

**A HANDBOOK ON THE RIGHTS AND RESPONSIBILITIES
OF TENANTS WITH CERTAIN DISABILITIES:
PSYCHIATRIC, ALCOHOL OR DRUG ADDICTION, AND
HIV/AIDS
OREGON**

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Massachusetts Housing Finance Agency

PREFACE

This Handbook was originally written and produced with a grant to the Massachusetts Housing Finance Agency (MHFA) and the Disability Law Center (DLC) from the United States Department of Housing and Urban Development (HUD) under the Fair Housing Initiative Program (FHIP). The Massachusetts Executive Office of Communities and Development (EOCD) assisted substantially in reviewing the original Handbook and organizing the training in how to use it, as have the Massachusetts Departments of Mental Health and Public Health, the Developmental Disabilities Council, and the Massachusetts Rehabilitation Commission. The final decisions about content were made by MHFA and DLC. MHFA received a second grant from HUD under FHIP to revise the manual so that housing providers across the country could utilize the manual.

The original Handbook did not include an analysis of Title VI of the Housing and Community Development Act of 1992 because the regulations had not been issued. This edition of the Handbook does have a chapter (4) on the new Title VI law and regulations. (Title VI allows certain assisted-housing owners to set a cap or limit on the number of people under age 62 in particular elderly/disabled developments. Title VI also allows housing authorities to designate buildings or sections of buildings as elderly-only or disabled-only under certain circumstances.)

A number of individuals and organizations very generously permitted us to use materials they had written on Title VI: Andrew Daniels from MAPPLAN Associates, Bonnie Milstein of the Bazelon Center and the Housing Task Force of the Consortium for Persons with Disabilities.

The second, third and fourth chapters of the Massachusetts version rely very heavily on William Crane's practice memorandum on the rights of persons with disabilities regarding housing in Massachusetts, which was rewritten and incorporated into the Disability Law Center's publication titled "**Discrimination on the Basis of Disability: Federal and Massachusetts Laws**". These chapters of the Handbook also used other information that was contained in that publication, which was primarily written by Jane Alper

of the Disability Law Center (DLC) and Debbie Piltch, formerly of DLC, and edited by Jane Alper, in conjunction with the Pike Institute of Boston University School of Law. In addition, we have relied on the Department of Housing and Urban Development's Occupancy Task Force Draft Report throughout the first chapter. We have also used charts that were obtained during a Housing and Urban Development Training and a chart summarizing the application process that was written by Russ Associates.

For states other than Massachusetts, Chapter 3 - State Laws has been authored by a lawyer in his or her respective state, and whose name appears at the beginning of the chapter. We extend our appreciation to those lawyers who were willing to contribute their knowledge so this Handbook could reflect each state's individual laws.

We also wish to thank a number of people who reviewed this document at various stages: Jane Alper, Barbara Chandler, Greg Russ, Henry Korman, Mac Macreight, Valda Winsloe and Lisa Sloane.

To obtain a large print copy of this manual, contact the Massachusetts Housing Finance Agency at (617) 854-1089.

INTRODUCTION

This Handbook is for you if you live in public or assisted-housing or have applied to live in public or assisted-housing and if you fit any one (or more) of the descriptions below. Public housing is housing run by the housing authority in a city or town, for example, the Boston Housing Authority or Chicago Housing Authority. Assisted-housing has low rents based on your income but is owned by separate, private companies. Assisted-housing is often called HUD housing or the name of the housing financing agency in your state such as MHFA housing in Massachusetts.

This Handbook explains your rights and responsibilities if you:

- a) have a psychiatric disability or a history of a psychiatric disability;
- b) have alcoholism or have a history of abusing alcohol;
- c) are HIV positive or have AIDS;
- d) have a history of using illegal drugs, but do not use them now.

If you have any of these conditions or if people think that you have any of these conditions, then you are protected by federal, and depending on where you live, state anti-handicap discrimination laws. This means that you can't be discriminated against because of your disability when you apply for public or assisted-housing or if you're already living in public or assisted-housing.

You may wonder if this Handbook applies to you if you have one of these disabilities but have been denied housing at some point because you did not meet the housing program's eligibility definition of "handicapped person". The answer is yes. The general definition of a "handicapped person" for deciding who can live in public housing is not the same as the definition of a person with a disability for the purpose of state and federal anti-handicap discrimination law.

The public housing eligibility definition is narrower than the anti-discrimination definition under state and federal laws. This means that you may not meet the public housing definition of "handicapped person" which lets you get into that housing, but could still be protected under state and federal anti-handicap discrimination laws in other situations. In addition, some housing programs are for individuals with certain types of disabilities and if you do not have that disability, then you would not be eligible for that particular program. For example, under certain housing programs you are only considered eligible if you have a mobility disability, such as using a wheelchair or walker. If you do not have a mobility disability, you would not be eligible for that program even if you had another disability. Finally, service programs may have eligibility definitions that depend on the kind and seriousness of a disability that are different from housing eligibility definitions.

However, you are still protected by state and federal anti-handicap discrimination law. A housing program or a service program for which you are eligible could not discriminate against you because of your disability. In addition, if a housing program tells you that you are not eligible for a particular housing program because you have a disability or a particular type of disability, you may wonder if this is true. If you have any questions about whether you are qualified for the housing, you should contact a lawyer. The Appendix (found at the end of the Handbook) has a list of state protection and advocacy agencies that can assist you in housing issues as well as a list of all HUD fair housing regional offices.

As the Handbook is written for people with disabilities, we will explain the various federal laws relating to discrimination and show how these laws can be used in individual cases of discrimination. We will also describe the state laws for the particular state where we are distributing the book. If you live in another state, you can call MHFA at (617) 854-1077 to see if there is a chapter for your state.

We have tried to present information in non-legal language where possible. The first chapter of this Handbook will answer the questions most commonly asked by public and assisted-housing tenants. You will see that some questions have very clear answers. For other questions, there are several opinions about what is the right answer. That is because sometimes the law is so new or general that lawyers have different ideas about what it really means. The only way we will get a final answer to some of these questions is when the people who disagree about a particular issue go to court for a judge to decide. (Chapters two,

three and four explain the various ways to get a hearing officer or judge to decide when people disagree.) In the meantime, both tenants and housing managers have to get as much information as possible about what the law means and to make a reasonable decision, knowing the other side may disagree so much that they decide to go to court.

The second chapter will provide a basic overview of what constitutes the "law" for those unfamiliar with legal processes and terms, and explain what happens if more than one law applies to a particular situation. We will then discuss the federal housing anti-discrimination laws which protect people with disabilities and will include a chart describing who has a disability for the purpose of each law, what housing practices are not allowed, and what housing managers are supposed to do. The focus of this chapter is Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and the Fair Housing Amendments Act because they are the principal federal means by which individuals can try to correct acts of housing discrimination because of their disabilities. Some people may want to read chapter two first so they can understand the whole picture. Other people may just want to read the answers to certain questions.

Chapter two of the Handbook also tells how to use the various laws to fight discrimination, provides questions you should ask yourself if you think you have been discriminated against, and describes what your choices are if you think you have been discriminated against because of your disability.

The third chapter will discuss the state laws in the state where this book is being distributed which protect people with disabilities. If you live in another state, you should contact the protection and advocacy program in your state to see if there is a state law where you live which protects people with disabilities from discrimination in housing. A list of the protection and advocacy programs for all states are in the Appendix found at the end of the book.

The fourth chapter will discuss Title VI, a federal law that was passed in 1990, which allows certain assisted-housing providers to limit the number of people with disabilities under the age of 62 in certain elderly/disabled developments. Title VI also allows housing authorities to designate buildings or floors of buildings as Designated-Elderly or Designated-Disabled only, under certain circumstances. This chapter will explain how you can protect your rights.

At the end of the Handbook there is an Appendix which contains a list of protection and advocacy programs across the country you can contact for more information or assistance and a set of HUD forms relating to Reasonable Accommodation and the HUD Housing Offices.

CHAPTER 1

COMMONLY ASKED QUESTIONS

A list of questions, which people with disabilities often ask when trying to understand their rights under federal and state anti-handicap discrimination laws as they apply to housing, follows. The questions are organized under topic headings and cover the whole occupancy cycle: admissions, tenancy, and eviction.

Many of the answers to the questions involve the obligation of housing providers to make reasonable adjustments to their rules, policies, practices and procedures and, in accordance with certain laws, make structural modifications for people with disabilities to enable you to have an equal opportunity to use and enjoy your unit or a common area. This obligation and the limits on it are discussed in Chapter 2, Section F, beginning on page 22.

A. INFORMATION A HOUSING MANAGER HAS A RIGHT TO KNOW, INCLUDING ABOUT MY DISABILITY

The questions a landlord may ask a person with a disability are the same as she may ask any other applicant or tenant applying for the same type of housing. The questions a housing authority may ask depend a lot on the type of housing program that you are applying for. If you are applying for the Section 8 certificate or voucher program, a housing authority shouldn't ask you about whether you can follow the lease because the private landlord whose apartment you hope to live in is responsible for screening applicants. A housing authority can only ask you about (1) whether you qualify for federal preferences or priorities; (2) number of bedrooms you need (including if you need a certain type of apartment because of your disability); (3) whether you owe any money to a housing authority, and if you do, are you paying back this money; (4) if you are single, whether you are elderly, handicapped or disabled within HUD definitions, because such

people would get a priority over other single applicants; and (5) whether you have done any violent criminal or drug activity that is a felony.

If you are applying for public housing or project-based, subsidized housing, the housing authority can ask you a full range of questions about whether you will be able to follow the lease. Likewise, an assisted-housing provider may ask you the same range of questions.

The information a landlord may ask you about your disability will depend on whether you are applying for housing designated for tenants with a particular disability, whether you are applying to a housing authority for a Section 8 program for priority status as a single person with a disability, whether you are asking a landlord to provide a reasonable change (accommodation), and whether you tell about your disability to explain a bad tenancy history or a criminal record. The following questions talk about each of these situations, and related issues, such as confidentiality.

1. WHAT MAY A HOUSING AUTHORITY OR ASSISTED-HOUSING MANAGER ASK ME WHEN I APPLY FOR PUBLIC OR ASSISTED-HOUSING THAT IS NOT FOR PEOPLE WITH A PARTICULAR DISABILITY?

Like any other landlord, a public or assisted-housing manager wants to know if a person is going to be a good tenant. Therefore, she asks everyone questions about whether they can and will follow the lease. Housing managers can ask about a person's ability to be a good tenant as long as they ask everyone the same questions. If housing managers ask certain questions only of people with disabilities, that would be illegal.

Although leases of different housing managers differ, the basic rules for all leases are the same: pay rent on time, take care of the apartment, respect the rights of others, avoid criminal activity, and follow the other reasonable rules. The following are the kinds of questions about following the lease that housing managers may ask:

- Will the person pay rent and other fair charges on time?

- Will the person care for and not damage the apartment and the other areas, use the stove, bathroom, laundry and other equipment in a safe way, get rid of garbage the right way and tell the manager when something needs fixing?
- Will the person avoid making lots of noise or bothering other tenants and avoid damaging the property of others?
- Will the person avoid drug-related criminal activity?
- Will the person avoid other criminal activity that affects housing?
- Will the person give the manager income and other information necessary to show that the person still needs housing?
- Will the person follow other health and safety rules in the building?

2. I AM APPLYING FOR PUBLIC OR ASSISTED-HOUSING. DO I HAVE TO TELL THE HOUSINGMANAGER THAT I HAVE A DISABILITY (TELL THAT I HAVE AIDS, HAVE A PSYCHIATRIC DISABILITY, HAVE A HISTORY OF ILLEGAL DRUG ABUSE, AM PRESENTLY IN A DRUG TREATMENT PROGRAM AND NOT CURRENTLY USING ILLEGAL DRUGS , HAVE ALCOHOLISM, ETC.)?

The answer to this question depends on whether you are: (1) applying for housing that is especially for individuals with disabilities or a particular disability; (2) whether you are applying to the Section 8 certificate or voucher program and are single and want priority status as a person with a disability; (3) whether you want a reasonable change made (a reasonable accommodation); (4) whether you have a bad tenancy history or criminal record related to your disability; and (5) if you want a break in your rent because of your disability.

a. If You Apply to Public Housing, but Don't Want Housing on the Basis of Disability and Do Not Need a Reasonable Change Made.

You do not have to tell the housing manager about your disability if you are applying for assisted-housing or public housing that is not especially for people with disabilities or a certain type of disability, or if you are applying to the Section 8 certificate/voucher program and are single and don't want priority status, or if you do not want a reasonable change made when you apply.

b. If You Apply for a Housing Program for People With Disabilities, or With Apartments Built for Persons With a Particular Disability, or the Section 8 Program and You do Want Priority Status.

If you've applied for elderly/disabled housing, but are under 62, you will have to show that you have a disability but you do not have to say what your disability is. Likewise, if you are single and want priority status as a person with a disability in the Section 8 program, you will have to show that you have a disability, but you do not have to say what your disability is. If you're applying for a housing program with apartments built for persons with particular disabilities (for example persons who use wheelchairs, or persons who have AIDS), you will have to show that you have the kind of disability the apartment or program is for. If you're applying for state assisted-housing, you may also have to show that your disability meets certain other eligibility requirements.

A letter from your doctor or another professional stating that you have a disability (or a particular disability, or a disability that meets certain eligibility criteria, if that is needed) is the only proof a landlord needs. If you only need to

prove that you have a disability, you may usually use the letter from the Social Security Administration showing that you receive Social Security Disability Insurance or Social Security Insurance. You never have to use your medical records as proof unless you need part of them to show that you need a particular reasonable change made (see below).

c. You Need a Reasonable Change (Accommodation) Made in Order to Apply for Housing or After You Become a Tenant.

If you need a reasonable change made in order to apply for housing or at any time when you are living in public or assisted-housing, you need to tell your landlord enough about your disability to get the help you need. For example, if you need help in filling out the application or if you need the application sent to you, you will need to tell the manager that you have a disability and what assistance you need. Also, you may be asked to provide a doctor's or other professional's letter (not your medical records) saying that you have a disability and explaining what you need is a reasonable accommodation.

d. If You Have a Bad Tenancy History or Criminal Record as a Result of Your Disability.

If you have a bad tenancy history or criminal record (more and more housing managers check criminal records) that is a result of your disability, you may decide to tell about your disability to explain your tenancy history. This will only be helpful if there has been a change in the way your disability affects you or if you are doing something different so that the old problem isn't happening anymore. The housing manager will want to know why the problem won't happen again. For example, a

housing manager would probably reject your application if she finds out from a landlord reference that you caused a lot of damage to the apartment you lived in three years ago. If this behavior was a result of a disability that is now under control, you may want to tell the housing manager this. In cases like this, a housing manager may ask you to prove that the former problem was as a result of the disability and that the change can reasonably be expected to prevent the problem from happening again.

e. If You Want a Break in Your Rent.

You may also want to tell that you have a disability so that you qualify for lower rent. See the answer to the next question for a detailed explanation. You may wait to tell that you have a disability until after you get into housing if this is the only reason you need to tell that you have a disability.

3. I ALREADY LIVE IN PUBLIC HOUSING. DO I HAVE TO TELL THE HOUSING MANAGER I HAVE A DISABILITY?

You would only have to tell a housing manager you have a disability once you are living in housing if you need to ask your housing manager for a reasonable accommodation. For example, if you have AIDS and need an apartment on the first floor rather than the second floor so that you don't have to use the stairs, you will have to tell the housing manager that you have a disability. You may also have to give her a letter from your doctor or another professional stating that you have a disability and that you need to be on the first floor. You do not have to give the housing manager your medical records or tell her what your disability is.

You may also want to tell that you have a disability because under many federal and state housing programs, you can get a lower rent if you have a disability. For example, under most

federal public and assisted-housing programs, there is a standard deduction of \$400 per year if the head of the household or spouse has a disability. There is also a standard deduction of \$480 per year for dependents, if the person with a disability is not the head of household or spouse. Some medical expenses may also be deducted. When your rent is based on income, many public housing providers also give certain deductions related to a person's disability. **Some state housing programs in Oregon use the standard deduction of \$400 per year. Other Oregon programs provide deductions if the head of household has a disability, there are deductions for expenses for caring for a sick or incapacitated household member, for homemaking/housekeeping services for a member of the household with a disability which causes her to be unable to carry out such activities, and extraordinary expenses for a member of the household with a disability who can't use public transportation for activities such as grocery shopping, going to work, and doctor visits.**

4. IF I TELL MY HOUSING MANAGER THAT I HAVE A DISABILITY, DOES SHE HAVE TO KEEP THE INFORMATION CONFIDENTIAL OR PRIVATE?

YES. Under the federal privacy laws, the housing manager can't tell any information that she gets confidentially (through private conversations with you or through doctors' letters or conversations. Many states also have privacy laws which protect you, including criminal record information.

However, under all the laws a housing manager can give out confidential information if you say it is okay to do so.

5. SHOULD I TELL THAT I HAVE A DISABILITY?

There is no right or wrong answer. In making this decision you should consider what advantage there is to you telling about your disability. If you need a reasonable change made, you need to tell. Also if you have a bad tenancy history or criminal record that is a result of your disability, and you

will be rejected from housing if you don't tell that you have a disability, you have nothing to lose by telling and trying to show that things have changed so that you will be able to be a good tenant.

If you do not need a reasonable change made and don't need to explain a bad tenancy history or criminal record, you may not gain anything by telling you have a disability. You may choose to do so because it makes you feel more comfortable. However, sometimes when people tell someone they have a disability they are treated badly because of their disability, especially people with psychiatric disabilities, AIDS, a history of illegal drug use (which includes people currently in treatment and not using drugs) and/or alcoholism. Whether or not you tell that you have a disability is a personal choice. Once you know the housing manager, it is easier to decide whether telling her will help her understand you better or make things harder.

6. CAN A HOUSING MANAGER ASK ME ABOUT MY DISABILITY?

The general rule is that it is illegal for housing managers to ask you (1) if you have a disability; (2) if you have a particular type of disability; (3) questions about your disability; (4) any question that would require you to tell about a disability; or (5) if any member of your family or any friend or associate has a disability. However, there are some exceptions to this rule:

Exceptions

- a. If you want a kind of housing that is especially for people with disabilities or a kind of disability, landlords can only ask you to provide information to prove that you have a disability which meets the eligibility criteria for the type of housing you are applying for;
- b. If you request a housing manager to make a reasonable change, she can ask you to show that you have a disability and that you need the change; and

- c. If during the screening process, the housing manager finds out something bad about how you lived in other housing, she can ask you to explain this even if it means you telling that you have a disability or something about your disability.

The following are examples of questions a housing manager can't ask you:

- a. Have you ever been treated by a psychiatrist?
- b. Do you take any medication?
- c. Have you ever taken medication?
- d. Have you in the past attended AA, NA or groups like that?
- e. Have you ever been hospitalized for a psychiatric disability?
- f. Have you been in the hospital recently?
- g. When was the last time you visited a doctor?

7. MAY A HOUSING MANAGER ASK ME QUESTIONS ABOUT SPENDING TIME IN A TREATMENT FACILITY OR HOSPITAL OR IF I AM PRESENTLY IN TREATMENT?

NO. As explained in the previous question, a housing manager is not permitted to ask you any question that would require you to reveal any information about having a disability except in special circumstances talked about in question 6. The federal law makes it clear that if you are presently in a treatment program and are not currently using illegal drugs, you have a disability.

However, you may need to tell a housing manager that you have spent time in a treatment facility or hospital to explain something in your tenancy history, for example, why you don't have a landlord that she may contact to check to make sure you will be a good tenant. This is your choice, but if you can't explain where you lived, a landlord can reject you. A landlord can't reject you just

because you lived in a treatment facility or hospital. If you tell that you spent time in a treatment facility to prove where you were for a certain time period or something else in your housing history, a housing manager can verify that information. She may not ask you any questions about your treatment or your disability, or any other medical information.

If a landlord already knows that you have a history of illegal drug use, such as through a criminal records check, and you are in treatment or have successfully completed treatment, it would make sense for you to tell this information.

8. IF A HOUSING MANAGER ASKS ME WHETHER I HAVE A DISABILITY OR SOMETHING ABOUT MY DISABILITY OR IF I HAVE A RELATIVE OR FRIEND WITH A DISABILITY, DO I HAVE TO ANSWER THE QUESTION?

In general, the answer to this question is NO. However, sometimes you will have to answer whether you have a disability:

- a. If you apply for assisted-housing or public housing that is especially for people with disabilities, or a certain type of disability, then a housing manager may ask you if you have a disability or the particular disability that would make you eligible for the housing. You must answer the question truthfully. If you lie, you would be committing fraud.
- b. If you apply for the Section 8 certificate/voucher program as a single person and you want priority status as a person with a disability, a housing provider may ask you to verify that you have a disability. She can't ask you any other questions about your disability.
- c. If you request a reasonable change and you tell that you have a disability, you do not have to answer general questions about your disability. You do, however,

have to provide proof that you have a disability and that you need the reasonable change. You may have to tell the landlord a little about your disability in order to figure out what change (reasonable accommodation) would work. You and your doctor or case manager should discuss this.

- d. If you tell about your disability in order to explain your bad tenancy history, you do not have to answer any other questions regarding your disability. You do, however, have to prove that the former problem was a result of the disability and that something has changed so that the same problem won't happen again.

9. WHAT HAPPENS IF A HOUSING MANAGER ASKS ME AN ILLEGAL QUESTION?

When a housing manager asks you an illegal question about your disability, it puts you in an awkward situation, especially if it happens when you apply for housing. When you apply for housing, you may feel nervous and not want to say that you have a disability because you are afraid that if the housing manager knew about your disability she wouldn't give you housing.

None of the laws or the housing cases say whether a housing manager can refuse housing to a person if the person lies when answering a housing manager's question about a disability if the housing manager shouldn't have asked that question. However, a court or administrative agency would probably not let a housing manager do anything bad to a person who lied about having a disability if a housing manager shouldn't have asked about the person's disability. If you lied about what you think was an illegal question, it is best to ask a lawyer to be sure it was an illegal question.

There is a list of protection and advocacy organizations that may be able to answer your question in the Appendix at the end of the book.

10. CAN A HOUSING MANAGER ASK ME WHETHER I NOW USE ILLEGAL DRUGS?

YES, but only if she asks all applicants the same question.

11. CAN A HOUSING MANAGER ASK ME IF I DRINK ALCOHOL?

NO, unless you are applying for housing specifically designed for people who have alcoholism (such as a sober house or a half-way house for individuals with alcoholism who are in recovery).

12. CAN A HOUSING MANAGER ASK ME IF I HAVE A HISTORY OF ALCOHOL ABUSE OR ILLEGAL DRUG USE?

In general, NO. However, if you have a bad tenancy history or criminal record related to housing which is a result of alcohol abuse or a history of illegal drug use, you will need to prove this and prove that something has occurred so that the problem isn't likely to happen again.

a. Ways of Showing You Don't Use Illegal Drugs Any More and That You Will be Able to be a Good Tenant Include the Following:

- (1) A letter from a reliable certified drug treatment counselor or program administrator indicating that you have been or are in treatment, are meeting the requirements of the treatment program, are not now using illegal drugs and that there is a good chance that you will not start using drugs again;
- (2) A letter from Narcotics Anonymous (trusted servant), or another self-help program, saying that you are in the program, that you are not now using illegal drugs and that there is a good chance that you won't start using illegal drugs again;
- (3) A letter from a probation or parole officer that you have met or are meeting the terms of probation or parole with respect to illegal drug use;

- (4) A voluntary interview with a substance-abuse screening team made up of local professionals indicating that you have a reasonable probability of success in not using illegal drugs again;
- (5) Agreeing to a voluntary drug test if it is conducted at a facility that uses the National Institute of Drug Abuse Guidelines, which only tests for the use of illegal drugs, and the housing manager pays for it if it is not paid for some other way. In order to use this kind of proof, you and the housing manager both have to agree to it.
- (6) You could provide a reference who can document recent lease-compliant behavior since you stopped using.
- (7) You could provide a reference from a reliable individual, such as an employer, showing that you did what you were supposed to in some other area of life after you stopped using.
- (8) A letter from a clergy person or other spiritual leader who has knowledge of your past difficulties and current method of correcting the problems.

NOTE: The list above was produced by the HUD Task Force on Occupancy Standards in Public and Assisted-Housing. You can decide to use one or several of these or other ways to prove that you are not using anymore, but the housing manager can decide whether this is enough proof depending on how much trouble you have had with illegal drugs and what any of these people say about your chances of continuing to not use illegal drugs. If you don't agree with the housing provider's decision, you can appeal it.

b. Ways of Showing That Your Behavior has Changed if You Have Alcoholism:

- (1) Letter from a reliable professional who treated you indicating that you are in recovery and are not likely to do things that would violate the lease;
- (2) Letter from a 12-Step "trusted servant" or meeting secretary stating you are involved in a program such as Alcoholics Anonymous;
- (3) Letter from a probation officer stating that you have completed or are completing the terms of probation regarding alcohol;
- (4) Evidence that after the last documented incident you were a good tenant or acted well in other situations, such as employment. (e.g. a letter from an employer or clergy person, or spiritual leader who knows about you and the drinking).

NOTE: The list above was written by the HUD Task Force on Occupancy in Public and Assisted-Housing. You can decide to use one or several of these or other ways to prove that you are not abusing alcohol anymore, but the housing manager can decide whether this is enough proof. If you don't agree with the provider's decision, you can appeal it.

