The Kelsey

July 24, 2023

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,

The Kelsey is grateful for the opportunity to submit feedback prior to HUD initiating rulemaking for Section 504 Regulations. Co-led by people with and without disabilities, The Kelsey advances accessible, affordable, and inclusive housing through public, private, and philanthropic partnerships to develop mixed-income, disability-forward residential communities. We have secured financing on over 230 homes in a $170M housing pipeline in one of the nation's most challenging housing markets: the Bay Area and are actively expanding into other markets across the country.

As a co-developer, we work with market rate and affordable housing developers to build inclusive and accessible homes for residents with and without disabilities of all backgrounds and income levels. We engage communities and provide innovative disability-forward standards for better housing design and experiences for all residents. We leverage new sources of capital and unrealized land value to accelerate development for a faster housing development process. Each one of our communities is unique to the local needs, but all are: affordable to people at the very lowest and moderate-income levels; accessible to people with a range of disabilities and access needs; and inclusive, with culture, staffing, leasing, and amenity spaces that support thriving, connected, service-rich community life.

Beyond our role as a co-developer, The Kelsey envisions scale through building capacity and sharing resources across the housing and disability fields to support organizations nationally to become disability-forward housing providers and meet critical local needs across multiple markets. We have received inquiries from over 36 states asking for support developing or advocating for disability-forward housing, and

individuals from 48 states have accessed our open-source resources in our Learn Center and our Housing Design Standards for Accessibility and Inclusion. These include developers, city and state housing staff, designers, and advocates. They represent all kinds of communities – rural, suburban, and urban – in every part of the country. Disabled people live everywhere, and their housing needs are experienced in diverse locations. Federal action that can benefit all communities can be critical in meeting these needs and helping to draw additional local and regional support for new disability-forward housing communities.

Alongside housing development and field building, The Kelsey drives policy change to create the conditions so that disability-forward housing can become the norm nationwide. We currently lead national advocacy initiatives to embed accessibility and inclusivity within the Low-Income Housing Tax Credit (LIHTC) and to strengthen existing HUD programs that explicitly serve extremely low- and low-income disabled adults, like HUD Section 811 and Mainstream Housing Vouchers. Moreover, we build state-specific coalitions and advocacy agendas focused on new funding sources and increasing interagency housing and services coordination.

Core to The Kelsey's approach is an understanding that people with disabilities have intersectional identities and may experience marginalization on multiple levels, so we center racial, gender, and age equity across our work. By being a team that is co-led by people with and without disabilities, we embed authentic, lived experience; reject paternalism and ableism; and support cross-disability inclusion. Additionally, disability and economic justice are deeply connected. Disability is both a cause and a consequence of economic insecurity; this is specifically true in housing. People who are housing insecure are more likely to experience related health issues and permanent disabling conditions. People with disabilities are also more likely to experience poverty and be unable to afford housing. While the critical role of housing is a central tenet of economic justice and highlighted in mainstream policies and narrative, disability is rarely included. The Kelsey's work embeds disability in the center of these conversations with the goal of advancing a more inclusive vision of economic justice.

In response to the ANPRM, the content of this letter is based on The Kelsey's experience at local, state, and federal levels, as well as the feedback from our partner organizations, including consultation with accessible design experts and disabled-led organizations.

Section 504 has played a pivotal role in combating housing discrimination against individuals with disabilities in federally funded housing. Since the original application of

Section 504 most of the country's new housing development stock has been built by the private sector. These entities use a variety of subsidies to build deed-restricted affordable housing, including LIHTC, state and local subsidies. The lack of updated guidance of what defines "public housing" and where Section 504 applies and does not apply leaves many local jurisdictions and private housing developers to spend significant resources on legal interpretations and code compliance review consultants. The use of scarce resources on interpretation results in less housing being built, higher rents, or, in cases of our own project, accessibility features being removed because of cost pressures. We urge HUD to provide as much guidance and clarity as possible through explicit regulations, advisory tools for local jurisdictions and developers to direct more resources towards resident-centered outcomes.

One such example of the lack of certainty is whether a project that uses LIHTC is considered to have received federal financial assistance. This interpretation varies on a state-by-state level; our research on this topic shows that 15 states require LIHTC-financed homes to be 504 compliant through QAP requirements or legislative changes. In California, for instance, developers and designers rely on a guidance published from the Division of State Architects whether 2010 ADA through the 2013 California Building Code Chapter 11B is applicable to projects built using LIHTC financing. In other states when we inquired about whether LIHTC units should apply Section 504 to the state housing finance agency, their response was to "ask legal counsel." Without clear guidance, developers and designers operate on a compliance-centered mindset rather than a resident-centered mindset and take more time and investment in navigating flow charts and conflicting requirements rather than spending their time designing housing projects that would truly benefit the intended recipients of federally funded and LIHTC-financed affordable housing: marginalized populations who need healthy, safe, and community-oriented housing.

Proven through our work, to create more fair and equitable housing access for disabled people means to create more housing access for all people. What is also known as the "curb cut" effect will apply to the strengthening of HUD Section 504; to advance Section 504 regulations will improve the experiences of all people with and without disabilities.

Response to 1:

As HUD considers updating the definition of disability, it is critical for it to be as expansive as possible, due to the very nature of disability diversity; that the definition can be in as much alignment with other federal programs; and HUD must always look

towards the leadership of disabled people when adopting most inclusive terminology. Specifically, we recommend the following:

- HUD should revise the definition of "individuals with disabilities" to align with the ADA Amendments Act of 2008 and DOJ's Title II ADA regulations. This revision will ensure consistency between the Fair Housing Act (FHA) and Section 504 and help protect people with substance use disorder and ensure these individuals can still be considered people with disabilities under Section 504.

- "Individuals with disabilities" should also be expanded to include people with long-COVID. A 2021 study estimates that 1.2 million more people became disabled because of COVID-19, and estimates suggest that up to 1.3 million people are unable to return to work.[1]

- The current definition notes that a qualified person with a disability must meet essential eligibility requirements, such as being "capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient." HUD should clarify that disabled persons may be able to meet essential eligibility requirements through reasonable accommodations, and individuals should not be excluded from HUD programs if they require these accommodations.

- The sentence "substantially impedes the individual's ability to live independently" is vague and needs additional clarity because many individuals with disabilities can live independently if the necessary accommodations, housing, and supportive services would be made available.

- "Disabled household" should be revised to include families with a head of household without a disability, but who take care of children or other dependents who are disabled. For example, families that have a child with mobility or sensory disabilities have difficulty accessing the affordable, accessible housing they need to thrive.

- HUD should consult the Diagnostic and Statistical Manual of Mental Disorders 5-TR, that was updated in 2022 for current terms and disability-related definitions. For example, "individuals with handicaps," should be replaced with "disabilities."

---

[1] Lily Roberts, Mia Ives-Rublee, Rose Khattar, "COVID-19 Likely Resulted in 1.2 Million More Disabled People by the End of 2021 – Workplaces and Policy Will Need to Adapt," February 9, 2022, https://www.americanprogress.org/article/covid-19-likely-resulted-in-1-2-million-more-disabled-people-by-the-end-of-2021-workplaces-and-policy-will-need-to-adapt/

HUD should also change terms like "alcoholic and drug user" with "an individual with alcoholism or an individual with a substance use disorder."

Response to 2 (a):

The Kelsey was founded to help fill a critical gap in the U.S. housing market: the severe deficit of affordable, accessible, integrated, and inclusive housing, particularly inclusive to those who have higher support needs. Beginning with the lived experiences of our co-founders Micaela and Kelsey Connery, followed by Micaela Connery's 2016 Harvard Joint Center for Housing Studies' research,[2] it was clear that disabled people with high support needs were still at serious risk of entering institutional settings or being unable to transition from institutional or group home settings into community-based options.

Even though people with disabilities have had the legal right to community living for almost 24 years, people are still not able to move into the communities and housing of their choice because supply does not exist. Community-based housing is not only good for people; it is more cost-effective than when people are relegated to live in institutional settings. Community-based models also can be built with recognition of local context and state-specific needs, creating solutions that are driven by local developers and providers and more responsive to the diverse needs of constituents.

Yet, this supply deficit of affordable, accessible, integrated, and inclusive housing is creating a crisis and results in people with disabilities being displaced from their communities and forced to reside in institutions. The U.S. Census Bureau's Household Pulse Survey revealed that people with disabilities experience higher rates of housing insecurity and are at a much higher risk of becoming unhoused than people without disabilities.[3] In 2021, only 16 percent of disabled Americans with low incomes received housing assistance through either public housing or rental assistance. This means that 15.6 million households were eligible for housing assistance but did not receive it.[4]

---

[2] Micaela Connery, "Disability Housing: What's happening? What's challenging? What's needed?," April 11, 2016, https://www.jchs.harvard.edu/research-areas/working-papers/disability-housing-what%E2%80%99s-happening-what%E2%80%99s-challenging-what%E2%80%99s-needed

[3] Jaboa Lake, Valerie Novack, & Mia Ives-Rublee, "Recognizing and Addressing Housing Insecurity for Disabled Renters," Center for American Progress, May 27, 2021, https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters/

[4] Susan J. Popkin et. al, "People with Disabilities Living in the US Face Urgent Barriers to Housing," October 21, 2022, https://www.urban.org/sites/default/files/2022-10/People%20with%20Disabilities%20Living%20in%20the%20US%20Face%20Urgent%20Barriers%20to%20Housing_0.pdf

Greater access to tenant- and project-based vouchers supports long-term housing affordability.

