, resulting in widespread noncompliance.

- a. *There is widespread misunderstanding of the applicability of 504 requirements, including both the coverage of 504 and the specific obligations under 504, results in noncompliance.*

As discussed in Section II above and Attachment A, widespread misunderstanding of Section 504's scope prevents full compliance with accessibility requirements. In our advocacy in Los Angeles and other localities, and with state agencies, staff and agency attorneys repeatedly claim that Section 504 obligations only cover projects with direct federal funding, even when the agencies receive federal financial assistance from HUD. It has taken years of advocacy to correct this issue with many of these entities, and it remains a widespread belief with local jurisdictions. Also, individual projects, particularly tax credit projects, continue to believe either that they are exempt completely, or that only those units with direct federal funding (such as a Project Based Section 8 Certificate or HOME) are covered. Some developments will pay for reasonable modifications in

those units but not other units. It is next to impossible for unrepresented tenants and applicants to determine the full range of subsidies in a development, or to understand the scope of Section 504.

We also note that HUD's regulatory language is in many cases inconsistent with other federal regulations and with DOJ interpretations of the scope of Section 504. See Attachment A for a more detailed legal analysis and specific regulatory language proposals.

**Recommendations:** As a priority, the Department should review the Section 504 regulations and modify them for clarity and consistency with the Civil Rights Restoration Act and comparable DOJ regulations. See Attachment A.

The Department should develop appropriate technical assistance, guidance, and training documents to ensure that all recipients and subrecipients understand the complete scope of Section 504 coverage.

The Department should conduct outreach and training regarding the applicability of Section 504.

The Department should require reporting by recipients and subrecipients regarding their compliance with the full scope of Section 504.

*b. HUD's 504 regulations could benefit from increased specificity and more examples, improving compliance.*

HUD's Section 504 regulations are often very general. This leads to confusion and misunderstanding. As we have learned in *ILCSC*, it takes a combination of education, training, reporting, consequences *and* monitoring to embed good accessibility practices in affordable housing covered by Section 504. Many stakeholders remain unaware of these requirements. Therefore, clearer and more specific regulations, reporting, monitoring, consequences, and education are all necessary to reach intended goals.

One example of confusing regulations is the intersection between the "disabled family" definition 24 CFR Section 5.403 with the Section 8.27 regarding occupancy of accessible dwelling units. "'Disabled family' means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or

more live-in aides." This definition excludes households where the heads of household do not have disabilities, but children or other adult family members do, from various disability related protections. For example, we have seen it interpreted to exclude households with children with mobility/communication disabilities from a priority for accessible units under Section 8.27. Indeed, the "disabled family" definition was a barrier when we began implementing *ILCSC*, although we have been able to educate owners and managers since. In this regard, we commend HUD for using the word "applicant" rather than "disabled family" in 24 C.F.R. § 8.27. However, we have still encountered instances where owners will only provide these units to "Disabled Households."

Further, 24 C.F.R. § 8.22(b) and (c) are confusing. While subsection (c) refers to a "minimum of 5%", it is often read as limiting requirements above that minimum without HUD approval. We do not believe that is the intent, but in our experience this provision is misinterpreted. Requiring HUD approval, or believing that approval is required, can unnecessarily slow down the process of expanding accessibility.

**Recommendations:** The Department should specify in § 8.27 that any household with a family member with a disability who needs the accessible features is entitled to the priority in this section.

The Department should modify 24 C.F.R. § 8.22(b) and (c) to clarify that jurisdictions can increase the required percentages of accessible units in programs, or throughout a jurisdiction, without HUD approval.

The Department should add more details and examples into the regulations, both to educate stakeholders and to ensure appropriate compliance. Many of HUD's current guidance materials on the Fair Housing Act have very helpful details and examples that we recommend incorporating into the 504 regulations. See, e.g. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications under the Fair Housing Act, March 5, 2008 (especially Question/Answer 31); Joint Statement of HUD and DOJ, Reasonable Accommodations under the Fair Housing Act, May 17, 2004.

- c. A widespread lack of understanding by owners/managers and local governments regarding reasonable*

*accommodations/modifications and effective communication requirements leads to a high level of noncompliance.*

As discussed in the responses to Questions 3 and 11, HUD recipients must better meet their obligations to provide effective communication and reasonable accommodations/modifications. Recommendations are listed there. Under the Settlement in *ILCSC*, projects report quarterly on requests for reasonable accommodations, reasonable modifications and effective communications. From 2018 through March 31, 2023, projects reported<sup>67</sup> at least:

- 4,149 requests for reasonable accommodations or modifications, with 3,375 approved, 383 denied, 315 pending, and 122 withdrawn by requestor.
- 64 requests for auxiliary aids and services for effective communication; with 59 approved; 9 denied; 2 pending; and 1 withdrawn by requestor.

While this information has not yet been independently verified in the absence of a specific grievance, it provides significant data about the high need for accommodations and modifications. The City has developed mandatory training materials for owners/managers regarding these obligations, and is developing specific targeted video materials. City Analysts review quarterly reports and work with owners to help them understand these obligations, and a city team responds to grievances filed by tenants when there are problems. What we have learned is that general fair housing training provides a useful base, but targeted training and monitoring is required to achieve long term changes.

*d. Most owners/managers/developers, code officials, local government officials and architects are unfamiliar with the technical accessibility standards under ADA Title II and HUD 504 regulations, leading to a high level of noncompliance.*

Because of the complexity of accessibility codes, including Section 504/UFAS, ADA 2010 Standards, the Deeming Memo, and state and local building codes, responsible parties often lack awareness and have a great

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<sup>67</sup> Note that this data has not to date been independently verified and relies on self-reporting. Especially in the early years of the Settlement, there was significant underreporting, and we believe some underreporting of reasonable accommodations, modifications, and effective communications still occurs.

deal of confusion about which codes apply. The overlay of multiple code requirements makes compliance much more difficult for all stakeholders, as does the general lack of readily available training materials and reporting and enforcement. Please see Mr. Hecker's comments on the code complexities in response to Question 6 in Attachment C. This is true for local governments, building code officials, architects, and contractors.

As described in Section III.D.4 above, California's prohibition on building code officials inspecting for federal accessibility requirements creates confusion and inefficiency. Furthermore, architects and code enforcement officials are rarely trained on accessibility requirements, particularly for affordable housing. In California, the program for CASps (Certified Accessibility Specialists) was designed to provide accessibility training for architects primarily in a commercial context. In our experience in *ILCSC*, even most CASps are not trained in the overlapping code requirements for accessible housing, including Section 504, FHA, ADA 2010 Design Standards, and California Building Codes for Title II entities (California Building Code Chapter 11B). We know from the *ILCSC* case implementation that well trained architects and city inspectors can produce highly accessible housing. HUD regulations should ensure that this training and reviews happen.

**Recommendations:** The Department should expand its training and technical assistance.

The Department should require sign-off on building plans for developments covered by 504 by architects who have received specific training and certification on federal housing accessibility requirements under the FHA, ADA Title II and 504.

The Department should consider regulations that would require local building code enforcers in local and state recipients to be trained on federal accessibility standards.

The Department should consider regulations that would require state and local government recipients to explain how they will ensure appropriate review by properly trained staff (either building code officials or others) of plans for compliance with the requisite accessibility codes.

The Department should consider regulations that would require state and local government recipients to inspect plans and physically inspect

completed projects (during construction and before occupancy) to ensure compliance with the requisite accessibility standards.

6. Challenge Six: There is widespread failure to rent the few accessible units that do exist to people with disabilities who need the features.