13. MAY A HOUSING MANAGER ASK ME IF I HAVE BEEN CONVICTED OF THE ILLEGAL MANUFACTURE OR DISTRIBUTION OF A CONTROLLED SUBSTANCE?

YES.

14. CAN A LANDLORD REQUIRE A MINIMUM PERIOD OFF ALCOHOL OR DRUGS OR IN TREATMENT?

NO. For example, a landlord can't require that every applicant have at least one year's worth of not using illegal drugs before she will admit an applicant to housing. A landlord has to consider each person's situation and evaluate whether that person will follow the lease.

15. MAY A HOUSING MANAGER ASK ME IF I HAVE A CRIMINAL RECORD?

YES. The HUD regulations say housing managers do not have to give you housing if your criminal record shows things that would harm the health, safety or welfare of other tenants. Any questions about your criminal record should be about this.

Although the HUD regulations allow housing managers to reject applicants because of past criminal activity, HUD does not control criminal records. Whether a housing manager can check your criminal record differs from state to state.

B. BAD TENANCY HISTORY OR CRIMINAL RECORD

If you have a bad tenancy history or a criminal record, it is important that you read the following questions and answers. Although you are always responsible for your past behavior and a housing manager may not rent to you for good reasons, these questions will help you understand how your disability affects whether and when a housing manager can reject you.

1. CAN A LANDLORD DENY ME HOUSING IF I HAVE A BAD TENANCY HISTORY?

In general, YES. A housing manager may reject any applicant with a bad tenancy history (someone who violated the lease). However, public housing authorities are required to give all applicants a chance to show facts that explain the bad information and to convince the housing manager that now the applicant will be a good tenant. Such facts are called "mitigating circumstances". Unlike public housing authorities, most assisted-housing managers do not have to consider mitigating circumstances for applicants unless the applicant has a disability. Assisted-housing managers have to consider mitigating circumstances for individuals with disabilities because it is a reasonable

accommodation. Some assisted-housing managers do listen to mitigating circumstances even if applicants don't have a disability. If they do it for one person, they must do it for all people.

Under federal law, an owner can deny you a federal preference (which means getting into housing ahead of other people because you are homeless, living in sub-standard housing, involuntarily dislocated, or spending more than 50% of your income on housing) for the Section 8 program and public housing programs if you've been evicted in the past three years from federally assisted-housing for drug-related criminal activity. You would have to provide evidence of rehabilitation-drug treatment and that you are no longer using illegal drugs to avoid this.

2. CAN A LANDLORD DENY ME HOUSING BECAUSE OF MY CRIMINAL RECORD?

The HUD regulations permit housing managers not to give you housing if your criminal record shows things that would harm the health, safety or welfare of other tenants.

Under federal law, a public housing agency can also disqualify you (if you are an applicant or participant) for the Section 8 certificate/voucher program if you've engaged in felonious drug-related criminal activity. An exception to this is where the activity is limited to use or possession of an illegal substance and the incident is over a year old or more recent incidents if you are in drug treatment or have completed drug treatment and you are not currently using illegal drugs.

3. WHAT IF MY BAD TENANCY HISTORY OR CRIMINAL RECORD IS RELATED TO MY DISABILITY?

As explained above, both public and assisted-housing managers must consider mitigating circumstances if the person has a disability. Housing managers also have to consider whether any reasonable accommodation would enable the applicant to meet the terms of the lease even though the applicant was not a good tenant before.

If you are rejected from housing because of a bad tenancy history or criminal record that was a result of your disability, you need to tell that you have a disability in order to either

(1) explain why things have changed (mitigating circumstances) or (2) to request a reasonable accommodation. However, if there hasn't been any change in your ability to be a good tenant and there is no plan (reasonable accommodation) that would enable you to be a good tenant, a housing manager could still reject you.

a. Examples of Situations Where Telling About Your Disability for the Purpose of Mitigating Circumstances or Reasonable Accommodation After Being Rejected for Housing Because of a Bad Tenancy History Might Help.

- (1) Your bad tenancy was because you were not receiving the right treatment for your disability and your present treatment will enable you to be a good tenant.

For example, your bad tenancy history was a result of your alcoholism: As a result of your abuse of alcohol, you lost your job and you did not pay your rent, you banged on your neighbors' doors in the middle of the night asking for alcohol and cigarettes, or you did other things that bothered your neighbors. You have since gone to Alcoholics Anonymous (A.A.). Now you have stopped drinking, still go to A.A. and have a job.

- (2) Your bad tenancy history was due to another housing manager not making a reasonable accommodation for you.

For example, due to your three month stay at the hospital for AIDS-related health problems, a public housing authority evicted you because you were not living in the apartment.

- (3) When you were having problems related to your housing, you did not know that you had a disability, and you have since gotten treatment and are capable of being a good tenant.

For example, due to hallucinations you hit the walls and ceiling with a broom, disturbing your neighbors and causing damage to your apartment. At the time, you did not know you had a disability and were not receiving treatment. Since then, you found out you have a psychiatric disability and are receiving treatment so that the problem has stopped and isn't likely to happen again.

b. Examples of Situations Where Telling About Your Disability for the Purpose of Mitigating Circumstances or Reasonable Accommodation, After Being Rejected for Housing Because of a Criminal Record, Might Help.

- (1) Your criminal record was because you were not receiving the right treatment for your disability and your present treatment will enable you to be a good tenant.

For example, you have been convicted of vandalism and malicious destruction. You did these things when you were drunk and now you are sober.

c. A Housing Manager has a Right to Verify What You Say About Your Bad Tenancy History.

If you say that your bad tenancy history or criminal record is a result of your disability and that there has been a change, the landlord may require proof that your bad tenancy or criminal history was the result of your disability and that because of the change, there are reasons to think you will be a good tenant. Although a housing manager has the right to check that what you say is true, she doesn't have the right to get detailed medical information about your treatment or diagnosis. However, if your poor tenant history is because you didn't follow treatment plans, the housing manager may ask questions to find out whether it is reasonably likely that you will follow your new treatment plan.

Also, if you say that a reasonable accommodation will enable you to be a good tenant, a housing manager may ask for proof that the accommodation will enable you to comply with the lease and that you will agree to follow the reasonable accommodation plan. If the accommodation involves services from someone else, the housing manager may also check to see that the services will actually be provided.

d. The Type of Proof You Will Need to Provide.

The type of proof you will need to provide will depend on the specifics of your situation. Such proof might be provided by a doctor or other medical professional, a peer support group, or a non-medical service agency.

4. CAN A LANDLORD PUT THINGS IN MY LEASE ABOUT MY ACCEPTING SUPPORTIVE SERVICES, ATTENDING SUPPORT GROUP MEETINGS, SUCH AS ALCOHOLICS ANONYMOUS (AA) OR COUNSELING?

NO. However, she can tell you that you can't get into public or assisted-housing because of your past problems unless you have a plan to deal with them. You might tell her you will accept

supportive services or attend a 12-step group or rehab program if your tenancy history looks like you need this. For example, the housing manager plans to reject you because your housekeeping in your previous apartment was poor. You explain to her that you have a housekeeping service to keep your new apartment clean. The housing manager checks that you have arranged for a housekeeping service to help you, and on that basis gives you an apartment.

If later on, you stop the housekeeping service, your housing manager can't evict you for that. However, if your apartment gets so dirty it violates your lease, you can be evicted. Then the manager and a judge probably won't believe you if you say that you will let the housekeeping service come back since you already broke the agreement once.

C. REASONABLE ACCOMMODATIONS

1. IF I NEED A REASONABLE ACCOMMODATION IN ORDER TO APPLY FOR HOUSING WHAT SHOULD I DO?

If you need an accommodation to apply for housing, such as assistance in filling out the application, having the application mailed to your house rather than picking it up, or having the housing interview take place at your house, you need to disclose your disability and ask for the accommodation. A housing manager must give you the accommodation unless it will result in a basic change (fundamental alteration) in the housing program or cost too much or cause too much work (an "undue administrative or financial burden"). See Chapter 2, Section F, beginning on page 22 for a discussion of these terms.

Also, if you didn't do something that you were asked to do, such as respond to the landlord's request for verification or a personal interview, a housing provider may take you off the waiting list. If the reason you didn't respond is a result of your disability (i.e. memory loss, hospitalization), you should tell the landlord this. A landlord must provide you reasonable

accommodation, such as putting you back on the waiting list, if the reason you didn't respond was a result of your disability.

- 2. IF I DIDN'T HAVE A DISABILITY WHEN I APPLIED FOR HOUSING, AM I ENTITLED TO A REASONABLE ACCOMMODATION IF I GET A DISABILITY WHILE I AM A TENANT?**

YES. You are entitled to reasonable accommodation regardless of whether you had the disability when you were admitted to housing.

- 3. IF I HAD A DISABILITY WHEN I APPLIED FOR HOUSING BUT DIDN'T TELL MY HOUSING MANAGER WHEN I APPLIED, DID I GIVE UP MY RIGHT TO ASK LATER FOR A REASONABLE ACCOMMODATION?**

NO, not at all. You can request a reasonable accommodation for your disability whenever you need one while you are a tenant in public or assisted-housing.

- 4. IF I DIDN'T NEED A REASONABLE ACCOMMODATION WHEN I MOVED INTO THE APARTMENT, BUT WILL NEED ONE AT A LATER POINT DURING THE TENANCY, AM I ENTITLED TO ONE? IF SO, HOW SHOULD I APPROACH THE HOUSING MANAGER?**

If you have a disability and are living in public or assisted-housing, you are entitled to a reasonable accommodation whenever you decide you need one and can give proof of this need.

Depending on your relationship with your housing manager you may consider asking her in person for a reasonable accommodation. You can also put your request in writing. The advantage of a written request is that you have proof that you asked for the accommodation, which will be helpful if the landlord doesn't answer your request or refuses to provide you with the accommodation without a good reason. There is a sample letter to a housing manager requesting a reasonable accommodation on page 56.

5. WHAT SHOULD I DO IF I HAVE VIOLATED MY LEASE BUT THINK THAT IF THE LANDLORD PROVIDED ME WITH A REASONABLE ACCOMMODATION, I COULD FOLLOW THE LEASE?

If you believe a reasonable accommodation would help you comply with the lease, then ask for a reasonable accommodation. See the sample letter to a housing manager requesting a reasonable accommodation on page 56.

6. HOW DO I PROVE THAT I NEED A REASONABLE ACCOMMODATION?

If you request a reasonable accommodation, a housing manager has a right to ask you to show that you need the accommodation. The type of information you will need to provide will depend on the specifics of your situation. The information might be provided by a doctor or other medical professional or a non-medical service agency.

7. WHAT IF MY HOUSING MANAGER REJECTS MY REQUEST FOR REASONABLE ACCOMMODATION BECAUSE SHE DOESN'T THINK IT WILL WORK?

You will need to get proof showing that the accommodation will help you be a good tenant (meet the terms of the lease). The type of information you will need will depend on your situation. Such proof might be provided by a doctor or other medical professional, a peer support group, or a non-medical service agency. If your housing manager still refuses after you have provided her proof, then get help from either a service provider or a lawyer or file a discrimination complaint. See Chapter 3.

8. WHAT SHOULD I DO IF I REQUEST A PARTICULAR ACCOMMODATION AND THE HOUSING MANAGER REJECTS THAT REQUEST, BUT OFFERS TO PROVIDE ME WITH A DIFFERENT ACCOMMODATION?

Your choices will depend on whether you think the plan your housing manager offers will work. The federal laws state that a housing manager should listen first to what you think will work. The housing manager may offer a different plan. If there are several plans that will all completely solve the problem so you can live there and take part in the programs like other tenants, the housing manager can choose which plan to use. You can still explain why you want a different plan and if it doesn't cost too much money or time, a manager might choose your plan, but she doesn't have to if

another plan works just as well. If you think the plan the housing manager offers will work, you should agree to it.

If you do not think the plan offered by the housing manager works just as well as your plan, you should tell the manager this and explain why it doesn't take care of the problem. If the manager still says that it will work, you have a few choices:

- a. Agree to the manger's plan. If you do this, write a letter saying that this was not the accommodation that you requested and that you do not think it will work completely;
- b. Give the housing manager a letter from a doctor or social worker or someone who helps you (physical therapist, occupational therapist, independent living specialist) explaining why the manager's plan will not work as well;
- c. Contact a service provider or lawyer to help you (see the Appendix at the end of the Handbook for a list);
- d. File a grievance with the housing authority or assisted-housing program or a complaint with HUD or, if there is a state law, the agency that enforces this law. Taking legal action should always be a last resort. However, it is sometimes necessary. See Chapter 3 if you choose this route.

9. IF A LANDLORD HAS PROVIDED ME WITH REASONABLE ACCOMMODATION, DOES SHE HAVE AN OBLIGATION TO PROVIDE ME WITH A DIFFERENT OR ADDITIONAL ACCOMMODATION?

The law does not limit the number of reasonable accommodations that you may request. If there has been a change which affects your ability to enjoy your housing equally with other tenants, a

housing manager will have to consider any request for accommodation and provide it if it does not change the basic nature of the housing program (a "fundamental alteration") or cost too much and cause a lot of work ("result in an undue financial and administrative burden"). (See Chapter 2, Section F, titled "Housing Managers Are Required To Make Reasonable Changes ("Accommodations") For People With Disabilities So They Can Live In Housing And Participate In Any Activities They Want," beginning on page 22. Even if there has not been a change, but you need a different reasonable accommodation or an additional reasonable accommodation in order to equally enjoy your housing, the housing provider should make the change if it does not change the basic nature of the housing program (a fundamental alteration) or cost too much and cause a lot of workload problems (result in an undue financial and administrative burden).

10. WHAT SHOULD I DO IF DURING MY TENANCY MY DISABILITY RESULTS IN BEHAVIOR WHICH CAUSES ME TO HARM ANOTHER TENANT OR DAMAGE MY APARTMENT?

If you think a reasonable accommodation will enable you to follow the lease, then ask for one. For example, the plan may include a time period to get treatment to help you to follow the lease before completing eviction proceedings. Understandably, if you have actually hurt someone, it will be most difficult to get a housing manager to agree to a plan unless she is certain you won't do it again. In this situation, and in cases involving physical damage to an apartment, you will have to provide very strong proof from your doctor or social worker that the plan will work.

Even with such letters, your housing manager might decide that your plan might not work. If this occurs, read Chapter 3.

11. CAN I BE FORCED TO ACCEPT A REASONABLE ACCOMMODATION?

In general the answer to this question is NO. If a housing manager asks you if you want a reasonable accommodation or "help" you have the right to refuse it. However, if you are violating

the lease and the manager will start eviction proceedings unless you agree to a plan you don't want, you have three choices:

- a. Agree to the plan;
- b. Try to negotiate a different plan (either by yourself or with the assistance of a service provider or attorney); or
- c. Go through the eviction proceeding.

12. IF I HAVE A PSYCHIATRIC DISABILITY AND THERE IS A "NO PETS POLICY", IS IT REASONABLE FOR A HOUSING MANAGER TO ALLOW ME TO HAVE A COMPANION ANIMAL (PET) IF I NEED IT FOR EMOTIONAL SUPPORT?

The answer to this question depends on each person's situation. If you can get a letter from a doctor or other service person which says that you need the pet because of your disability, then a housing manager would have to say yes as long as you make sure the pet is kept in a manner that doesn't violate the lease.

13. WHAT SHOULD I DO IF I DIDN'T RESPOND IN TIME TO A HOUSING MANAGER'S REQUEST FOR VERIFICATIONS, PERSONAL INTERVIEW, OR RECERTIFICATION, BECAUSE OF MY DISABILITY (I.E., HOSPITALIZATION, MEMORY LOSS...) AND I WAS TAKEN OFF THE WAITING LIST BECAUSE OF THIS?

Tell the housing manager why you failed to respond was as a result of your disability. If she refuses to put you back on the waiting list, contact a lawyer. Look in the Appendix at the end of the book for a list of protection and advocacy organizations that may be able to help you.

14. IF I HAVE A CERTIFICATE/VOUCHER AND I NEED AN ACCESSIBLE UNIT, DOES THE HOUSING AUTHORITY HAVE TO HELP ME FIND ONE?

YES. Section 504 requires public housing authorities administering a Section 8 - Existing Housing Certificate program, or a housing voucher program to help people with disabilities, who have a Section 8 certificate, find accessible housing. This duty includes searching for accessible units when requested by an individual and recruiting landlords with the desired type of housing and accessible units. The duty to help a person with a disability may also include help in removing barriers for everyone whose disability makes the search more difficult, such as helping in the lease negotiation process with the owner, if requested. If your disability causes you to need this kind of help, you have to ask for it. Otherwise, the housing authority will think you are getting the housing yourself.

Public housing authorities are also required to take into account the difficulty in locating an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Certificates or Housing Vouchers and exceptions to the Fair Market Rents.

D. HOMELESS, TIME IN INSTITUTION, OTHER NON-TRADITIONAL HOUSING - PROVING GOOD TENANCIES

Individuals who haven't lived much in regular housing often have a hard time showing that they will be good tenants. Also, many people who have spent time in a homeless shelter, a battered women's shelter, a drug treatment facility, a hospital or an institution don't like to tell a housing manager about this because they are afraid they won't get the apartment. The questions in this section will help you figure out how you can show you will be a good tenant and if and when you should tell where you lived if you haven't lived much in regular housing.

1. CAN A LANDLORD DENY ME HOUSING IF I'VE BEEN HOMELESS OR IN AN INSTITUTION?

NO, as long as you meet the eligibility requirements which are based on the lease you can't be denied public housing because you have been homeless or in an institution or have any other non-traditional tenancy.

The housing manager does have the right to ask you for some kind of proof that you will pay your rent on time and be a good tenant, etc. - information the housing manager would usually get from your old landlord. Most housing managers look at the last three to five years of tenancy. Read the next question for suggestions on how to show the housing manager that you will meet the lease eligibility standards.

2. IF I HAVEN'T HAD A LANDLORD FOR A LONG TIME BECAUSE I'VE BEEN HOMELESS, OR IN AN INSTITUTION OR LIVING WITH MY FAMILY, HOW CAN I SHOW THE HOUSING MANAGER THAT I'LL BE A GOOD TENANT?

There are many ways to show that you are responsible and that you will follow the lease. Letters from bosses, religious leaders, neighbors, staff members of shelters, doctors or social workers, can help a housing manager decide whether or not you will follow the lease. Use the suggested ideas below, which are broken down by types of lease rules, to show how you can be a good tenant:

a. Ability to Pay Rent and Other Charges in a Timely Manner:

- payments of utility, telephone, or cable TV bills
- payments for child support or alimony
- credit card, loan, or layaway payments
- vendor payment or representative payee (rep payee)
- any other kind of regular payment
- proof of no outstanding debts, liens or defaults or other bad payment history
- completion of a housing training program acceptable to the housing manager

b. Ability to Care For and Avoid Damaging the Apartment:

- caring for your room or space while living with someone else or in a shelter or group home.
- maintaining any physical space (at a job, etc.)
- chore service or other assistance with care of unit
- live-in or other aide
- successfully answering the housing manager's questions about how to care for an apartment
- completion of a residency training program acceptable to the housing manager

c. Respecting the Rights of Others:

References from:

- people you live with
- institutions, shelters, transitional housing, group homes
- administrators or other staff in treatment programs
- school or work relationships (teachers, counselors, co-workers)
- school records, if recent
- completion of a residency training program acceptable to the housing manager

d. Criminal Activity:

- clean police records or a record unrelated to ability to be a good tenant
- clean court records or a record unrelated to ability to be a good tenant

e. Compliance with Other Program Requirements:

- job or school references
- shelters, or any other programs you participate in that have set rules you follow
- current housing manager (if not homeless)
- school records, if recent
- completing a residency training program acceptable

to the housing manager

NOTE: The list above was produced by the HUD's Task Force on Occupancy Standards in Public and Assisted-Housing.

3. IF A HOUSING MANAGER WANTS PROOF OF WHERE I HAVE BEEN LIVING FOR A PAST PERIOD OF TIME, DO I HAVE TO GIVE THIS INFORMATION IF IT WILL MEAN TELLING THAT I HAVE BEEN IN A TREATMENT FACILITY OR SOMETHING ABOUT MY DISABILITY?

Landlords ask all applicants where they have lived for a past period of time because landlords want to know if they have a good tenancy history and that they will follow the lease. Landlords use a person's housing history to tell if they will follow the lease in the future. Landlords worry when they see gaps in an applicant's tenancy history because they think that you are hiding a bad tenancy history and that you won't follow the lease if you get an apartment.

If a landlord asks all people (not just those she thinks have a disability) about their housing history for the same past period, you will need to answer the same questions. If you did not live in regular housing during this period of time, list all the places - even shelters - where you did live. Some advocates believe that you don't have to list the names of any hospitals, but you do have to say you were in a hospital if you were there very long. Some housing lawyers believe that you also have to list the name of the hospital.

If a housing provider asks everyone to prove that what they say is true about where they were living, then you will have to do this as well. Some advocates believe that a housing provider should permit you to get a reliable person who can write a letter saying you were in the hospital. This person should not be required by a housing authority to reveal the name of the hospital, why you were there or any other information about your disability. A reliable person could include a medical professional, a rehabilitation specialist, a clergy person, or your employer. Some housing lawyers disagree with this position. They believe that a housing provider may require you to get someone at the hospital to both confirm that you were there and answer tenancy-related questions.

Advocates don't think a housing provider should ask someone at the hospital any tenancy-related questions because the person is not likely going to have the information to answer these questions given that a hospital setting is not the same as a housing setting.

If you lived in a shelter, halfway house, supported living, group home or any place where the primary purpose of the program was housing, not treatment, you have to tell this. The people at those places can tell the manager if you will be a good tenant. It is important that you give the name of someone who has personal knowledge of how you acted when you were staying at the shelter, halfway house, supported living or group home so that you don't delay the processing of your application. If you don't give the name of someone who personally knows how you acted, the landlord may come back to you and ask you for the name of another person who can answer her questions.

4. CAN I BE EVICTED FOR FRAUD BECAUSE I DIDN'T TELL ABOUT PERIODS OF HOSPITALIZATION WHEN ASKED ABOUT PREVIOUS RESIDENCES ?

NO. A landlord can't evict you if you didn't tell that you spent time in a hospital when you applied for housing and were asked to list your previous residences. Hospitals are not residences. You therefore didn't lie by not listing it as a previous residence. A failure to tell that you spent time in a hospital is therefore not housing fraud. In order for you to commit housing fraud, you would have to lie or leave something out on purpose in order to get an apartment or a lower rent or some other benefit.

You should also remember that a landlord can't reject you just because you were in a hospital or other institution.

E. PERSONAL CARE ATTENDANTS

- 1. DOES A HOUSING MANAGER HAVE TO PERMIT ME TO HAVE A PERSONAL CARE ATTENDANT LIVE WITH ME?**

A housing manager can ask you to prove that you need a live in personal care attendant (PCA). The housing manager can't refuse to allow you to have a personal care attendant live with you if you have a letter from a doctor or other professional saying a PCA is essential for your care and well being.

- 2. IF I AM A SINGLE PERSON WHO NEEDS A LIVE-IN PERSONAL CARE ATTENDANT, AM I ENTITLED TO A TWO-BEDROOM UNIT RATHER THAN A ONE BEDROOM UNIT?**

YES.

- 3. IF I HAVE A LIVE-IN PERSONAL CARE ATTENDANT, IS HER INCOME INCLUDED IN THE DETERMINATION OF HOW MUCH RENT I PAY?**

If the personal care attendant is not a person who would have the right to apartment as a remaining household member when the individual with a disability moved out, the PCA's income is not included.

- 4. DOES A HOUSING MANAGER HAVE THE RIGHT TO CHOOSE WHO MY PCA WILL BE?**

NO.

5. DOES A HOUSING MANAGER HAVE THE RIGHT TO MAKE MY PCA GO THROUGH TENANT SCREENING OR SOMETHING LIKE TENANT SCREENING?

If your PCA lives with you, a housing provider can screen her for relevant tenancy information. For example, the housing manager should not ask questions about the PCA's ability to pay rent because she won't have to pay rent. A housing provider can only do screening of non-live-in PCA's if she conducts screening of everyone who works for tenants or who works in the building. Some advocates believe that this policy may violate federal law if it affects people with disabilities more than people without disabilities.

Also, if you need to hire a PCA in order to live in your apartment, a housing manager should allow the PCA to begin work prior to the manager checking the PCA's background.

If a public housing manager decided that you couldn't have a particular PCA because that person has a bad tenancy history or criminal record, you would be able to challenge that decision through the normal public housing grievance process. It is unclear if this is true for assisted-housing.

6. DOES A HOUSING MANAGER HAVE THE RIGHT TO CHECK THE CRIMINAL RECORD OF MY PCA OR SOMEONE I INTEND TO HIRE AS A PCA?

The answer to this question will vary from state to state. There is nothing in federal anti-handicap discrimination law that addresses this issue. HUD has not addressed the issue either.

If a state permits a housing manager to check the criminal record of all members of a household, she might be allowed to include PCA's living with a tenant.

It is also not clear if a housing manager would be allowed by law to check the criminal record of a PCA who is not living with a tenant. Under federal anti-handicap discrimination law, this would only be legal if a housing manager checked the criminal record of everyone who worked for each tenant. It may also be illegal if a housing manager did this and it affected people with disabilities more than people without disabilities.

7. AM I RESPONSIBLE FOR MY PCA'S BEHAVIOR WHEN SHE IS IN THE BUILDING?

YES. If you know, or should have known, that your PCA is doing something wrong, you must do something about it. If you do not do anything about it, your housing manager can take action against you. Your housing manager will want to help you take action if you need help.