As the disability population continues to rise, including older adults, the need for supportive services in their own homes also continues to rise. As of 2022, there are 4.2 million people who use Medicaid home and community-based services (HCBS) and 819,886 people are on the waitlist for Medicaid HCBS.[5] Federal investment in HCBS continues to be prioritized over institutional care but the need for further investment is critical. Those who are still impacted by institutionalization, in part because of lack of supportive housing, include the roughly 1.2 million adults living in nursing homes,[6] more than 360,000 people in psychiatric facilities,[7] and the more than 268,980 people with I/DD who live in congregate, institutional settings or are on waitlists for services and residential programs.[8]

Additionally, the 2011 American Housing Survey discovered that less than 4 percent of U.S. homes offered a combination of a no-step entry into the home, single-floor living, and wide halls and doors that could accommodate a wheelchair. In the 2019 American Housing Survey, about 5 percent of households reported that they had trouble navigating or using their homes, amounting to a total of 6.8 million households.[9] As a result, individuals are likely to stay in institutional or group home settings to comfortably use their unit, however, these settings decrease independence and self-determination for people with disabilities. Similarly, when an individual needs to temporarily enter an institution, they can often lose access to their housing because their housing voucher expires after a period of 60 days[10] and/or they are not able to work thus they cannot afford to continue paying rent.

[5] Molly O'Malley Watts, Mary Beth Musumeci, and Meghana Ammula, "Medicaid Home & Community-Based Services: People Served and Spending During Covid-19," March 4, 2022, https://www.kff.org/medicaid/issue-brief/medicaid-home-community-based-services-people-served-and-spending-during-covid-19/

[6] Kaiser Family Foundation, "Total Number of Residents in Certified Nursing Facilities," 2022 https://www.kff.org/other/state-indicator/number-of-nursing-facility-residents/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

[7] Ted Lutterman et. al, "Trend in Psychiatric Inpatient Capacity, United States and Each State, 1970 to 2014, National Association of State Mental Health Program Directors," August 2017, https://www.nasmhpd.org/sites/default/files/TACPaper.2.Psychiatric-Inpatient-Capacity_508C.pdf

[8] Corporation for Supportive Housing, "Estimated Supportive Housing Need", May, 2019, https://www.csh.org/wp-content/uploads/2019/05/IDD_web.pdf

[9] United States Census Bureau, "American Housing Survey (AHS)," May 17, 2023, https://www.census.gov/programs-surveys/ahs.html

[10] U.S. Department of Housing and Urban Development: Office of Public and Indian Housing, "Voucher: Housing Choice Voucher Program," n.d., https://www.hud.gov/sites/documents/DOC_11741.PDF

Based on The Kelsey's developments and our technical assistance nationwide, it is evident that there are concrete solutions that HUD can implement that will decrease the rate of institutionalization and increase people's ability to live in the community:

- **Increase affordable housing developments capacity to be service-linked and ready for people who need in-home supports and services:** Service-linked and ready housing means that housing developments are equipped through design and operations to support tenants who need supportive services in their own homes. Through existing initiatives, such as the ACL & HUD Housing Services and Resource Center, HUD can provide clearer guidance through publishing best practices and case examples of service-ready housing; particularly with the assurance that the tenants have full choice over the services they receive in their own homes. HUD improving its guidance in this area will support the implementation of the Home & Community Based (HCBS) Settings Rule.

- **Strengthen referral and waiting list practices:** HUD does not have guidance for PHAs and HUD-assisted housing providers to identify people with disabilities who are existing institutions. PIH Notice 2012-31 states, "PHAs cannot restrict the [people exiting institutions] preference to those referred or approved by a single state agency or to persons with specific disabilities or diagnoses unless such a restriction is related to a HUD-approved remedial action." This requirement grants more control to HUD than in most aspects of housing operations and contributes to PHAs having difficulty serving people exiting institutions. A PHA should be allowed to implement a preference for referrals of people with disabilities.

- **Increase partnerships between service providers and PHAs:** Partnerships between PHAs and service providers and coordinators are critical for community-based housing, and particularly for special voucher holders. HUD should issue joint guidance with ACL, CMS, and SAMHSA to encourage housing providers to coordinate with community organizations serving people with disabilities.

- **Income documentation:** For individuals seeking to leave institutional settings, securing the necessary documentation for income verification is extremely challenging and results in delays in obtaining permanent, supportive housing. HUD should instruct PHAs and housing providers to assist these individuals in this process and provide presumptive financial eligibility for people whose sole source of income is Supplemental Security Income (SSI), among other scenarios.

- **Disability documentation:** It can take substantial amounts of time to receive documentation from medical providers because their profession is understaffed, and in some cases, you need to wait for an appointment with your medical provider to request the documentation, which can take months. Presumptive eligibility should also be given in these scenarios.

Response to 2 (b):

- Regulations should require PHAs and other housing providers to provide accommodations that address issues like those raised by the EHV waivers listed here:

    - Any member of the family has been evicted from federally assisted housing.

    - PHA has ever terminated assistance under the program for any member of the family.

    - The family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

    - The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

    - The family breached an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA.

    - The family would otherwise be prohibited admission under alcohol abuse standards established by the PHA in accordance with §982.553(a)(3).

    - The PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity.

- During The Kelsey's development processes, as well as broader local inclusive housing advocacy, we have witnessed and pushed back against discriminatory narratives that pit disabled people against one another. For example, in multiple places we have worked, inclusive housing for people with IDD is advocated for at the expense of further stigmatizing people with psychiatric and mental health

7

The Kelsey

disabilities. This an unacceptable and discriminatory means of advocating for housing to include one group and not the other.

- People with mental illness are discriminated against in very inconspicuous ways. Landlords and property owners generally do not understand what support services there are for people with mental illness and will avoid renting a unit by prioritizing other potential tenants or stating the unit is no longer available; this is especially acute in areas where there is a lack of affordable housing already and many potential tenants to rent to. Property owners have stated to us that they have been "burned" in the past by renting to individuals who did not have sufficient support services to be able to live independently. To overcome these cultural barriers and learned behaviors by property owners, HUD could partner with larger nongovernmental organizations and service agencies to demonstrate to property owners, property managers, neighbors, and housing organizations the types of support services available for people with mental illness through Medicaid and other programs that help them live and thrive in the community.

Response to 2 (c):

When it comes to the approximately 7.4 million people with intellectual and developmental disabilities (I/DD),[11] 75 percent of these adults live with a parent or other caregiver and are not connected to publicly available services and supports, and at least one million of those households have a caregiver over the age of 60.[12] Moreover, only 12 percent of people with intellectual and developmental disabilities own or rent their own homes.[13] This low percentage does not reflect what people want, which is to own or rent their own home.[14]

- **Plain language:** 4 CFR 8.4 does not provide usable, plain language examples that would help to guide decision-makers. HUD should provide more plain

---

[11] University of Minnesota, Center on Community Integration, "Residential Information Systems Project Annual Report: Status and Trends Through 2018," December, 2022, https://ici-s.umn.edu/files/y_7tYyJDmn/risp_2019_v6

[12] The Arc and The Council on Quality and Leadership, "There's No Place Like Home: A National Study of How People with Intellectual and/or Developmental Disabilities and Their Families Choose Where to Live," 2019, https://futureplanning.thearc.org/assets/CFP_Housing_Survey_Technical_Report-80e6eb718c816d07a15a9972df06a6e73b1393d5b56ae145acc058fce243cd93.pdf

[13] University of Minnesota, Center on Community Integration, Residential Information Systems Project "Annual Report: Status and Trends Through 2018," December, 2022, https://ici-s.umn.edu/files/y_7tYyJDmn/risp_2019_v6

[14] The Arc and The Council on Quality and Leadership, "There's No Place Like Home: A National Study of How People with Intellectual and/or Developmental Disabilities and Their Families Choose Where to

language examples and online and in-person training, and technical assistance to agency administrators, advocates, housing providers, tenants, etc. Additionally, plain applications, explanation of leases and other agreements or contracts should be provided in plain language. For example, currently the Section 811 PRA lease approved by HUD is written at a graduate school level according to a plain language expert, whereas plain Language for accessibility, geared toward audiences with cognitive disabilities, typically sits at the 5-6 grade level. Staff should also be provided to proactively facilitate access to programs, services, and activities. Covered entities should be expected to develop procedures to ensure essential information is effectively communicated to people who have disabilities that can interfere with typical ways of reading and understanding content. Also, someone with cognitive disabilities may have difficulty using the computer and websites and should be able to submit materials via the mail or other non-electric means.

- **Supported Decision-Making:** Supported decision making is a tool that allows people with disabilities, often people with intellectual and developmental disabilities, to retain their decision-making capacity by choosing supporters to help them make choices. HUD can provide guidance on ways that federal housing assistance programs can promote and implement practices that enable future or current tenants to use supported decision making. We recommend that HUD partner with the Administration on Community Living, as well as the National Resource Center for Supported Decision Making and people with lived experience to ensure appropriate resources and guidance be issued.

- **Service-linked and Ready Housing:** See 2(a) comment.