Once accessible units are actually built, they should be rented to people who need the accessible features of the units. Unfortunately, failure to properly lease the units means they are often not properly occupied. The causes of this mismatch include intentional discrimination, failure of project owners to appropriately market accessible units, and lack of information about how to reach disability communities. It is much harder to properly lease an accessible unit once it is improperly rented than it is to rent to the right person in the first place.

Even with a lease addendum in place that provides the tenant must move to a comparable unit if a person needing the accessibility features reaches the top of the waitlist (a rarity despite the regulatory requirement), comparable units for the existing tenants are hard to identify. Moving people initially placed improperly in accessible units to comparable conventional (non-accessible units) can be difficult for a variety of reasons. First, people are reluctant to leave their homes, particularly if they have lived there for a while. Second, it is bad policy to evict people for refusing to move. Third, given the complexity of funding sources in buildings, other units in the building may have different eligibility requirements or different income/rent levels. Fourth, there may not be units with the right bedroom size, or units that are comparable in other features. For these and other reasons, ensuring units are properly rented in the first place is critical.

Prior to the *ILCSC* Settlement, most properties did not keep good information about households seeking accessible units. The City now requires specific marketing to disability and related communities, The City also mandates a marketing list of disability resources, has set up a web-based registry to match tenants and accessible units, and prohibits leasing of accessible units to tenants who do not need the features. But moving out people who do not need the features into comparable units continues to be a challenge in LA for tenants who moved into accessible units prior to the Settlement.

The Settlement also requires that separate transfer and waiting lists are to be maintained. This has been helpful in ensuring that there are qualified people available when accessible units become vacant.

**Recommendations:** The Department should modify 24 C.F.R. § 8.27(b) to require, not just permit, HUD recipients to enter into lease addenda requiring people without disabilities who reside in accessible units to move to a comparable non-accessible unit when one becomes available. Without such a lease addendum, these units are essentially lost to the people who need them.

The Department should require more specific marketing to disability communities and agencies serving seniors and people with disabilities.

The Department should modify 24 C.F.R. § 8.27(a) to add a third step for offering units. If there are no households on the transfer lists or waiting lists in Steps 1 and 2, projects should be required to do outreach to the disability community for a specified period of time, perhaps 30 days, prior to renting to someone who does not need the features.

The Department should clarify § 8.27(a)(1) to provide more direction about “comparable projects under common control.” This provision of the regulation is often ignored. Changes should specify that “common control” includes properties with the same owner, management companies with leasing control over multiple buildings, and/or agencies that control access to units in a portfolio. The regulations should also clarify that comparability in this case refers to projects otherwise available to tenants but excludes only projects with inconsistent eligibility requirements (such as senior restrictions or veteran restrictions).

The Department should provide more direction about waiting and transfer lists for people who need accessible units. Preferably, the regulations should require separate transfer and waiting lists for accessible units. Alternatively, single waiting lists that clearly identify those who need the features could be used, but this has not worked well in our experience. Projects should not be able to close accessible unit waiting lists until there are sufficient applicants on the list to ensure that the project can fill vacancies with those that need the units. Once transfer and waiting lists drop below certain levels, owners and managers should be required to do outreach to fill up the lists in advance of vacancies, to avoid rental delays.

The Department should prohibit projects opening for the first time through lottery or outreach from filling accessible units with people who do not need the features.

7. Challenge 7: The Coordinated Entry System's failure to address physical accessibility.

See Section III.B.15.

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

Among the most important things HUD can do to strengthen and encourage compliance is:

1. Improve regulations and training materials so that 504 coverage is appropriately interpreted.
2. Require more specific reporting on how they provide program access, and on implementation of reasonable accommodations, modifications, and effective communication requirements.
3. Allow organizations composed of people with disabilities or acting on behalf of people with disabilities to file complaints and seek enforcement.
4. The Department should renew the requirement for HUD recipients to engage in a self-evaluation<sup>68</sup> and transition plan<sup>69</sup>, and to add periodic reporting requirements, with the related information made available to the public.

See our specific recommendations above on these points.

## **E. Question 5: Voucher Challenges**

*5(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?*

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<sup>68</sup> 24 C.F.R. § 8.51.

<sup>69</sup> 24 C.F.R. § 8.24.

1. High rents, discrimination, and a lack of units meeting disability-related needs make tenant-based rental assistance difficult to use.

The biggest challenge to using tenant-based rental assistance in the private rental market is the combination of sky-high rents, discrimination, and lack of units meeting people's disability-related needs. Those rents are described in response to 5(b).

Discrimination, even where source of income discrimination protections exist, like in California, is still rampant<sup>70</sup>, including for people with disabilities, especially those who are also people of color or families with children. And, housing authority payment standards can exacerbate existing patterns of segregation.<sup>71</sup>

Further, the private market contains few units meeting disability-related needs. Section III.D.2 describes the lack of accessible affordable housing. Moreover, local rent control ordinances do not apply to newer buildings, thus forcing people in the private market to choose between stable rents or accessibility.<sup>72</sup> But physical accessibility is not the only problem. For example, some individuals have significant care needs and have built delicate networks of care in neighborhoods that have become difficult to afford with tenant-based rental assistance. And yet, many HUD recipients do not advise individuals that the search time may be extended, and some have even demanded doctor letters in order to extend the time. This is a barrier to housing.

Related to cost and accessibility is the issue of exception payment standards. The guidelines for when these exceptions can be made are not easy to understand, nor are they widely distributed.<sup>73</sup> And many landlords will not hold a unit for the time it takes a PHA to approve the exception. Finding a unit that meets a person's disability-related needs, that one can

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<sup>70</sup> Andrew Khouri, *California Outlawed Section 8 housing discrimination. Why it still persists*. LOS ANGELES TIMES (Nov. 19, 2022), <https://www.latimes.com/california/story/2022-11-19/california-outlawed-section-8-housing-discrimination-why-it-still-persists>

<sup>71</sup> See e.g., *NAACP et al. v. San Diego Housing Commission*, San Diego County Super. Ct. No. 37-2019-00012582-CU-WM-CTL; Claire Trageser, *Legal Battle over San Diego housing vouchers continues, with a new twist*, KPBS (Jan. 26, 2023): <https://www.kpbs.org/news/local/2023/01/26/legal-battle-over-san-diego-housing-vouchers-continues-with-a-new-twist>

<sup>72</sup> See, e.g. *Smith v. Oakland*, Case No. 19-5398, Northern District of California, <https://dralegal.org/case/smith-v-city-of-oakland/>

<sup>73</sup> Notice PIH 2011-19, Extension of Notice 2010-11, *Requests for Exception Payment standards for Persons with Disabilities as a Reasonable Accommodation*.

also afford, and where the landlord is willing to rent the unit to the individual is an extraordinary challenge.

**Recommendations:** The Department should require HUD recipients administering tenant-based rental assistance programs to maintain a list of accessible units. It should further update its regulations to extend the minimum voucher search time for people who have disability-specific needs (for any needs, not only mobility/sensory access) for their housing to 120 days, and allow for automatic extensions without requiring a reasonable accommodation request. The Department should also create streamlined, plain language, and expedited procedures for exception payment standards so that individuals who find an accessible unit do not lose it while waiting for such approvals. Importantly, an individual should be allowed to request an exception payment *before* finding a unit. In tight markets, HUD should make blanket waivers allowing exception payment standards up to the needed percentage of FMR. And, in tight housing markets, the Department should require HUD recipients to project base some of its vouchers in scattered site accessible units.

## 2. Voucher waitlists are not always accessible.

Because of the massive demand for tenant-based rental assistance, getting on the waitlist can be difficult. First-come, first-serve waitlists are especially a problem. Our responses to Questions 2, 3, and 4 all identify some waitlist barriers.