F. EVICTIONS

1. IF I AM BEING EVICTED BECAUSE OF BEHAVIOR WHICH IS A RESULT OF MY DISABILITY, WHAT SHOULD I DO?

If you believe that reasonable accommodation will enable you to comply with the terms of your lease, then ask for the accommodation. If you can show that the accommodation will likely solve the problems, the housing manager should provide the accommodation unless it will be a basic change (fundamental alteration) in the housing program or cost too much and cause a very large workload (an undue administrative and financial burden). See Chapter 2, Section F, beginning on page 22 for a discussion of these terms.

If the housing manager refuses to provide you the reasonable accommodation, contact a lawyer or a service provider immediately for assistance. See the Appendix at the end of the book for a list of protection and advocacy organizations which may be able to provide you assistance.

2. IF A HOUSING MANAGER IS PROVIDING ME WITH REASONABLE ACCOMMODATION AND I CONTINUE TO BREAK THE TERMS OF MY LEASE AND SHE HAS MOVED TO EVICT ME, WHAT SHOULD I DO?

If you believe a different reasonable accommodation will enable you to follow the terms of your lease, then ask for the accommodation. The law does not limit the number of accommodations you may ask for or say how many a provider has to give you. If you can show that the accommodation is likely to solve the problem, the housing manager should provide the accommodation unless it will result in a basic change (fundamental alteration) in the housing program or cost too much and cause a very large workload (an undue administrative and financial burden). See Section F beginning on page 22 for a discussion of these terms.

However, if you continually violate your lease and constantly ask your housing manager for different accommodations to enable you to follow your lease, it is highly likely that at some point your housing manager will refuse to consider another accommodation. At this point you need to think about whether this is the right housing for you. If the housing manager starts to evict you, you will have to prove why this time the accommodation would stop the lease problems. You will also need to figure out a course of action. See Chapter 4.

If you decide that you need different housing, contact an appropriate service provider to help you find different housing. The manager may be able to tell you who can help.

3. IF THE HOUSING MANAGER TRIES TO EVICT ME FOR LEASE VIOLATIONS AND I AGREE TO ACCEPT SUPPORTIVE SERVICES IN ORDER TO GET THE PROVIDER TO STOP THE EVICTION PROCEEDINGS, CAN I REFUSE TO ACCEPT THE SUPPORTIVE SERVICES ONCE THE PROVIDER STOPS THE EVICTION PROCESS?

You can refuse to accept supportive services whenever you want. However, if you do this before you start services, it will cause the housing manager to begin an eviction proceeding immediately and she will not believe that you will keep your word. If you started services and the eviction

proceeding has been stopped, in most cases a landlord would not be able to evict you for your previous behavior.

If the landlord never actually got into court or if the prior eviction proceeding was dismissed "without prejudice", and there hasn't been a long interval since the last lease violation, the landlord might be able to reopen the first eviction proceeding. If she does this, a judge might base her decision on your behavior that led to the first eviction proceedings. It is best for you to talk to a lawyer to find out for sure what would happen in your particular situation.

Before you agree to accept supportive services in order to stop an eviction, think long and hard about whether you are willing to use the services and whether it will help you to follow the terms of your lease. Saying that you will do something that you don't really mean to do or that you can't do will make a manager and a judge not believe any future promises you make.

4. IF I HAVE A SERVICE PLAN AND I CHOOSE TO STOP SERVICES AFTER I'VE BEEN ADMITTED TO PUBLIC HOUSING, CAN I BE EVICTED?

You can't be evicted for simply stopping your supportive services. Once you have been admitted to public or assisted-housing, you can only be evicted for failing to follow the lease. For example, if you were admitted in spite of a bad history of not keeping the apartment clean because you said you would have a chore service and then you decided to cancel the chore service after moving in, the housing manager could not automatically evict you. With or without the chore service, as long as your apartment stays clean and you do not otherwise violate the lease, you can't be evicted.

However, if you cancel the chore service and don't keep your apartment clean, the housing manager can evict you if the apartment gets so bad that you're violating the cleanliness requirements in the lease. Also, breaking agreements means that next time a housing manager or judge may not believe that you will keep your word.

5. CAN A HOUSING MANAGER EVICT ME IF I GO INTO THE HOSPITAL FOR A LONG TIME?

The answer to this question depends on whether your housing manager knows that you haven't "abandoned" your apartment and if you continue to pay rent. You, your service provider or someone else at your request should tell your housing manager that you will return. If your housing manager is notified that you are not giving up your unit and you continue to comply with the terms of the lease, she should not evict you. If someone does not tell the housing manager you are coming back, she might try to evict you. Contact a lawyer immediately if this happens. A list of protection and advocacy organizations that might be able to help you is in the Appendix at the end of the book.

While you are in the hospital you will still have to meet your tenancy obligations, including paying rent and recertification of your income and household composition. If you are getting SSI, you will get money to pay your rent for the first three months that you are in the hospital. Also, while you are in the hospital, your rent should be reduced if your income is less. A housing manager should also agree either to delay the recertification of your income and household composition or to send the papers to the hospital or to someone you have said will help you, such as a service provider.

Allowing a tenant to keep a unit in public or assisted-housing if she will be hospitalized indefinitely is controversial. Some people believe that because there is a housing shortage, it is wrong to have an empty apartment and that a better solution would be to have you move out of this apartment but not give up your right to come back. You would be given the next available unit when you are ready to return. Some housing managers may suggest this as an alternative to you. You do not have to agree to this. If you agree to this, it may be a very long wait until a unit becomes available as a result of recent changes in the law which affect people with disabilities. You should contact a lawyer before agreeing to do it. A list of protection and advocacy organizations that may be able to assist you is in the Appendix at the end of the book.

a. What Happens to My Things if I am Evicted While I am in the Hospital or if I Abandon my Apartment?

The answer to this question will vary from state to state. It is best for you or someone else to tell the manager where you want your things to go.

b. What Can the Landlord do With My Things if it Appears That I Have Abandoned My Apartment?

If the landlord thinks that you abandoned your apartment and left behind goods, the landlord may try to get rid of your things and not place them in storage. Before a landlord does this, she should send you a letter to your last known address letting you know she intends to do this. To avoid this, you should contact the landlord or have someone else contact the landlord and tell her that you haven't abandoned your apartment. Also, if you have given the landlord the name of someone to contact in an emergency, the landlord should contact her. That person should then let you know if there is a problem.

6. WHEN CAN A HOUSING MANAGER LEGALLY EVICT ME?

First of all, only a judge can evict you. No landlord or housing manager can evict a tenant without going to court. You can't be put out in the street without first having had a chance to tell a judge your side of the story. Before a housing authority starts the court process, there is usually a private conference in which you can discuss why the housing authority wants to evict you and why you think it shouldn't do this. If after the private conference, the housing authority decides to proceed, you have the right to request a grievance hearing. Whether tenants in state public housing get the

right to a grievance hearing for non-payment of rent may vary from state to state. In Oregon, they generally don't unless the lease requires it.

If a hearing is going to take place, the housing authority is required to send you a notice telling you when and where the hearing is so that you can attend and defend yourself. You can bring someone to help you. If the hearing officer decides that you have violated the lease, the housing authority can then go to court and ask a judge to evict you.

In assisted-housing, a landlord isn't required by law to conduct an internal hearing unless the finance agency requires it. However, you do have the right to respond to the eviction notice within 10 days and ask for a meeting to discuss the eviction. In addition, some cities provide tenants with certain rights.

It's important that you know what assisted-housing providers are required to do in your state. For example in Oregon in some state housing, you have 10 days to ask for an informal conference between you (and anyone you want to help you) and the manager before the manager goes to court unless the problem is illegal drugs, violent crime, or not paying rent. Read your lease to see if you have a right to an informal conference.

A judge can evict you if you don't follow the important parts of the lease or if you break small rules again and again. You can also be evicted if other people who live with you or visit you break the rules. Lease violations include not paying your rent, disturbing your neighbors, creating safety problems like leaving trash in the hall or letting your cigarette burn holes in the carpet. Bringing in illegal drugs or letting others bring illegal drugs in the building will also lead to eviction. Little things, like making noise when knocking the snow off your boots might occasionally bother others, but are not a reason to evict. Other reasons for eviction include unreasonable behavior which disturbs your neighbors, for example, repeatedly playing music loudly late at night.

7. WHAT SHOULD I DO IF I GET AN EVICTION NOTICE?

First of all, there are two types of eviction notices: one you get from the housing manager and the other you get from the court. If you've gotten one from the housing authority, it should tell you the time and date of a public housing authority hearing. Do not miss the hearing or you will lose a chance to tell your side of the story to the housing authority before you go to court. This is a good time to talk about reasonable accommodation if you haven't already done it. The hearing is in front of a hearing officer who, after listening to both the housing manager and you, will decide if you have broken the lease and should be taken to court. But remember, only a judge can evict you. If the Housing Authority's hearing officer decides you should be evicted, the public housing authority still has to go to court to get a judge to decide.

The second type of eviction notice is from the court and is called a "summary process" notice. It will state the time and date you need to go to court in order to defend yourself and not lose your housing. If you don't go, a judge can automatically evict you.

The best thing to do if your housing manager wants to evict you is to go to your local legal services office. These lawyers represent low-income people for free and can give you legal advice on your housing problems. Although you are allowed to go to court on your own, it will help to talk to a lawyer first or have her go to court with you. (See the Appendix at the end of the Handbook for a list of protection and advocacy agencies in every state.)

If the problem is related to your disability, it is also helpful to talk to a service agency or case manager to figure out if there is a reasonable accommodation plan that would stop the problem from happening again. Sometimes it helps to have the lawyer and the service person talk to each other or talk with you together to figure out the best thing to do.

CHAPTER 2
AN OVERVIEW OF
FEDERAL DISABILITY ANTI-DISCRIMINATION LAWS

This chapter provides the reader with an overview of the federal anti-handicap discrimination laws which apply to public and assisted-housing. For those individuals unfamiliar with legal processes and terms, we have begun this chapter with a section on terms that relate to discrimination claims. More experienced readers may skip over this section and turn to page 6.

A. WHAT MAKES UP THE LAW?

The "law" is made up of several kinds of rules: statutes, regulations, executive orders, constitutions, and judicial and administrative decisions (case law).

1. STATUTES

A statute is law in the way most people think about laws, a written collection of rules passed by a legislature. Both Congress and state legislatures pass statutes which may be called by the name of the law (the Fair Housing Amendments Act, The Americans with Disabilities Act or ADA, Rehabilitation Act, etc.) the number of the law (P.L. 101-336 [*Public Law 101-336*]), Chapter 151B, etc.) or the number from the complete collection of state or federal laws (29 U.S.C. [*United States Code*] §794 [*Section 794*], O.R.S. [*Oregon Revised Statutes*] Chapter 659).

2. REGULATIONS

Regulations are the rules government agencies (for example, Housing and Urban Development or HUD, the Department of Health and Human Services, etc.) follow to administer the laws passed as statutes. Regulations provide structure, detailed procedures, and specific rules to carry out the requirements of statutory provisions. Although regulations are related to the statutes they implement, they are also laws which must be followed. "Regs" set standards of behavior, and often provide the procedures for filing a complaint, making an appeal, and requesting a review. Like statutes, they are referred to by numbers (29 CFR [*Code of Federal Regulations*] 1613, OAR [*Oregon Administrative Rules*] 839-08-200).

3. EXECUTIVE ORDERS

Another kind of law is an executive order issued by the President or the governor of a state. Executive orders set requirements for behavior, operations or policy for agencies of the government.

4. CONSTITUTIONS

State and federal constitutions are another kind of law sometimes used to fight discrimination. The United States Constitution is the highest form of law, and all other kinds of law must follow it. The state constitution is the highest state law and all state laws must follow it. State constitutions may have higher standards than the federal constitution but not lower. The U.S. Constitution sets requirements for the equal protection of citizens and due process (fair procedure), but is not often relied upon in disability discrimination cases. The Oregon Constitution does not have a provision prohibiting discrimination like some states. However, Article 1, Section 20 of the Oregon Constitution prohibits the state from adopting a law that favors some citizens over other citizens.

5. CASE LAW

Finally, all sources of anti-discrimination laws and protections are explained through written decisions by courts. The written decisions are called "case law". In some cases, it may be an administrative agency "making" case law. An example of an administrative agency is the Department of Housing and Urban Development (HUD) which is responsible for enforcement of Section 504 of the Rehabilitation Act in cases involving housing and the Fair Housing Amendments Act. Another example is the Civil Rights Division of the Bureau of Labor and Industries (BOLI) which enforces Oregon's anti-discrimination laws.

If a person disagrees with the decision a court makes or the "finding" the administrative agency makes, she can often appeal it. A higher court, an "appellate" court, will make a "ruling" (a decision) either agreeing or disagreeing with the earlier decision. These rulings are law too, and they provide more specific guidance about the meaning and scope of statutory, regulatory or constitutional provisions. For example, the Federal District Court may rule on the meaning of Section 504 of the Rehabilitation Act. On appeal the Court of Appeals may reverse the lower court's interpretation. Then that decision can be appealed to the highest court, the United States Supreme Court, which might disagree with the Court of Appeals. In cases where a higher court disagrees with a lower court about the decision of a case, the higher court decision "controls" (wins, in a sense) and the decision of the lower court no longer counts. All these court decisions add to our understanding of the meaning of laws.

If a decision is made at the appeals level in federal court, that decision governs only in the geographic region covered by that court. Often lawyers will use a decision from another region as an argument for their point of view. Sometimes a judge in another region will give great weight to the first region's decision; other times, the judge will make a different decision. When the regional decisions differ, sooner or later someone will appeal to the highest court. If the highest court takes the case, its decision will then govern everywhere.

B. WHAT HAPPENS IF MORE THAN ONE LAW APPLIES?

In many cases, you may have rights under several different laws. For example, an individual denied housing in Oregon because of her disability may be protected by the Oregon anti-discrimination law, (The Oregon Civil Rights of Disabled Persons Act [O.R.S. 659.400]), Section 504 of the Rehabilitation Act, the Fair Housing Amendments Act and Title II of the ADA. Some of these laws give more or less protection or better remedies (what you can get if you win your case) than others.

Where more than one law applies in a particular case, you may choose whichever law or laws provide the greatest protection or the best remedies, and begin legal action under those laws. If the state law provides greater protection than federal law, you can usually choose to use the state law. Which law or laws to choose depends on many factors, including the procedures required to enforce the laws, how much time it will take to resolve the case, and what kinds of remedies the individual seeks. If you want to file a complaint of discrimination, you are not restricted to any one law and may file complaints under any and all laws that apply. A lawyer or advocate can help you figure out which law will best help your particular case.

C. HOW IS THE LAW ENFORCED

If you have been discriminated against because of your disability, you may choose to try to resolve the matter informally by talking with the housing manager or writing her a letter, or using the housing agency's or authority's internal grievance procedure if one is available. Regardless of whether you try the informal process, you have the choice of filing a complaint with an administrative agency like the Department of Housing and Urban Development (HUD) or the state agency that enforces the appeals anti-discrimination law. A complaint is usually a description of who you think discriminated, the situation in which you think discrimination happened, and other information. The person who thinks she was discriminated against, called a "complainant" at this point, must file within a period set in the law or regulation (this is called a statute of limitations), and the agency must answer the complaint, usually also within a certain time period.

If this step does not succeed, or if the law does not require the complainant to take this step before filing a lawsuit in court, the person who believes s/he was discriminated against may go to court. The party who sues is called the "plaintiff" and the person or housing agency or company sued is called the "defendant".

Once the lawsuit is filed, unless the case is settled or disposed of at an earlier stage, a trial will occur. At trial, both sides have a chance to tell their side of the case, have witnesses testify and question the other side's witnesses, and give the judge papers or letters related to the case. At the end of the trial, the judge (or jury if a jury trial is available) will decide which side is right. If the individual or agency claiming discrimination wins, the court has several choices of remedies: it may award money damages, including financial losses which you suffered as a result of discrimination, and, in some cases, punitive damages (damages to punish the defendant); and/or "equitable relief", which is a practical solution, for example, an order to give someone the next available apartment, or a declaratory judgement, which is a statement by a court about your and the housing manager's rights and obligations.

If you or the housing agency or company appeals the lower court's decision, the appellate court will decide whether the trial court decided the legal issues correctly, and will either uphold (agree) or reverse (disagree with) the lower court's decision, or send the case back to the trial court with instructions to help it to decide the case correctly. If either side wishes to appeal the decision of the appellate court, that is often allowed. If the higher appellate court refuses to hear the case, the lower court's decision counts.

FEDERAL LAWS

A. WHAT FEDERAL LAWS PROTECT ME AGAINST DISCRIMINATION IN HOUSING?

In recent years there has been a dramatic growth of the legal rights of people with disabilities to be free from housing discrimination. The following is a brief description of each of the federal laws that provide individuals with disabilities protection against discrimination in public and assisted-housing. Central to all of the anti-handicap discrimination laws discussed below is that throughout the occupancy cycle (in admissions, residency, and eviction) housing providers have an obligation to make reasonable adjustments to their rules, policies, practices and procedures and, in accordance with certain laws, make structural modifications for people with disabilities to enable them to have an equal opportunity to use and enjoy their unit or a common area. This obligation and the limits on it are discussed in Chapter 2, Section F, titled "Housing Managers Are Required To Make Reasonable Changes ("Accommodations") For People With Disabilities So They Can Live In Housing And Participate In Any Activities They Want", beginning on page 22.

The chart which immediately follows this introduction to each law lays out the laws that apply. It includes the types of practices which are not allowed by each law, the type of housing covered, each law's definition of a person with a disability, and whether individuals with a psychiatric disability, those who have a substance abuse problem or a history of substance abuse, and individuals who are HIV positive or have AIDS are protected. An explanation of the information contained in the chart follows. How each law is enforced, and the remedies available are discussed in Chapter 3.

1. SECTION 504 OF THE REHABILITATION ACT OF 1973:

Section 504 reads:

"No otherwise qualified individual with handicaps in the United States....shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service."

Section 504 is explained through federal regulations. Each federal agency that provides funding for a program or activity must develop regulations about how Section 504 affects the program. Those regulations apply to programs and organizations receiving money from that particular agency. HUD has written Section 504 regulations which apply to housing programs that receive federal money. These regulations can be found at 24 CFR Part 8 and 9.

Most local and state housing authorities receive federal money and therefore must follow Section 504's rules. Privately operated, federally subsidized housing entities are also covered by Section 504. Examples of housing programs to which HUD provides financial assistance are (1) low-income housing (such as public housing, Sections 8, 221 and 236 programs); (2) housing for people who are disabled (such as Section 202 and Section 811); and (3) programs for the homeless (such as McKinney programs).

2. THE FAIR HOUSING AMENDMENTS ACT:

In 1988, the federal Civil Rights Act of 1968 was changed to forbid discrimination on the basis of disability whether or not federal money is involved. The practices which are not allowed under

Section 504 are not allowed under the Fair Housing Amendments Act and its regulations either. This law covers more and is more specific in its protections than Section 504 of the Rehabilitation Act and its regulations. The Fair Housing Amendments Act makes illegal all forms of discrimination in the sale or rental of a house or apartment, or providing services related to housing to the buyer or renter, because of that person's disability. The Fair Housing Amendments Act is further explained through HUD regulations. These regulations can be found at 24 CFR Part 14.

The Fair Housing Amendments Act and its regulations make it illegal to discriminate based on the disability of the person who signs the lease, or the disability of the person living in or wanting to live in that apartment or room, such as a child, or of any person connected with the renter or other person planning to live or living in that housing. For example, a manager could not refuse to rent to someone who has AIDS, or an individual whose child has AIDS or an individual whose guests have AIDS, simply because the person or someone she associates with has AIDS.

3. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA):

This is one of five sections of the ADA, which was signed into law in 1990. Title II of the ADA and the regulations under that title extend the protections of Section 504 to all activities of "public entities" - state and local governmental organizations - even if they don't get federal money. Thus public housing authorities must obey Title II.

The requirements under Title II are basically the same as those under Section 504. Housing authorities have to make sure their programs, when looked at as a whole, are open to individuals with all types of disabilities. Housing authorities should already follow Title II's rules. In addition, necessary changes to the buildings or grounds must be done before January 26, 1995.

The ADA is put into effect by regulations. Title II's regulations can be found at 28 CFR Part 35. Like the Fair Housing Amendments Act, the ADA makes illegal, discrimination because of the renter's disability and/or her connection with a person with a disability living in or hoping to live

in that housing, such as a child, or because of any person connected with the renter or other person planning to live or living in that housing.

Federal Laws Prohibiting Discrimination in Housing Against People with Disabilities

Law	Types of Practices Which Are Prohibited or Required	Housing Covered	Definition of a Person With a Disability (Handicap)
<p align="center">Rehabilitation Act §504 29 USC §794 (federal)</p>	<ol style="list-style-type: none"> 1. Can't discriminate, exclude or deny benefits solely because of disability. 2. Must provide <u>reasonable</u> modifications in all rules, policies and procedures. 3. Program must be readily accessible to and usable by individuals with disabilities. 	<p>Any housing that receives federal funds, including public housing authorities and assisted-housing providers</p>	<p>A person who:</p> <ol style="list-style-type: none"> 1. has a physical or mental disability which substantially limits a major life activity, such as walking, thinking, speaking, hearing, learning, breathing...; 2. a record or history of a disability which limits a major life activity, even if the person no longer has the disability or if the disability no longer limits a major life activity or 3. is regarded as having a disability that limits a major life activity.
<p align="center">Fair Housing Amendments Act 42 USC §3601 et. seq. (federal)</p>	<ol style="list-style-type: none"> 1. Can't discriminate. 2. Provide <u>Reasonable</u> Accommodation in rules, policies and procedures; 3. Allow tenant to make <u>reasonable</u> physical modifications. 	<p>All housing except owner-occupied 4-, 3-, or 2-family housing</p>	<p align="center">same as above</p>
<p align="center">Title II of the Americans with Disabilities Act (ADA) (federal)</p>	<p align="center">Same as Section 504</p>	<p>Housing provided by state and local governments and their entities, including public housing authorities</p>	<p align="center">same as above</p>

Chart Continued ... Read each law across for information on who it covers

Are People With Psychiatric Disabilities Covered?	Is Illegal Drug Use Covered?		Are People Who Have Alcoholism Covered?	Are People With AIDS or Who Are HIV+ Covered?
	Current Use	History of Use		
<p>YES,</p> <p>1. if the psychiatric disability substantially limits a major life activity;</p> <p>2. or if a housing provider thinks the person's psychiatric disability or perceived psychiatric disability limits a major life activity, or</p> <p>3. if the person has a history of psychiatric disability which limits a major life activity and the housing provider discriminates against the person because of the history.</p>	<p>NO,</p> <p>if the illegal use of controlled substances that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem</p>	<p>YES,</p> <p>1. if recovered from addiction, i.e. successfully completed rehab program and not using, or</p> <p>2. if participating in treatment program or self-help group and not currently using</p>	YES	YES
YES	NO	YES	YES	YES
YES	NO	YES	YES	YES

B. INDIVIDUALS PROTECTED BY FEDERAL LAWS

The laws, discussed in this Handbook, all protect individuals with disabilities (handicaps) from discrimination. Under Section 504 of the Rehabilitation Action Act, the Fair Housing Amendments Act, and Title II of the ADA, a person meets these laws' definition if s/he:

1. has a physical or psychiatric disability which limits a person's daily activity in a major way. This is referred to as "substantially limiting a major life activity";
2. has a record or history of a disability which limits a person's daily activity in a major way, even if the person no longer has the disability or if the disability no longer limits the person; or
3. if someone thinks she has a disability.

The physical or psychiatric disability can include almost any condition, disease, illness, disfigurement or disorder (e.g. alcoholism, AIDS, emotional disorder, drug addiction, mental retardation, cerebral palsy, cancer, deafness, or HIV infection) if it limits at least one thing a person would normally do. "Major life activities" includes caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning and working. Other life activities can also be "major".

For anti-discrimination purposes, a person does not have to have a psychiatric or physical disability in order to fall within these laws' definition of a "handicapped person". A person is "handicapped" if someone thinks the person has a disability and discriminates against her because of it. For example, if a housing manager believes that an applicant for housing has a psychiatric disability and refuses to rent to her because of this, the applicant would be considered "handicapped" under the law even if she does not have a psychiatric disability.

A person also is protected from discrimination if she used to have a disability but no longer has the disability or if her disability no longer limits her, but a housing provider discriminates against her because of her history of disability. For example, a person who had a history of psychiatric disabilities would be protected by the law if a housing provider refused to rent to her just because of that history.

1. INDIVIDUALS WHO CURRENTLY USE ILLEGAL DRUGS .

Each federal law - Section 504 of the Rehabilitation Act, the ADA, and the Fair Housing Amendments Act - plainly say that individuals who currently use illegal drugs are not protected by the law.

2. INDIVIDUALS WHO HAVE A HISTORY OF ILLEGAL DRUG USE.

The federal law says there is a difference between individuals who use illegal drugs now ("currently") and individuals who used to use illegal drugs but don't any more. Individuals who don't use illegal drugs now are protected even if they used to use illegal drugs. The problem is how to decide what the law means by using drugs now ("current user"). This is very unclear. The law does say that an individual is protected if she is not using illegal drugs now and has either (1) successfully finished a treatment program or (2) is participating in a treatment program or self-help group, such as Narcotics Anonymous. The law also says that use is "current" if the average person looking at the facts would think that someone's drug use was still a problem.