Response to 2 (d):

As mentioned in 2a, one of the reasons people are unable to remain in their own homes or move from institutional settings into community is because of the lack of housing accessibility for those with physical disabilities.

Examples of discrimination include:

- **Accessible Housing Stock Is Non-existent:** Often voucher holders with physical disabilities are unable to find a unit to lease due to lack of accessibility. For example, the Housing Authority of Birmingham District opened their waiting

Live," 2019, https://futureplanning.thearc.org/assets/CFP_Housing_Survey_Technical_Report-80e6eb718c816d07a15a9972df06a6e73b1393d5b56ae145acc058fce243cd93.pdf

list for the Mainstream Voucher program – which serves families who have a disabled loved one – for the first time since 2019 this year and nearly 600 people applied, but they only had 10 units available.[15]

- **Refusals or extended wait times to provide home modification or reasonable accommodations:** This applies to people with physical disabilities and other disabilities that require higher in-home support. Housing providers are not always amenable to providing an extra bedroom for a caregiver. This applies both to people with physical disabilities, as well as other people with disabilities that require 24-hour in-home support. It is commonplace for requests for accommodations to take extensively longer to be filled than should be allowed. The delay of having reasonable accommodations met can lead to housing insecurity and risks to a tenant's health and wellbeing.

People with physical and sensory disabilities should always have coverage under Section 504, including when they reside or are applying for a LIHTC funded unit. LIHTC funds the vast majority of affordable housing available to low-income families, and because it is administered at the state level there are no accessibility requirements beyond the Fair Housing Act (FHA), which is insufficient for: the 12.1 percent of U.S. adults that have a mobility disability with serious difficulty walking, the 6.1 percent of U.S. adults who are deaf or have serious difficulty hearing, and the 4.8 percent of U.S. adults who have a vision disability with blindness or serious difficulty seeing even when wearing glasses. For example, FHA only requires a 30-inch by 48-inch clear floor space in front of a toilet, while other higher standards require more space, such as UFAS which requires 60 inches of clear floor space, which allows wheelchair users to have a sufficient turning radius. Additionally, UFAS requires that electrical outlets and switches be installed no more than 44 inches above the floor, while FHA does not require any accessibility for these essential utilities. UFAS also requires unit emergency alarms to have a visual component while FHA does not, which could result in a deaf or hard-of-hearing individual not evacuating during a life-threatening emergency. FHA also has several exemptions to its design requirements, including but not limited to multi-family buildings without elevator access (excluding the ground floor), townhouses, and duplexes. This contributes significantly to the shortage of accessible, affordable housing for people with disabilities and older adults. Therefore, we recommend that HUD and the Department of Treasury align to increase the accessibility required and incentivized through LIHTC.

---

[15] Brittany Dionne, "HABD offers resources to help with lack of affordable housing as need grows," February 15, 2023, https://www.wbrc.com/2023/02/15/habd-opens-waiting-list-program-help-families-with-disabled-loved-ones-find-affordable-housing/

HUD should also reinforce that state and local tax credit allocating agencies must follow S. 504 requirements where federal funds are allocated. Which means they must include the required percentage of accessible units, pay for reasonable accommodations and modifications, accept vouchers, etc.

Response to 3:

There are a robust set of auxiliary aids and services that people with disabilities need in housing and community development programs and activities. Housing developers and practitioners, at every stage of the development process, including operations, should provide such services and aids through the reasonable accommodation process. Examples include:

- Screen reader software on property management websites for applications, lease signing, payments, maintenance requests, etc.

- Technical advancements in communication access for deaf and hard of hearing communities that must be available and used across federal housing programs. This includes video relays services, video remote interpreting (VRI), as well as greater availability of CART captioning. However, VRI and CART cannot be a replacement to fulfill the request of an onsite interpreter.

- Large print materials and braille

- Audio Description

- Video Conferencing

- Emergency technologies specifically for people with speech disabilities (including users of augmentative and alternative communications (AAC)), people with cognitive disabilities, Deaf/Blind people, and people with multiple disabilities. The Kelsey defers to partners like CommunicationFIRST to provide further expertise.

HUD and covered entities can improve the experiences and therefore housing outcomes of people with disabilities by:

- Asking applicants/tenants whether they have communication disabilities and record their needed auxiliary aid or service in their application or tenant file so that they can consistently receive effective communication from the covered entity.

- Clarifying that if an individual requests that all written communications be rendered in alternative formats or in other languages, then all future communications should be provided in the requested format or language.

- Developing template notices in plain language formats that will make information accessible to people with intellectual and developmental disabilities.

Response to 4 (a):

- **Challenges:**

  - **Identifying accessible units:** Research on NED vouchers and the Money Follows the Person programs found that identification of accessible units was a barrier for people with disabilities attempting to leave institutions to live in community-based housing.[16] HUD can invest in a database for individuals to search for affordable, accessible housing and provide resources, monetary and others, to recipients on how to best identify accessible units and match those units to those who need them. Depending on the jurisdiction, Chapter 11B units only need to be held for a person with disabilities for a discrete time period ahead of being rented to the general eligible population. In practice, although not legal, some owners do not proactively advertise those units to the disabled population because of perceived risks associated with renting to people with disabilities. There should be a requirement that all accessible units that are built with federal funding should be advertised through local service providers who are providing federally funded services to people with disabilities, including independent living centers, Medicaid-funded institutions and in-home support services, and continuum of care responsible agencies.

  - **Allowing for operating reserves of accessible units:** Property owners should be allowed and encouraged to keep a reserve of operating expenses for accessibility-related relocation purposes. If a property owner rents an accessible unit to someone that does not need the accessible features because the waiting period has lapsed, they should inform the

---

[16] Washington, DC: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Disability, Aging and Long-Term Care Policy, "Non-Elder Disabled Category 2 Housing Choice Voucher Program: An Implementation and Impact Analysis," January 31, 2014, https://mathematica.org/publications/nonelderly-disabled-category-2-housing-choice-voucher-program-an-implementation-and-impact-analysis

The Kelsey

forthcoming tenant that a relocation within the same project may be required. In the case a non-accessible unit becomes available and an eligible resident needing accessible features qualifies for an inaccessible unit, the resident in the accessible unit can be compensated to relocate to the inaccessible unit, and the new resident can have access to the features they need.

- **Website accessibility:** HUD needs to do more to instruct housing entities that website and application accessibility compliance is mandatory. There is strong support for the Web Content Accessibility Guidelines (WCAG) as an instructive tool to make websites and applications accessible for users with disabilities, and these standards are not currently adopted law. Similarly, a study carried out by the Department of Justice and the General Services Administration (GSA) found that many federal agencies, such as HUD, failed to make their websites fully accessible.

- **Excessive paperwork:** The plethora of questions asked and documents that need to be submitted and then resubmitted each year to the PHAs while people are on the waiting list for a home is an unnecessary barrier. Individuals have also complained that PHA offices are unorganized and tend to lose documentation, so there needs to be regulations around organization of materials.

- **Addressing repairs:** The lack of accessibility in housing is also perpetuated by the backlog of repairs and modifications needed to people's homes. For example, by 2019, the capital fund backlog for public housing repairs grew to around $70 billion and continues to rise.[17] Many residents, including people with disabilities, continue to live in homes made unsafe by mold, lead, or disrepair. This directly threatens the health and safety of residents and can cause additional disabilities.

- **Sources of data:**

  - A 2022 Urban Institute report found that 84 percent of disabled people with low incomes in the United States — nearly 18 million people across 15.6 million households — were eligible for housing assistance but did not receive it. The group of 18 million disabled people with low incomes who

---

[17] Jackson Gandour, "The Promise of Public Housing," April 14, 2021, https://www.hrw.org/news/2021/04/14/promise-public-housing#:~:text=By%202019%2C%20the%20capital%20fund,mold%2C%20lead%2C%20or%20disrepair

are not receiving housing assistance may face other significant financial barriers to accessing housing. For example, 14 percent of this population receives SSI, but SSI payments are not enough for recipients to afford rent in any U.S. housing market. Without housing assistance, this group will continue to struggle to meet their housing needs. Disabled people who are eligible for housing assistance— especially those at the lowest income thresholds—are also more racially and ethnically diverse than the non-eligible disabled population.[18]

○ According to the Harvard Joint Center for Housing Studies, "Homes that include universal design features or are designed to be easily adapted to resident needs are more likely to fit the needs of residents without major interventions. However, the U.S. housing stock does not regularly incorporate accessibility and includes very few housing units that offer multiple accessibility features."[19]

○ Additional sources to help capture the growth of the disability population include:

■ Center for Disease Control data

■ U.S. Census, especially the American Community Survey

■ Current Population Survey

■ Coleman Institute State of the States in Development Disabilities

■ Technical Assistance Collaborative's Annual Priced Out Survey

■ Brandeis University Community Living Policy Institute

■ Local and state organizations, such as: local disability commission; state Medicaid Office; state Money Follows the Person program;

---

[18] Susan J. Popkin et. al, "People with Disabilities Living in the US Face Urgent Barriers to Housing," October 21, 2022, https://www.urban.org/research/publication/people-disabilities-living-us-face-urgent-barriers-housing

[19] Samara Scheckler, Jennifer Molinsky, Whitney Airgood-Obrycki, "How Well Does the Housing Stock Meet Accessibility Needs?: An Analysis of the 2019 American Housing Survey," March 2022, https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_housing_stock_accessibility_scheckler_2022_0.pdf

Centers for Independent Living, Area Agencies on Aging, Legal Aid
and Protection & Advocacy agencies.