**Recommendations:** The Department should mandate that HUD recipient waitlists are accessible, allow for easy use by housing navigators, match people who have accessibility needs to accessible units, and allow verified disability, aging, and community-based organizations to directly refer individuals to waitlists.

## 3. HUD's documentation and paperwork requirements are burdensome.

Applications and recertifications are burdensome and confusing. Often, people with disabilities need more time and/or assistance with filling out paperwork, but are penalized for not understanding or not completing it in time, for disability-related reasons.

**Recommendations:** The Department's documents should be streamlined, plain language, and assistance should be provided in completing them. The

Department should reduce applicant/tenant paperwork requirements that are not mandated by statute.

4. Many people cannot afford to pay security deposits.

Many people do not have money for security deposits or moving in costs associated with private rental housing.

**Recommendation:** The Department should allow flexible funds to be used for security deposit assistance.

5. Porting vouchers is difficult.

We receive calls regularly from individuals who could not find a place to live with their tenant-based voucher, attempted to port it, and faced major problems. Public housing authorities do not communicate well, resulting in unnecessary and lengthy delays in processing the ported voucher, resulting in lost housing opportunities. Some PHAs are also not aware that individuals with disabilities may request an accommodation to port within the first year of having a voucher. Moreover, even when people do manage to port, some housing authorities do not honor previous reasonable accommodations, like a larger voucher unit size for a caregiver or medical equipment.

**Recommendations:** The Department should create a streamlined process for porting vouchers due to a disability-related need (that does not require requesting an accommodation) and its regulations should explain that existing reasonable accommodations must remain in place when the voucher is ported, without the need for reverification.

6. Many individuals need housing navigation and case management services.

We regularly receive intakes from individuals who do not understand what type of tenant-based rental assistance they have and/or how to use it. Many HUD recipient case managers are unfamiliar with basic obligations like reasonable accommodations or effective communications. People with disabilities are more successful in obtaining housing when case managers

understand disability and the rights of people with disabilities.<sup>74</sup> We recognize that HUD currently encourages HUD recipients to refer to disability organizations and to provide housing search assistance.<sup>75</sup> But it is not mandatory nor done frequently enough. There is also a lack of clarity and consistency about the scope of housing navigation services that housing seekers can expect either of the PHA or outside housing navigation organizations. Many people with disabilities come to us confused and frustrated with housing navigators—some of the frustration certainly stems from realities of the rental housing market, but some comes from lack of communication and expectation-setting about the scope of services, what the housing navigators are responsible for doing, and what the housing seeker is responsible for doing.

**Recommendations:** The Department should mandate regular, verified training and certification regarding disability issues for case managers, including rights, as well as trauma-informed communication. The Department should also maximize flexibility in tenant based rental subsidy programs and identify where it can mandate housing navigation services.

7. Housing Authorities approve exceptionally large rent increases as reasonable.

We have seen housing authorities approve as reasonable very large rent increases, particularly when they are in tax credit properties. For one client, the housing authority approved a \$200 rent increase.

**Recommendation:** The Department should specify that rent increases above 5% are presumptively unreasonable.

8. Reasonable modifications are illusory for voucher participants because they cannot afford to make them.

As discussed in Sections III.B.11; D.3,5a, people using tenant-based rental assistance cannot often afford to make reasonable modifications, even if a private landlord follows their obligation to allow them.

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<sup>74</sup> See, e.g., Los Angeles's Flexible Subsidy Housing Pool, which has a low barrier to entry, includes housing navigation and maintenance services, and provides for higher subsidy to meet access needs: <https://www.hiltonfoundation.org/wp-content/uploads/2020/12/Executive-Summary-Strategies-and-Lessons-Learned-from-Implementing-the-Los-Angeles-County-Flexible-Housing-Subsidy-Pool.pdf>.

<sup>75</sup> See, e.g., HUD Notice PIH 2013-19 *Revised Policies and Procedures for Special Purpose Housing Choice Vouchers for Non-Elderly Disabled Families and other Special Populations*.

**Recommendation:** The Department should specify that HUD recipients should use flexible funds to pay for modifications for tenant-based rental assistance program participants.

9. New property managers do not honor previous accommodations.

We regularly hear from individuals whose property managers do not honor existing reasonable accommodations. In one case, a new property manager tore out all of a person's garden plants without notice, which had been allowed as a reasonable accommodation for their mental health disabilities. At other times, new property managers require re-verification for an entire building's emotional support animals, disregard unit transfer requests, or a host of other types of accommodations.

**Recommendations:** The Department should clarify that new property management must honor reasonable accommodations and consider requiring a notice with the HAP contract explaining a landlord's obligations regarding accommodations/modifications.

10. HUD's current guidance regarding bedrooms for caregivers poses problems for people with disabilities.

HUD's guidance regarding "oversubsidization" has caused regular problems in ensuring a person with a disability can get the care they need from a live-in aide or other caregivers.<sup>76</sup> Because of the guidance, HUD recipients often view requests for additional bedrooms with skepticism, and refuse additional bedrooms when a person needs 24-hour care from rotating caregivers. This harms people with the highest care needs, who may utilize more than one caregiver. Further, some housing authorities do not provide an additional bedroom for people who have disability-related needs for the additional bedroom other than medical equipment or caregivers.<sup>77</sup> The lack of clarity and restrictive language of HUD's notice is a problem.

**Recommendations:** The Department must make clear that rotating caregivers may require an additional bedroom and revise its existing Notice

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<sup>76</sup> PIH Notice 2014-25, *Oversubsidization in the Housing Choice Voucher Program*.

<sup>77</sup> See, e.g. *Huynh v. Harasz*, No. 14-CV-02367-LHK, 2016 WL 2757219, at \*1 (N.D. Cal. May 12, 2016)(partially granting summary judgment where housing authority regularly denied additional bedrooms for non-caregiver and non-medical equipment disability-related needs, including under Section 504).

to be very clear on that point. For example, though the Notice states that one may receive an accommodation for rotating caregivers, that is immediately preceded by a paragraph saying that “multiple or rotating caregivers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom should not be approved for a live-in aide under these circumstances.” Additionally the Department should be clear that additional reasons may exist for requiring an additional bedroom.

11. Vouchers lapse for preventable reasons.

Expiring voucher search terms, disability-related inability to complete recertification, or temporary institutionalization are three common causes of losing a voucher, that then needs to be reinstated as a reasonable accommodation.

**Recommendation:** As suggested elsewhere in these comments, the Department should extend the minimum voucher search term for people with disabilities, should prohibit terminations due to institutionalization, and should pause recertifications for disability-related reasons (e.g. hospitalization, impacts of treatment, etc.).

12. Evictions should not equal subsidy termination

Too often, individuals are evicted due to disability-related issues. Housing authorities then terminate subsidy because the eviction *appears* to be serious. While, with an attorney, these terminations can be defended against, many never get to that point, instead agreeing to move out of a unit in order to preserve their voucher.

**Recommendations:** The Department should require that a HUD recipient determine if a tenant was evicted for disability-related reasons before issuing a notice to terminate subsidy; even if serious, if the eviction can be/could have been prevented with an accommodation, it should not serve as a basis for subsidy termination.