3. INDIVIDUALS WITH ALCOHOLISM

Section 504 of the Rehabilitation Act no longer contains any exception regarding individuals with alcoholism outside the employment context. But the HUD regulations haven't been brought into

compliance with the statute. In accordance with the statute, an applicant with alcoholism (like any other applicant with a disability) must be "otherwise qualified" with reasonable accommodations.

The definitions in the Fair Housing Amendments Act and Title II of the ADA do not exclude individuals with alcoholism whose use of such substance prohibits them from meeting tenancy requirements. The Fair Housing Amendment Act instead provides a general exclusion elsewhere in the law for any individual whose tenancy would pose a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others, provided reasonable accommodation could not eliminate the threat. The preamble to the ADA's Title II regulations states that where questions of safety are concerned, a person who poses a significant risk to others will not be "qualified" if reasonable accommodations will not eliminate that risk.

4. INDIVIDUALS WITH PSYCHIATRIC DISABILITIES .

Each law says individuals with psychiatric disabilities, as well as individuals who have a history of psychiatric disabilities or whom others think have a psychiatric disability, are definitely protected. People with psychiatric disabilities, like others with disabilities, are covered by the law unless: (1) the individual's tenancy poses a direct threat to others, (2) the individual's tenancy would result in "substantial physical damage to the property of others", or (3) the person is not "otherwise qualified" for housing. Each of these exceptions is important and is discussed below under the section called "Exclusions Under Federal Law."

5. INDIVIDUALS WITH HIV OR AIDS.

All of the federal laws protect people who are HIV positive or who have AIDS, and individuals whom others think have HIV or AIDS. A diagnosis of HIV or AIDS by itself poses no "direct threat to others". Housing maintenance workers should already be observing "universal

precautions" whenever disposing of trash which could contain human blood or waste or used needles and when cleaning up or making repairs that could involve human blood or waste. A person with HIV or AIDS, like any other person, should only be excluded if that individual has a history that would be included in the exceptions below under the section called "Exclusions Under Federal Law" and a reasonable accommodation could not cure the problem.

C. EXCLUSIONS UNDER FEDERAL LAW

Section 504 of the Rehabilitation Act, Title II of the ADA and the Fair Housing Amendments Act say that some people are not covered by the law. A person isn't covered when:

- a. she would cause a direct threat (a significant risk of substantial harm) to other people;
- b. she would physically damage other people's property; or
- c. the person is not "otherwise qualified" for housing.

These exceptions are important to the group of individuals for whom this Handbook is mainly written.

1. DIRECT THREAT TO OTHERS.

The legislative history of the Fair Housing Amendments Act shows that the "direct threat" exception was not meant to create or permit people to assume that individuals with disabilities are a greater threat to the health or safety of others than individuals without disabilities. If a landlord says that a tenant will be a direct threat or cause a substantial risk of harm to others, she must prove how that tenancy causes a direct threat. The landlord has to have factual evidence about the particular person's behavior, not assumptions about all people with disabilities or people with a particular

disability. For example, a housing manager could not prove that an applicant won't be able to follow the lease just because the person has a psychiatric disability or was in treatment. However, if the applicant assaulted other people or did something else that was serious, a landlord could consider that person a threat unless there was proof this type of behavior wouldn't happen again.

A housing manager must consider whether a reasonable change or "accommodation" could get rid of, or reduce, the risk to people's health or safety if the applicant/tenant requests her to do this. The landlord must provide the change if she is convinced that the reasonable accommodation is likely to work. What is "reasonable" is talked about in section in Chapter 2, Section F, titled "Housing Managers Are Required To Make Reasonable Changes ("Accommodations") For People With Disabilities So They Can Live In Housing And Participate In Any Activities They Want", beginning on page 22.

Section 504 doesn't use the term "direct threat" except for people who currently use alcohol or illegal drugs. However, Section 504 (and the ADA) allows a housing manager to exclude anyone who is not "otherwise qualified" to be in public or assisted-housing. Someone who would be a risk to other people's health or safety, even if a reasonable change was made, would not be qualified to live in public or assisted-housing. The term "otherwise qualified" is explained below.

2. SUBSTANTIAL PHYSICAL DAMAGE TO PREMISES .

The Fair Housing Amendments Act allows a housing manager to not admit a person into housing if the individual would cause a lot of physical damage to the property of others. This wasn't meant to allow a housing manager to exclude a person who uses a wheelchair because of normal wear and tear on an apartment or common area that might be expected by a person who uses a wheelchair, such as the nicking of door frames or walls.

A housing manager must also consider whether a reasonable change or "accommodation" could get rid of, or reduce the likelihood that a person with a disability would cause physical damage to the housing if an applicant/tenant requests her to do this. The landlord must provide the

reasonable change for the person with the disability if the landlord is convinced that the accommodation is likely to cure the problem. What is "reasonable" is talked about in Section E, titled "Housing Managers Are Required To Make Reasonable Changes ("Accommodations") For People With Disabilities So They Can Live In Housing And Participate In Any Activities They Want", beginning on page 22.

3. OTHERWISE QUALIFIED.

Section 504 and the ADA, unlike the Fair Housing Amendments Act say that a person with a disability has to be "qualified" in order to be protected by the law. A person is "otherwise qualified" for housing if she can meet the lease requirements (and any other eligibility requirements). If a person with a disability was likely to be violent toward other people or cause a lot of property damage, she would not be "otherwise qualified" to live in public or assisted-housing because such behavior would violate the lease. However, if a reasonable change (accommodation) could get rid of or reduce enough the risk to people's health or safety, the person would be "otherwise qualified" and the housing manager must provide the change. The concept of reasonable change (accommodation) is discussed in Chapter 2, Section E, titled "Housing Managers Are Required To Make Reasonable Changes ("Accommodations") For People With Disabilities So They Can Live In Housing And Participate In Any Activities They Want" beginning on page 22.

D. HOUSING COVERED UNDER FEDERAL LAWS

Unlike Section 504 of the Rehabilitation Act, which covers only housing that receives federal money, and Title II of the ADA, which covers public housing authorities or other programs run by state or local governments, the Fair Housing Amendments Act covers almost every kind of housing. In general, both laws

cover public or private housing which is used or intended to be used by at least one family. There are, however, certain exceptions.

1. EXEMPTIONS FROM COVERAGE.

The Fair Housing Amendments Act does not cover owner-occupied housing with four or less units. This law also exempts an owner if she is renting or selling her single family house, if the owner (1) doesn't also own at least part of more than three houses, (2) hasn't sold a house within the previous 24 months, (3) doesn't use a real estate agent or broker to sell or rent the house, and (4) doesn't use advertisement that discriminates. This exemption applies only to the owner and not to any coop or condominium association.

E. FEDERAL ANTI-HANDICAP DISCRIMINATION STATUTES: What Do They Actually Say a Housing Manager Can't Do?

Section 504 makes it illegal to discriminate because of a person's disability, to leave her out or not to allow her the same benefits as other people. HUD's Section 504 regulations give more details about what that means. An individual with a disability (1) must be given opportunities equal to those given to others, (2) must be given housing or benefits which are as effective as those given to others, (3) may not be given different or separate housing or benefits unless this is necessary to provide the person with a handicap with housing or benefits that are as effective as those provided to others. For example, an apartment that someone in a wheelchair can use is not the same as other apartments but it allows the person to live in the building as other people do.

These regulations make clear that the law gives persons with handicaps an equal opportunity to get the same result, to gain the same benefit or to reach the same level of achievement. Moreover, the regulations make clear that programs or activities which receive federal money must house people with disabilities in the most integrated setting possible that meets the needs of qualified individuals with disabilities.

As mentioned earlier, Title II of the ADA and its regulations covers all activities of state and local governmental programs even if they don't receive federal money. Therefore, the practices that are illegal

under Section 504 are also illegal under Title II of the ADA. Many of the illegal practices under Section 504 and the ADA are also discriminatory and unlawful under the Fair Housing Amendments Act. This law makes illegal all forms of discrimination in anything involving the sale or rental of housing or in providing services in connection with the housing.

1. EXAMPLES OF DISCRIMINATION NOT ALLOWED BY FEDERAL LAW.

Rule:

- a. A housing manager can't refuse to let an eligible person with a disability apply for housing or rent housing because of the person's disability.**

Examples of Things That Managers Can't Do:

- (1) A housing manager or housing authority can't refuse to let a person who can't get to the office because she uses a wheelchair or a person who can't leave her home because of her disability mail in an application just because there is a rule that people have to come to the office with an application.
- (2) A housing manager can't refuse to rent to someone with a psychiatric disability, or a person they think has a psychiatric disability, just because they are afraid of what the other tenants will think or because they are afraid the person can't live independently.
- (3) A housing manager can't refuse to rent to someone just because the person has AIDS or is thought to have AIDS.

- (4) A housing manager can't refuse to let a single person with a disability who needs a live-in personal care attendant (PCA) have a two-bedroom apartment.

Rule:

- b. A housing manager can't make a person with a disability live separately from everyone who doesn't have a disability. However, housing for people who need special services, for example, people who are very sick with AIDS, is permitted for those who want it.**

Examples of Things That Managers Can't Do:

- (1) A housing manager can't put all people with a disability or type of disability, such as psychiatric disabilities, on one floor of an apartment building or in one section of a building, unless it is a special program with special help for people who want it or unless the floor section is Designated-Disabled housing under Title VI. (See Chapter 4.) No one has to be in a special program unless she wants special help.
- (2) A housing manager can't ask a person with psychiatric disabilities to sit in the front of the shuttle bus, if there is one, or to use only one corner of a community room to keep that person away from other tenants.

Rule:

- c. **A housing manager can't treat people with disabilities differently when deciding who gets to live in the building, except when there are elderly or disabled preferences for certain buildings. (See Chapter 4.)**

Examples of Things That Managers Can't Do:

- (1) A housing manager can't make someone who has a history of alcoholism or illegal drug use go to AA or any other program for people with drinking or drug problems in order to get an apartment.
- (2) A housing manager can't make anyone prove that she can live on her own just because the person has a psychiatric disability or other disability. It is okay to ask everyone to prove they can be a good tenant.
- (3) A housing manager can't make anyone with AIDS get a doctor's letter saying that she won't give AIDS or some other disease to other people in the building.
- (4) A housing manager has to check the criminal or rental history the same way for everyone. For example, it is illegal to check for ten years for people with psychiatric disabilities but only five years for everyone else.

Rule:

- d. **A housing manager can't provide less service just because of the person's disability.**

Examples of Things That Managers Can't Do:

- (1) A housing manager can't ignore a person with psychiatric disabilities who complains that another tenant is bothering her just because the manager assumes that the person with psychiatric disabilities makes things up.
- (2) A housing manager who provides a bus or van service can't refuse to let someone with a psychiatric disabilities ride on the bus just because other tenants don't like it. If Elder Services or a Boys and Girls Club or some other organization provides the bus or van, it is okay to let only people served by that organization use the van.

2. RULES THAT UNFAIRLY MAKE IT HARDER FOR PEOPLE WITH DISABILITIES TO GET INTO HOUSING OR TO USE ALL THE PROGRAMS IN HOUSING ARE ILLEGAL.

Section 504 and the ADA say that rules which make things harder for people with disabilities are often illegal even if the manager did not mean those rules to make things harder for people with disabilities. For example, if a housing manager had a rule that everyone has to come into the housing office to apply for public housing - no matter what, that rule would make it harder for people with certain types of disabilities to apply for housing and would be illegal.

F. HOUSING MANAGERS ARE REQUIRED TO MAKE REASONABLE CHANGES ("ACCOMMODATIONS") FOR PEOPLE WITH DISABILITIES SO THEY CAN LIVE IN HOUSING AND PARTICIPATE IN ANY ACTIVITIES THEY WANT.

A main requirement of all the laws is that when you apply to housing and while you are a tenant, a landlord must reasonably change her rules, policies, practices and procedures for a person with a disability so you can have an equal chance to use and enjoy your apartment, community room, laundry room or any other part of the development. Some of the laws call this "reasonable accommodation" and other laws call it "reasonable modifications". Changing the rules does not mean that a person with a disability doesn't have to follow all the terms of the lease; it means that you can have help following the lease or do it in a different way. For example, a housing program may have a rule that says that tenants have to bring their rent to the office in person. A reasonable accommodation would allow a person who had difficulty getting to the office because of her disability to mail in her rent, but she still has to pay rent.

Some of the laws also require housing providers to make physical changes in the buildings, such as building ramps, installing grab bars, and lowering cabinets. Other things don't have to be changed. A housing manager doesn't have to change the basic housing program or do things that take too much money or time away from the housing program. For example, if a housing program didn't provide housekeeping services, the program wouldn't have to provide you these services to enable you to live in your housing.

The law calls a change in the basic housing program a "fundamental alteration". The law calls something which takes too much money or time away from the housing program, "an undue financial and administrative burden". Housing providers do not have to make changes that are a "fundamental alteration" of the program or that cause "an undue financial and administrative burden."

1. RULES, POLICIES, AND PROCEDURES.

All the anti-handicap discrimination laws discussed in this chapter require housing managers to change their rules, policies, practices and procedures for people with disabilities if they need

changes in order to have an equal chance to use and enjoy their apartment or other parts of the development.

2. EXAMPLES OF REASONABLE CHANGES OF RULES, POLICIES AND PROCEDURES.

It is not clear how far a housing provider has to go in making changes because neither the federal laws nor their regulations say exactly what "reasonable accommodation" means. The following examples show what is intended:

- a. A tenant with a psychiatric disability who has a letter from a doctor or social worker saying that she needs a pet to help her remain stable should get to keep the animal in her apartment even if there is a no-pet rule as long as the animal doesn't cause problems;
- b. Allowing rent to be mailed in rather than delivered in person if someone's psychiatric disability keeps her from leaving her apartment;
- c. An assisted-housing manager taking into account explanations why a problem happened for someone with a bad tenancy record or criminal record which is a result of her disability. This means someone with a bad record can explain the reasons why the person's disability led to the problems and how the person's life has changed so that the problem would not happen again. (A public housing authority has to do this whether the person has a disability or not.)
- d. Allowing a tenant, whose psychiatric disability causes her to damage her apartment, a chance to get psychiatric health assistance and time for it to work

before eviction, as long as the damage is not too expensive and other tenants are not being too disrupted.

3. FUNDAMENTAL ALTERATION OF THE HOUSING PROGRAM.

Not all changes of rules, policies, and procedures would be considered "reasonable". Under federal law, a change would not be considered reasonable if it would change the basic parts of the housing program. This means looking at the main purpose of the program and what it takes to serve this purpose.

4. EXAMPLES OF BASIC CHANGES OF HOUSING PROGRAMS THAT HOUSING MANAGERS WOULD NOT HAVE TO DO.

- a. Pay for a social worker or home care worker to help the tenant to live independently if the housing does not normally provide a social worker or home care worker;
- b. Take care of a pet for a tenant with a psychiatric disability who can't care for the pet herself;
- c. Let a person, who has a bad tenancy history (violence, not paying rent...) as a result of a drinking problem, move in if she hasn't changed her behavior.

5. PHYSICAL CHANGES OF THE BUILDING OR GROUNDS.

Section 504 and Title II of the ADA require housing managers to make physical changes for individuals with disabilities. These laws adopt the idea of "program accessibility", which means that

people with disabilities can use the program as a whole. For example, every laundry room in the building does not have to be accessible, only enough laundry rooms so that it is reasonably convenient for a person with a disability.

Among the possible ways to make sure that a program as a whole is accessible is reassigning services to buildings that can be used by people who use wheelchairs, helping people who have communication problems (such as using a sign language interpreter to communicate with people who are deaf), making physical changes in buildings, and building new facilities.

A housing manager doesn't have to make physical changes in buildings if there is another way to make sure people with disabilities can fully use the housing and common areas. The manager must choose ways that allow people with disabilities to be with people without disabilities as much as possible.

6. EXAMPLES OF PHYSICAL CHANGES .

Examples of physical change include, but aren't limited to, the following:

- a. installing an automatic water faucet shut-off for people who can't remember to turn off the water;
- b. installing pictures or color coded signs or pathways for people whose cognitive problems make written signs impossible to use.
- c. installing carpeting or acoustic tiles to reduce noise made by a person whose disability causes them to make a lot of noise; or
- d. disconnecting a stove and installing a microwave for a person unable to operate a stove safely.

7. THINGS TO THINK ABOUT IN DECIDING IF A PHYSICAL CHANGE WOULD RESULT IN AN UNFAIR WORKLOAD OR FINANCIAL HARDSHIP.

All physical changes are not "reasonable". A landlord does not have to make a physical change if it would cause great hardship. This means looking at the cost of the change and at how much money the landlord has that is not needed for other important things like fixing a roof, furnace, or paying security guards. Each time someone asks for a physical change, the landlord has to check again to see how much money she has because this amount may be different at different times. Things to think about in deciding whether a change would cause a large hardship include the type of change, the cost of the change, the size of the owner's overall housing business, the budget and other sources of money, and whether the housing program can get paid back from somewhere else (not you).

Even if a physical change would cause a financial hardship to the housing program, if you can pay enough of the cost or the total cost, the landlord must allow the change to happen. The manager should pay whatever part of the cost she is able to, depending on how much money she has and the other important uses for the money.

G. WHAT SHOULD I DO IF I THINK I HAVE BEEN DISCRIMINATED AGAINST?

This section contains the following information:

1. How each federal law in Chapter 2 is enforced and what each law allows a person to get if she proves that a housing manager discriminated against her. This is called the "remedies" available to individuals. The complaint forms that you need to enforce your rights are included with a line by line explanation of how to answer each block on the form. In

addition, a model complaint is provided for a housing discrimination case. (Don't forget to check the next chapter to see how to enforce your rights under state law.)

2. A discussion of how important it is to keep records.
3. Questions you should ask yourself to figure out if you have been discriminated against, and what you hope to achieve by complaining of discrimination.
4. How to decide on a plan of action. Your plan of action will depend on what you think the housing manager did wrong, and whether you have tried to resolve the matter informally. For example, you may decide to proceed differently if you were turned down for housing than if you were denied a reasonable accommodation or are being evicted. You might also proceed differently if you haven't tried to talk with your housing manager about the situation than if you have made every effort to get the housing manager to follow the law. This section will also discuss possible ways of resolving the matter and the pros and cons of each:
 - a. Discussing the matter with the housing manager;
 - b. Writing a letter to the housing manager about the issue involved (a model letter is included);
 - c. Filing an internal grievance (if a procedure exists);
 - d. Contacting an attorney or advocate; and
 - e. Filing a discrimination complaint with an agency.

The Appendix at the end of the Handbook lists protection and advocacy agencies for all states who can give you information on legal service, civil rights and service providers who specialize in housing.

H. ENFORCEMENT MECHANISMS AND REMEDIES

Enforcement is carried out in a variety of ways depending upon the particular law involved and how you choose to proceed. Before reading about each law, it is important that you know a few common legal words and procedures.

First, **all claims of discrimination must be filed within certain time limits, often called "statutes of limitations"**. The deadline for filing administrative complaints is often quite short (for example, 180 days to file an administrative complaint under Section 504 and Title II of the ADA).

There are a variety of agencies that enforce housing discrimination laws. The Fair Housing Amendments Act, Section 504 (if the money comes from HUD), and Title II of the ADA (if it involves housing) are enforced by HUD. Specific information regarding enforcement and procedure is found in the chapter which follows.

If you file with an agency, you may want to see the agency's file on your case by making a request under state and federal freedom of information laws. The federal Freedom of Information Act, for example, gives an individual a right to see files about her in nearly all situations if there is federal money involved.

It is important for you to know that if you have been discriminated against, you have to take some kind of action if you want the discrimination to stop. Favorable laws, constitutional amendments, regulations, and court decisions are important, but they are not enough. You have to make the law work by doing things like continuing to talk to the housing manager, filing administrative complaints, and going to court. Hopefully this chapter will help you in that process.

1. ENFORCEMENT MECHANISMS AND REMEDIES AVAILABLE UNDER FEDERAL ANTI-HANDICAP DISCRIMINATION LAWS .

A chart of the ways you can enforce your rights and the possible remedies available under each anti-handicap discrimination statute follows.

Federal Enforcement Mechanisms and Possible Remedies

Law	Enforcement	Possible Remedies (what you can get if you prove discrimination)
<p align="center">Rehabilitation Act §504 29 USC §794 (federal)</p>	<ol style="list-style-type: none"> 1. Grievance with housing agency/authority if it employs 15 or more people, or 2. Administrative complaint with federal agency providing the financial assistance within 180 days of discrimination and/or federal court within 3 years 	<ol style="list-style-type: none"> 1. The housing agency can lose its federal money. 2. You can get money damages for actual financial losses, attorney's fees and/or emotional distress. 3. The court could order the housing authority/agency to stop discriminating against you and give you an apartment or make a reasonable accommodation.
<p align="center">Fair Housing Amendments Act 42 USC §3601 et. seq. (federal)</p>	<p>Complaint to HUD within 1 year of alleged discrimination, and/or lawsuit within 2 years</p>	<ol style="list-style-type: none"> 1. You could get money damages for emotional distress, attorney's fees and/or punitive damages. 2. The court could order the housing authority/agency to stop discriminating against you and to do something like give you an apartment or make a reasonable accommodation.
<p align="center">Title II of the Americans with Disabilities Act (ADA) (federal)</p>	<ol style="list-style-type: none"> 1. Grievance with housing agency/authority if it employs 50 or more people, or 2. complaint to designated federal agency within 180 days and/or 3. lawsuit in state or federal court within 3 years 	<ol style="list-style-type: none"> 1. You could get money damages for emotional distress, attorney's fees and costs, and/or 2. The court could order the housing authority/agency to stop discriminating against you and to do something like give you an apartment or make a reasonable accommodation.

I. SECTION 504

Section 504 has three enforcement procedures: an internal grievance procedure, HUD (or whichever federal agency provides funding to the housing manager), or filing a lawsuit against the landlord.

1. INTERNAL GRIEVANCE PROCEDURES.

You can file a grievance with the housing authority's Equal Opportunity (EO) office. If it involves state assisted-housing, you may be able to file with your state's Housing Finance Agency or other state housing agency. How this works will vary from agency to agency. Any agency that has at least fifteen employees must have an internal grievance procedure.

2. A COMPLAINT WITH HUD.

If your landlord receives federal money and you believe that s/he has discriminated against you because of your disability, you can file a complaint with HUD. To do this you can either write a letter or use HUD's housing discrimination complaint form 903. The form is available at HUD regional offices. (Look in the Appendix at the end of the book for a copy of the complaint form and a list of local HUD regional offices. The complaint should tell exactly what happened with all the details and include at least the following information:

- a. Your name, address and telephone number. If you do not have an address or a telephone number, write that and tell the agency how to reach you. For example, use a friend's address or telephone number, or the address and phone number of a shelter or hospital, with the name of a contact person;
- b. The name and address of the housing program that discriminated against you;

- c. A complete description of what you think is discriminatory action, including dates, places, names and titles of the people involved. This description should include an explanation of why you are qualified, with or without reasonable accommodation, for the housing;
- d. What the housing manager said about your complaint of discrimination (if she said anything) and why this answer was unsatisfactory;
- e. A statement that you have a disability (handicap);
- f. A statement of what you want the housing manager to do and what else you want; and
- g. any other information or papers which help describe the discrimination, including any housing rules or practices which you think are discriminatory.

The complaint should be carefully written to explain clearly and convincingly what discrimination occurred. If you believe that you were discriminated against because of another illegal reason (for example, sex, race, national origin) in addition to disability, you should also tell about that in detail. A sample complaint is provided at the end of this section, using the HUD complaint form for filing a federal Fair Housing Complaint.

Complaints must be filed within 180 days of the alleged discrimination. This time may be extended if there is a very good reason for filing the complaint late. For example, if you were unable to file the complaint because your disability prevented you from knowing that you were being discriminated against, HUD may be willing to allow you more time to file a complaint. Also, if

the discrimination is continuing, then the complaint may be filed while the discrimination continues or within 180 days of the last time it happened.

To file a complaint, mail a letter about it (use the form if you can) to the HUD Regional Office (look in the Appendix at the end of the book for the regional office near you) or to:

Office of Fair Housing and Equal Opportunity
Department of Housing and Urban Development
Washington, D.C. 20410

You should get a letter from HUD within 10 days stating that the complaint has been received. Once the complaint is filed, HUD will investigate the facts and determine whether unlawful discrimination occurred. You and your advocate, if you have one, should help HUD by giving all the facts and information about what happened to the investigator assigned to the complaint - for example, you should give the investigator names, addresses, and telephone numbers of witnesses and other people who know about what happened.

During its investigation, HUD will try to talk to both you and the housing manager to resolve the complaint. This is called negotiation and reconciliation. You should continue to be involved, offering information and giving ideas for solutions to the investigator during the time of trying to work things out. After its investigation, HUD will send a letter of findings. This letter will tell the important facts and whether or not HUD thinks discrimination happened. If you or the housing manager think that there is more information that might change HUD's decision, you can send the information to HUD with a letter asking for a review. You (or your representative) have to do this within 30 days after you receive the Letter of Findings. If neither side makes a request, HUD has 14 days to send a letter to both sides stating its final decision. If HUD finds that the landlord discriminated against you, the landlord will have 10 days to agree to correct the problem. HUD is supposed to reach a decision within six months. It often takes longer. The following chart summarizes the HUD complaint resolution process.