Response to 4 (b):

HUD can issue clear guidance on standards with diagrams and harmonization between codes. Additionally, guidance is needed on what is considered "federally funded housing." Currently, it is a jurisdiction-by-jurisdiction interpretation. For example, in San Francisco the interpretation of whether a site that was privately developed but was involved in a land swap with a public entity had below market rate units stay unoccupied for close to a year after the building was completed because of a question of whether it was considered "public housing". The uncertainty, legal costs, and additional time for interpretation could be better spent in resident-centered costs.

The flow charts on pages 13-20 of "Guide to Public Housing Regulated by Chapter 11B of the California Building Code" (see attachment 1) published by the Division of State Architects in California demonstrate the difficulty of interpreting what accessibility codes apply in which contexts. These are used to define "public housing" as it applies to ADA 2010 and Section 504, as well as Chapter 11B of the California Building Code. These were only published after the Governor of California appointed a Certified Access Specialist (CAS) as the State Architect. Prior to the publishing of these materials, there was no state-published source that supported the private sector in differentiated different access codes. As far as we know, there is nothing of such material at the federal level. The result is millions of dollars that would be better spent towards more affordable housing, being spent on code interpretation.

Regarding LIHTC, HUD should engage these properties in training and technical assistance efforts around reasonable accommodations, including the obligation to pay for reasonable modifications; and HUD requires states to widely advertise in ways that are accessible for all the federal and state funding sources provided to each LIHTC property, thus allowing easier identification of LIHTC properties that are covered by Section 504.

Response to 5 (a):

The disproportionate rates of poverty and housing discrimination compounded by the lack of affordable, accessible, and integrated housing stock, leads to people with disabilities experiencing acute challenges in accessing vouchers and using them. We recommend that HUD make following improvements:

- **Increase the competitiveness of voucher holders who have a disability:** HUD should ensure that housing providers have access to incentives that increase their acceptance of Mainstream, NED, and related programs that target disabled households. HUD provided an additional $500 per unit to PHAs administering the Mainstream program, but $2,500 to PHAs administering EHV. The competition for units means that when a participant is required to take extra steps and extra time to let a landlord know they want to apply for a unit, they are more likely to lose the unit to another housing seeker.

- **Provide clear guidance on extra bedrooms for caregivers:** Many disabled households require an additional bedroom for 24-hour caregivers, such as a live-in aide. HUD PIH Notice 2008-20 made some PHAs more wary of allowing an extra bedroom for caregivers. Some PHAs require paperwork to request an extra bedroom (or any reasonable accommodation) and/or deny requests. PHAs should not require unnecessary documentation and HUD should amend §8.28 to clarify that PHAs must approve an extra bedroom under a reasonable accommodation request.

- **Provide guidance on extended absences:** People with disabilities who have HCVs need to be absent from their unit for weeks or months after experiencing medical emergencies or necessary institutional care. These absences put tenants at risk of eviction from their homes and termination from the HCV program. HUD should include in §8.28 the obligation to grant reasonable accommodations for disability-related extended absences.

- **Model regulations from the Emergency Housing Voucher (EHV) program:** EHV leased up more quickly than previous HUD-funded voucher programs. The characteristics of this program that appear to have led to this success and could be considered best practices include (but are not limited to):

  - Waivers that remove many eligibility and access barriers that vulnerable populations experience when trying to access the HCV program. The full use of the waivers and alternative requirements aids in centering equity in a community's EHV program and creates a more equitable program overall.

  - Administrative fee funding to PHAs for expenses that are not normally eligible under the HCV program, as well as fees designated for the cost of administering the EHV program generally. PHAs receive the following fees as part of their EHV allocation: Preliminary Fee, Issuance Fee,

Placement Fee, Ongoing Administrative Fee, and Service Fees.

- o A requirement for PHAs to work with community partners to determine the best use and targeting for the vouchers to ensure EHVs assist households who are most in need.

- o Waivers that allow PHAs to establish a separate waiting list for the EHV program and to accept direct referrals from the local continuum of care and/or victim service providers.

- o Funding for service fees to pay for some short-term service needs to obtain housing.

Response to 5 (b):

We have assisted people with disabilities, including those who need physical, sensory, and cognitive access needs, look for apartments that are within the FMR range in the high cost, urban San Francisco Bay Area. Because the housing stock is older, there are little to no apartments within the FMR range that are accessible to people who have mobility access needs. Many newer apartments are accessible, but priced above FMRs. New apartments positioned as co-housing, meaning smaller units with efficiencies instead of full kitchen, are within the FMR range, but because they are leased on a bedroom-by-bedroom basis, there are more barriers to the landlord accepting the tenant because it is questionable whether those bedrooms are covered under FHA non-discrimination clauses. We recommend HUD allowing for higher rents for individuals with mobility access needs in urban areas where the proportion of housing built after 1991 is relatively low compared to other housing.

We have interviewed people with disabilities in rural areas in Massachusetts that have a strong tourism industry. In these areas, access to housing where a voucher can be used is difficult because of the limitations of year-round leases. Many rentals will only give off-season leases, which means housing vouchers cannot be used. There should be dedicated investment in year-round housing in those areas that are priced at fair market rents and are accessible. The understanding of people who receive an HCV (whether they have a disability or access needs that could be met locally) is that they need to leave the county to find a rental where they could use their voucher.

Response to 6:

Too often accessibility is seen as a risk that projects take on by not meeting code and/or inviting lawsuits around compliance. Due to a lack of clear guidance of what standards

apply in what settings and what is permissible from those standards, accessibility access is a perceived barrier to housing development, rather than something that creates value for the end resident. By taking a strong, clear, and definitive approach to how accessible spaces are created, housing developers and municipalities can spend less resources on code interpretation and more on accessibility and other resident-benefiting features.

We urge HUD to shift towards a uniform accessibility standard that is already adopted within states rather than introduce more technical requirements within 504. HUD should partner with the author of these technical requirements to provide extensive diagrams, bulletins and other advisory materials for that design and develop housing.

Some examples that HUD should review:

- 2019 California Building Code (CBC): CBC uses 2010 ADA Standards for Accessible Design as the model code for chapter 11B. There are several exceptions that the 2010 ADA Standards that CBC did not adopt, but none of those pertain to multifamily housing. In some places, CBC is more stringent than 2010 ADA Standards for Accessible Design, for example with the requirement of visual carbon monoxide alarms in addition to fire alarms. Until there are considerable updates to the 2010 ADA Standards for Accessible Design, the 2019 CBC should be considered for a safe harbor for Section 504.

- For states that use the International Building Code, the 2017 ICC A117.1 goes beyond ADA 2010 Standards by requiring a 67 turning radius in kitchen, bathrooms, and bedrooms. This is to accommodate larger spaces for power wheelchair maneuvering. They also have other recommendations that require grab bars to be put in place at the time of construction. These features would be important to consider as an additional requirement beyond ADA 2010 Standards or UFAS.

- The Kelsey's Inclusive Design Standards provide guidelines to take a progressive approach to disability access that encourages developers to go beyond code. These guidelines could be used as an incentive for projects to include the voices of disabled people throughout the design process and to include resident-centered features that go beyond code compliance:

  - The Design Standards define multifamily housing elements throughout the development process and address everything from the design approach to physical spaces, to mobility and reach to healthy materials selection, to

amenities, outdoor spaces, on-site staffing, and resident supports. A cross-disability approach provides elements that are specific to individualized access needs and others that benefit a diversity of disabilities. The elements were assessed on intersectional benefits alongside affordability options, considerations for racial equity, sustainability, and a better resident experience. The below goals were embedded throughout the creation of the standards:

- **Cross Disability:** Support access and inclusion for the broad and diverse needs of people with disabilities.

- **Multidimensional:** Address the many elements of housing development, design, and operations that impact accessibility and inclusion. Often, accessibility discussions are limited to physical spaces — only considered once it is too late — in certain moments within the design process or among certain project team members. Design and development teams must consider strategies at all phases of the project to support accessibility and inclusion that accommodates more people. Members of the team must recognize and address multiple dimensions of a housing community's needs, understanding conflicts and creating solutions that address a resident's access needs.

- **Implementable and Expandable:** Provide standards that can be clearly and swiftly adopted into projects and policies while evolving and expanding over time. These standards are meant to be immediately usable by project development teams, including funders, designers, project managers, city officials, community members, engineers, and owners. Some people will come to these standards with a mission-oriented approach to inclusion and access, and others will be thinking about these issues for the first time beyond basic code requirements.

- **Value Creation:** Disability-forward design supports better, more efficient, equitable, building development. In addition to the explicit goals outlined above, the standards are developed with an eye towards value creation for the communities they inform and the future residents of those communities. Embedding access and inclusion as a fundamental design strategy is an opportunity for value creation in a resident-centered approach.