*5(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*

The private market is not affordable in urban, suburban, or rural areas. In Los Angeles, 521,596 of the County's less than 900,000 very or extremely low income renters do not have such access.<sup>78</sup> In California, median rent has increased by 63%, while renter household income has only increased by 7%.<sup>79</sup> Renter burdens are greatest for Black renter households.<sup>80</sup> Statewide, 1,315,784 low-income renter households in California do not have access to an affordable home.<sup>81</sup>

Rural areas fare no better.<sup>82</sup> So, for example, 8,099 of less than 12,000 very or extremely low income renters in rural Butte County do not have access to an affordable home. The rural Central Coast has one of the biggest gaps between wages and rents.<sup>83</sup> Many rural areas simply do not have housing at all, and much of its rental housing stock is in substandard conditions. In addition, many types of housing serving lower income households in rural areas, such as mobile homes are highly unlikely to be accessible and are being bought by private investors who are raising rents exorbitantly, sometimes even turning mobilehome parks into "tiny home" vacation rentals.

And, nowhere in the country, let alone California, is affordable for individuals living on Supplemental Security Income.<sup>84</sup> We regularly work with individuals who pay all of their income, or nearly all of their income, toward rent.

## **F. Question 6: Accessibility Standards Issues**

*Comment 6: 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*

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<sup>78</sup> Cal. Hous. P'ship, *Housing Needs Dashboard*, <https://chpc.net/housingneeds/>

<sup>79</sup> Cal. Hous. P'ship, *California Affordable Housing Needs 2023* (Mar. 2023), [https://chpc.wpenginepowered.com/wp-content/uploads/2023/03/HNR\\_CA\\_CHPC-Master2023-FINAL.pdf](https://chpc.wpenginepowered.com/wp-content/uploads/2023/03/HNR_CA_CHPC-Master2023-FINAL.pdf)

<sup>80</sup> *Id.*

<sup>81</sup> Cal. Hous. P'ship, *Housing Needs Dashboard*, <https://chpc.net/housingneeds/>

<sup>82</sup> See e.g., <https://www.theguardian.com/us-news/2021/nov/06/fresno-housing-prices-rent-california>.

<sup>83</sup> See Terry Castleman, *See which California counties are the most expensive for renters in the U.S.*, LOS ANGELES TIMES (June 30, 2023), <https://www.latimes.com/california/story/2023-06-30/californian-counties-are-most-expensive-for-renters-in-u-s-report-says> (citing to Nat'l Low Income Hous. Coal., *Out of Reach 2023*, [nlihc.org/sites/default/files/2023\\_OOR.pdf](https://nlihc.org/sites/default/files/2023_OOR.pdf))

<sup>84</sup> Tech. Assistance Collaborative, *Priced Out: The Housing Crisis for People with Disabilities* (Dec. 2017), <https://www.tacinc.org/resources/priced-out/#:~:text=According%20to%20TAC's%20ongoing%20data,decent%20apartment%20without%20rental%20assistance.>

*guidelines provide sufficient or insufficient accessibility in the context of housing or other residential facilities funding 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.*

1. HUD should use the most state-of-the-art national accessibility technical standards with strong scoping requirements.

As HUD notes, multiple overlapping architectural standards currently apply to housing funded by HUD: ADA Title II, Section 504 (UFAS), the Fair Housing Act, and state and local building codes. Unfortunately, *none* of the federal standards have kept pace with the needs of people with disabilities, both in terms of current mobility devices and sensory technology and in terms of emerging technology in housing construction. For more detail, please see Attachment C, responses to comments developed by architect Bill Hecker, whom DRC has regularly retained as an accessibility consultant. As Mr. Hecker notes, the UFAS standards currently being used date from 1984, almost 40 years ago, and the ADA Title II standards date back to 1991 in some cases, but no later than 2010, more than 13 years ago. Much has happened in the worlds of technology and construction, and we commend HUD for recognizing that its current standards need updating.

We recommend that HUD adopt the most state-of-the-art national accessibility technical standards, along with additional features that are important for individuals with disabilities. Those standards are currently the (IBC) ICC A117.1-2017 technical standards, but we understand that it is likely that more advanced standards will be available in 2024, so those should be used if possible. Please see Mr. Hecker's response to this question in Attachment C.

These improved technical standards should be adopted along with strong scoping requirements (see, for example, our comments in Section III.D regarding increasing the mandatory minimum percentages of accessible units.)

2. HUD should continue to use a Deeming Notice.

We strongly support the use of the Deeming Notice for reconciling HUD's Section 504 accessibility standards with the ADA 2010 standards, since any project covered under 504 will also be covered under ADA 2010. At the

time HUD adopts the new standards, we urge it to adopt an updated Deeming Notice. In our experience working with state and local government, code officials, architects and developers, the Deeming Notice is difficult to find and many are not aware of it until it is brought to their attention. Therefore, we suggest incorporating an updated version into the new regulations, or at least incorporating into the regulations some instructions about it and where to find current and future iterations.

3. Ongoing research and state and local laws should inform new HUD regulations.

Excellent research is being done into the need for improved accessibility standards for individuals using newer mobility devices such as power chairs and scooters.<sup>85</sup> HUD should consider whether some improvements based on this research should be incorporated into the updated regulations.

HUD should also consider incorporating provisions from some state and local codes. For example, California has developed good accessibility standards for Electric Vehicle Charging stations in housing settings and elsewhere, and also standards for adult changing stations in large commercial buildings to accommodate adults with disabilities who need assistance with these needs.

4. HUD should require roll-in showers.

Roll-in showers are a major area of concern. For many individuals using mobility devices, roll-in showers are the best, or in some cases, only practical way for them to shower without attendant care, to maintain their independence. Yet current codes do not provide sufficient roll-in showers. Numerous shower designs work for both people who would like a roll-in shower and individuals who prefer a transfer seat, because they provide sufficient space, pull down benches, and appropriate placement of fixtures. There is no longer any reason to limit the use of roll-in showers in accessible units. Accessibility standards should require certain percentages

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<sup>85</sup> Old accessibility standards were designed for individuals using manual chairs, and do not accommodate more recent technology. See more information and papers from Mr. Steinfeld at the Center for Inclusive Design and Environmental Access, School of Architecture and Planning, University at Buffalo, Buffalo New York. <http://idea.ap.buffalo.edu/staff/edward-steinfeld/>, including *Space Requirements for Wheeled Mobility*, <http://idea.ap.buffalo.edu/wp-content/uploads/sites/110/2019/06/spacerequirementsforwheeledmobility.pdf>.

of units with roll-in showers, and in units with more than one bathroom the requirement should be for one transfer tub and one roll-in shower that also includes the ability to use a bench to transfer.

5. HUD regulations should ensure that they can be regularly updated to keep up with technology.

HUD regulations must include a way for accessibility rules to stay current. For example, updated regulations could adopt the ICC A117.1-2024 standards and further provide that future revisions of those standards ICC A117.1 standards be automatically adopted, perhaps accompanied by a published notice of the update (and perhaps a grace period to allow HUD to make any modifications in deems necessary.) This would allow HUD regulations to keep pace with developing technologies without going through an extensive rulemaking process every time standards change.

#### **G. Question 7: Accessibility Standards Issues**

*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?*

No, the Deeming Notice is inclusive. Please see Mr. Hecker's response to this question in Attachment C. However, as noted above, the Deeming Notice is very critical in assisting code users to harmonize standards, providing a safe harbor. When HUD updates the code standards, it should also update the Deeming Notice.

#### **H. Question 8: Public and Common Areas and Advances in Technology**

*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?*

Please see Mr. Hecker's response to this question in Attachment C.

Public and common areas continue to include significant barriers to people with disabilities. We will address some of the major ones, but this list is far from inclusive.