CHART INSERT - HUD COMPLAINT RESOLUTION PROCESS (504)

a. Remedies

If HUD decides that discrimination happened, it could tell the housing authority to pay you money damages, stop discriminating against you (i.e. give you the apartment you wanted, give you a reasonable accommodation), make changes in rules or procedures, train workers about disabilities and fair housing, have HUD check on them or do other things to make sure they don't discriminate again. If the landlord acted very badly, HUD can take away the landlord's federal money for a while or stop the landlord from getting any new money.

3. FILING A LAW SUIT.

Instead of, or in addition to, filing an administrative complaint with HUD, you may file a lawsuit within three years. The three year statute of limitations runs from the date of the discrimination, regardless of whether or not a complaint has been filed with HUD. If you filed a complaint with HUD and it is still unresolved by the end of the three-year period, you must file a lawsuit immediately or else give up the right to sue on that complaint.

a. Remedies

If you win in a lawsuit, you may get money for actual financial losses you had and lawyer's fees. In addition, the court may order the housing authority to stop its discriminatory practices (including refusing to provide you reasonable accommodation) and, in accordance with recent case law, give you money to make up for the discrimination (compensatory damages).

J. FAIR HOUSING AMENDMENTS ACT

HUD is responsible for enforcing this statute as well. Violations of the law may also be taken to court.

1. FILING A COMPLAINT WITH HUD.

If you believe that your housing manager has discriminated against you because of your disability, you may want to file a complaint with HUD. To do this you can either write a letter, use the agency's housing discrimination complaint form 903, which you can get at HUD regional offices (look in the Appendix at the end of the book for a copy of the complaint form and a list of the offices), or call on the HUD Hotline at: 1-800-669-9777 or TDD 1-800-927-9275. If you are mailing your complaint form or letter, send it to your local HUD regional office or:

Office of Fair Housing and Equal Opportunity
Department of Housing and Urban Development
Washington, D.C. 20410

The complaint should be as specific as possible and include the same information as in a Section 504 complaint (see Section L, beginning on page 43). You have one year after the alleged discrimination, or one year after the end of discrimination that continued for a period of time, to file an administrative complaint. What happens after you file a complaint is confusing, and is illustrated in the chart on page 40. The following is a description of the rest of the complaint process.

2. INVESTIGATION OF THE COMPLAINT.

If your complaint is not referred to a state or local agency, HUD will proceed with its own enforcement procedures. The investigation is supposed to be completed within 100 days, unless it

is not practical to do so. HUD has to let you know if it is unable to complete the investigation within that time period and why.

At the end of the investigation, HUD prepares a final report. HUD has to let you see information which comes from the investigation.

3. CONCILIATION.

To the extent possible, HUD will try to get you and the housing manager to reach an agreement. This is called "conciliation". Conciliation and investigation are supposed to happen at the same time. A conciliation agreement between you and the housing manager must be approved by HUD.

You can ask for the following types of things in conciliation: (1) money damages and (2) for the housing manager to stop discriminating against you, which might mean letting you have housing or giving you a reasonable accommodation.

If HUD has a good reason to believe that the housing manager hasn't followed a conciliation agreement, it must refer your case to the Justice Department (Attorney General) and recommend that your case go to court to get the housing manager to do what she agreed to do.

4. PROMPT JUDICIAL ACTION.

At any time, after the complaint is filed, HUD may decide that it has to go to court to enforce your rights. HUD will then tell the Justice Department (Attorney General) to go to court to get you relief.

5. CHARGING THE RESPONDENT (HOUSING MANAGER).

If HUD determines that there is reason to believe that you were discriminated against ("reasonable cause") and you and the housing manager haven't agreed to settle the matter (a conciliation agreement), HUD must immediately issue a charge on your behalf. HUD has to send both you and

the landlord a copy of the charge together with information about how to choose whether you want your case to be tried before a hearing officer or in court.

If HUD determines that there isn't good evidence that discrimination happened, it must dismiss the complaint promptly. If you still disagree, you may then go to court. This is discussed below.

6. ELECTION OF JUDICIAL DETERMINATION.

When HUD does decide that there is good evidence to believe that discrimination happened (issues a charge), you or the housing manager may choose to have the claim tried in court instead of an administrative hearing. The choice must be made within 20 days after receiving the charge.

If either you or the landlord choose to have the claim tried in court, HUD must immediately notify the Justice Department and tell it to begin a court case for you. The Justice Department must do this within 30 days after the choice is made.

7. ADMINISTRATIVE LAW JUDGE HEARING.

If you or the landlord don't choose to take the case to court, HUD must provide the opportunity for a hearing before an Administrative Law Judge (ALJ). At the hearing you and the landlord may appear in person, have a lawyer, present evidence, question the other side's witnesses and get an order requiring people to testify (subpoena). The hearing must begin within 120 days after the charge is sent unless it is not practical to do so. The ALJ must make an initial decision within 60 days after the end of the hearing unless it isn't practical.

If the ALJ finds that a housing manager discriminated against you or is about to, she may give you compensatory damages (money to make up for the discrimination) and order a landlord to take action, including giving you housing or providing you with a reasonable accommodation. The

court may also require the landlord to pay your attorney's fees and costs. The ALJ may also fine the landlord.

8. REVIEW.

HUD may review the ALJ order. This review must be completed within 30 days after the decision is issued. If the review is not completed, the initial decision becomes a final decision.

Any person adversely affected by a final decision of HUD, may file a petition for review in the U.S. Court of Appeals, for the place where you said the discrimination happened within 30 days after the order is entered. If no petition for review is filed within 45 days after the order is entered, the findings of fact and final decision will be final for any petition for enforcement.

9. ENFORCEMENT.

HUD can ask the court to enforce a final decision and for any appropriate relief or restraining order. If, before the expiration of 60 days from the date of the final decision, the landlord hasn't asked that the decision be reviewed, and the Secretary of HUD hasn't tried to enforce the final decision, you can ask the court for the place where you were discriminated against to make the landlord obey the decision.

The following chart summarizes what happens after you file a complaint with HUD:

INSERT CHART - THE HUD ADMINISTRATIVE COMPLAINT PROCESS
(For Fair Housing Amendments Act)

10. FILING IN COURT.

You have the choice of bringing a private lawsuit in federal court if the landlord discriminates or doesn't follow the conciliation agreement, instead of filing an administrative complaint with HUD. There are two exceptions to this rule. First, if you have signed a conciliation agreement with a housing manager, you may not bring a case in court about the same discrimination except to enforce the agreement. Second, you may not begin a court case if an ALJ has begun a hearing about the same charge. In all other cases you are not required to get relief from HUD (exhaust administrative remedies) before filing a case in court.

a. Statute of Limitations

You have two years after the alleged act, or continuing acts, of discrimination ends to file a case in court.

b. Relief

If the court finds that a landlord discriminated against you or is about to, the court may award you money damages, including punitive damages, and require a housing manager to do things, including giving you housing or providing you with a reasonable accommodation. The court may also require the housing manager to pay your attorney's fees and costs.

K. TITLE II OF THE ADA

You can file a grievance with the housing authority or possibly the assisted-housing provider's EO officer (if there is one) or the state Housing Finance Agency. Any agency that has at least fifty employees must have

an internal grievance procedure. You may also file a complaint with the Department of Justice and/or file a lawsuit.

1. FILING WITH HUD.

Title II of the ADA gives various federal agencies responsibility for making state and local government agencies follow the law. HUD has responsibility for enforcing housing discrimination complaints. A complaint under the ADA should contain the same information as a Section 504 complaint. Like the other federal laws, you have 180 days to file a complaint unless you have an extremely good reason for why you are filing late. If you are mailing your complaint form or letter, send it to your local HUD regional office or:

Office of Fair Housing and Equal Opportunity
Department of Housing and Urban Development
Washington, D.C. 20410

Once HUD receives the complaint, it will use the procedures for Section 504 if the housing program gets federal money. If the agency doesn't get federal money, HUD has to investigate the complaint, attempt to resolve it informally, and if unable to resolve it, issue a decision (letter of findings) stating the facts and the law and what the housing manager must do if there is a violation of the law.

a. Remedies

If HUD decides through its investigation that discrimination happened, it could order the housing authority to stop discriminating against you (i.e. give you the apartment you wanted or provide you with a reasonable accommodation), to pay you money damages, make changes in their policies or procedures, conduct training programs for their staff and/or undergo additional monitoring and enforcement activities.

2. FILING A COMPLAINT IN COURT.

As under Section 504, you may also file a private lawsuit in state or federal court within three years of the discrimination. This may be filed in addition to, or instead of, filing a complaint with HUD.

a. Remedies

If you win in a lawsuit, you may get money to make up for actual costs or money losses you had, emotional distress damages, and lawyer's fees. In addition, the court may order the housing authority to stop whatever it is doing that is illegal (including refusing to give you reasonable accommodation).

L. SAMPLE COMPLAINTS

On page 49 is a sample HUD complaint form, filled out for the case described below. Following this model complaint is a line by line description of how to answer each block on the form:

Jane Doe has a psychiatric disability which affects her ability to work. Her parents forced her to be sterilized as a young woman. As a result, she has developed an emotional dependence on her dog. She considers it to be her child. She applies to the Town Housing Authority for public housing. The Authority's address is 153 Ocean Drive, Town, MA 01234. The housing manager offers Jane Doe an apartment at 53 Ellington Road, Town, MA 01234 on May 13, 1993. However, the housing manager tells her that day that there is a "no pets" policy and she will not be able to have her dog live with her. Jane Doe immediately reveals that she has a psychiatric disability, needs her pet to live with her because of her disability, and that she has a letter from her doctor saying this. The housing manager refuses to make an exception to the rule and immediately tells Jane Doe this.

1. FILLING OUT HUD COMPLAINT FORM 903.

HUD's fair housing complaint form (903) has numbers in some of the various blanks on the form where you are suppose to fill in information. We have added additional numbers and some letters to simplify explaining how the form should be filled out. The following description explains how the different numbered blanks should be filled in. The description assumes that the person filling in the complaint form is the person who believes she was discriminated against.

- A)** This states that the paper is a housing discrimination complaint form.

 - B)** This is the name of the agency and office responsible for enforcing both the federal Fair Housing Amendments Act and Section 504 for recipients of federal financial assistance from the department of Housing and Urban Development.

 - C)** This states that the form was approved for use by the Office of Management and Budget.

 - D)** This tells you to fill out the complaint form as best you can and where to send it. There are also some unnumbered boxes with blank spaces within the area. These spaces are not for you to write any information. They are for HUD's use.
-
- Block 1a)** Fill in your name, beginning with your last name, then your first name, your middle initial, and indicate whether you are "Mr., Ms. or Mrs."

 - Block 1b)** Fill in your home telephone number. If you do not have a phone, you may either leave it blank or write down a number where you can be reached.

 - Block 1c)** Fill in your work telephone number. Leave it blank if you are not employed.

Block 1d) Fill in your address. Include your street, city or town, county, state and zip code.
If you do not have an address, fill in an address where HUD can send you mail.

Block 2a) Fill in the name of the housing manager you are filing a complaint against.

Block 2b) Write the housing manager's telephone number.

Block 2c) Write the housing manager's office address, including the street address, city or town, county, state and zip codes.

Block 2d) This block asks you to check off who discriminated against you. Because the federal law prohibits all kinds of housing discrimination, there are categories here that may not apply to your situation. Check off the person or persons who discriminated against you:

- a) builder;
- b) owner of the building;
- c) a broker;
- d) a salesperson;
- e) a superintendent or manager of the building;
- f) a bank or other lender; or
- g) someone else.

Block 2e) If the person you named in 2d worked for a housing company or housing authority, check the box and write the name and address of the housing company or authority.

Block 2f) If you think another person or persons discriminated against you in this case, write their name or names and who they are. For example, the person may be a maintenance worker for the housing authority.

Block 3a) This block asks you to check the box or boxes which indicate what the person you are complaining against did wrong:

- a) Refuse to rent, sell or deal with you;
- b) Advertise in a discriminatory way;
- c) Tell you that there was not housing available when there was housing available;
- d) Discriminate in financing;
- e) Engage in Blockbusting (getting someone to buy her property quickly at a reduced profit because of fear that someone from a minority group, or a person with a disability, will move into the neighborhood, and then reselling the property at a higher price);
- f) Discriminate in broker's services;
- g) Discriminate in the conditions or terms of sale, rental, occupancy, or in services or facilities;
- h) Intimidate, interfere or coerce you to keep you from getting the full benefit of the federal Fair Housing Law;
- i) Check this block if none of the other blocks indicate the discriminatory action.

Block 3b) Write the date when you were last discriminated against.

Block 4) Check off all the blocks indicating why you believe you were discriminated against. Column (a) indicates race, Column (b) indicates religion, Column (c) indicates sex,

Column (d) indicates handicap (disability), Column (e) indicates because you have children, or you or a woman in your household is pregnant, and (f) national origin. Within some of these columns there are sub-blocks. These blocks are for you to provide more specific information. For example, within Column (d) under the block "handicap" are two blocks, A and B. If you think you were discriminated against because of a physical disability check the top block (A); if because of a psychiatric disability, the bottom block (B); if both, check both blocks.

Block 5a) Check off what kind of house or property was involved:

- A) Single family;
- B) A house or building for 2, 3, or 4 families;
- C) A building for 5 families or more;
- D) If none of the categories of housing listed there apply to your situation, then check this block and explain in #6.

Block 5b) Check off whether the owner lived in the housing. If yes, check box A, and if no, check box B. If the owner is a city or town, check no. If you do not know whether the owner lived there, check off "unknown", box C.

Block 5c) This asks you to check off if the house or property involved is (a) being sold or (b) being rented. If you are trying to buy a house and are being discriminated against, check the first box. If you rent, or are trying to rent an apartment, and are being discriminated against, put a check in the second box.

Block 5d) Write the address of the house or property.

Block 6) Write what happened that makes you think you were discriminated against.

Block 7a) Sign your name.

Block 7b) Write the date.

**INSERT CHART - SAMPLE HOUSING DISCRIMINATION
COMPLAINT FORM (HUD)**

M. THE IMPORTANCE OF KEEPING RECORDS

If you think that you have been discriminated against or will be discriminated against in the future, it is extremely important for you to be able to remember what occurred and when. If possible, you should do the following:

1. Keep track of everything that has been said or done to you to make you think that you have been discriminated against. Specifically, keep track of dates, who said what, and who was present when things were said.
2. After you meet with your housing manager, send her a letter telling what happened in the meeting and what, if anything, was agreed to. This will show the manager what you think happened or was agreed to and give your housing manager a chance to let you know if she had a different understanding. The housing manager may send you a reply letter. If the letters say different things, you will both know there is a misunderstanding and you can talk again to see if you can straighten it out. If you can't straighten it out, at least you both have in writing what the other one thinks.
3. Keep a copy of all letters - those that you send your housing manager and any that she sends you.
4. Keep records of telephone calls. If you speak with your housing manager on the phone, write down the date you talked, the time of day it was, and what was said. It is best to do this right after you hang up the phone because the information will be fresh in your head.

5. Keep track of how the discriminatory treatment made you feel, whether it affected your health, your sleeping habits, your eating habits, and how you got along with other people.

N. THE QUESTIONS YOU SHOULD ASK YOURSELF IF YOU THINK YOU HAVE BEEN DISCRIMINATED AGAINST BECAUSE OF YOUR DISABILITY

Before you figure out what to do if you have been discriminated against, you need to be able to say why you think you have been discriminated against and what you hope to gain by taking action. The following questions will help you figure this out. Ask yourself each of these questions. It may be helpful to write down the answers to these questions, or to discuss the questions and answers with a friend and then write them down.

1. Am I someone who wants to get into housing (an applicant)?
2. If I am a tenant, do I get along with the housing manager?
3. What happened to make me think that I have been discriminated against?
(It could be more than one thing or the same thing that happened more than one time).
4. Does the housing manager know I have a disability? If so, how?
5. Did the housing manager mean to discriminate against me?
6. What reason did the housing manager give me for acting the way she did or for refusing an accommodation?

7. Do I know of other people with my disability living in the building or in any housing managed by the housing manager?
8. Has anyone else with my disability or other disabilities had problems with the housing manager?
9. If I gave the housing manager information about disabilities or disability rights, would she change what she was doing or change her decision?
10. Will the housing manager stop discriminating against me if I tell her I might file a complaint against her?
11. Can I explain the situation and get the changes I need myself?
12. Would it be helpful to ask my service provider (if I have one) to help me with the situation?
13. Would it be helpful to get advice from a lawyer?
14. Would it be helpful to ask a lawyer to help me?
15. What do I want from this situation, for example, getting into housing, a reasonable accommodation, the provider to stop asking me personal questions about my disability, money damages or, an apology, etc.?
16. Do I want to file a complaint with an enforcement agency?

17. What do I think is the best way to get what I want or need?

O. DEVISING YOUR PLAN OF ACTION

If you have taken the time to answer the questions in the previous section, you will be prepared to figure out your plan of action. If you think you have been discriminated against, there are a number of things you can do:

1. Talk about the matter with the housing manager;
2. Write a letter to the housing manager about the issue involved;
3. Call a lawyer or advocate;
4. File a discrimination complaint with the housing authority, the state Housing Finance or other housing agency, HUD, the state or local anti-discrimination agency, or court;
5. Nothing.

What action you choose will depend on whether you get along with the housing manager, whether you think talking to the housing manager will make a difference, whether you feel you can handle the situation yourself, whether you feel a lawyer would be helpful, whether you want to file a discrimination complaint and how quickly you need to take action.

1. TALKING WITH THE HOUSING MANAGER.

If you think that talking with the housing manager has any possibility of helping, you should try this approach if you feel capable of doing it. If you have a service provider and would find it helpful to have her go with you to the meeting, this is a good idea.

The advantage of talking with the housing manager is that you might be able to resolve the matter quickly and without tensions rising any more than they have to. If you are unable to work out the situation, you can always seek legal assistance and/or file a complaint later.

It is also a quick way to determine whether the situation will be resolved or if you have to try something else. You can decide as you talk whether it is necessary to mention what the law says housing managers must do or not do and that you will file a complaint or contact a lawyer if the manager doesn't do what you want.

If you do not think that talking with the housing manager will be helpful or you aren't comfortable doing so, then you shouldn't. You might however, want some one else to talk to the manager for you - a friend, a case manager or an advocate.

2. WRITING THE HOUSING MANAGER A LETTER.

Writing the housing manager a letter is a good choice in a number of situations. If you have talked with the housing manager and the housing manager agrees to do what you want, you might want to write the letter to confirm that she agreed to do it. If the manager did not agree to it, you should write her a letter saying what happened during the meeting. Writing a letter is also helpful in situations where you are not comfortable talking with a housing manager or when you have experienced difficulty communicating with one another. A letter or other written document is a much better way than just your memory or the housing manager's to show whether or not discrimination happened.

If the manager does not yet know about your disability or about what you think is discrimination, you should explain in the letter why you believe the manager's action or inaction is discriminatory and what laws she is breaking. Once the manager learns about what you think, she may stop the discrimination or work out a way to solve the problem. If the manager already knows what you think or refuses to consider what you say, you may choose to say that you will call a lawyer or file a complaint if you don't get a good answer.

If you need help writing a letter, ask someone who you trust to help you. You may also decide to contact a lawyer to help you write the letter.

If you write a letter, make sure you say how much time the housing manager has to answer you before you take further action. This may make the housing manager notice that your request is important. Also, by giving a deadline to the housing manager you can make sure that the answer won't take too long. Make sure that the time is reasonable, a week or two.

For example, using Jane Doe's request for reasonable accommodation described on page 43, the following is a sample letter.

SAMPLE LETTER

put the date here

Mr./Ms. Name of Housing Manager
Job Title of Housing Manager
Name of Housing Authority or Management Company
Address of Housing Authority or Management Company

Dear _____:

I am very excited about becoming a tenant in your building. It is my understanding that I can move into the apartment but that there is a no pets rule so my dog will not be able to live with me. As I told you on May 13, 1993, I have a psychiatric disability and I am extremely emotionally dependant on my dog. I need to be able to live with my dog. I hope you will reconsider your unwillingness to accommodate my disability.

As I told you before, I have documentation that I have a disability and that I need to live with my dog. I would be happy to give you this documentation.

As you know, both federal and state law requires housing managers to provide individuals with disabilities reasonable accommodation.

Please contact me by (give date). If I don't hear from you by then, I will have to take other action.

Sincerely,

Your name

3. CONTACTING AN ATTORNEY OR ADVOCATE.

If you are unsure of how to approach a landlord, if you have questions about your legal rights, if you want someone to advocate for you, or if you have received an eviction notice, you should contact an advocate or attorney experienced in this area of the law. See the end of chapter three for information in your state or the protection and advocacy list at the end of the book for a list covering all states.

If you contact a lawyer or advocate, she does not have to be the one negotiating with the landlord. The lawyer or advocate can simply give you advice about what you should do if that is what you want her to do. Also, if you have tried to resolve the matter yourself or you don't think this would be helpful or you don't feel capable, getting a lawyer or advocate involved is a good step. The housing manager is likely to take the situation more seriously if a lawyer gets involved. Your lawyer or advocate may be able to convince the housing manager that she is discriminating against you and that she has to do what you want. The landlord may call her lawyer. That lawyer may tell the landlord not to talk with you about the matter. This often happens with legal issues. Then your lawyer and the landlord's lawyer will negotiate. In clear cases of discrimination, it can be helpful if the housing manager calls a lawyer, because if the housing lawyer thinks you and your lawyer are right, she will tell the manager to follow the law.

Another possibility is that the landlord or the lawyer won't agree with your lawyer or advocate, leaving you with a decision to make: should you file a complaint?

4. FILING A DISCRIMINATION COMPLAINT.

You should only file a discrimination complaint if you have tried other means of resolving the problem or if you don't think anything else will work. It usually takes a long time to get relief from filing a complaint or a court action and this approach can be extremely hard emotionally.

The advantage to filing a complaint is that the housing provider is likely to take the issue seriously. She is likely to contact a lawyer and consider resolving the matter.

5. NOTHING.

You may choose to do nothing. Taking action is not for everyone. However, if you choose to do nothing, you and possibly others may continue to be discriminated against by this housing manager.

CHAPTER 3
STATE LAWS
OREGON ANTI-DISCRIMINATION LAWS

Written by David Thornburgh, J.D., Oregon Legal Services Corporation

INTRODUCTION

In addition to the federal laws, housing providers also have to comply with state laws which prohibit discrimination against persons with disabilities in housing. This chapter contains a brief description of laws in Oregon which protect persons with disabilities: the Oregon Civil Rights of Disabled Persons Act, (ORS) 659.400 et seq., the Oregon Assistance Animals Act, ORS 346.620 et seq. and 346.680, and the Oregon Administrative Rules, OAR 839-08-200 et seq. The discussion covers the differences and similarities to the federal laws. The focus of this chapter will be on ORS 659 because this is the law which is primarily used by people with disabilities in Oregon to rectify discrimination.

A chart summarizing the law in Oregon which prohibits discrimination appears directly after this introduction. It includes the types of practices which are prohibited and required by each law, the type of housing covered, each law's definition of a person with a disability, and whether individuals with a psychiatric disability, or those who have substance abuse, a history of a substance abuse problem, and/or individuals who are HIV positive or have AIDS, are covered. An explanation of the information contained in the chart follows. Later in this chapter there is a chart showing how each law is enforced and what remedies are available. A discussion of how these laws are enforced follows.

**State Laws Prohibiting Discrimination in Housing
Against People with Disabilities**

Law	Types of Practices Which are Prohibited or Required	Housing Covered	Definition of Person with a Disability (Handicap)
<p>Oregon Civil Rights of Disabled Persons Act ORS 659.400 <u>et seq.</u></p>	<ol style="list-style-type: none"> 1. Discrimination prohibited 2. Must provide a <u>reasonable</u> accommodation 3. Retaliation because of a complaint prohibited 	<p>All housing, rented or sold</p>	<p>A person who:</p> <ol style="list-style-type: none"> 1. has a physical or mental impairment which substantially limits a major life activity, such as walking, thinking, speaking, hearing, learning, breathing, working, socializing . . . 2. a record or history of an impairment which limits a major life activity, even if the person no longer has the disability or if the disability no longer limits a major life activity or 3. is regarded as having an impairment that limits a major life activity.
<p>Oregon Assistance Animals Act ORS 346.620 and 346.680</p>	<p>Discrimination against a person with a physical disability using an assistance animal</p>	<p>All rental housing</p>	<p>Physically impaired person</p>

Chart Continued . . . Read each law across for information on who it covers.

Are People with Psychiatric Disabilities Covered?	Is Illegal Drug Use Covered?		Are People Who Have Alcoholism Covered?	Are People With AIDS or HIV+ Covered?
	Current Use	History of Use		
<p>YES.</p> <ol style="list-style-type: none"> 1. if the psychiatric disabilities substantially limit a major life activity, or 2. if a housing provider thinks the person's psychiatric disabilities or perceived psychiatric disabilities limit a major life activity, or 3. if the person has a history of psychiatric disabilities which limits a major life activity and the housing provider discriminates against the person because of the history 	<p>Statute does not contain exclusion but this is not likely to be covered</p>	<p>YES</p>	<p>YES</p>	<p>YES</p>
<p>Not covered.</p>	<p>Not covered.</p>	<p>Not covered.</p>	<p>Silent</p>	<p>Silent</p>

A. THE OREGON CIVIL RIGHTS OF DISABLED PERSONS ACT (ORS 659.400 et seq.)

State law (ORS 659.400 et seq.) is similar to the Fair Housing Amendments Act and was signed into law in 1973. The state law was based on Section 504 of the Rehabilitation Act of 1973. The law prohibits all forms of discrimination in the sale or rental of a dwelling to the buyer or renter because of that person's disability, the disability of any person planning to live in the dwelling, or the disability of any person associated with the renter or purchaser. Discrimination is unlawful with respect to the terms, conditions, or privileges of any sale or rental of a dwelling, or in the provision of any services or facilities in connection with the dwelling.