19

A lack of coordination between codes results in costly delays in development and deters the production of new or rehabilitated accessible homes, but more importantly, results in poorer design outcomes for disabled residents. HUD could solve this by shifting to a universal accessibility standard that is supported by "cheat sheets" that are similar to San Francisco's Mayor's Officer on Disability's design bulletins (see attachment 3 & 4).[20] Whatever standards that are adopted should strive to be performance-based or functional design criteria to meet the fundamental purpose of accessibility standards, rather than a well-intentioned, but possibly too stringent criteria that creates spaces to be less functional for different types of people with disabilities. Below are some issues that currently exist within safe harbor accessibility code that should be addressed in functional accessibility standards, if they were to exist:

- **Storage cabinets:** There is a significant discrepancy between state, local, and federal code regarding kitchen storage which often catches designers by surprise. For example, 2010 ADA Standards require 50% of storage to be within reach range. The ADA standards, nor CBC modeled off the ADA standards, offer cost effective, approved solutions on how to accomplish these goals. The result is that designers and developers commonly remove out of reach cabinetry from accessible units and sometimes from non-accessible units because of the interpretation that all units should have similar features; result is all residents receive less storage. With additional guidance about suggested cost-effective alterations to add to cabinets that increase reach range, like drawers and moveable shelving that are pre-approved, housing developers will be less trepidatious to add low-tech assistive devices in storage areas.

- **Electrical outlets:** Complying with both electrical code (NEC) and accessibility code regarding outlet placement is challenging. This often results in outlets being placed where they are not accessible.

- **Kitchen layout:** Because of reach range requirements, kitchens with corners are more difficult to get reach ranges correct leading to less "L" shaped kitchens. This conflicts with the need for a lot of turning space within a kitchen and the requirement of 180-degree open requirements. Exceptions for reach ranges for corners may be important to encourage "L" shape or straight kitchens which provide more floor space for units.

---

[20] San Francisco Government, "Design bulletins, informational sheets, and access plan review forms for architectural access," n.d., https://sf.gov/resource/2022/design-bulletins-informational-sheets-and-access-plan-review-forms-architectural

- **Bathroom design:** There needs to be more clarity or alignment with the Type-A ICC standard for bathrooms. Safe Harbor guidelines are a step in the right direction, but UFAS and other codes do not always align. Also, the requirements of larger bathrooms are conflicting with cost pressures from affordable housing developers to build more units of smaller units. Bathroom size has grown, but in high-cost areas the total unit size remains the same. There should be efforts to reconcile the size of the bathroom with the remainder of the unit where residents spend most of their time.

- **Handrail height:** Handrails must be between 30"-34" high (UFAS) and between 34" and 38" (IBC), thereby making handrails only acceptable at exactly 34". This could lead to conflict in spaces where flexibility is needed because of programming (for example more children in a space) or other physical restrictions to where handrails can be placed (windows, etc.)

- **Door swings within restrooms:** There is conflicting code of whether a bathroom door can swing into an accessible bathroom; this should be left up to the designer of an accessible dwelling unit when deciding what is better for general access within the unit.

- **Hearing and Mobility Units:** Clarification of whether you can have both sensory and mobility units counting for the same accessible unit if needed; with current guidance the assumption is these should be different units but when building housing for people with significant support needs, these features may be needed within the same unit.

- **Communication tools:** ADA 2010 Standards still require the use of TTY despite being an outdated technology; standards should allow for the equivalent facilitation/provide a different means of communication. Affordable housing developers are not installing updated, safer, more accessible video communication options for door security systems which would benefit multiple access needs because it does not use TTY.

- **Misalignment with standardized products:** Items that make affordable housing more feasible because they come pre-built may have aspects that are not aligned with existing accessibility standards. One example that gets removed altogether from units – because products without thresholds do not exist – is prefabricated balconies. Another that is unclear whether they are allowable, but incredibly important for cost-efficiency, is prefabricated tubs. By default, the industry makes 60" tubs which are 58" installed; some designers question whether this meets the requirements of a 60" bathtub with a seat included.

Furthermore, we encourage HUD to update its method of determining what is a "substantial alteration", which results in very few alterations being considered "substantial". Additionally, there is no codified definition for what it means to alter a unit; it is only spelled out in the official HUD Section 504 FAQ. We would like this to be formally defined, and in a better way. The International Existing Building Code uses a "work area" formula that results in far greater accessibility because of an alteration.

Response to 8 (a):

Often accessibility discussions are limited to physical space. However, design process and operation strategies should be considered as tools that support more inclusion and equity for their residents in public and common use areas. Also, most physical compliance requirements focus on mobility access for common use areas; more cross-disability access like vision, hearing, cognitive, and wellness are a needed addition to federally assisted housing.

The types of barriers that people with disabilities face in public housing are similar to the barriers that all residents face and expanded to additional access needs would both benefit residents with disabilities and other residents who deserve safe and healthy housing. When developers and housing designers are encouraged to design for a cross-disability access, all residents benefit.

Some accessibility features and operational practices to include:

- **Shared Spaces:**
  - **Activity Areas and Places to Socialize:** Provide shared social spaces for activities and interactions. This supports output such as stronger community connections, cultivation of informal support networks, and decrease in loneliness. These outputs relate to health outcomes such as prevention of heart disease, stroke, dementia, depression, and anxiety,[21] as well better neighborhood resilience during and after natural disasters:[22]
    - Sensory gardens, demonstration or shared-use kitchens, fitness areas, game/TV rooms, and similar spaces – that are thoughtful

---

[21] Julianne Holt-Lunstad, "Social Connection as a Public Health Issue: The Evidence and a Systemic Framework for Prioritizing the "Social" in Social Determinants of Health," Annual Review of Public Health 2022 43:1, 193-213, https://www.annualreviews.org/doi/10.1146/annurev-publhealth-052020-110732

[22] Karen Feldscher, "Social connections boost resilience among elderly after disaster," October 8, 2019, https://www.hsph.harvard.edu/news/features/social-connections-boost-resilience-among-elderly-after-disaster/

and intentional in their design – are important for resident mental and physical health.

- ■ Design shared spaces and their furnishings to be flexible and easily moved, to accommodate multiple uses that may develop over time.

- ■ Staff help create a sense of community, build trust with and among residents, and facilitate relationships.

- ○ **Public Restrooms:** Projects that have over 50 units, a common area restroom close to the main entrance or community space should be incentivized to provide closer access to restrooms rather than requiring residents to return to their dwelling units. Encourage adult size changing tables in public restrooms. Encourage common area bathrooms in residential facilities to be single user non-gendered. Bathrooms should also have safe sharps containers.

- **Signage:**

  - ○ **Assistance Signage:** Use signage to alert people that support is available. "Need something? Just ask." signs in common rooms. Sets a positive tone, lets everyone know there is support available from building staff. Include a phone number for texting or QR code to make it easy to contact staff.

  - ○ **Directional Signage:** Design site directional signage to be clear and broadly usable. Signs are high contrast (light text on a dark field that yields the least glare), in raised text, and in braille. Text should use sans serif font. Signs have pictograms for children, non-English speakers, people with learning disabilities, and others who cannot read.

  - ○ **Clean Air & COVID-19 Conscious Protocols:** Many people with disabilities, including people who are immunocompromised, have been forced into further isolation due to the removal of masking protocols. Public spaces should be inclusive to those who are immunocompromised. Therefore, we encourage HUD to work with disabled, chronically ill, and long haul covid advocates to publish best practices for how shared spaces across federal housing programs can implement harm reduction efforts to prevent the spreading of COVID19. This can include, but is not limited to, mask use indoors, providing free masks and COVID tests for residents and guests, as well as implementing clean air efforts with air purifiers. We refer to experts from entities such as Project N95, Strategies for High

[Impact](#), and [COVID-19 Longhauler Advocacy Project](#) (C19LAP), among others.

- **Resident Services:**

  - **Inclusion Supports & Services Personnel:** A dedicated resident services staff trained in inclusion, disability, supports, and services on staff to:

    - Assist with connecting residents to services they require.

    - Manage events and promote social connections for all residents, promoting long-term residency.

    - Manage outreach and engagement with the neighborhood community outside the building.

    - Assist with wayfinding and assistive technology like listening devices, etc.

  - **Inclusion, Equity and Disability Training:** All building staff and personnel receive training in disability rights, inclusion, accessibility, and equity prior to building occupancy or within the first 60 days of onboarding. This training should apply an intersectional lens, centering first-hand lived experience of multiply marginalized disabled people. This training should be provided to all management, resident-facing, and maintenance staff. After the initial trainings, ongoing professional development opportunities must be provided.

  - **Resident Programs and Events:** Ongoing building events and activities. Allow projects to fund in-person events, art activations, and non-traditional partnerships. These provide regular opportunities for residents to connect with one another and the surrounding community members who live nearby and include them in processes to promote civic trust and strengthen a sense of community.

  - **Culture of Interdependence:** Community staff creates a culture of mutual support through strong presence in the community, a natural ability and interest to connect residents to each other, and an ability to connect residents to the larger community. Gives opportunities for residents to support and be supported.

○ **Trauma-informed housing:** To create equitable and accessible experiences for residents with disabilities, a trauma informed approach must be applied. We refer to our partners at Preservation of Affordable Housing (POAH) who released a Trauma-Informed Housing toolkit.[23]

Response to 8 (b):

In general, we encourage the flexibility of homes as much as possible to accommodate mobility accessibility because people with mobility disabilities use assisted devices that vary in size and maneuverability. Some people with mobility disabilities may switch between different devices day-to-day (e.g., between a manual wheelchair to walker to cane). Others may always use a larger power wheelchair with a larger turning radius. We also consider height as an access need that is adjacent to mobility-access needs and benefits from similar design features. To that end, we have included access needs for people with smaller stature in the list below.