1. Numerous barriers to accessible public and common areas exist.

A major contributor to those barriers, as noted above, is broad noncompliance with accessibility standards. Other barriers include lack of maintenance of accessible features (e.g., elevators, pool or other lifts, and improper maintenance or inoperable automatic door openers); poor signage, placement of plants, furniture, trash cans and other objects blocking accessible routes or in accessible bathrooms; and difficulty in locating accessible equipment such as fitness and laundry equipment. New features in housing, such as appliances or building entry with touch screens or codes are often not accessible to people with vision or dexterity disabilities. Building entry systems that connect to individual units may rely entirely on either visual or audio communication, leaving out groups of people with other sensory disabilities. Computers and televisions or movie areas in common areas often lack accessible technology, and websites or email application systems for applicants can be inaccessible for a wide range of disabilities, including people with vision and intellectual disabilities (and just generally people without easy access to technology, either because of age, cost, or the “digital divide”). Inability to communicate with management by text or videophone is often a major barrier for individuals with communication disabilities. Additionally, recreational/fitness equipment should be accessible.

2. Parking and transportation access is a major challenge.

A major problem is parking and access to transportation. Buildings with adequate accessible parking are rare. DRC handles many complaints about failures of Section 504 covered housing to provide accessible parking spaces in their parking lots and failure to provide them as a reasonable accommodation/or modification. Complaints include insufficient spaces, refusals to designate spaces for individual use, and refusals to provide adequate parking (accessible and other) for care and service providers. Updated regulations should require significantly more accessible parking spaces, including at least one accessible space for every mobility unit, plus accessible spaces for guests and service providers. Many people with mobility disabilities have a difficult time accessing public transit, and paratransit is scarce and unreliable. These individuals rely on adaptive

vehicles. We also note that as the country moves to electric vehicles (California will be phasing out new gas vehicles in coming years), accessible electric vehicle (EV) charging stations/parking spaces should be required.<sup>86</sup>

For a variety of reasons, including a push to public transit for environmental reasons, space and density limitations in urban areas, and incentivizing market rate housing production, many newer developments are built with limited or no parking. For example, California no longer allows local jurisdictions to require any parking spaces in new housing development near transit.<sup>87</sup> This is extremely challenging for people with disabilities who need their adaptive vehicles. It is therefore critical that the updated regulations *require* accessible parking, even when no other parking is on site.

Not all individuals with disabilities own adapted vehicles, so equal consideration needs to be given to the transportation needs of people who do not own cars. For some people, a half-mile to transit is too far to travel (especially where there are broken, or no, sidewalks), and for others public transit is simply not accessible. Therefore, we urge HUD to include in the updated regulations accessible drop off/pick up loading zones for accessible ride-shares (taxicabs/Lyft/Uber); paratransit; and visitors and service providers for residents with disabilities.

The new regulations would also benefit from addressing access to transit and services and coordination with service providers.

### 3. Laundry rooms are often inaccessible.

Laundry rooms can be particularly challenging. In addition to access issues, it may be difficult to find accessible appliances. Issues include height, door swings, touch screens that are inaccessible to people with some disabilities, or knobs that are difficult for some people to grasp. We encourage HUD to do research in this area to provide technical assistance on identifying and using accessible appliances. Some fixes are simple (adding braille labels to written labels) but others may be complex. Also,

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<sup>86</sup> See the California EV accessibility regulations at Cal. Bldg. Codes Ch. 11B-228 et seq.

<sup>87</sup> Assemb. B. No. 2097, 2021-2022 Leg., Reg. Sess. (Cal. 2022), codified at Government Code Section § 65863.2. AB 2097 prohibits a public agency from imposing or enforcing any minimum automobile parking requirement on any residential, commercial, or other development project that is within one-half mile of a Major Transit Stop, with minor exceptions.

appliances and equipment may not be maintained well. For people with environmental sensitivities and allergies, for people with auto-immune disorders, and others with similar issues that place them at high risk of COVID and other viruses, sharing a common machine may not be possible. HUD should consider regulations that would allow individuals with disabilities to install laundry appliances in their units.

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

Please see Mr. Hecker's response to this question in Attachment C.

We are impressed with the lists that HUD has provided in this Comment. Many of these features would make a huge improvement in the lives of people with disabilities. And emerging smart technologies continue to provide additional options.

We note that many designers and architects feel that an accessible design may not be aesthetically pleasing. On the contrary, not only do current technology and design enable many of these features to be attractive and inobtrusive, many of the most advanced technologies that are useful to people with disabilities are now also found in high-end residential design. Despite that, it is often relatively inexpensive given the huge advantage it can provide to people with disabilities. Smart technology that can be used by people with a wide variety of disabilities, including with various input options including audio, can control security, lights, thermostats, window coverings, building and unit entry, and more. For example, many new designs of barrier-free or roll-in showers now do not look "medical" or out of place.

Many features, some of which HUD has listed, that could be part of the updated regulations are:

- Roll out shelves
- Wider hallways, and thoughtful design of open space
- Clear sight lines
- Reduced travel distances
- Features that can be modified (like removable lower cabinets)
- Adjustable shelving
- Tilting mirrors

- Wall treatments that prevent scrapes from mobility devices
- Durable nonslip flooring useable by mobility devices
- Touch controls on appliances with audio options that can be used by many people with mobility disabilities and those with vision disabilities
- Microwaves installed into lower kitchen cabinets instead of higher ones
- Removal of unnecessary doors between rooms
- Voice or remote-controlled thermostats
- In common areas, furniture that accommodates mobility devices
- Faucets with touch or motion sensors
- Motion sensor lights

Major issues that should be addressed in the updated regulations are better reach ranges, larger turning spaces and other features for scooters and larger power chairs, and potentially wider doorways.

*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?*

Please see Mr. Hecker's response to this question in Attachment C.

Again, we are impressed with the lists that HUD has provided in this Comment. Many of these features would make a huge improvement in the lives of people with disabilities. And emerging smart technologies continue to provide additional options. Here are some potential items:

- Artificial Intelligence software such as Otter AI transcription, Microsoft's Seeing AI, and Soundscape;
- All displays should be light on dark visuals;
- Digital Braille Devices that automatically provide braille or translation services;
- Voice assistants that can integrate and control events within home;
- Smart home applications that can control different features of home;
- Audible notifications throughout entire unit;

- Accessible emergency devices that ensure safety in a fire or disaster;
- Accessible and up to date screen readers and applications already installed on any device used publicly to apply for housing in leasing office and common areas;
- Text/Video relay systems.

*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?*

Please see Mr. Hecker's response to this question in Attachment C.

Creating an initial design that is functional for all persons regardless of disability is a more helpful and less-costly alternative than having to remodel as one ages. Creating a free-flowing space with no stairs or other unnecessary barriers will go far to ensure that as the U.S. population ages, they can remain in their homes. By implementing a design concept that seamlessly integrates the majority of larger adaptations like a roll-in showers, stepless entries to buildings and units, wider hallways, and larger turning spaces in bathrooms and kitchens, much of the work will already be completed.

We also note that many features can be built during construction that are not visible but lead to easy adaptation as people age in place. This includes things like grab bar backings, reinforced ceilings to accommodate track and harness systems, and adequate electrical outlets. If small adaptations need to be made, then the cost is much lower, and the unit can also plan from the start to have flexible features that can be adjusted to accommodate ageing or disability.

It is important to recognize that there is a higher need for mobility and hearing vision units and features in senior buildings. We recommend higher minimum percentages of required mobility and hearing/vision units in senior housing. As noted above, California Tax Credit Projects are already required to provide 50% mobility units in senior projects. Also, as discussed above, accessible pick up and drop off zones and accessible parking (for residents, guests, and service providers) are important features as residents age.

*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.*

Please see Mr. Hecker's response to this question in Attachment C.

