

Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

This chapter explains the laws and HUD regulations requiring housing agencies to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the AHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and AHA policies related to these topics in three parts:

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of the AHA regarding nondiscrimination.

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons. This part details the obligations of the AHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD's final Guidance, published January 22, 2007 in the *Federal Register*.

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. The AHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063

- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Section 12921 of the California Government Code
- Violence Against Women Reauthorization Act of 2005 (VAWA)
- When more than one civil rights law applies to a situation, the laws will be read and applied together.
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

2-I.B. NONDISCRIMINATION

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as AHA policies, can prohibit discrimination against additional classes of people.

The AHA shall not discriminate because of race, color, sex (includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, as well as gender identity and gender expression), religion, marital or familial status, age, disability, medical condition, national origin, ancestry, source of income, and sexual orientation, (called “protected classes”). Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

The AHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based on any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a

member of a protected class

- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

Providing Information to Families and Owners

The AHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, the AHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by the AHA or an owner, the family should advise the AHA. HUD requires the AHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the AHA is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

Applicants or participants who believe that they have been subject to unlawful discrimination may notify the AHA either orally or in writing.

The AHA will attempt to remedy discrimination complaints made against the AHA.

The Housing Authority refers Fair Housing complaints to the local fair housing agency as well as to HUD and the California Department of Fair Employment and Housing on behalf of a family that claims that illegal discrimination has prevented the family from leasing a suitable unit.

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

The AHA must ensure that persons with disabilities have full access to the AHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the HCV program.

The AHA will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the AHA, by including the following language:

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the housing authority.”

A specific name and phone number will be indicated as the contact for requests for accommodation for persons with disabilities.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A person with a disability may require special accommodations in order to have equal access to the HCV program. The types of reasonable accommodations the AHA can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the AHA, or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

Types of Reasonable Accommodations

When needed, the AHA must modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the AHA range) if the AHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit
- Increasing the utility allowance by the amount of additional cost for operating necessary medical equipment
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with AHA staff
- Displaying posters and other housing information in locations throughout the AHA's office in such a manner as to be easily readable from a wheelchair

2-II.C. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the AHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with

the disability full access to the AHA's programs and services.

If the need for the accommodation is not readily apparent or known to the AHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

The AHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, the AHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

2-II.D. VERIFICATION OF DISABILITY

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

Before providing an accommodation, the AHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to the AHA's programs and services.

If a person's disability is obvious, or otherwise known to the AHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the AHA, the AHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the AHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- The AHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The AHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The AHA must approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the AHA, or fundamentally alter the nature of the AHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the cost of the requested accommodation, the financial resources of the AHA at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the AHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the AHA may verify the need for the requested accommodation.

After a request for an accommodation is presented, the AHA will respond, in writing, within 14 calendar days.

If the AHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the AHA's operations), the AHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden.

2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

HUD regulations require the AHA to ensure that persons with disabilities related to hearing and vision have reasonable access to the AHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, the AHA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available.

To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with AHA staff, one-on-one assistance

will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

2-II.G. PHYSICAL ACCESSIBILITY

The AHA must comply with a variety of regulations pertaining to physical accessibility, including the following:

- PIH 2011-31 (HA), Accessibility Notice or most current notice
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

The AHA's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in three key documents:

- This plan describes the key policies that govern the AHA's responsibilities with regard to physical accessibility.
- Notice PIH 2011-31(HA) Accessibility Notice or most current notice issued by HUD summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The AHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of AHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the AHA will include a current list of available accessible units known to the AHA and will assist the family in locating an available accessible unit, if necessary.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves.

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

A AHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of the AHA's informal review process. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review process.

When a participant family's assistance is terminated, the notice of termination must inform them of the AHA's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, the AHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the AHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the AHA must make the accommodation.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

The AHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this administrative plan, LEP persons are HCV applicants and participants, and parents and family members of applicants and participants.

In order to determine the level of access needed by LEP persons, the AHA has completed the "Four Factor" analysis pursuant to HUD's guidance. These four factors include: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the AHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the AHA.

2-III.B. ORAL INTERPRETATION

Oral interpretation can be provided by formal or informal interpreters. The AHA is committed to accuracy in interpretation services provided to LEP persons.

Formal Interpreters: When necessary, the AHA will provide qualified interpreters, including bilingual staff and contract vendors.

At important states that require one-on-one contact, written translations and verbal interpretation services will be provided consistent with the four-factor analysis. The AHA may require a formal interpreter to certify to the following:

- The interpreter understood the matter communicated and rendered a competent interpretation.
- The interpreter will not disclose non-public data without written authorization from the client.

Informal Interpreters: Informal interpreters may include family members, friends, legal guardians, service representatives or advocates of the LEP client. Staff will determine whether it is appropriate to rely on informal interpreters, depending upon the circumstances and subject matter of the communication. In some circumstances, however, informal interpreters, especially minors, are not competent to provide quality and accurate interpretations. There may be issues of confidentiality, competency, or conflict of interest.