We have separated our comments into adaptations that can be made at move-in of a resident with height and mobility access needs and elements that should be integrated into initial construction, rehabilitation, or during modifications:

● Adaptations:

○ **Washer and Dryers:** Front loading, combined washer and dryer so that individuals who cannot reach a top loading machine can do their own laundry.

○ **Toilet Adaptation:** Raised toilet seats on top of default lower tower seats to add options for different access needs.

○ **Roll-in Shower Mount:** For roll-in showers a second mount in the shower for the hose so that the bathroom does not get drenched in water when the water turns on; hoses should also be long enough to reach second mount.

○ **Entry Door Security:** Selected doors can be secured and unsecured using magnetic swipe cards, electronic key fobs, smart phones, numeric

---

[23] Trauma Informed Housing, "A Toolkit for Advancing Equity and Economic Opportunity in Affordable Housing," 2023, https://traumainformedhousing.poah.org/

keypads, or other technology in lieu of keys for more convenient entry by residents with low dexterity or limited reach.

- **Window Controls:** Ensure window treatments have controls that come down to a maximum 44 inches high. Specify windows with mechanisms that meet ADA requirements for controls, and ensure there are no secondary latches mounted high, which is the case with many casement windows.

- **Smart Home Controls**: Allow and encourage the use of smart home controls that control lighting, local smoke alarms, HVAC, or other controls that can be activated by remote control (smartphone app, or similar) or voice command. Unit smoke/carbon monoxide alarms can be controlled/silenced with, and send notifications to, a smartphone app (should not include fire detection that is required to be build-wide). Incorporation will allow extensibility in the future as new technologies continue to develop.

- **Outlet Extensions:** Extensions for controls, switches, and outlets to increase vertical reachability. At the minimum they should be 18'' min. to bottom of device, 42" max. to top of device, whether side or front reach, or reaching over obstruction and 25" max reach if across obstruction.

- **Kick plates and wall protectors:** Install additional kick plates and wall protectors for units that have wheelchairs that can be easier to keep clean and aesthetically pleasing than drywall.

- **Design:**

  - **Navigable Floor Plans:** Lay out dwelling units to ensure navigability. Especially in small units, ensure that standard-size beds and furniture will not prevent wheelchair maneuverability. Encourage open interior design which provides better natural light, enhancing well-being for everyone. Explore navigable floor plans early in the design process which can help determine placement of closets, windows, or similar, to yield a more usable unit. Avoid placing protruding mechanical equipment under windows that impair reach and reduce leverage for opening windows. Consider navigation of a unit with a ceiling-mounted Hoyer-type lift, or ceiling reinforcement for future lifts.

The Kelsey

- **Single-Story Units:** If site topography or local parking requirements dictate it, a maximum of 25% of all units may be multi-story dwelling units or dwelling units that are not served by elevators but must meet the following requirements. The kitchen, one full bathroom, the living space, and at least one bedroom on an accessible floor level with the main entry.

- **Kitchen Layout:** Galley or U-shaped kitchens provide minimum 60 inches between cabinet faces or cabinets and projecting appliance faces.

- **Kitchen & Bathroom faucets:** Faucets should have a single lever for temperature and water flow control. Use levers that are easy to control for people with less dexterity. Select longer levers that require less reach over the sink. Longer spouts bring the water closer to the user.

- **Dwelling Unit Closets:** Provide accessible closet storage within the unit. Doors to closets should allow a minimum 32-inch clear width for forward approach (more stable and generally stronger than a side reach). Closets should include closet rods/shelves that are adjustable between 36 and 60 inches for flexible use by people with different reach abilities and strength.

- **Enable future installation of automatic door openers in Chapter 11B units:** Units are equipped with a junction box and cover plate adjacent to the head of the door, on the dwelling unit side, to support easy future installation of a plug-in automatic door operator. Future operators can use a hand-held remote control or radio frequency wall-mounted button(s) inside the unit. Unlocking and unlatching for this type of installation still needs to be performed by the resident.

- **Drawers in Base Cabinets:** Provide drawers or roll-out shelves in 50-75% of base cabinets. Provides more usable storage space that is easier to reach for someone who cannot stoop down to get items in the back of base cabinets. Provide some deeper drawers to allow for storage of larger items such as pots and other cookware.

- **Door Viewers:** Provide high and low, wide-angle door viewers (peep holes) in every unit entry door. Door viewers centered at 42 inches and 56 inches high can benefit including but not limited to: children, wheelchair riders, and shorter adults. 180-degree door viewers allow people to better identify who is at the door for better security.

- **Kitchen Countertop:** Include at least one variable height kitchen countertop. Can be for the sink, work surface, and/or cooktop. Varies from 28 to 42 inches high with a crank or by electric switch (with safety bar sensor on bottom to detect knees). Solid surface is more durable than plastic laminate.

- **Roll in showers:** Build into project 10-50% roll-in showers to accommodate as many access needs as possible. Distribute throughout project and unit types.

- **Modeling assistive technology:** Make sure units model the use of Hoyer lifts in bedrooms and tracks and harnesses in bathrooms to ensure there are units where these technologies can fit.

Response to 8 (c):

Increasing access for people with vision and hearing disabilities is essential to creating fair and inclusive housing experiences. Additionally, as with all advancements in accessibility, there will be benefits to all residents, those with and without disabilities.

For those with vision disabilities, it is essential that HUD develop and maintain relationships with Blind and Low Vision-led organizations who can provide feedback on technological advancements and existing barriers within HUD and HUD recipients.

For those with hearing disabilities, it is critical that HUD consider the shared language and cultures of Deaf, Hard of Hearing, and Blind communities. We urge HUD to partner with Deaf-led organizations and entities to ensure that federal housing solutions actively support Deaf culture(s) and sign languages.

Below are examples of accessibility features for people with vision and hearing disabilities:

- **Paving Surface Wayfinding:** Change of materials at entrance doors, transitions from one space to another, and in front of stairs and elevators. Assists in navigating the building. Should be cane detectable and not too rough to disrupt travel. Select colors for visibility to people with different sorts of color blindness; minimum luminance contrast of 50 percent as well.

- **Noise Isolation:** Exceed required STC and IIC ratings to limit noise between dwelling units and between units and corridors. In addition to supporting a

diverse range of access needs, it enhances privacy, enhances user comfort, and reduces neighbor disputes.

- **Outdoor Noise Control:** All doors and windows exceed the required Sound Transmission Class (STC) to control outside noise sources. Enhances hearing and communication, reduces distractions, and enhances user comfort.

- **Low Glare Materials:** Use wall and floor surfaces that are low glare. Matte surfaces and medium-value surfaces are better for reducing glare. This facilitates wayfinding for people with low vision and results in lower-slip floors.

- **Video Conferencing and Touch Screen with Audible Controls Call Boxes:** Deaf and hard of hearing individuals need the ability to let visitors into their building. Most people use their smartphones or email to communicate with their visitors instead. Built in screen reading technology to digital interfaces can support people with vision impairments as well.

- **Acoustic Wayfinding:** Use wall and ceiling surface materials and ceiling heights to differentiate spaces. Audible changes in the acoustic environment are a helpful guide for visually impaired people. Ceiling heights can indicate different functions for visual orientation. Circulation paths, atriums, or other large spaces can be articulated with spaces with different acoustic responses to indicate location (e.g., corridor intersections, unit entries, sitting areas vs. circulation areas, etc.).

- **Kitchen Lighting:** Provide task lighting below upper cabinets. Specify downward-facing strip LEDs with a diffuser to avoid reflected glare off a tall, shiny backsplash for seated or shorter users. Creates shadow-free lighting for better visibility and safety for everyone. Provides another option for creating lighting moods for different users and seasons, thereby increasing a sense of comfort and wellness.

Response to 8 (d):

Similar to our earlier note that designing for people with disabilities benefits all residents, designing for people with disabilities especially benefits the increasing aging population. To that end, many of our recommendations are not senior specific but the access areas addressed in questions 8(a), 8(b) and 8(c) will benefit older adults. Other access needs that we see as needing accommodations are **cognitive** access, those who have **support needs**, and those who would benefit from better **health and wellness** – all of which benefit the aging populations.

- **Cognitive access**: Defined as individuals who process information differently, have alternative language reception and/or communication preferences and needs, and need items or materials presented in different ways or speeds of information, and/or who use supports in understanding and content retention, information processing, and decision making/choice selection. Examples of cognitive access include:

    - **Entry Doors Hardware:** Entry door manual hardware is cognitively clear. Hardware has design cues indicating the appropriate pushing or pulling action to open (e.g., plate or bar for pushing, U-shaped handle for pulling).

    - **Entry Doors Security**: Exterior doors balance security and ease of resident entry. Self-locking exterior doors eliminate the possibility of residents forgetting to lock doors and outside people infiltrating the property.

    - **Background Noise:** Avoid introducing background noise that can hamper communication. Video displays (in lobbies, gyms, etc.) should be silent or the volume should be easily controlled by occupants. Avoid background music in lobbies and other shared spaces.

    - **Differentiation of Spaces:** Interior wayfinding system differentiates primary routes, zones, or nodes using variations in flooring, lighting, color, ceiling height, materials, and/or other architectural features.