Many features which contain adaptability and flexibility will allow for use by children. Parents with children with disabilities will want to provide them full access to learning and growing just as any other child. This could include ensuring a lowered counter space or additional granite/stone countertop roll under desk space in a kitchen for cooking and schoolwork, lower shelving for accessing toys, cleaning supplies etc. Adjustable shelves and counter heights can be modified as children grow.

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

Please see Mr. Hecker's response to this question in Attachment C.

Broken elevators create severe isolation and danger. DRC has received many complaints regarding problems created by non-working elevators and other accessibility features. For residents with mobility disabilities in particular, non-working and unsafe and unsanitary elevators drastically impact their lives. We have heard many stories of, and represented, people isolated in their apartments for weeks and months, unable to attend medical appointments, go to work, shop, get medical care, or otherwise leave the apartment. Some have had to give up their vouchers to move out of the household. In many cases their attendants, family members or other caregivers cannot visit. They may have inadequate food and medical supplies. Some individuals are stranded in elevators for hours. Individuals have had to call the fire department to leave their units, often on multiple occasions, resulting sometimes in expensive charges from the departments or evictions for nuisance from their apartments. In other situations, a broken elevator may strand a disabled individual on a ground floor, unable to return home, without access to vital accommodations and medical supplies set up within their unit, such as a ceiling lift, shower chair or seat, kitchen adaptation tools for cooking, medical equipment and supplies, voice controlled features, or other unique set ups that each disabled individual

might tailor to have full access to their life. These experiences endanger health and are traumatic at best and life-threatening at worst.

If there is a temporary outage for fundamental accessibility elements, like elevators, lifts, and ramps, then management must seek prompt repairs and provide alternate accessible strategies for disabled residents as a reasonable accommodation.

ADA regulations require maintenance of accessible features. 28 C.F.R. section 36.211 (Title I); 28 C.F.R. section 35.133. Covered entities “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 by the Act or this part.” The ADA 2010 Standards for Accessible Design contain an advisory at 407.1 that says:

“The ADA and other federal civil rights laws required that accessible features be maintained in working order so that they are accessible and usable by those people they’re intended to benefit. Building owners should note that the ASME Safety Code for Elevators and Escalators requires routine maintenance and inspections. Isolated or temporary interruptions in service due to maintenance or repairs may be unavoidable; however, failure to take prompt action to effect repairs could constitute a violation of Federal laws and these requirements.”

The updated regulations should include a specific similar requirement for maintenance of accessible features, including elevators and lifts. However, we note that subsection (b) should be modified. It provides: “This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.” This sentence is too vague, given the life-saving nature of many accessible features.

**Recommendations:** The Department should list examples of reasonable accommodations that HUD recipients should provide during an elevator/lift outage. This can include, depending on the length of the outage, delivering groceries and medications to tenants with disabilities, relocating tenants to accessible dwelling units in alternate locations, or relocating tenants to accessible hotel rooms for short-term outages. Assistance with this alternate accommodation must also include help with moving and accommodation management. Projects should be required to have

emergency plans that address outages, as well as technology such as Evacu-chairs. To minimize even temporary outages of key accessibility elements in housing projects, it is critical that these elements be regularly maintained and repaired or if necessary, then replaced as expeditiously as possible.

The Department should incorporate 28 C.F.R. §§36.211 and 25.133, but should also provide:

1. Keeping of records demonstrating performance of regular maintenance of elevators and lifts in accord with manufacturer's best practices and guidance, or if no such guidance exists, of maintenance on a regular schedule.
2. Advance notice to individuals with disabilities of scheduled elevator or lift maintenance or maintenance of other critical accessible features.
3. Immediate notice to individuals with disabilities of any breakdown in elevator or lift services, accompanied by information regarding the anticipated repair time.
4. Provisions requiring that repairs to non-working elevators and lifts be considered urgent and made as soon as possible.
5. Provision of reasonable accommodations paid by the development, including any necessary temporary relocation, to any individuals with disabilities in the building. This includes individuals stranded either inside the building or unable to access their unit. Temporary relocations must meet residents' disability related needs, and owners must provide transportation and moving services during any necessary relocation.

## **I. Question 9: Emerging Design and Disaster Response Issues**

*Are there specific emerging design approaches, or specific construction materials that HUD should consider?*

Many organizations have been developing accessibility design approaches that incorporate designing from the beginning for accessibility and inclusion and for aging-in-place. See, for example, The Kelsey, Housing Design Standards for Accessibility and Inclusion.<sup>88</sup> HUD should

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<sup>88</sup> The Kelsey, *Housing Design Standards for Accessibility and Inclusion*, First Edition, <https://thekelsey.org/learn-center/design-standards/>

further explore these resources and consider appropriate regulation updates.

HUD should consider whether new building designs aimed at affordability are adequately covered by accessibility requirements. This includes things such as modular housing, tiny homes, container housing, and new creative design concepts.

*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?*

DRC works to ensure people with disabilities are safe during disasters. DRC has also sponsored an Equal Justice Works Disaster Resilience Fellow since 2021. That fellow provides direct services to clients in response to Public Safety Power Shutoffs, Federal Emergency Management Agency appeals, and financial assistance for disaster damage. They also provide support to policy makers and non-profits such as the Office of Emergency Services and the investor-owned utility companies, on questions regarding inclusion and access to their resources for people with disabilities. Additionally, they support legal aid organizations and community-based organizations that make up the Disaster Legal Aid Collaborative.

As a result of DRC's work, we have identified a number of issues that HUD should address to ensure accessibility for individuals with disabilities. Many of these are design and regulatory issues that are necessary for accessibility.

### **Recommendations:**

- Alarm systems indicating emergency should have both visual components (example: flashing) as well as auditory components (example: vocal commands/alerts via speaker) to accommodate people with both hearing or visual impairments. Evacuation routes should be wide enough to accommodate people with mobility devices and should be regularly maintained.
- Features for disaster resilience, for example storm shutters. It is important to consider how someone with mobility impairment would

be able to access and control these features of their home to secure their home in the case of disaster.

- Many disasters cause mass power shutoffs, sometimes for days at a time if not longer. Having an independent power source is vital for safety in the face of natural disaster, to ensure those with power dependent machines to stay alive can remain safe, e.g., generators, solar power, battery storage.
- Due to climate change, air conditioning should be a requirement in Section 504 developments, with limited exceptions for localities that can demonstrate that they are not likely to face extreme heat in coming years. Areas that previously did not face heat emergencies are now facing these crises. Heat kills more people each year than any other climate related issue.
- The updated regulations should require state and local government recipients to have emergency plans that affirmatively assess how to ensure that the needs of people with disabilities are met in a disaster, including how they will identify and assist individuals with disabilities in the event of a disaster such as fire, earthquakes, tornadoes, and hurricanes, as well as in the case of power shortages or periods of extreme heat. Indeed, in *Communities Actively Living Indep. & Free v. City of Los Angeles*, No. CV 09-0287 CBM RZX, 2011 WL 4595993, at \*2 (C.D. Cal. Feb. 10, 2011), the Court noted that “Despite the fact that individuals with disabilities have special needs and may require reasonable accommodations during an emergency, the City's emergency preparedness program does not include provisions to notify people with auditory impairments or cognitive disabilities of an emergency, or evacuate, transport, or temporarily house individuals with disabilities during or immediately following an emergency or disaster.” The Court granted summary adjudication for plaintiffs that the City of LA’s disaster planning violated Section 504, noting “the City's residents with disabilities ‘will continue to be at-risk for suffering and death in disproportionate numbers unless the City drastically enhances the existing disability-related emergency management and disaster planning process and readiness as required by the ADA and other statutes.’” *Id.* at \*14. The Department should incorporate these principles into its regulations.