1. HOUSING COVERED

This law covers almost every kind of housing. It covers apartments, single houses, rooming houses, shelters, and even vacant lots.

2. INDIVIDUALS PROTECTED BY THE LAWS

ORS 659.400 et seq. prohibits treating people differently because of their disability. The state law defines a person with a disability the same as the federal laws. A person meets this law's definition if the individual:

- a. has a physical or psychiatric disability which "limits a major life activity";
- b. has a record or history of such a disability; or
- c. if the seller or landlord treats the individual as if he or she has a disability.

As under the federal law, the physical or psychiatric disability can include almost any condition, disease, illness, disfigurement or disorder (e.g. alcoholism, AIDS, emotional disorder, mental

retardation, cerebral palsy, or HIV infection) if it limits at least one thing a person would normally do. This law clearly protects individuals with AIDS, HIV, psychiatric disabilities, alcoholism, as well as individuals who have a history of psychiatric disabilities, or are perceived as having a psychiatric disability.

3. DIFFERENCES IN STATE LAW

The state law (ORS 659.400 et seq.) applies to all property owners renting and selling a home or apartment. There is no exception for small landlords with only a few units.

The state law (ORS 659.400 et seq.) applies to all real property, not just to dwellings. Therefore, it protects against discrimination when property owners are renting or selling commercial space and empty land in addition to renting or selling homes.

The state law also protects tenants against discrimination based on the disability of the tenant's guests.

Although the state law (ORS 659.400 et seq.) contains no exception explicitly excluding individuals currently using illegal drugs, courts are likely to hold that current illegal drug use is not covered as a disability. Past illegal drug use is likely to be covered by state law. Oregon law includes language exempting people whose tenancy would constitute a direct threat to other individuals or to property. Even if current drug use was considered a disability, this exemption may be used to exclude illegal drug users. The Oregon Supreme Court held that an employer did not have an obligation to provide reasonable accommodation to a drinking alcoholic if he or she denied use and was not able to perform his or her duties.

4. REASONABLE ACCOMMODATION

The state law in Oregon requires owners to provide reasonable accommodations in all rules, policies and procedures. For example, the landlord may have to provide a parking space near the door. Like

the Federal Fair Housing Amendments Act, the state law generally does not require a housing provider to make a physical modification of the premises, but permits the tenant to make the modification at his or her own expense. Reasonable modifications include, but are not limited to, installing raised numbers or a flashing-light doorbell, lowering a cabinet, ramping a front entrance, widening a doorway or installing a grab bar.

As under federal law, this law does not require a housing provider to provide an accommodation if it would impose an undue financial or administrative burden or would fundamentally alter the nature of the program. Under state law, if an accommodation would pose an undue financial burden, a landlord is still required to provide this accommodation if the person with the disability agrees to pay for it.

If the modification will alter the rental unit in a manner that will make it harder to sell the property for market value, then a landlord may require that the tenant sign an agreement promising to restore the rental unit to the condition that existed prior to modification.

B. THE OREGON ASSISTANCE ANIMALS ACT (ORS 346.620 et seq. and 346.680)

This law (ORS 346.620 et seq. and 346.680) prohibits discrimination against a person with a physical disability using an assistance animal. Assistance animals include animals trained to assist a physically impaired person with walking, hearing, balance, self-care, communication, transportation and similar things.

Animals required for companionship due to a mental disability are not covered by this statute, but are covered by the Oregon Civil Rights of Disabled Persons Act (ORS 659.400 et seq.) and federal law.

C. OREGON ADMINISTRATIVE RULES GOVERNING HANDICAPPED PERSONS IN REAL PROPERTY TRANSACTIONS (OAR 839-08-200)

These administrative rules (OAR 839-08-200) were adopted pursuant to the Oregon Civil Rights of Disabled Persons Act. They define additional terms, create an exception when there is a significant risk to a disabled person, other tenants or the public, and clarifies that landlords are not forced to pay for physical alterations under the state law.

D. ENFORCEMENT MECHANISMS AND REMEDIES AVAILABLE UNDER OREGON ANTI-DISCRIMINATION LAWS

The following chart shows the ways you can enforce your rights and possible remedies available under each anti-discrimination statute.

State Enforcement Mechanisms and Possible Remedies

Law	Enforcement	Possible Remedies
<p>Oregon Civil Rights of Disabled Persons Act (ORS 659.400 et seq.)</p>	<ol style="list-style-type: none"> 1. Complaint to Bureau of Labor and Industries (BOLI) within one year of alleged discrimination 2. Lawsuit filed in circuit court within one year of the alleged discrimination if no BOLI complaint was filed 3. If BOLI finds substantial evidence of discrimination: <ol style="list-style-type: none"> a. Lawsuit filed within 90 days of the BOLI finding, or b. BOLI may file an administrative complaint 4. If BOLI fails to make a finding (or finds no substantial evidence of discrimination) within one year of filing a complaint, then you may still file a lawsuit within 90 days 	<ol style="list-style-type: none"> 1. In BOLI, you could get money damages 2. In court, you could get money damages, attorney's fees and costs, and/or punitive damages (damages to punish the housing manager). 3. The court, or BOLI, could order the landlord/housing authority/agency to stop discriminating against you and give you an apartment or make a reasonable accommodation
<p>Oregon Assistance Animals Act (ORS 346.620 et seq. and ORS 346.680)</p>	<ol style="list-style-type: none"> 1. Civil suit filed within one year of discrimination 2. Criminal suit 	<ol style="list-style-type: none"> 1. Compensatory damages, costs and attorney fees 2. Class C Misdemeanor; state may get up to \$1,000 as a penalty

**1. OREGON CIVIL RIGHTS OF DISABLED PERSONS ACT (ORS 659.400 ET SEQ.)--
FILING WITH BOLI**

Below is a brief outline of the steps used by the Civil Rights Division of the Oregon Bureau of Labor and Industries (BOLI) in handling civil right complaints. Not every complaint will go through all these steps, since many are resolved early in the process.

STEP 1: Filing a Complaint

Anyone claiming to be harmed by a violation of Oregon civil rights law may file a complaint with BOLI. A person who wants to file a complaint may call BOLI's Civil Rights Division Intake Office at the phone numbers listed on page 19. The intake office will mail a complaint questionnaire form to your home. You should fill out the complaint questionnaire form and mail it back to BOLI. If you have questions about the complaint questionnaire form or need help filling it out, the intake officer at BOLI will help you fill it out. You should ask BOLI for reasonable accommodation if your disability makes it difficult for you to read or fill out the form. An attorney could also help you fill out the housing discrimination complaint questionnaire. There is more information about how to fill out a complaint questionnaire starting on page 13 of this booklet.

After you mail the complaint questionnaire back to BOLI, the intake workers will review the answers and may call for more information. If BOLI decides that you complained about housing discrimination based on disability, BOLI will then type an official complaint and mail it to you for you to sign in front of a notary public. Most banks and law offices have a notary public.

After signing the official complaint in front of a notary public, mail it back to BOLI. The complaint is filed when you return the official complaint to BOLI with a properly notarized signature. After a notarized complaint is received, BOLI will notify the parties and assign an investigator.

Alternative Methods of Complaint:

If you have a complaint to make about discrimination, you may also file a civil suit in Circuit Court or with the appropriate federal agency, rather than filing a complaint with the Civil Rights Division of BOLI.

Deadlines:

A housing discrimination complaint must be filed with the Civil Rights Division within one year after the violation occurred. The Division is unable to accept complaints filed after this deadline. BOLI must receive the notarized complaint within one year of the discrimination. It is not enough to call or return the first questionnaire within one year.

Notification:

All parties named in the complaint will be notified within 30 days of a complaint being filed. A copy of the complaint will be sent with the notification.

STEP 2: Settlement and Investigation

Many complaints are resolved before an actual investigation. If both parties can agree, a settlement will be signed by complainant, respondent and representatives of BOLI. This agreement is binding and no further action can be taken on the complaint.

Fact Finding Conference:

BOLI may request that the people involved in the complaint attend a Fact Finding Conference. At the conference, both sides will have a chance to give their side of the story. At the end of the conference, the parties may agree to settle the complaint. If BOLI can determine whether or not a violation of the law occurred, a Notice of

Administrative Determination will be issued. If the conference does not resolve the complaint, the case may be sent on for further investigation. If the conference reveals that the dispute between the parties does not involve a law enforced by BOLI, the complaint will be closed.

Investigation and Determination:

BOLI will collect information from both parties. The investigator is an impartial fact finder who will decide whether or not the evidence indicates a possible violation of the law. If necessary, the Commissioner of BOLI may issue subpoenas to require either party to produce evidence.

The facts and the resulting decision will be put in writing and sent to both parties. This document is called a Notice of Administrative Determination.

Case Closure :

The case will be closed if BOLI determines that no violation occurred, or that there was not enough supporting evidence to proceed further. In addition, BOLI will close the case if a complainant files a complaint in court on the same issues contained in the complaint to BOLI or if the complainant fails to cooperate with the investigation.

The case will also be closed if the complainant withdraws the complaint. The complaint may be withdrawn at any time. Some parties withdraw the complaint and file in court after a determination.

Conciliation:

If BOLI finds evidence of a violation, a BOLI representative will again try to help both parties reach a voluntary settlement. If a settlement is reached, a formal agreement will be signed by both parties and representatives of BOLI.

STEP 3: Hearings and Orders

If no agreement can be reached through conciliation, the complaint may be scheduled for hearing. Not all cases go to a hearing. Priority is given to cases that have statewide impact, involve an area of law lacking precedent, involve a group of people or where there is an ongoing pattern of discrimination. If BOLI does not provide a hearing, then you will receive a letter and may file in court within ninety days of receiving the letter.

BOLI will prepare "specific charges" which explain what illegal act supposedly occurred. These charges, along with a notice of hearing, will be mailed to both parties. Not all cases scheduled for hearing are actually heard. The parties may reach an agreement settling the complaint before the date of hearing.

A referee chosen by the Commissioner of BOLI will conduct the hearing. A hearing is a formal fact finding meeting, and all testimony is under oath and is recorded.

Orders and Appeal Rights:

After the hearing, the Hearings Officer will issue a proposed order. This document proposes the findings of facts and conclusions of law. If the Hearings Officer concludes that discrimination did occur, remedy will be ordered for the complaint. In a housing case, remedy might include rental of an apartment or reasonable accommodation.

The Commissioner will issue a Final Order after careful consideration of the exceptions. Final orders are subject to judicial review by the Oregon Court of Appeals and then the Oregon Supreme Court.

2. OREGON CIVIL RIGHTS OF DISABLED PERSONS ACT (ORS 659.400 ET SEQ.)--FILING IN COURT

It is recommended that you consider talking to a lawyer before deciding whether to file a complaint under ORS 659.400 et seq. A list of lawyers that help people who are low income is provided at the end of this section.

You can choose to go to circuit court at different times:

- (1) You may go straight to court without filing a complaint with BOLI. You must file within one year of the alleged discrimination.
- (2) If BOLI finds that discrimination probably happened (substantial evidence of discrimination), you can choose to go to court instead of asking to have a BOLI Hearings Officer decide your case. You must file in court within 90 days after receiving a letter from BOLI telling you that you have this right. You should get a lawyer to represent you.
- (3) If BOLI finds that there is no substantial evidence of discrimination and closes your file, you may file a case in circuit court within 90 days of when the file is closed. The finding of BOLI may be used in court.
- (4) If BOLI does not finish the investigation within one year and closes your case, you may file in court within 90 days of when the file is closed.
- (5) You can appeal the BOLI decision by filing a petition in the Oregon Court of Appeals.

A chart summarizing how you can enforce your rights under the Oregon Civil Rights of Disabled Persons Act ORS 659.400 et seq.) follows.

CHART - OREGON CIVIL RIGHTS OF DISABLED PERSONS ACT ENFORCEMENT - (ORS
659.400 et seq.)

3. REMEDIES

Under the Oregon Civil Rights of Disabled Persons Act (ORS 659.400 et seq.), you may ask for money for financial loss and emotional distress in both a BOLI proceeding and a court action. You may ask for damages to punish the landlord (punitive damages), attorney's fees and costs in a court action. A landlord can also be ordered not to discriminate, to adopt a new policy, and to do something for you, such as give you housing or an accommodation in both BOLI and in court.

4. FILLING OUT A BOLI CIVIL RIGHTS DIVISION COMPLAINT QUESTIONNAIRE

Prior to filling out a questionnaire, you should seek advice from a lawyer. A list of legal services organizations available for low-income individuals is attached to the end of this section. This information is not an alternative to seeking legal advice from a lawyer.

The form actually used by BOLI does not have numbers in brackets in the various blanks on the form. We have put numbers in brackets on the sample to help explain how the different blanks should be filled in.

Block (1) There is nothing for you to fill out in block one. It simply states that the form is from the Civil Rights Division of the Bureau of Labor and Industries (BOLI)

Block (2) BOLI will fill this out. When a person sends a complaint questionnaire form to BOLI, the staff fills in this section.

Block (3) Here you print clearly or type the name of the person who has been discriminated against and is making the complaint. This person is called a complainant. For the purpose of this Handbook the authors have assumed that person is you.

Block (4) This is where you put the name of a person who is willing to act as your contact person in case you move or are hard to reach. It could be a parent, brother, sister, friend, co-worker or any other reliable person.

Block (5) This is where you put the name of your lawyer if a lawyer has agreed to represent you. Do not put in the name of a lawyer unless she has agreed to take this discrimination case.

Block (6) The name of the person or housing agency who is being complained about goes here. This is called the respondent. If the respondent is a housing authority or management company, you need to write the name of the authority or management company even though the person you dealt with was an individual. If you do not know the name of the housing company or authority that you dealt with, call and ask the person who answers the phone the name of the housing company or authority.

Block (7) If you cannot fill in all this information, ask BOLI for help identifying the protected class to which you belong and the basis of the discrimination. If you are physically or mentally disabled and the landlord treated you differently because of your disability or failed to provide reasonable accommodation, check the box marked "Physical/Mental Disability."

Block (8) You fill in the date of the most recent act of discrimination here. In Jane Doe's case, the housing manager refused to accommodate her on a specific date so that date was filled in. If this date is more than one year ago, BOLI will reject the claim as being too old.

Block (9) Simply check the line to show whether you live in a house for one family, a house for 5 or more families, a house for 2, 3 or 4 families, or other.

- Block (10)** Answer "yes" if the owner lives in the building you live in.
- Block (11)** Circle "rented" if you are a renter. Circle "sold" if you are buying your home.
- Block (12)** Fill in your address if you live in the house or apartment. Fill in the address of the house or apartment where you want to live if this is a case where your application to rent was denied or you were discriminated against during the application process.
- Block (13)** Fill in this information about the landlord or person you are filing your complaint against.
- Block (14)** Set forth the details of your case here. If you need additional space, you may attach extra sheets of regular size (8-1/2 x 11 inch) paper. If you use additional pages, put your name and the date that you filled out the form at the top of each page.
- If you have a computer or access to a computer, you may find it easier to type the whole description on the computer rather than filling in Block 14 with a pen or typewriter. If this is the case, simply type or write in Block 14 "please see attached."
- If you do this, make sure you put your name and the date you filled out the form on each page, and get each page notarized. We have done this with Jane Doe's complaint.
- Block (15)** Describe the reason that you think this happened to you. It should be the same reason listed in block (7). If this did not happen to you because of discrimination or failure to accommodate based on your disability, you may not have a claim.
- Block (16)** Describe the reasons given by the landlord to explain his action.

- Block (17)** List the names of people who have also been discriminated against. This may include workers, managers, or their employers. In many cases, this is left blank because you do not know.
- Block (18)** List the names of others who are treated differently from you. For example, if the landlord lets some tenants use the laundry room but will not let you use it because of your wheel chair, list the names of the tenants who get to use the laundry room. Leave this section blank if you do not know or it is not relevant.
- Block (19)** If others were treated differently, indicate why you think they were treated differently in this space. It will probably be due to your disability. See Block (15) and Block (7). If the others were treated differently for other reasons, you may not have a case.
- Block (20)** Sign and date the Complaint Questionnaire form and mail it to BOLI. There is no need for a notary. After returning your questionnaire, BOLI will usually send you a complaint that is typed out. The official complaint must be signed in front of a notary.

CHART - SAMPLE OREGON BUREAU OF LABOR AND INDUSTRIES - CIVIL RIGHTS
DIVISION - HOUSING COMPLAINT QUESTIONNAIRE

PAGE 1

OREGON APPENDIX

RESOURCE SECTION

AGENCIES WHERE YOU CAN GET FREE HELP INVESTIGATING YOUR CLAIM BEFORE FILING

Fair Housing Council of Oregon
520 SW Sixth Avenue, Suite 1050
Portland, OR 97204-1512
(503) 223-8295 (Portland Metro area)
1-800-424-3247

AGENCIES WHERE YOU CAN FILE A COMPLAINT

SECTION 504 OF THE REHABILITATION ACT

US Department of Housing and Urban Development (HUD) - NW/Alaska area

HUD - Fair Housing and Equal Opportunity (FHEO)
909 First Avenue #200
Seattle, WA 98104-1000
(206) 220-5172

FEDERAL FAIR HOUSING AMENDMENT

US Department of Housing and Urban Development (HUD) - NW/Alaska area

HUD - Fair Housing and Equal Opportunity (FHEO)
909 First Avenue #200
Seattle, WA 98104-1000
(206) 220-5172

AGENCIES WHERE YOU CAN FILE A COMPLAINT Cont.

TITLE II OF THE ADA

US Department of Housing and Urban Development (HUD) - NW/Alaska area

HUD - Fair Housing and Equal Opportunity (FHEO)

909 First Avenue #200
Seattle, WA 98104-1000
(206) 220-5172

CIVIL RIGHTS DIVISION OF THE BUREAU OF LABOR AND INDUSTRIES

PORTLAND AREA

800 NE Oregon St. #32
Portland, OR 97232
(503) 731-4075

MEDFORD AREA

700 E. Main Suite 105
Medford, OR 97504
(503) 776-6197

EUGENE AREA

165 E. 7th Street #220
Eugene, OR 97401
(503) 687-7460

SALEM AREA

3865 Wolverine St. NE, #E-1
Salem, OR 97310
(503) 378-3296

PENDLETON AREA

200 SE Hailey Avenue #308
Pendleton, OR 97801
(503) 276-7884

THE DISABILITY LAW CENTER

The Oregon Advocacy Center (OAC) is an organization that protects and advocates for the rights of Oregon residents with disabilities. OAC is a private, non-profit corporation, independent of any service provider. OAC has the ability to pursue legal and administrative remedies for clients. OAC provides persons with disabilities and their advocates information, technical assistance, and legal representation to help overcome discrimination on the basis of disabilities. Inquiries or requests for assistance may be addressed to OAC at its office:

Oregon Advocacy Center
620 SW Fifth Avenue, 5th Floor
Portland, Oregon 97204-1428

Voice: (503) 243-2081
1-800-452-1694

TDD: 1-800-556-5351
FAX (503) 243-1738

A LIST OF LEGAL SERVICES OFFICES IN OREGON

The following is a list of federally-funded legal services offices which provide lawyers without charge for low-income individuals, to the extent resources permit. If you think you have been discriminated against on the basis of your disability, these agencies may be able to provide you assistance:

Albany Regional Office

(Linn, Benton)
Oregon Legal Services
425 2nd Ave. SW, Ste 102
Albany, OR 97321-2262
(503) 926-8678
FAX (503) 926-8919

Central Oregon Regional Office

(Jefferson, Crook, Deschutes)
Oregon Legal Services
123 NW Kearney Ave.
Bend, OR 97701-4547
(503) 385-6944
FAX (503) 385-8915

Center for NonProfit Legal Services

(Jackson)
225 W Main
P.O. Box 1586
Medford, OR 97501
(503) 779-7291
FAX (503) 779-7000

Columbia County Volunteer Lawyers

(Columbia)
P.O. Box 1400
St. Helens, OR 97051
(503) 397-1628
FAX (503) 397-0052

Coos Bay Regional Office

(Coos, Curry, Western Douglas)
Oregon Legal Services
295 S Tenth
P.O. Box 1098
Coos Bay, OR 97420-0241
(503) 269-1226
FAX (503) 269-1372

Farmworker Office

(Mid-Willamette Valley farmworkers)
Oregon Legal Services
397 N First Street
Woodburn, OR 97071-4623
(503) 981-5291
FAX (503) 981-5292

Grants Pass Regional Office

(Josephine)
Oregon Legal Services
207 SW "G", Suite C
Grants Pass, OR 97526-3133
(503) 476-1058
FAX (503) 476-4478

Hillsboro Regional Office

(Washington, Columbia, Tillamook, Clatsop)
Oregon Legal Services
230 NE Second, Suite A
Hillsboro, OR 97124-3011
(503) 648-7163
FAX (503) 648-0513

Klamath Falls Regional Office

(Klamath, Lake)
Oregon Legal Services
136 N. 3rd, Suite A
Klamath Falls, OR 97601-6316
(503) 884-7709
FAX (503) 884-7700

Lane County Legal Aid

(Lane)
376 East 11th St.
Eugene, OR 97401
(503) 342-6056
FAX (503) 342-5091

Lincoln County Office

(Lincoln)
Oregon Legal Services
127 SW Nye
P.O. Box 1970
Newport, OR 97365-0132
(503) 265-5305
FAX (503) 265-9356

Marion-Polk Legal Aid

(Marion, Polk)
1655 State Street
Salem, OR 97301
(503) 581-5265
FAX (503) 581-5627

McMinnville Office

(Yamhill)
Oregon Legal Services
720 East Third
P.O. Box 141
McMinnville, OR 97128
(503) 472-9561
FAX (503) 472-5009

Multnomah Co. Legal Aid

(Multnomah)
700 SW Taylor, Suite 300
Portland, OR 97205
(503) 224-4086
FAX (503) 295-9496

Native American Program

(assistance to tribal governments)
Oregon Legal Services
917 SW Oak, Suite 410
Portland, OR 97205-2829
(503) 223-9483
FAX (503) 294-1429

A LIST OF LEGAL SERVICES OFFICES IN OREGON Cont.

Ontario Regional Office

(Malheur, Harney, Grant, Baker)
Oregon Legal Services
772 N Oregon Street
Ontario, OR 97914-1727
(503) 889-3121
FAX (503) 889-5562

Oregon City Regional Office

(Clackamas)
Oregon Legal Services
421 High Street, Suite 110
Oregon City, OR 97045-2249
(503) 655-2518
FAX (503) 655-2701

Pendleton Regional Office

(Gilliam, Hood River, Morrow,
Sherman, Umatilla, Union, Wallowa,
Wasco)
Oregon Legal Services
365 SE Third Street
P.O. Box 1327
Pendleton, OR 97801-0260
(503) 276-6685
FAX (503) 276-4549

Roseburg Regional Office

(Douglas, Josephine)
Oregon Legal Services
1000 SE Stephens
P.O. Box 219
Roseburg, OR 97470-0039
(503) 673-1181
FAX (503) 673-1183

OTHER ORGANIZATIONS

Lawyer Referral Service

Oregon State Bar
684-3763 in Portland, or
1-800-452-7636 toll free in Oregon

This service gives you the name of an attorney in your community.
There is a fee of \$35 for the first meeting with the lawyer.

Tel-Law Tape Library

620-3000 in Portland, or
1-800-452-4776 toll free in Oregon

Tel-Law is a collection of tape-recorded messages on legal topics. You can get a list of all the topics from the Oregon State Bar, P.O. Box 1689, Lake Oswego, OR 97035-0889.

Portland Housing Center

(Multnomah County)
(503) 282-7744

The Portland Housing Center provides information and referral on housing discrimination.
It is the primary intake for the Fair Housing Pilot Program for Multnomah County.

INDEX OF AFFORDABLE HOUSING OPPORTUNITIES

CERTIFICATE AND VOUCHER PROGRAMS

Section 8: This federal program takes two forms: certificates and vouchers. Both programs are administered by local housing authorities or regional non-profit housing agencies. Both certificates and vouchers are available to very low income or low income people to rent apartments of their choice from private landlords. In the certificate, the total contract rent payable to a landlord may not be greater than fair market rents based on a rent schedule established by the U.S. Department of Housing and Urban Development (HUD). The tenants' share of the rent is limited to about 30% of their income. The Section 8 program pays the balance of the remaining rent to the landlord. In the voucher program there is no limit on the amount of rent a landlord may charge. Tenant rental assistance is paid to the landlord and is adjusted based on family income, up to a maximum payment standard.

PRIVATE SUBSIDIZED HOUSING

Section 8: The Section 8 program also offers project-based subsidies in which the rental assistance belongs to the property owner, and not to the tenant. Eligibility and rent levels in the Section 8 properties are the same as in the Section 8 certificate program. If a particular Section 8 project was built for special groups like the elderly and people with disabilities, occupancy can be restricted to these special groups.

Rent Supplements: The federal rent supplement program is the predecessor to the Section 8 program. Rents are set at the greater of 30% of tenant income or 30% of the contract rent for the apartment. Financial eligibility in the rent supplement program is limited to low income families or individuals. Families with incomes over program limits may still live in rent supplement properties, but they must pay unsubsidized rents.

Section 236: This federal program provides property owners with either mortgage insurance or low cost mortgage loans. Like the rent supplement program, low income tenants pay the higher of 30% of their income or 30% of contract rents. Families with incomes over program limits may live in Section 236 properties if they pay market rents.