An LEP person may use an informal interpreter of their own choosing and at his/her expense, either in place of or as a supplement to the free language assistance offered by the AHA. If possible, the AHA will accommodate an LEP client's request to use an informal interpreter in place of a formal interpreter. If an LEP client prefers an informal interpreter, after the AHA has offered free interpreter services, the informal interpreter may interpret. In these cases, the client and interpreter could sign a waiver of free interpreter services or other documentation of the offer of formal interpreter services, the refusal, and accommodation of the client's wishes. If an LEP client wants to use his/her own informal interpreter, the AHA reserves the right also to have a formal interpreter present.

2-III.C. WRITTEN TRANSLATION

Translation is the replacement of a written text from one language into an equivalent written text in another language.

In order to comply with written-translation obligations, the AHA has taken the following steps:

- The AHA will provide written translations of vital documents (i.e., forms or documents that are critical for ensuring meaningful access, or awareness of rights or services, of federally-funded services or benefits) for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.

Translation of other documents, if needed, can be provided orally; or

- If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, the AHA will not translate vital written materials, but will provide written

notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

In addition to staff oral translation capabilities in some languages, the AHA has contracted with a competent vendor to provide oral translations in more than 150 languages.

2-III.D. IMPLEMENTATION PLAN

The AHA has developed a written LEP plan. The AHA's Language Access Plan (LAP):

1. Provides an introduction and the federal requirements;
2. Describes the "Four Factor" Analysis;
3. Outlines the LAP (e.g., access measures, oral and written interpretations, outreach, noticing, etc.);
4. Describes how the LAP will be distributed and staff trained; and
5. How the LAP will be monitored and updated.

2-IV: Affirmatively Furthering Fair Housing in the Family Unification Program

AHA will administer its HUD Family Unification Program in accordance with all applicable Fair Housing and Equal Opportunity laws, HUD's Limited English Proficiency (LEP) guidelines, and in such a manner as to affirmatively further fair housing.

AHA will comply with the affirmatively furthering fair housing requirements of 24 CFR Section 903.7(o), and will work with persons with disabilities, public and private service and resource providers, and property owners to address accessibility problems for persons with disabilities.

AHA and its child welfare agency program partner, the Alameda County Social Services Agency Department of Children and Families (ACSS), will take the following steps as they relate to personnel, participants, and the overall operation of its FUP Program and associated activities:

- (1) Identify and ensure certification of FUP eligible families and youth that may be on the AHA's waiting list and ensure that the family or youth maintains their original position on the waiting list after certification.
- (2) Appropriately place all FUP eligible families and youth referred from the ACSS on the Housing Choice Voucher waiting list in order of first come, first served.
- (3) Inform applicants and FUP voucher participants on how to file a fair housing complaint, and provide the toll-free number for the Housing Discrimination Hotline (1-800-669-9777) as well as information on the appropriate local, state, and federal organizations and agencies charged with investigating fair housing complaints.
- (4) Operate in physical spaces (main office, partner offices or other off-sites locations used for FUP purposes) which are accessible and comply with Americans with Disabilities Act (ADA) requirements.

- (5) Facilitate effective communication with applicants, beneficiaries and members of the public through practices which ensure that interested persons (including those with impaired vision or hearing) can obtain information concerning the FUP Program, including but not limited to utilization of TDD/TTY equipment, providing key FUP materials in languages appropriate to the client base, and taking reasonable steps to provide or allow for interpreters as needed.
- (6) Offer and/or respond to requests for reasonable accommodations in order to allow persons with disabilities to participate in the FUP Program.
- (7) Comply with data reporting requirements through PIC or its successor data systems and the HUD-50058 as a form suitable to meet OMB's Standards for the Collection of Racial and Ethnic Data.
- (8) Promote, review, and revise (as necessary) these policies and procedures to affirmatively further fair housing in the Family Unification Program during regular collaboration meetings and/or at a special meeting held for this purpose at least annually.

AHA will maintain records that these steps have been taken, and gauge their impact from, the following:

- a. Accessible Facilities: Addresses of facilities used for FUP purposes together with notation that they meet accessibility requirements.
- b. Effective Communications: Telephone numbers and names of trained operators of TDD/TTY equipment at the AHA and partner agency offices, copies of key FUP documents in appropriate languages, and copies of AHA policies and notices regarding provision and/or allowance of interpreters together with records of any such services requested by FUP applicants or participants and the response of the AHA or its partner agencies to such requests
- c. FUP Outreach: Copies of materials, notices, or other FUP outreach materials together with distribution lists of the same.
- d. Reasonable Accommodations: Copies of standard language used to offer formal or informal accommodations to FUP applicants and participants; copies of all written requests for reasonable accommodations as they relate to the FUP program together with written records of the AHA or partner agency's responses.
- e. Fair Housing Information: Copies of information, materials, and referrals relevant to fair housing laws and protections, agencies, and discrimination complaint procedures (state and federal) which have been provided to FUP participants.
- f. Minutes of all discussions held as part of regular or special FUP collaboration meetings as they pertain to these policies and procedures to affirmatively further fair housing in the Family Unification Program.

EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 and 100.201]

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or
- Has a record of such impairment, or
- Is regarded as having such impairment

The phrase “physical or mental impairment” includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities” includes, but is not limited to, caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and/or working.

“Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the AHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the HCV program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the \$480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the HCV program, yet an accommodation is needed to provide equal opportunity.