- Similarly, the updated regulations should require housing developments to have emergency plans that address these issues. Plans must address notice provisions, identification of people who need assistance, which staff are responsible for notification and assistance, how assistance will be provided, safe gathering areas and more. Specific attention should be paid to assisting residents with disabilities to evacuate if needed when elevators and lifts aren't working. Evacuation plans should include staff training, drills, and using emergency equipment. Multiple story buildings must have several "Evacu-chairs" available and staff should be trained to use them.<sup>89</sup> There are many models on the market, and we encourage HUD to research and set standards for the use of such critical emergency equipment. We would note that similar equipment is available in all of DRC's offices, and staff have been trained and practice using it. With appropriate training, they are very easy and safe to use.

In the *ILSCS* case, the City has been investigating whether covered housing developments have emergency plans. Most do not. However, the City has acquired a sampling of good plans and is considering development of a recommended template.

- The regulations should also require that specific people are appointed to knock on doors of people with communication disabilities during an emergency, or notifying first responders where those individuals live. HUD should also consider requiring sprinkler systems in units housing people with speech disabilities, who may not be able to call emergency services.

## **J. Question 10: Reasonable Accommodations**

*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*

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<sup>89</sup> See, e.g., Evac+Chair (<https://evac-chair.com/0https://evac-chair.com/>) and Mobile Stair Lift (<https://www.mobilestairlift.com/>).

*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. The Department is interested in comments on these issues.*

We receive an extraordinary number of calls regarding problems with reasonable accommodation requests. In addition to the many other places in this comment we have discussed problems with reasonable accommodation provision, we offer the following observations.

1. HUD Recipients often impose barriers to making reasonable accommodation requests.

First, these are some problems we have seen with HUD recipients' reasonable accommodation request processes:

- Requiring the use of a written form;
- Mandating doctors' letters to support all requests, sometimes under penalty of perjury;
- Requiring a tenant/program participant to list alternative accommodations before the housing authority has determined whether to grant the initial accommodation;
- Failure to inform people of their right to accommodation/modification;
- Case managers who do not understand the process;
- Requiring individuals to reverify accommodations;
- New staff not honoring in-place accommodations;
- Failure to reply in a timely manner;
- Failure to engage in interactive process; landlords/property managers/case managers stretch out process instead of outright denial;
- Automatic denial of a request at the eviction/termination stage.

As mentioned previously, individuals have trouble obtaining verifications to support their reasonable accommodation requests. Even for people who obtain verifications, HUD recipients either ask for more intrusive information related to their disability or claim, without a sufficient basis, that the verifications are not from a credible source.

**Recommendations:** The Department should incorporate clear regulations regarding the reasonable accommodation process itself. For example, information contained in the HUD/DOJ Joint Statement on Reasonable Accommodations is useful and should be incorporated into regulations. Given the rampant violations related to the process itself, this should not be left to subregulatory guidance. California's fair housing regulations offer an excellent example.<sup>90</sup> Some critical pieces of that process include making clear that requests need not be written, doctor's notes are not always needed for verification, mandating timely responses (e.g. no more than 14 days for non-emergency requests), outlining the interactive process, making clear that accommodations can be requested to the "proverbial last minute". Further, as noted above, the Department should mandate ongoing training regarding disability rights, including accommodations and modifications.

## 2. HUD recipients regularly deny or ignore reasonable accommodation requests.

Disability Rights California receives numerous requests for assistance with reasonable accommodation on a weekly basis. The following is a list of common ones:

- Denials of emotional support animals. See III.B.4;
- Requiring applicants/tenants/participants to come to office for paperwork;
- Late payments due to when disability-related income is received;
- Denials of requests for relief from eviction/termination where a guest/caregiver engaged in criminal activity that the tenant had no control over;
- Denials of requests for parking closer to a unit, near an entrance or an elevator, for a caregiver, or even any designated spot at all, particularly where the mobility disability is not obvious;

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<sup>90</sup> 2 California Code of Regulations § 12177(a).

- Requests to be relocated to a unit or floor that is accessible, for example, to a first floor, without increasing the rent (particularly in rent stabilized jurisdictions);
- Denials of extra bedrooms for live-in aides, rotating caregivers, mental health, autism-related needs, etc.;
- Refusal to grant a reasonable accommodation for criminal activity background checks policy where criminal record related to disability;
- Refusal to change recertification dates, ensure plain language and/or assistance with recertification, and/or accusing individuals of fraud for not understanding recertification questions;
- Refusal to reschedule a housing quality standard inspection that was missed due to disability (including being in hospital, institution, disability-heightened risk of harm from communicable disease like COVID-19, being unable to get out of bed, etc.);
- Denial of effective communications (See III.C.1);
- Reasonable modification denials (See III.B.10);
- Denials of an increase in utility allowances due to usage of medical equipment, air conditioning, or other disability-related need for increased utilities;
- Requests to be relocated to units with less noise;
- Requests to be relocated due to disability-related harassment (e.g. neighbors harassing due to stereotypes regarding disability)
- Requests related to the how and when recertifications are conducted by HUD recipients (e.g. allowing a disabled individual to recertify via phone, rather than coming into an office);
- Requests for relief from eviction where neighbors complain about family member behavior, often I/DD or mental health disabilities;
- Requests related to when and how often management can enter a unit (e.g. longer notice period before entering);
- Requests to designate a third-party who receives all correspondence;
- Refusal to grant reasonable accommodation requests related to alleged criminal activity that is disability-related<sup>91</sup>;

**Recommendations:** HUD should provide recipients with concrete examples of both common scenarios and common accommodations. This should include not only accommodations for tenants in specific units or

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<sup>91</sup> *Boston Housing Authority v. Bridgewater*, 898 N.E.2d 848 (Mass. 2009) laid out a good analysis of these requests, including relevant HUD and DOJ regulations.

buildings, but should also include things like reasonable accommodation zoning ordinances. See III.B.15. Further, examples should include run-of-the-mill examples, as well as ones that are more challenging to analyze, like criminal activity-related accommodations. California's fair housing regulations offer some good examples.<sup>92</sup>

## **K. Question 11: Complaints**

*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?*

There are several important changes that HUD should consider. They include:

1. Allowing organizations that are composed of people with disabilities or represent people with disabilities to file complaints.
2. Extending the time limit for complaints to 1 year to coincide with FHA complaints,
3. Clarifying punitive damages.

## **L. Question 12: Tribal Issues**

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

DRC's multicultural affairs advocate has strong ties to California's Central Valley Indigenous communities, and is engaging in outreach relationship-building with Northern and Southern California tribes. They are a regular collaborator with the California Tribal Families Coalition, a subcommittee member of the California Truth and Healing Commission, and a disability committee member of the National Congress of American Indians. They support various tribes, tribal based organizations, and their families through legal education and advocacy work in areas such as: Special Education, Civil Rights, Mental Health, and general outreach support to the community.

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<sup>92</sup> 2 California Code of Regulations §§ 12176 *et seq.*

California is home to the highest number of native populations – about 723,225 people who are either American Indian or Native Alaskan (AI/NA) alone or combined with one or more other race.<sup>93</sup> There are over 110 federally recognized tribes in California, with 81 seeking recognition, some have as many as six thousand members.<sup>94</sup> Tribes who are federally recognized have access to additional supports for housing, but tribes who are not recognized are often left with the same county or state support as other non-native individuals.