        - Color-code or have unique materials for each floors' elevator lobbies for orientation.

        - Select colors for visibility to people with different sorts of color blindness; minimum luminance contrast of 50 percent as well.

        - Assists older adults with memory issues, people with cognitive impairments that affect orientation, and people who cannot read or understand signage.

    - **Walking Surface Patterns:**

        - Avoid confusing patterns on interior floor and exterior paving walking surfaces.

- Carpets and flooring with busy visual patterns can be distracting for people with low vision and disorienting to people with cognitive differences.

- Complex patterns can obscure tripping hazards, especially rocks, branches, etc. outside.

- **Support Needs** is defined as individuals who use support services in their home and/or the community including but not limited to direct support professionals, health aides, nursing support, behavioral supports, and individualized therapies. This also includes individuals using in-house family support for mobility or other assistance. Examples include:

  - In overall design and operations, there can be designated staff and support provider spaces.

  - Staffing elements such as: 24/7 On-Call Support and Service-Provider Gap Support.

  - Carsharing Support.

  - Adult changing room in common area restrooms.

- **Health and Wellness** is defined as individuals who have chronic health conditions, who have allergies and chemical sensitivities, are immunocompromised, and/or regularly utilize medical and/or therapeutic services. Examples include:

  - Building Components related to Air Quality / HVAC should address pollution, filtration, ceiling fans, amongst others.

  - Elevator Foot Controls.

  - Hazardous Waste Disposal Bins in common restrooms.

  - Flexibility lighting in units.

  - Unit Trash Collection.

Response to 8 (e):

Some suggestions of accessibility features that could benefit children along with people with disabilities:

- **Dual Handrails:** Stairs and ramps have high and low handrails – one handrail at 36" and another at 30" above the nosing – which provides safety for children and shorter adults. For ramps, someone in a wheelchair can slow their descent or pull themselves up the ramp more easily with better leverage than pushing a wheelchair.

- **Directional Signage:** Signs have pictograms for children, also benefits non-English speakers, people with learning disabilities, and others who cannot read.

Response to 8 (f):

In older buildings, the number one complaint we hear is about people with disabilities who are stuck in their homes for days, weeks, or months because of elevator outages. For new construction there should be a second elevator in case the first one requires maintenance so that people with disabilities do not get stuck on non-ground floors. Additionally, requiring more regular maintenance of elevators and allowing for elevator repair and replacement reserve funds should be encouraged.

Response to 9 (a):

As more jurisdictions consider cost-saving measures to build affordable housing, industrialized construction (IC) or modular construction technologies are being used more often. To take advantage of cost and time saving related to IC, factories order bulk materials in advance and configure their factory assembly when building permits are reviewed. When there are changes that are required by municipalities after permit approval there is an outsized impact than on traditionally built construction. Anecdotally we hear that many of the changes requested by municipalities that result in changes in cost estimates or timelines in IC are related to interpretation of disability access code and what is permissible. HUD should encourage jurisdictions to restrict changes in accessibility requirements after permit approval to reduce the uncertainty of this emerging technology and bring affordable housing units online faster.

Response to 9 (b):

Overall, we see a significant need to improve evacuation measures in multi-story buildings. Currently, people with disabilities are instructed to go to the stairwell and wait for help if the elevator is out of service or should not be used (e.g., in a fire emergency), but not every building has a designated person to help people evacuate from the stairwell or neighbors are unable to provide help.

A couple of suggestions that could strengthen people's safety in the case of an emergency:

- A requirement for buildings to have a protected Areas of Refuge (usually at the elevator lobby), with increased communication tools to communicate with first responders.

- Backup power that is based on regenerative batteries rather than diesel-powered generators. This power could be used to safely operate elevators for evacuation purposes only. Also, in the event of a disaster that results in power outage, these could be important for refrigeration back-up for important medications, air purification systems when the air quality outside is dangerous, and other back up power mechanisms for people who need power for their medical and access devices. The technology for regenerative batteries in multi-family housing is not there yet, so we would encourage government investment to identify a scalable solution.

Response to 10:

A reasonable accommodation process should be seen as a stopgap measure for residents with disabilities. When cross-disability access needs are considered and flexible approaches are taken to multi-family residential design, less structural reasonable accommodations should be needed. A key feature of cross-disability design is to recognize that one size does not fit all, and to consciously discuss and pinpoint when access needs may not be met, such as why the access needs could not be fully met for certain individuals or when there are competing access needs. At these points the reasonable accommodation process should begin.

Our comments for reasonable accommodations are both procedural and identify the type of accommodations that should be within a list that can be requested:

- Procedural:

33

The Kelsey

- ○ In February 2022, the Office of the Inspector General at HUD found that the agency "Did Not Have Adequate Policies and Procedures for Ensuring Public Housing Agencies Properly Processed Requests for Reasonable Accommodation." [24] These findings validate the stories disabled people and their families have been sharing for generations: that people struggle tremendously to get their accommodations met in both the process of applying for housing and when they are living there. The ramifications of not providing reasonable accommodation can directly threaten the health and well-being of residents and can create barriers for people to get into housing.[25] There are recommendations in the report that HUD must implement.

- ○ [Texas Administrative Code §1.204](#) (see attachment 5) is an example of a superior accommodation procedure that HUD can model and PHAs should follow to reduce barriers to housing access and increase the timeliness of response by housing providers. Rules can decrease the burden on housing providers as well as make them responsive and accountable. The rule also includes examples, which helps housing entities understand how this will play out in real life.

- Examples of accommodations include but are not limited to:

  - ○ An individual with a mental health disability may request a reasonable modification to have additional locks on their door so that they have a better sense of safety and security.

  - ○ A housing provider might be asked to waive a requirement for a guest fee or lease addition for a live-in home health aide.

  - ○ A housing provider may be asked to waive their no-cosigners rule for an applicant with a disability who was unable to work and therefore could not meet the minimum income requirement.

---

[24] United States Department of Housing and Urban Development: Office of Inspector General, "HUD Did Not Have Adequate Policies and Procedures for Ensuring That Public Housing Agencies Properly Processed Requests for Reasonable Accommodation," February 7, 2022, https://www.hudoig.gov/reports-publications/report/hud-did-not-have-adequate-policies-and-procedures-ensuring-public
[25] National Library of Medicine: National Center for Biotechnology Information, "Housing Accessibility - WHO Housing and Health Guidelines," 2018, https://www.ncbi.nlm.nih.gov/books/NBK535300/

○ A housing provider may be asked to provide the resident additional time to come into compliance with various lease requirements. For example, an individual with a hoarding mental illness may be asked to clean their home to provide adequate fire routes but the housing provider should give the resident at minimum two weeks to become in compliance because cleaning their home is a difficult process both emotionally and physically.

○ A housing provider may be asked to waive their requirement that rent be paid in person when someone has a disability that limits their ability to use transportation or a mental health disability where they are not able to leave their home.

○ An individual with intellectual and developmental disabilities or a mental health disability may need support with housing-related management activities. For example, a housing provider may be asked to call with a reminder that rent is due in a couple of days if someone has difficulty remembering to pay.

○ Service animals: For non-pet rentals, property owners will often ask on rental applications if you have an "animal" or even a "service animal" instead of a "pet" which requires the applicant to either disclose their protected status (which is likely to result in the property owner not responding back to the applicant as opposed to an outright denial) or lie on their rental application which is often a lease violation that can justify eviction proceedings. There should be a prohibition on these types of questions on rental applications so that a disabled person's protected class is not revealed. HUD regulations on service animals already state that the reasonable accommodation can be requested after the resident has already moved in so this needs to be harmonized with rental application questions. The same protection should be given to individuals who need an emotional support animal. Additionally, housing providers will pass on additional unnecessary costs after move-out which may or may not be outlined in a "service animal addendum." For example, even if the service animal did not cause any damage to the property housing providers often require a deodorization and/or defleaing of the unit which is exorbitantly expensive for the tenant and unnecessary unless urine and fleas are detected.

Response to 11:

As a production focused organization, The Kelsey looks to our partners in tenant rights and protection for comprehensive recommendations on how 504 investigations can be improved. We recommend the following improvements to be made:

- The entities that can file complaints should be expanded to include organizations and associations. Currently, organizations and associations whose members include people with disabilities are not authorized to file complaints on behalf of their members, which places the burden on the members who have less resources and capacity.
- Section 504 regulation should provide guidance explaining what circumstances complaints should be kept with HUD and not referred to state or other agencies because non-federal agencies have less capacity and usually have backlogs of several months, which results in dismissals despite the complacent having sufficient evidence to pursue a claim of discrimination.
- HUD should increase the expiration date for filing S504 complaints from 180 days to one year which would mirror the Fair Housing Act timeline and reduce confusion.

Response to 13 (a):

Due to the disproportionality of disability across LGBTQIA+ populations, communities of color, unhoused people, and immigrant communities, among others, improving access and fairness for disabled people in federal housing can only be realized by using an intersectional approach to access and inclusion.

Disability-related discrimination reports to FHOs, HUD, and FHAP agencies account for 53.68 percent of all submissions, and race-related complaints account for the second highest at 18.97 percent.[26] Therefore, non-white disabled people, as well as disabled people who hold multiple marginalized identities and/or who receive federal assistance, are at risk of experiencing compounded types of discrimination.[27]
Moreover, there is a historic lack of trust in government officials and federal agencies that should be considered when attempting to share information with multiply marginalized disabled people. Many people may be reluctant to utilize the services available to them because of past discriminatory experiences.