Section 221(d)(3): This is another federal mortgage insurance and low cost mortgage loan program serving low income tenants. Unlike the Section 236 program, rents do not change based on tenant income. Instead, they are fixed at amounts that will allow landlords to pay operating expenses, plus earn a small profit.

INDEX OF AFFORDABLE HOUSING OPPORTUNITIES Cont.

PRIVATE SUBSIDIZED HOUSING Cont.

Section 202 and Section 811: These two federal programs are low cost loan programs for non-profit developers of housing for elderly people and people with disabilities, respectively. Most Section 202 and 811 properties also receive Section 8 project-based assistance. Financial eligibility and rent levels in those properties are set by reference to the Section 8 rules. Very few of the older Section 202 projects do not have Section 8. In these projects, rents are set at levels that will allow the owner to pay operating expenses. Until 1990, most 202 properties were constructed for occupancy by both the elderly and people with disabilities.

HCS: The mission of Oregon Housing and Community Service Department is to work in partnership with community-based organizations to develop affordable housing, provide services that alleviate the causes of poverty, and empower Oregonians. HCS strives to this end through administration of several affordable housing development funds, including the federal HOME Program, federal Low Income Housing Tax Credits, state Tax Credits, the Oregon Housing Trust fund and multi-family loan programs. Home ownership is promoted through the Single Family Mortgage Bond program and Mortgage Credit Certificate program. HCS works in partnership with county Community Action Agencies to implement special programs such as emergency housing, homeless assistance, Community Services Block Grants, weatherization and energy assistance, and tenant-based rental assistance.

PUBLIC HOUSING

Federal Public Housing: Federal public housing refers to housing projects owned and operated by local housing authorities and funded by HUD. There are two general types of federal public housing: 1) family housing and 2) housing for the elderly and handicapped. Eligibility is limited to lower income households. As in the Section 8 program, tenants pay about 30% of their family income for rent. There are no ceiling rents in most federal public housing, although some cities and towns maintain housing projects with ceiling rents.

CHAPTER 4

TITLE VI AND WHAT YOU CAN DO

INTRODUCTION

Title VI of the Housing and Community Development Act of 1992, allows public housing authorities and certain kinds of assisted-housing providers to change how they house people under age 62 with disabilities.

It allows public housing authorities (PHAs) to designate buildings or parts of buildings as Designated-Elderly, Designated-Disabled, or Mixed Elderly and Disabled-housing if they meet certain federal standards and consult with local and state governmental agencies, advocates and health and social service providers. It also allows some assisted-housing providers to house only elderly applicants and others to reduce the number of non-elderly applicants (younger people with disabilities) they admit. To do so, both groups of assisted-housing must meet certain standards.

Considerable controversy surrounded the passage of this statute. However, this chapter focuses solely on the content of this law, and the regulations and HUD Handbook implementing this law, and what people with disabilities can do to make sure this law doesn't lead to less affordable, inaccessible, and segregated housing.

I. THE IMPLEMENTATION OF TITLE VI

A. PUBLIC HOUSING

HUD's Final Rule implementing Title VI for Public Housing is effective as of May 13, 1994. The Final Rule creates Section **24 CFR Part 945, Designation of Public Housing**. It also changes definitions and requirements for unit offers in 24 CFR part 960, (Admissions and Occupancy).

The regulations specify the information that must be submitted to HUD if a public housing provider wants to designate a building "Designated-Elderly" or "Designated-Disabled", and the approval process. Section E, "Public Housing Providers" on page 3, discusses the Final Rule in question and answer format.

B. ASSISTED-HOUSING

HUD also published a Final Rule on December 21, 1994, implementing Title VI for "covered Section 8 housing". This rule adopted the Interim Rule which was effective as of June 2, 1994, with a few clarifying changes. HUD hasn't issued either Interim or Final Rules for assisted-housing other than "covered Section 8 housing", (Section 202, Section 237 and 236). HUD did, however, provide some guidance on Title VI in Change 24 to Chapter 2 of its Multi-Family Occupancy Handbook (3450.3), the agency's sub-regulatory guidance to managers of federally-assisted, multi-family housing. A discussion of the Interim Rule and Handbook occurs in a question and answer format in Section F, "Assisted-Housing Providers", on page 21.

Before discussing Title VI's specific requirements, it is important to explain key definitions used in the law: Elderly Family, Near-Elderly Family, and Disabled Family

C. ELDERLY FAMILIES AND DISABLED FAMILIES

Title VI separates the definitions for elderly families and disabled families. In the past, the term "elderly families" included both elderly persons (those at least 62 years of age) and younger persons with disabilities.

The statute now defines **Elderly Families**, also now referred to as "seniors", as those with a head of household or spouse who are **at least 62 years of age** (such a family can include a disabled elder person as a member of the household). **Disabled Families** are those with a head of household or spouse who is

disabled. The definition for a person with a disability, **for purposes of housing eligibility**, is the Social Security Act and public housing program definition and standard (a physical or mental impairment which [a] is expected to be of long-continued, indefinite duration, [b] substantially impedes his or her ability to live independently, and [c] is of such a nature that such ability to live independently could be improved by more suitable housing conditions); or a developmental disability as defined in Section 102 of the Developmental Disabilities Assistance and Bill of Rights Act. **NOTE:** this is not the civil rights definition, given in Chapter 2, under FEDERAL LAWS: Section B on page 12, which continues to apply **for purposes of non-discrimination and reasonable accommodation.**

D. NEAR-ELDERLY FAMILY

This term is defined as those whose head of household or spouse is **under the age of 62 but at least 50 years of age**, and is important because the statute and the regulations which apply to PHAs gives individuals who fall into this category, a preference for housing over younger, disabled families under certain circumstances.

E. PUBLIC HOUSING PROVIDERS

1. WHAT DOES TITLE VI PERMIT PUBLIC HOUSING AUTHORITIES TO DO?

Title VI permits public housing authorities (PHAs) to designate buildings or portions of buildings as "Designated-Elderly" housing, "Designated-Disabled" housing or "Mixed" housing, (in which the housing authority may rent to any combination of elderly individuals and people with disabilities). Designation can be by whole developments, by floors of buildings, by one or more buildings which are a portion of a development, or by individual units which can be either contiguous or non-contiguous.

2. HOW SHOULD ADMISSION TO DESIGNATED DEVELOPMENTS WORK?

Assume that a Housing Authority designates one development for Designated-Elderly, one for Designated-Disabled, and one for Mixed Populations.

An **Elderly person *who is disabled*** (and Head of Household) would be able to live in a Designated-Elderly development, a Designated-Disabled development or Mixed Population Development.

An **Elderly person *who is not disabled*** (and Head of Household) would be able to live in a Designated-Elderly development or Mixed Population Development.

A **Disabled person *under age 62*** (and Head of Household) would be able to live in a Designated-Disabled development or Mixed Population Development. A non-elderly-disabled individual could be offered a unit in a Designated-Elderly building if that unit is vacant for more than sixty (60) days.

A **Near-Elderly person** with or without disabilities (between 50 through 61 years old) would be able to live in a Designated-Elderly development if no one age 62 or over from the Waiting List were available or willing to accept a unit offer. A **Near-Elderly-disabled person** would also be able to live in a Disabled Only building or a Mixed Population building.

3. WHAT HAPPENS IF A PHA DESIGNATES A BUILDING AS DESIGNATED-ELDERLY AND THERE ARE NOT ENOUGH ELDERS WHO WANT TO LIVE IN THE BUILDING?

If there are not enough elders who apply for the vacancies in a Designated-Elderly building, the PHA may select individuals who are near-elderly (age 50 through 61), regardless of disability status before

younger applicants with disabilities. If, however, a unit stays vacant for sixty (60) days or more, the PHA must make it available for any eligible applicant.

4. **IF A PHA WANTS TO DESIGNATE A BUILDING OR PORTION OF A BUILDING AS DESIGNATED-ELDERLY, CAN IT EVICT YOUNGER TENANTS WITH DISABILITIES WHO WERE LIVING IN THE BUILDING BEFORE ITS DESIGNATION?**

NO. Title VI prohibits PHAs from evicting existing tenants of any age, no matter what the building designation, unless they are violating their leases.

5. **UNDER THESE CIRCUMSTANCES CAN A PHA REQUIRE A YOUNGER TENANT WITH A DISABILITY TO ACCEPT AN INCENTIVE TO TRANSFER?**

NO.

6. **WHAT DOES A PHA HAVE TO DO IN ORDER TO DESIGNATE AN EXISTING ELDERLY/DISABLED PUBLIC HOUSING DEVELOPMENT AS EITHER ELDERLY OR DISABLED?**

The Housing Authority must develop an "Allocation Plan" if it intends to designate any existing elderly/disabled public housing development as either Designated-Elderly or Designated-Disabled and submit the plan to HUD. If a PHA wants to designate a development as Designated-Disabled, a PHA must also have a HUD approved supportive service plan.

a. An Allocation Plan

An Allocation Plan is an explanation of the actions a Housing Authority has taken or will take to make certain that applicants/tenants with disabilities are not being housed in any less proportion than they were before. The Allocation Plan must **analyze whether designating buildings "Designated-Elderly" has a negative impact on tenants/applicants with disabilities, and**

whether designating building "Designated-Disabled" has a negative impact on elderly tenants/applicants. The plan must then describe a way to equalize the impact.

b. A Supportive Service Plan

A supportive service plan is a description of the services that will be available to tenants. These services must reflect residents' "needs and demands". The Supportive Services Plan must show how the PHA will continue to provide the same kind and amount of services that were formerly available to disabled people in elderly/disabled housing and how designation will not lead to fewer or poorer services for any single group. No one is required to accept services; the services are merely available as is currently the case in some Elderly/Disability developments.

7. WHAT ARE THE BASIC REQUIREMENTS OF AN ALLOCATION PLAN?

- a. Identify all developments or portions of developments to be designated and type of designation to be made;
- b. Explain why each development, or portion of a development, will be designated;
- c. Identify the groups and people who were consulted about the plan;
- d. Include a summary of all comments; and
- e. Describe how the Plan was modified (if at all) to respond to comments;

8. WHAT ARE THE DATA ELEMENTS THAT MUST BE INCLUDED IN AN ALLOCATION PLAN?

a. The Before Picture

- (1) Current development demographics including a percentage of elderly and disabled families.
- (2) A projection of who would be housed at the development if designation did not occur, using data sources including the Waiting List, Comprehensive Housing Affordability Strategy (CHAS) or Consolidated Plan, Section 504 Self-Assessment and Needs Assessment, historical and projected vacancy turn-over data, and an estimate of the waiting periods for the elderly and for persons with disabilities.
- (3) An estimate of the number of potential tenants who will need accessible units based on information provided by the 504 needs assessment and the CHAS or HUD prescribed consolidated plan.
- (4) The number of units in the development that became available for occupancy during the year before the date of the allocation plan.
- (5) The average length of vacancy for units in the development for the year before the date of the allocation plan.
- (6) An estimate of the number of units in the development that the PHA thinks will become vacant and available for occupancy during the two-year period following the date of submission of the allocation plan if the development was not to be designated.
- (7) An estimate of the average length of time elderly families and non-elderly persons with disabilities now wait for units.

b. The After Picture

- (1) The new development demographics and sources of households. For instance, how many households will stay, how many will come off the Waiting List, and how many will transfer into the development?
- (2) In the case of developments to be designated for the elderly, the number of expected vacancies in the next two years.
- (3) The number of near-elderly families, if any, who may be needed to fill units in a Designated-Elderly development.
- (4) A description of the wait time for units for the group for whom the development is designated and for the group for whom the development was not designated.
- (5) A description of any changed policies and procedures including waiting list management, unit assignment, and how records will be maintained to document the effect of designation (e.g. how many times a household on top of the list does not get the next offer because it was at a designated development for which it was not an appropriate family type).

c. How The PHA Will Address The Current And Future Housing Needs Of The Families In The PHA's Jurisdiction

- (1) A description of all housing resources owned or controlled by the PHA.
- (2) A description of how the PHA will respond to any need for accessible units that will no longer be available for applicants who need them.

- (3) If a development will be Designated-Disabled, a description of how the PHA will facilitate access to requested supportive services for non-elderly-disabled families that are equivalent to those available in Designated-Elderly developments.
- (4) If a development is Designated-Elderly, the PHA must identify the additional housing resources necessary to house at least the number of non-elderly-disabled families that would have been housed by the PHA if it hadn't designated the development as Elderly.

d. The Safety Valve

The Authority must describe its plan to make sure it has enough housing resources to house at least the same number of young persons with disabilities who would have been housed if the PHA had not designated a building(s) Designated-Elderly. (One for one replacement is not required.) These can be resources currently owned or controlled by the Authority or resources for which the Authority reasonably expects to acquire and control. For the latter, the PHA must give a reason it expects to obtain housing. These resources can be new, such as an allocation of Section 8 Certificates or Vouchers, or they can be existing resources controlled by the Authority which will be used to replace the units in Designated-Elderly housing that would otherwise be available to younger people.

In no event, can an Authority count third party resources as replacements for units now unavailable because of Elderly designations. For instance, a Housing Authority cannot count HOME program or McKinney Program housing development initiatives owned by non-profit corporations or Community Development Corporations (CDCs).

HUD provides a list of possible options for additional Housing resources for person with disabilities:

- (1) Normal turn-over in existing non-designated developments;
- (2) Providing local preferences for a specific number of non-elderly-disabled persons for a specific general occupancy development or developments, for Mixed Population developments or for Section 8 certificate and vouchers;
- (3) Converting a development that currently houses mixed populations to general occupancy, which provides a more integrated setting;
- (4) Allocating a certain number of existing or new public housing units or Section 8 certificates or vouchers, which will be accompanied by a supportive services package;
- (5) Using modernization funds to reconfigure units and buildings to sizes or uses for non-elderly-disabled families;
- (6) Designating developments for occupancy by Designated-Disabled;
- (7) Allocating units in other developments owned or controlled by the PHA that will be vacated by elderly moving to Designated-Elderly developments;
- (8) Using public housing development funds, or funds for major reconstruction of obsolete public housing to provide housing for disabled families;

- (9) Using all or a portion of net increases in units available for occupancy in a development as a result of the rehabilitation of vacant units.

e. Incentives To Move

The PHA must describe any proposed incentives to promote voluntary transfers to and from the designated building(s).

9. WHERE CAN A PHA GET INFORMATION FOR AN ALLOCATION PLAN AND A SERVICE PLAN?

Sources for the housing elements of the plan include census data, waiting list data and history, descriptions of program resources, the local Comprehensive Housing Affordability Strategy (CHAS) and elements of the Section 504 program evaluation. Sources for the service plan include local and state information on the supply and demand for social services including any unmet needs.

HUD recognizes that any assessment of actual resident or applicant supportive service desires can only be based on collected data provided on a voluntary basis, and therefore will only provide an approximate assessment of needs/desires as seen by residents/applicants.

10. CAN A PHA DESIGNATE A DEVELOPMENT FOR PERSONS WITH A SPECIFIC DISABILITY?

NO.

11. MUST THE DESIGNATED DEVELOPMENT BE MADE UP OF CONTIGUOUS UNITS?

NO.

12. WHAT ARE THE CRITERIA FOR APPROVAL OF AN ALLOCATION PLAN?

- a. Information must be "complete and accurate", and the projections must be reasonable;
- b. Implementation of the Plan must not substantially increase the vacancy rate in the designated development;
- c. Implementation must not create substantial increases in denial of program access or substantial extension of waiting periods;

- d. The portion of the Plan for securing new resources must be reasonable; and
- e. The Plan must have the required data elements contained in the regulations.

13. WHEN WILL HUD LET A PHA KNOW IF ITS ALLOCATION PLAN IS ACCEPTED?

HUD must let a PHA know, in writing, whether its plan is approved within ninety (90) days after the PHA submitted the plan if it contains comments. If the plan contains no comments, HUD must respond within forty-five (45) days. If HUD fails to act within the time frame, the plan is considered approved.

14. WHAT HAPPENS IF THE ALLOCATION PLAN IS REJECTED BY HUD?

The Housing Authority has between 45 and 90 days to resubmit a rejected plan. Another public comment period is required for all Plans resubmitted more than ninety (90) days after a rejection. The reason for the outer limitation is that the underlying data could change.

15. HOW OFTEN DOES THE ALLOCATION PLAN HAVE TO BE UPDATED?

The Allocation Plan must be updated to reflect changes in Waiting List and portfolio demographics every two years from the date of HUD approval. If the PHA does not update its plan, HUD may revoke the designation.

Future updates to the Plan require a public comment period. Rejection of future Plan updates will not lead to automatic reversion to a Mixed Population development. HUD will allow a revision (cure) period of up to ninety (90) days and may in certain circumstances extend the revision period. However, any submission after 90 days from HUD's rejection will require a new public comment period. Revisions to a Plan update submitted prior to the end of the ninety day revision

period, may still require a new public comment period if the changes are substantial. The Final Rule does not specifically require comments on substantial changes, but it is difficult to imagine that HUD would approve a Plan whose conceptual framework and approach has not been publicly discussed.

HUD has forty-five (45) days from the date of resubmission to approve or disapprove the PHA's Plan. If HUD fails to act within this time, the allocation plan is considered approved.

16. WHAT INFORMATION SHOULD AN UPDATED ALLOCATION PLAN CONTAIN?

An updated Plan must contain at least the following:

- a. An update of the data and projections for the next two years;
- b. An assessment of the accuracy of the projections in previous plans and in the updated allocation plan and a plan to correct the impact of any former inaccuracies;
- c. The number of times a vacancy was filled by Near-Elderly families;
- d. A discussion of the impact of designation on the designated development and the other public housing developments operated by the PHA, including waiting list delays or denial of housing as a result of designation;
- e. A plan for adjusting the allocation of designated units, if necessary. (For example, if a housing authority did not secure the hoped for additional resources in the Allocation plan or if the projections were wrong.)

17. WHAT CRITERIA WILL HUD USE FOR APPROVAL OF AN UPDATED PLAN?

HUD will use the same criteria as for the initial plan. The review and assessment may include HUD on-site review and monitoring of PHA performance in administering its designated housing and allocating the PHA's housing resources.

18. HOW DOES A PHA KNOW IF AN UPDATED PLAN IS APPROVED BY HUD?

HUD has forty-five (45) days from the date of submission to approve or disapprove the PHA's updated plan. If HUD fails to act within this time frame, the allocation plan is considered approved.

19. WHAT CAN HAPPEN IF HUD DISAPPROVES AN UPDATED PLAN?

In this case, HUD may require the PHA to change the designation of existing or planned developments to other categories such as general occupancy or mixed population.

20. WHAT CRITERIA WILL HUD USE TO APPROVE DESIGNATED DEVELOPMENTS FOR DISABLED FAMILIES?

In general, HUD will approve designated developments for disabled families only if there is both a need and a demand by disabled-families for segregated housing. The regulations state, "in the absence of such demonstrated need and demand, PHAs should provide for the housing needs of disabled families in the most integrated setting possible".

If the PHA conducts surveys to determine the need or demand for a designated development for disabled families or for supportive services in such development, the PHA must protect the confidentiality of individual survey responses.

21. WHAT DOES A PHA HAVE TO DO IN ORDER TO DESIGNATE A DEVELOPMENT FOR DISABLED FAMILIES?

A PHA must submit an allocation plan (describe above) and a supportive service plan.

22. WHAT ARE THE BASIC REQUIREMENTS OF A SUPPORTIVE SERVICES PLAN?

- a. Identify the number of disabled families who need services *and* who have expressed an interest in receiving services;
- b. Describe the types of services that are available *and* the duration of their availability (e.g. two year grant);
- c. Identify each service provider and describe their experience delivering services;
- d. Describe how the services will be provided (e.g. on-site or off-site, using Housing Authority staff or using vendors);
- e. Identify the funding and in-kind contributions for all services;
- f. Submit evidence of contractual commitments between service providers and the PHA or other contract for the delivery of supportive services available to the PHA for at least two (2) years (e.g. contracts or Memorandums of Agreement);
- g. Identify groups who were consulted and summarize the comments and recommendations made by these parties (see #23 below for details on consultation);

- h. If residential supervision is planned, document the need for this and how this will occur; and
- i. any other information that the Authority considers relevant or HUD considers relevant to assist HUD in its review.

23. WHAT ARE THE CONSULTATION REQUIREMENTS FOR THE ALLOCATION PLAN AND THE SUPPORTIVE SERVICE PLAN?

The consultation requirements for the Supportive Services Plan are the same as for the Allocation Plan. Both consultation processes can be conducted simultaneously. The Allocation Plan and the Supportive Services Plan must have a two stage consultation process: a **pre-plan consultation** and a **pre-submission consultation**.

The **pre-plan consultation** requires consultation with the State or unit of local general government where the development is located, public and private service providers, the resident groups of the buildings to be included in the plan and representatives of advocacy groups for the disabled, the elderly and families with children (to the extent that such groups exist at the local level) and other parties that the PHA thinks would be interested in the plan or who have contacted the PHA and expressed an interest in the plan. A PHA could contact regional groups if local ones don't exist.

The **pre-submission consultation** requires the PHA to contact directly those individuals and agencies involved in the pre-plan consultation and to let them know the draft plan is available for review. It also requires public notices (legal advertisements) stating: (a) The intent to designate specific housing developments; (b) The minimum 30-day availability of the draft Allocation Plan and Supportive Service Plan, (provided free of charge and in an accessible formats); and (c) one Public Meeting. Summary comments from the public meeting and all written comments must be submitted to HUD with the Allocation Plan. The PHA must give fair consideration to all comments received, and must maintain all comments (written and transcripts) for five years.

24. WHAT ARE THE CRITERIA FOR APPROVAL OF A SUPPORTIVE SERVICES PLAN?

The Authority must show both **a need** and **a demand** for the services in the service plan. In addition, HUD must find that the Supportive Service Plan satisfies four specific criteria:

- a. Documentation that disabled households are interested in living in a designated development and have expressed a need and demand for the services;
- b. The Service Plan responds to the specific needs and desires of the disabled population who have indicated a desire for them;
- c. The proposed Service Provider is experienced in providing effective supportive services for people with disabilities; and
- d. If "residential supervision" is needed, a written commitment to provide the supervision is obtained.

25. CAN A DISABLED FAMILY OR ELDERLY FAMILY IN DESIGNATED HOUSING BE REQUIRED TO ACCEPT SERVICES ?

NO.

26. CAN ADMISSION TO DESIGNATED DEVELOPMENTS FOR DISABLED FAMILIES BE BASED ON NEED FOR SERVICES ?

NO. The designation of a development for disabled families can only happen if there is a demonstrated need and demand for this type of housing. After designation, however, admission to

this development is open to anyone with disabilities. If the person next on the waiting list does not want or need services, he or she cannot be denied occupancy for that reason.

27. WHAT STANDARDS DO SERVICE PROVIDERS HAVE TO MEET?

Service Providers must be "qualified and experienced" according to the common qualification in the locality. In some localities, qualifications might include state or local licensure.

28. IF A HOUSING PROVIDER WANTS TO DESIGNATE A BUILDING "DESIGNATED-DISABLED", IS THERE A LIMIT ON THE NUMBER OF UNITS?

There is no limit on existing buildings. Section 634 of the HCDA of 1992 provides a five percent (5%) set aside of PHA new construction funds for use for developments or portions of developments designated for disabled families, but only if the buildings contain 25 or fewer units. (HUD may waive this requirement.) The statute and the implementing rule say nothing about other types of funds used to create Designated-Disabled housing.

29. IF AN APPLICANT REFUSES A UNIT OFFER IN AN DESIGNATED-ELDERLY DEVELOPMENT OR IF AN APPLICANT REFUSES AN OFFER ON A DESIGNATED-DISABLED DEVELOPMENT, WHERE DOES THE PERSON GO ON THE WAITING LIST?

An applicant's refusal of a unit in a Designated-Elderly development or a Designated-Disabled development has no effect on the family's admission or position on a public housing waiting list. Ideally, the PHA should explain the choices and estimated wait list at application so a person can indicate a preference, if any.

The one exception is: if the family refuses to occupy or accept occupancy in designated housing because of the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area, they lose their place on the waiting list.

30. DOES A PHA HAVE TO SUBMIT AN ALLOCATION PLAN OR A SUPPORTIVE SERVICE PLAN FOR MIXED POPULATION BUILDINGS ?

NO. However, if a PHA wants to designate some developments as Designated-Elderly or Designated-Disabled, the Allocation Plan must describe all the buildings in the portfolio where elders or disabled people could live. This includes all existing Elderly- or Mixed developments and all family developments that have one bedroom units. In other words, the Plan must show the big picture to describe the smaller changes.

31. CAN PUBLIC HOUSING MANAGERS USE THEIR FUNDS FOR EMPLOYING SERVICE COORDINATORS?

Title VI allows public housing managers to use annual contributions for service coordinators. However, PHA's may only use these funds to pay up to fifteen percent (15%) of the cost for service coordinators for elderly and disabled tenants. Managers will have to find the remaining eighty-five percent (85%) of the cost outside their budgets.

32. DO THE APPLICATION PROCEDURES AND OPERATION OF DESIGNATED DEVELOPMENTS HAVE TO COMPLY WITH THE NON-DISCRIMINATION REQUIREMENTS OF SECTION 504, THE FAIR HOUSING AMENDMENTS ACT, AND THE AMERICANS WITH DISABILITY ACT?

YES, as well as other applicable federal, state and local laws prohibiting discrimination and promoting equal opportunity.