About 28% of American Indians and Alaska Natives live on reservations, and 30% of them are over the age of 55.<sup>95</sup> Close to half of people who live on reservations are in housing considered substandard, compared to about 25% outside of Indian country. One in three live in poverty. About a third live in mobilehomes.<sup>96</sup> In one report, about one-quarter of homes surveyed had exterior conditions that were deficient, including a lack of ADA access.<sup>97</sup> Tribes report that there is a long wait time, often a minimum of 10 years, to be placed on a housing list with a tribe. Even then, frequently no funding is available for tribal housing, or tribes will tell offer a low-interest tribal loan for a home that is often off the reservation. If individuals and/or families want access to HUD housing, they have to go off of the reservation.

In some areas up to 50% of native homes are without cell access or land line access, 49% of tribal homes do not have access to reliable water sources, clean drinkable water sanitation. Most tribal reservations have limited water access and usage. Reservations require more resources to ensure accessibility. For example, the National Congress of American Indians has just drafted a Resolution for “Physical Access to Ceremonial Grounds and Spaces for Tribal Elders and People with Disabilities recognizing “the ability to participate in Pow Wows and other ceremonial

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<sup>93</sup> See Cal. Coal. for Rural Hous. and Rural Cmty. Assistance Corp., *California Tribal Housing Needs and Opportunities: A Vision Forward* (Aug. 2019), [https://www.calruralhousing.org/\\_files/ugd/8d7a46\\_e7569ba74f5648ba9bc8d73931ebd85d.pdf](https://www.calruralhousing.org/_files/ugd/8d7a46_e7569ba74f5648ba9bc8d73931ebd85d.pdf)

<sup>94</sup> *Frequently Asked Questions: Indian Tribes and Tribal Communities in California*, <https://www.courts.ca.gov/documents/TribalFAQs.pdf>

<sup>95</sup> See National Indian Council on Aging, *Understanding Disabilities in American Indian and Alaska Native Communities Toolkit Guide*, NATIONAL COUNCIL ON DISABILITY (Feb. 2023) for more information and a robust discussion on housing accessibility issues beginning at page 171, available at: [www.nicoa.org/wp-content/uploads/2023/03/NCD\\_Understanding\\_Disabilities\\_in\\_American\\_Indian\\_508.pdf](http://www.nicoa.org/wp-content/uploads/2023/03/NCD_Understanding_Disabilities_in_American_Indian_508.pdf).

<sup>96</sup> See California Tribal Housing Needs and Opportunities, *supra* note 89 at 26.

<sup>97</sup> *Id.* at 29.

events is critical to the quality of life and social and emotional wellbeing of all Tribal members, including Tribal elders and people with disabilities” and that “many ceremonial grounds and spaces are not physically accessible to many Tribal elders and members who use mobility devices or who are deaf or hard of hearing . . .” Significant resources are required to guarantee disability access and inclusion in tribal communities.

*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?*

Often individuals with disabilities who live on reservations are not given accommodations due to lack of outreach, support to rural tribal members, and lack of funding and land. Section 504 is not often implemented other than basic access needs, *i.e*; ramps, wheelchair access door entries. Funding for tribes is not specifically targeted to ensure the provision of reasonable accommodations, appropriate auxiliary aids and services necessary to ensure effective communication, access to accessible facilities. Though the tribe or families will take care of elders or a person who has disability, there is not funding for other types of accommodations. Additionally, non-tribal members, including some caregivers or others who provide support services, cannot access the reservation because of undeveloped access routes. Tribes need more housing resources.<sup>98</sup>

### **M. Question 13: Intersectional Issues**

*In housing or HUD assisted programs against individuals with disabilities who are also members of other specific protected classes? 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*

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<sup>98</sup> See The National Congress of American Indians Resolution #SPO-16-034, *Urging HUD to Include Tribes and Tribally Designated Housing Entities in the Section 8 Housing Voucher Program to Provide Rental Assistance* (June 2016), [https://www.ncai.org/attachments/Resolution\\_axCdpBDiRWCRhzqhhzUEIEazcPeVGAGfJLNUSFNbLfcCohmEcdD\\_SPO-16-034%20final.pdf](https://www.ncai.org/attachments/Resolution_axCdpBDiRWCRhzqhhzUEIEazcPeVGAGfJLNUSFNbLfcCohmEcdD_SPO-16-034%20final.pdf).

*also require appropriate auxiliary aids and services necessary to ensure effective communication?*

A plethora of unique barriers exist related to disability and other identities. The following is a non-exhaustive list of some systemic issues we witness in housing:

- See Section III.B.2.a.-b. regarding institutionalization, houselessness, and Black and LGBTQIA+ Californians.
- See Section III.B.5 regarding nuisance evictions and “crime-free” ordinances.
- See Section III.B.6 regarding the unique impacts on BIPOC and LGBTQIA+ people with disabilities as it relates to tenant screening policies.
- Race and disability is also intimately tied together in environmental racism. The percentage of people with disabilities living in areas with greater exposure to PM<sub>2.5</sub> is significantly higher than in areas with less exposure, even when controlling for other variables; this is especially true for individuals with cognitive and independent living difficulties.<sup>99</sup> Critically, “[p]eople with disabilities are specifically exposed to and vulnerable to environmental injustice as a result of ableism” and some are also more vulnerable to environmental injustice because of the nature of their disability.<sup>100</sup> Environmental injustice can also create disabling conditions. Thus, the Department may need to consider additional features to enhance accessibility in environmental justice communities (e.g., triple-pained windows, stronger air filtration, noise dampening, etc.)
- National origin and disability also intersect in unique ways. See Section III.C regarding difficulties limited English proficient persons face obtaining effective communication and plain language documents, setting people up to fail with regard to program obligations.
- Finding accessible units is already difficult, but finding accessible units for large families is almost impossible. We have had cases involving large families with tenant-based rental assistance needing

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<sup>99</sup> Jayajit Chakraborty, *Disparities in exposure to fine particulate air pollution for people with disabilities in US*, SCIENCE OF THE TOTAL ENVIRONMENT (June 2022).

<sup>100</sup> Catherine Jampel, *Intersections of disability justice, racial justice, and environmental justice*, ENVIRONMENTAL SOCIOLOGY (2018).

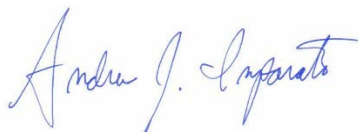
4+ bedrooms, but being forced to remain in shelters due to a lack of appropriate, affordable, and accessible housing.

- Shocking disparities exist related to race and homelessness. Many of the consequences are described in Section III.B.2.a.-b. Disparities also exist for transgender individuals, who are also significantly overrepresented in the unhoused population. The LGBTQIA+ population of the U.S. has much higher percentages of disabilities than the cisgender/heterosexual population, because of a combination of discriminatory and societal substandard treatment.<sup>101</sup> A number of shelters will not accept people whose gender identity does not align with their sex assigned at birth, also leading to cycles of criminalization that impact the ability to obtain housing. Further, homelessness makes it difficult to manage symptoms of disability and creates disabling conditions, increasing the need for supportive and/or accessible housing.

#### **IV. Conclusion**

Disability intersects all identities and impacts nearly every aspect of our lives, especially the home. We thank HUD for updating its critical Section 504 Regulations. If you have any questions, please contact Navneet Grewal at [navneet.grewal@disabilityrightsca.org](mailto:navneet.grewal@disabilityrightsca.org)

Sincerely,



Andrew J. Imparato  
Executive Director  
Disability Rights California



Navneet Grewal  
Litigation Counsel  
Disability Rights California

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<sup>101</sup> Assistant Secretary for Planning and Evaluation, *Health Insurance Coverage and Access to Care for LGBTQ+ Individuals: Current Trends and Key Challenges*, HP-2021-14 (June 2021), <https://aspe.hhs.gov/sites/default/files/2021-07/lgbt-health-ib.pdf>