---

[26] Lindsay Augustine et. al, "2022 Fair Housing Trends Report," 2022, https://nationalfairhousing.org/wp-content/uploads/2022/11/2022-Fair-Housing-Trends-Report.pdf
[27] Lindsay Augustine et. al, "2021 Fair Housing Trends Report," 2021, https://nationalfairhousing.org/wp-content/uploads/2021/10/trends-2021-c.pdf

People in marginalized communities are disproportionately policed which results in higher rates of criminal records which impacts their ability to be fairly considered for housing and housing assistance programs. HUD must continue to reduce housing barriers for people with criminal records. Yet, as more HUD guidance comes out related to people with criminal records, there should be explicit inclusion of program and protocol best practices for people with disabilities who have criminal records.

Additionally, HUD should also consider the use of artificial intelligence, or AI, as a unique barrier faced by multiply marginalized disabled people attempting to access housing.[28] AI software is often used by housing administration to determine who is "appropriate for" housing. AI pulls unfair predictors such as credit, education, and criminal history, and this practice disproportionately impacts multiply marginalized people with disabilities who may not have access to a certain social status.

Below we break down some of the specific experiences of multiply marginalized people with disabilities:

- Native Americans and Native Alaskans with disabilities

  - A disproportionate number of American Indians and Alaska Natives have a disability. The Centers for Disease Control and Prevention found that Native people overall are 50.3% more likely to have a disability, when compared to the national average.[29] Some barriers to access to services within housing are inadequate funding and personnel shortages. HUD can make regulatory changes that improve coordination among agencies and that help identify persons eligible for services.

  - Native Hawaiians were three times less likely to have access to mental health resources than their white counterparts, on top of experiencing increasing housing crises and gentrification in Hawaii.

  - What constitutes a disability can vary across cultures and given that every tribe across the U.S. has its own cultural traditions and beliefs, it is important to recognize this and seek to incorporate varying perspectives in

---

[28] Charlton McIlwain, "AI has exacerbated racial bias in housing. Could it help eliminate it instead?," October 20, 2020, https://www.technologyreview.com/2020/10/20/1009452/ai-has-exacerbated-racial-bias-in-housing-could-it-help-eliminate-it-instead/

[29] Centers for Disease Control and Prevention, "Racial/Ethnic Disparities in Self-Rated Health Status Among Adults With and Without Disabilities—United States, 2004-2006," http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5739a1.htm

the definition of "person with a disability." In fact, most Native languages do not include a word equivalent to "disability."[30]

○ Colonial context frames attitudes around federal administered and financed programs and services for tribal governments and individual Native Americans with disabilities. HUD should explicitly recognize that tribal governments are distinct sovereign entities that should have increased flexibility around implementing their funding and programs, while also ensuring that they follow necessary guidelines for accessibility and inclusion. To achieve this there needs to be extensive consultation with tribes to ensure that cultural differences are considered.

○ HUD has been tasked with the responsibility to carry out trust obligations between the federal government and Native Nations in the housing realm, but officials are not well versed in disability issues and need culturally informed training. Conversely, national disability organizations are knowledgeable about disability, but not about Native culture. This hinders the development of successful policies and services for Native people with disabilities.

○ Many Native tribes and individuals believe that mental illness is a disruption of one's spirituality or spiritual belonging and therefore need spiritual support and interventions. HUD should make it clear that Native people (and other individuals from non-western religions) may request reasonable accommodations or modifications based on their religious beliefs. For example, a person who is mentally ill may submit a reasonable accommodation to use medicinal sage in their home or a reasonable modification to build a sweat lodge on their property if their community does not provide one. Cultural renewal and deepened connection to one's spirituality has been shown to be an effective strategy in addressing negative health outcomes.[31]

○ Despite the disproportionate rate of disability among Native people, they are less likely to seek institutional or formal services and supports, primarily because of a lack of trust in the U.S. healthcare system because it has historically been a source of discrimination and violence (i.e. forced

---

[30] Hilary N. Weaver, "Disability through a Native American lens: Examining influences of culture and colonization," pp. 18-32, August 19, 2015, doi: 10.1080/1536710X.2015.1068256
[31] F. W. Young, "Social activism and disability rates in American Indian tribes, Cross-Cultural Research," p. 418–432, 2005, doi:10.1177/1069397105276691

sterilizations).[32] HUD should issue guidance that Native people are able to choose their own service providers to ensure they are offering culturally appropriate care. For example, Assist to Independence provides services on the Navajo, Hopi, and Southern Paiute reservations to help people improve functional skills and enhance their overall quality of life.

- ○ Due to the ongoing legacy of colonial violence and other systemic injustices, Native Americans have higher rates of alcohol use disorders compared with other racial groups (10.7% versus 7.6%)[33] and as a result are at risk of higher rates of discrimination based on this disability. Additionally, the 2018 NSDUH revealed that nearly 1 in 5 Native American young adults (aged 18-25 years) has a substance use disorder, including 11% with illicit drugs and 10% with alcohol.[34] non-tribal grantees and other entities need guidance on how to adequately provide accommodations and other supports to these individuals without perpetuating long standing stereotypes and harm.

- ○ Native people need equal access to cultural spaces that the tribe provides (e.g., sweat lodges, community houses, recreational rooms).

- African American/Black people with disabilities

    - ○ In 2020, one in four disabled Black adults lived in poverty compared to just over one in seven of their white counterparts[35].   The high rates of poverty and struggle to afford housing have only exasperated during the pandemic. One year after the pandemic, nearly 40 percent of renters with any disability experienced housing insecurity, in that they either deferred paying their rent or reported no or slight confidence in their ability to pay next month's rent. This is substantially higher than the national average of 25 percent. Disabled Black and Hispanic renters were especially likely to be housing insecure, at 52 percent and 50 percent.[36]

---

[32]Gregory W. Rutecki, "Forced sterilization of Native Americans: Later twentieth century physician cooperation with national eugenics policies?," p. 33-42, 2011.

[33] Native American Center for Excellence. (2008). Environmental Scan Summary Report.

[34] Substance Abuse and Mental Health Services Administration, "2018 National Survey on Drug Use and Health Detailed Tables," 2019, https://www.samhsa.gov/data/report/2018-nsduh-detailed-tables

[35] Rebecca Vallas et. al, "Economic Justice Is Disability Justice," April 21, 2022, https://tcf.org/content/report/economic-justice-disability-justice/

[36] Jaboa Lake, Valerie Novack, Mia Ives-Rublee, "Recognizing and Addressing Housing Insecurity for Disabled Renters," May 27, 2021, https://www.americanprogress.org/article/recognizing-addressing-

- ○ As HUD continues its efforts of closing the African American homeownership gap, there should be an evaluation and the appropriate changes made to ensure that Black disabled people are not left behind or experience access barriers.

- ○ Because of redlining and other discriminatory land use policies, Black Americans disproportionately endure housing barriers related to HUD construction backlogs and impacts of environmental racism. All of which can lead to new disabilities developing or worsening of existing disability-related symptoms.

- Asian Americans and Pacific Islanders with disabilities

- ○ Asians and Asian Americans face unique social barriers and stigma surrounding both mental health and socioeconomic status. Not only do familial and cultural values lead Asians to struggle more in bringing up any mental health issues they suffer,[37] but the model-minority myth also leads to a general societal bias against the idea of Asians needing either mental health or economic assistance.

- Immigrants with disabilities:

- ○ HUD can apply an access and inclusion lens to ensure that disabled immigrants are accessing all programs they are eligible for. HUD can continue to expand guidance and flexibility for immigrants with and without disabilities and build from the existing resources including "Operation Allies Welcome."[38]

Response to 13 (b):

- Complaint forms are available in non-English languages, but navigating to them on the HUD website can be incredibly difficult because government agency websites are in English.

- Many housing providers covered by Section 504 fail to provide language

---

housing-insecurity-disabled-renters/

[37] Grace Galletti, "How the Mental Health System Fails Asian Americans - And How to Help," February 2, 2022, https://www.calhealthreport.org/2022/02/02/heres-why-many-asian-americans-dont-get-mental-health-care-and-how-to-help/

[38] U.S. Department of Housing and Urban Development, "Operation Allies Welcome - HUD Programs & Resources," November, 29, 2021, https://www.hud.gov/sites/dfiles/FPM/documents/HUD-HCC-Factsheet-4-22.pdf.pdf

assistance services for people with limited English proficiency (LEP) as required under Title VI. HUD should make clear that the provision of auxiliary aids and services in English only for people with disabilities who also have LEP may violate Section 504 (as well as Title VI and the Fair Housing Act).

- All auxiliary aids and services should be translatable into the language of the tenant.

- It is also critical to fund and partner with auxiliary aids and service providers that are led and/or co-led by those with lived experience. This will increase the effectiveness of the translations and will help to resource minority-run entities.

Thank you for your consideration of these comments. Any questions can be directed to Allie Cannington (allie@thekelsey.org) or Hunter Herrera-McFarland (hunter@thekelsey.org). We look forward to commenting on the NPRM.

Sincerely,

The Kelsey