33. WHO HAS PRIORITY IN A MIXED POPULATION DEVELOPMENT, ELDERLY FAMILIES OR FAMILIES WITH DISABILITIES ?

Neither. Unit offers should be made to the next eligible applicant on the wait list, regardless of age or disability. The PHA must of course apply the federal preferences and other tenant selection plan elements when selecting applicants.

34. TO WHOM SHOULD A PHA OFFER A UNIT WITH ACCESSIBLE FEATURES IN A MIXED POPULATION DEVELOPMENT?

PHA's continue to apply existing regulations. If no one presently living in the development needs an accessible unit, the PHA should offer the apartment to the first person on the internal transfer list or on the waiting list who needs an accessible apartment. Age is not relevant in a Mixed Population building.

35. DOES TITLE VI PROVIDE ANY NEW SOURCES OF FUNDING FOR HOUSING PEOPLE WITH DISABILITIES ?

YES. In the 1990 Housing Act, Congress created the 811 program for separate housing for people with disabilities. This was an offshoot of the Section 202 program which previously housed disabled and elderly people together. In 1992, Congress authorized HUD to allocate some of the 811 funds as rental certificates for people with disabilities to housing authorities with approved plans. At this time Congress has not funded this program.

The 1992 law also required the HUD Secretary to set aside a minimum of five percent (5%) of federal major reconstruction and new construction funds for developments for people with disabilities. This money can only be utilized for buildings which have no more than 25 units although this requirement is waivable.

F. ASSISTED-HOUSING PROVIDERS: COVERED SECTION 8 PROGRAMS

1. WHAT DOES TITLE VI PERMIT FEDERALLY ASSISTED-HOUSING PROVIDERS TO DO?

Title VI permits federally assisted-housing providers to limit the number of non-elderly people with disabilities who will be eligible as tenants. The degree to which an assisted-housing provider can do this depends on the type of HUD assistance. This is discussed below.

a. The Section 8 Program

Title VI and HUD's Final Rule says that if either Section 8 new construction or substantial rehab was designed primarily for the elderly, providers can limit the number of non-elderly residents, but they must also reserve a number of units for families with disabilities under 50 (hereinafter younger families with disabilities) according to a formula.

2. DOES THE STATUTE OR THE INTERIM RULE SPECIFY WHICH SECTION 8 PROGRAMS ARE COVERED?

YES. The following Section 8 programs are covered: (a) The Section 8 New Construction Program; (b) The Section 8 Substantial Rehabilitation Program; (c) The State Housing Agencies Program (insofar as it involves new construction and substantial rehabilitation); (d) The New Construction Set-Aside for Section 515 Rural Rental Housing Developments Program; and (e) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Developments - "Demo Dispo" (insofar as it involves substantial rehabilitation).

3. HOW DOES A HOUSING PROVIDER DETERMINE IF A DEVELOPMENT WAS ORIGINALLY DESIGNED FOR ELDERLY (62 AND OVER)?

The statute does not define the term "originally" or "designed for occupancy by elderly families", but the legislative history offers some insight. The House Report suggests that to qualify as housing originally designed for elderly families (called "seniors" in the regulations), the owner must have expressed an intent to create housing for the elderly when he or she negotiated with HUD for Federal funds. This is difficult to determine in many cases. The Final Rule provides for supporting documentation to be drawn from a variety of sources, either "**primary**" or "**secondary**".

4. WHAT ARE PRIMARY SOURCES OF DOCUMENTATION?

Primary sources that would show that a development was originally designed for elderly (seniors) include any of the following:

- a. The application in response to the Notice of Funding Availability (NOFA);
- b. The terms of the NOFA under which the application was solicited;
- c. The regulatory agreement;
- d. The loan commitment;
- e. The bid invitation;
- f. The owner's management plan, including tenant selection plan, or;
- g. Any other underwriting or financial document collected at or before loan closing.

5. WHAT ARE SECONDARY SOURCES OF DOCUMENTATION?

Secondary sources of documentation include:

- a. Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older;
- b. Evidence that services specifically for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging;
- c. A development unit mix with a higher percentage of efficiency and one-bedroom units; or
- d. any other relevant type of historical data unless clearly contradicted by other comparable evidence.

6. HOW ARE PRIMARY AND SECONDARY SOURCES USED TO ESTABLISH WHETHER A DEVELOPMENT IS A COVERED SECTION 8 HOUSING DEVELOPMENT?

If at least one of the primary sources clearly establishes that a development was originally designed for elderly (seniors), and there is no conflicting primary source, the owner may choose elderly (or senior) preferences as described in Question 12 on page 25. **However**, if another primary source contradicts the primary source indicating that the development was designed for seniors, the owner cannot establish senior preferences without finding support from **at least two** secondary sources.

If there are no primary sources clearly establishing the original design of the development, secondary sources may be used. At least two secondary sources must show that the development was designed as elderly (seniors) housing if there is no primary documentation.

7. WHOSE BURDEN IS IT TO ESTABLISH THAT A DEVELOPMENT WAS OR WAS NOT ORIGINALLY DESIGNED FOR ELDERLY FAMILIES (SENIORS)?

It is the owner's burden to establish that a development is a covered Section 8 property. He or she must keep the required documentation on file and show all relevant documentation that pertains to the original design of the project, not only the evidence that was supporting evidence, to anyone who asks to see it. The owner may be challenged by existing tenants, applicants, a state finance agency or another HUD contract administrator, advocates or any interested citizen.

8. IS AN OWNER OF A COVERED SECTION 8 REQUIRED TO INFORM HUD OR OBTAIN HUD APPROVAL BEFORE DECIDING TO IMPLEMENT PREFERENCES FOR ELDERLY?

NO. An important difference between public housing and covered assisted-housing is that owners of Section 8 housing are not required to take into account the impact on non-elderly or near-elderly persons with disabilities or submit a plan or request approval from HUD.

9. MUST AN OWNER OF A COVERED SECTION 8 DEVELOPMENT FINANCED THROUGH A HUD CONTRACT ADMINISTRATOR GET APPROVAL BEFORE DECIDING TO IMPLEMENT PREFERENCE FOR THE ELDERLY?

YES. The change cannot be implemented until the contract administrator approves this change in the same manner that would be required for any other tenant selection plan change.

10. MUST AN OWNER OF A COVERED SECTION 8 HOUSING DEVELOPMENT CHOOSE TO IMPLEMENT THE ELDERLY PREFERENCE?

NO. Any owner can decide whether or not to have an elderly preference and can change that decision at any time as long as the proper documentation is in place and, where relevant, the change in the tenant selection plan has been approved by the contract administrator.

11. WHAT WILL IT MEAN FOR AN OWNER OF A COVERED SECTION 8 HOUSING DEVELOPMENT IF S/HE DOES NOT CHOOSE TO IMPLEMENT THE PREFERENCES ?

If an owner of a covered Section 8 housing development decides not to implement an elderly preference, the new Title VI definition of "elderly families" or "seniors" (only a family with a member who is 62 and over) would not apply. Rather, the old definition which includes non-elderly disabled families in the meaning of "elderly families" would apply. In developments which do not choose to implement the Title VI elderly or "seniors" preference, elderly families under this broader category of people (elderly families and disabled families) would continue to be eligible for units in the same manner as before.

12. IF AN OWNER OF A COVERED SECTION 8 HOUSING DEVELOPMENT DECIDES TO IMPLEMENT THE PREFERENCES, WHAT IS THE FORMULA TO DETERMINE THE PERCENTAGES OF ELDERLY OR "SENIOR" FAMILIES AND NON-ELDERLY FAMILIES WITH DISABILITIES ?

The law requires owners to "reserve" a percentage of units for disabled families under 50 (hereinafter, younger families with disabilities) based on a formula in the statute and regulations. The percentage of younger families with disabilities required is the highest percentage in occupancy of non-elderly disabled families on two dates in 1992, (October 28, 1992, or January 1, 1992), unless that number exceeds ten percent (10%), in which case the requirement is set at ten percent (10%). An owner should therefore (a) determine the percentage of covered Section 8 units occupied by

non-elderly-disabled families (those under 62) on October 28, 1992, and then (b) compare the October 28, 1992, percentage to the percentage of covered Section 8 units occupied by disabled families under 62 on January 1, 1992. The owner must reserve the highest occupancy percentage (either from October 28, 1992, or from January 1, 1992), up to a maximum of ten percent (10%) of the covered Section 8 units, for younger families with disabilities. If there were no disabled families under 62 at either of the two dates the required percentage of units reserved for younger families with disabilities would be zero percent (0%). The actual required reserve would vary by development depending on the actual percentage of disabled families under 62 on the two dates.

13. MAY AN OWNER ADMIT MORE YOUNGER FAMILIES WITH DISABILITIES THAN THE REQUIRED RESERVE?

YES. An owner can (a) choose not to implement the elderly preference (also called a non-elderly cap) at all, in which case tenant selection continues according to the existing plan, or (b) decide to set the cap at some percentage higher than the required reserve. In fact, the preamble to the regulations and some contract administrators encourage owners to reserve more than 10% for younger families with disabilities (those under 50).

14. IF AN OWNER CHOOSES TO RESERVE A GREATER PERCENTAGE OF COVERED SECTION 8 UNITS FOR YOUNGER FAMILIES WITH DISABILITIES, CAN S/HE DECIDE TO LOWER OR RAISE THAT PERCENTAGE AT A LATER TIME?

YES. An owner can always change the percentage of units reserved for younger families with disabilities as long as he or she maintains the required reserve for that development and as long as tenant selection rule changes are approved by the administering agency and those on the wait list properly notified of their change in position. Existing residents, of course, always have the right to stay as long as they meet the terms of the lease.

- 15. WHEN CALCULATING ACTUAL UTILIZATION OF UNITS RESERVED FOR YOUNGER FAMILIES WITH DISABILITIES, CAN AN OWNER COUNT AS PART OF THE REQUIRED PERCENTAGE UNITS OCCUPIED BY ELDERLY FAMILIES WHERE A MEMBER OF THE FAMILY IS DISABLED?**

NO.

- 16. WHEN PEOPLE IN RESERVED UNITS TURN 50, DO HOUSING PROVIDERS HAVE TO ADMIT OTHER YOUNGER PEOPLE WITH DISABILITIES IN ORDER TO MAINTAIN THE REQUIRED PERCENTAGE OF RESERVED UNITS?**

YES, unless the development is exceeding the reserve requirement even with the change of age. No one can be evicted because they turn 50 and reduce the percentage; rather the next available unit must be offered to a younger family with a disability.

- 17. CAN A HOUSING PROVIDER DESIGNATE ACCESSIBLE UNITS TO FULFILL THE REQUIRED PERCENTAGE OF UNITS RESERVED FOR YOUNGER FAMILIES WITH DISABILITIES ?**

NO. Younger families with disabilities may have a variety of disabilities, many of who will not need an accessible unit. Also, elderly-families may have a disability which requires an accessible unit. The accessible units may therefore be occupied by families regardless of their age. In determining whether a development is meeting the required reserve for younger families with disabilities, the relevant factor is the number of units inhabited by these families, not the number of accessible units.

- 18. IF A DEVELOPMENT HAS REACHED ITS REQUIRED RESERVE PERCENTAGE OF OCCUPANCY BY YOUNGER FAMILIES WITH DISABILITIES AND HAS A VACANT ACCESSIBLE UNIT AND NO ONE PRESENTLY HOUSED NEEDS THE UNIT, WHO IS ENTITLED TO THIS UNIT?**

The owner can give this unit to the next eligible applicant on the waiting list. If an owner gives an accessible unit to an elderly or disabled family that does not need an accessible unit, the lease should include a provision requiring transfer to the next available, similar non-accessible unit if an applicant who needs an accessible unit appears and there is no other accessible unit available. A state housing finance agency may have a right under state law or contract to regulate an owner's ability to offer the unit to an elder who does not need an accessible unit. In addition, state fair housing law may place limits on an owner's actions in this instance. See the next question for a more complete answer.

- 19. DOES TITLE VI INVALIDATE EXISTING CONTRACTS BETWEEN HOUSING PROVIDERS AND HOUSING FINANCE AGENCIES OR OTHER STATE OR LOCAL ENTITIES WHICH REQUIRE THE OWNER TO OFFER CERTAIN NUMBERS OR TYPES OF UNITS TO PERSON WHO MIGHT PUSH A DEVELOPMENT OVER THE REQUIRED RESERVE?**

NO. Many new construction and substantial rehabilitation developments are financed by state housing finance agencies or have funds from other local or state entities. These funding sources often impose their own tenant selection standards with respect to admitting people with disabilities. Moreover, a substantial number of states have enacted laws which protect people with disabilities against housing discrimination.

- 20. WHAT HAPPENS IF A VACANCY OCCURS AND THE NEXT ELIGIBLE FAMILY NEEDS AN ACCESSIBLE UNIT, BUT THE UNIT IS NOT ACCESSIBLE?**

An owner cannot skip over the eligible family in such an instance. Where the available unit is not accessible and the disabled family needs an accessible unit, the housing provider must accommodate the family, either by (a) making that unit accessible, unless it causes an undue financial or administrative burden, or substantial alteration in the nature of the program, or is structurally infeasible; or (b) by transferring a tenant who is living in an accessible unit but does not need it to a non-accessible unit, and offering the eligible family the accessible unit.

21. WHAT HAPPENS IF AN OWNER CHOOSES TO IMPLEMENT ELDERLY ("SENIORS") PREFERENCES AND THERE ARE NOT ENOUGH ELDERLY FAMILIES TO FILL ALL THE UNITS?

If there are not enough elderly families to fill vacant covered Section 8 units, an owner **may** give secondary preference to Disabled-Near-Elderly (50 - 61 years of age) families. Also, if there are not enough younger families with disabilities (under 50) to fill the reserved units, the owner may give secondary preference to Disabled-Near-Elderly Families. In both of these cases, the statute is worded that the owner may give preference, but is not required to. If there are not enough families qualifying for the elderly preference, or the reserved units for younger families with disabilities (or qualifying for the disabled-near elderly family secondary preference if adopted) the owner must offer the unit to otherwise eligible families.

22. HOW DOES AN OWNER DETERMINE IF THERE ARE NOT ENOUGH FAMILIES TO FILL VACANT UNITS SUBJECT TO THE PREFERENCES?

These standards are already in place in the existing Section 8 regulations. An owner must conduct marketing to attract applicants qualifying for the preferences, including outreach to such applicants, in accordance with various Section 8 regulations. The owner must show good faith to lease to applicants qualifying for the preferences (which must include taking all feasible actions to fill vacancies by renting to such families), and not reject any such applicant family except for reasons acceptable to HUD or the contract administrator (in accordance with HUD guidelines).

23. DOES TITLE VI OBLIGATE ASSISTED-HOUSING PROVIDERS TO LOCATE ALTERNATE HOUSING OR ENSURE ITS AVAILABILITY?

NO. Only PHA's must do this.

24. CAN AN ASSISTED-HOUSING PROVIDER EVICT A CURRENT TENANT WITH A DISABILITY TO ACHIEVE THE OCCUPANCY LEVEL THAT HAS BEEN DETERMINED UNDER THE SYSTEM OF PREFERENCES OR THE RESERVATION OF UNITS?

NO. Current residents cannot be evicted except for lease violations.

25. SOME NEWLY-CONSTRUCTED OR SUBSTANTIALLY REHABILITATED DEVELOPMENTS HAVE BOTH UNASSISTED-UNITS AND ASSISTED-UNITS, OR "PARTIALLY-ASSISTED DEVELOPMENTS". DOES TITLE VI APPLY TO PARTIALLY-ASSISTED, SECTION 8 DEVELOPMENTS?

Title VI **only applies to the assisted-units** in the "partially assisted-development".

26. CAN AN OWNER OF A COVERED SECTION 8 DEVELOPMENT WHO DECIDES TO IMPLEMENT TITLE VI REMOVE NON-ELDERLY- OR NEAR-ELDERLY-DISABLED APPLICANTS FROM A WAITING LIST?

NO. The Final Rule clarified this. In addition, the legislative history to the new law states that "no applicant [shall be] dissuaded or refused a place on a waiting list because of a disability or handicap or because the reserve requirements are met or exceeded". However, the waiting list as a whole may be closed in certain situations in accordance with current HUD procedures.

The applicant's place on the waiting list and the application of preferences determine the order of selection for admission. The federal preferences continue to apply within each group. For example, an elderly family with a federal preference would be selected for a vacant unit before an

elderly family without a federal preference. Local preferences also are permitted under existing rules.

27. IF THE APPLICANT AT THE TOP OF THE WAITING LIST IS A YOUNGER FAMILY WITH A DISABILITY AND YOUNGER FAMILIES WITH DISABILITIES CURRENTLY OCCUPY THE FULL PERCENTAGE OF COVERED SECTION 8 UNITS UNDER TITLE VI, WHAT MAY THE OWNER DO?

All owners must follow their tenant selection plans or follow proper procedures to change their plans if they decide to do so. If the tenant selection plan permits an elderly preference once the reserve units have been filled, the owner may skip over the disabled family and offer the unit to an elderly family.

28. DOES AN OWNER OF A COVERED SECTION 8 DEVELOPMENT HAVE TO NOTIFY APPLICANTS WITH DISABILITIES ABOUT HIS OR HER DECISION TO PROVIDE PREFERENCES TO ELDERLY FAMILIES UNDER TITLE VI?

If the number of younger families with disabilities is higher than the reserve requirement, or equals the reserve requirement, or if the development is one that will have no units reserved for younger families with disabilities, the owner must notify non-elderly families on the waiting list of the new preferences and how this policy affects them.

G. ASSISTED HOUSING BUILT WITH HUD ASSISTANCE THROUGH THE SECTIONS 202, 221, 231 AND 236 PROGRAMS

Title VI allows owners of Sections 202, 221, 231, and 236, to reject all applicants with physical or mental disabilities under 65 **if the housing was originally designed for elderly families (seniors)**. Title VI

allows the owner to continue to restrict occupancy to elderly families according to rules, standards, and agreements in effect at the time the housing was developed.

Title VI states that implementation of Title VI for 202, 221, 231 and 236 housing could be done only by HUD regulation after public notice and opportunity for comment. However, HUD adopted and incorporated into change 24 a method to determine what housing meets the standard, originally designed for elders, without seeking public comment and without publishing any kind of notice in the Federal Register. As a result, many advocates believe that the Handbook changes exceed what is permitted by Title VI and are illegal.

1. WHAT IS THE HANDBOOK'S DEFINITION OF "ORIGINALLY DESIGNED FOR OCCUPANCY BY THE ELDERLY"?

The Handbook does not provide a definition. It allows owners of §231, §221, §231 and §236 developments to restrict occupancy to elderly (senior) applicants if they were originally constructed for elderly residents, as evidenced by tenant selection policies, grant and loan applications, loan documents, or regulatory agreements.

2. HOW DOES AN OWNER DETERMINE IF SECTION 202, SECTION 221, SECTION 231 OR SECTION 236 HOUSING WAS ORIGINALLY DESIGNED TO BE DESIGNATED-ELDERLY?

Title VI provides no guidance and HUD hasn't issued regulations for these subsidy types. Instead, HUD issued a revision to its assisted-housing Handbook (Change 24), "Occupancy Requirements of Subsidized Multifamily Housing Programs," providing some guidance.

The Handbook provides that owners should consider regulatory agreements, loan commitment papers, financial documents, notice of funding availability, bid invitation, the owner's management plan, and the application for funding to determine whether a development was specifically designed for and has been operated for the elderly.

3. WHAT HAPPENS IF A DEVELOPMENT WAS DESIGNED FOR THE ELDERLY, BUT ONLY A PORTION OF THE DEVELOPMENT HAS ACTUALLY BEEN OPERATED AS HOUSING FOR THE ELDERLY?

In such developments only the portion which was both designed for the elderly and actually operated as Elderly housing can continue to be operated as Elderly housing.

4. IF A PROVIDER HAS DESIGNATED HIS OR HER BUILDING AS ELDERLY, BUT HE OR SHE HAS HISTORICALLY ALLOWED YOUNGER PERSONS WITH DISABILITIES TO HAVE ACCESSIBLE UNITS, WHAT HAPPENS WHEN THE NEXT ELIGIBLE PERSON ON THE WAITING LIST IS A NON-ELDERLY PERSON WHO NEEDS AN ACCESSIBLE UNIT AND ALL THE ACCESSIBLE UNITS ARE OCCUPIED BY INDIVIDUALS WHO NEED THEM?

The answer to this question is unclear. The Handbook provides that in such developments only the portion which was both designed for the elderly and actually operated as Elderly housing can continue to be operated as Elderly housing. However, in a Notice of Change issued by HUD, it states that "the number of units which are constructed to be accessible to people with physical disabilities is not intended to dictate any standard or cap on the number of units serving persons with disabilities". Some advocates argue that this implies that an owner would have to provide the applicant at the top of the waiting list with a reasonable accommodation. On the other hand, one could argue that the owner only operated a fixed number of units as available to non-elderly families with disabilities and need not go beyond what he or she historically has done.

- 5. WHAT IF DOCUMENTS REVEAL THAT THE DEVELOPMENT WAS ORIGINALLY DESIGNED AND OPERATED FOR THE ELDERLY, BUT AN OWNER IN THE PAST ADMITTED THE NON-ELDERLY HANDICAPPED UNDER THE BELIEF THAT NOT TO ADMIT THEM WOULD CONSTITUTE A VIOLATION OF THE FAIR HOUSING AMENDMENTS ACT?**

According to the Handbook, the fact that non-elderly, handicapped tenants reside in such units does not by itself establish that the development or part of the development was not designed and actually operated as Elderly housing.

- 6. IF THE OWNER DOCUMENTS THAT THE DEVELOPMENT WAS DESIGNED FOR THE ELDERLY, CAN S/HE OPERATE IT AS ELDERLY WITHOUT HUD APPROVAL?**

YES.

- 7. WHAT SHOULD AN OWNER DO IF S/HE IS UNCERTAIN WHETHER THE DOCUMENTATION ESTABLISHES THAT THE DEVELOPMENT WAS ORIGINALLY DESIGNED FOR THE ELDERLY, BUT BELIEVES THIS TO BE THE CASE?**

If documents do not clearly show that the property was designed for and operated for elders, the owner must secure approval from the Director of Housing Management at HUD before limiting the development to Elderly.

- 8. WHO HAS THE BURDEN OF SHOWING WHAT GROUP THE HOUSING WAS ORIGINALLY DESIGNED AND OPERATED FOR?**

The owner has the burden of proof. If the owner cannot show this, the housing must remain available to both elders and non-elders with disabilities. The owner may be required to show that

proof to HUD, Oregon Housing and Community Services (HCS), or other financing or contract entity, or another party (including tenants and disability advocates) at any time.

9. IF AN OWNER REQUESTS TO DESIGNATE HIS OR HER DEVELOPMENT AS ELDERLY, WHAT KIND OF INFORMATION WILL THE OFFICE OF HOUSING MANAGEMENT CONSIDER?

The Handbook says that HUD will consider the "totality of circumstances" including historical data and the bedroom configuration of the property. "Historical data" includes, but is not limited to, lease records demonstrating that occupancy of the development, or parts thereof, has been limited to households where the head or spouse is 62 years of age or older, and evidence that services for the elderly, such as HUD-approved mandatory meal plans, have been approved.

According to the Handbook, a large percentage of efficiencies and one-bedrooms indicates that the development was originally designed for elderly housing. Bedroom configuration alone, however, cannot be used to show that the development, or part of it, was originally designed for the elderly. There **must also be at least one** type of historical data supporting that conclusion in order for the development, or part of it, to operate as an Elderly development.

If the bedroom configuration does not support a conclusion that the development, or part of it, was originally designed for the elderly, **at least two** types of historical data must show that the development, or part of it, is Elderly, in order to operate as an Elderly development.

The Handbook also says that even if an owner can show the required number of historical factors, he or she would not be able to designate the building as Elderly "if the totality of circumstances" regarding the development indicates that it should not be categorized as elderly.

10. WHEN MUST AN OWNER IDENTIFY THE DEVELOPMENT AS ELDERLY HOUSING?

There is no time limit. Owners can decide to designate their developments as Elderly (age 62 or over) at any time in the future if they can show that the development was originally designed and operated for elderly.

11. DOES TITLE VI REQUIRE ASSISTED-HOUSING PROVIDERS TO HIRE SERVICE COORDINATORS?

YES, for all covered programs but only if Congress also appropriates funds for service coordinators.

12. IF AN ASSISTED-DEVELOPMENT HAS A SERVICE COORDINATOR, CAN A TENANT (ELDERLY OR DISABLED) BE REQUIRED TO ACCEPT SERVICES ?

NO, except at application in a 202 program in which, to be eligible, a person has to need and desire the services provided at that particular program. Once in the program, residents retain all rights to accept or refuse services. However, if tenancy problems develop, resident are subject to the usual eviction and/or reasonable accommodation procedures.

13. WHAT DOES THE TERM SUPPORTIVE SERVICES INCLUDE?

Title VI states that supportive services may include health-related services, mental health services, services for non-medical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable state laws), case management, and personal emergency response.

14. IF AN OWNER HIRES A TITLE VI SERVICE COORDINATOR, WHAT ARE THE SERVICE COORDINATOR'S RESPONSIBILITIES ?

The statute defines the service coordinator's duties as follows:

- a. identifying the needs of the tenants and any supportive services related to their needs by talking directly with the tenants, tenant organizations, the owner, any resident management organizations, service providers or other relevant person;

- b. managing and coordinating the provision of the services;
- c. Service coordinators may also coordinate or provide training for tenants on their obligations.

15. HOW DOES THE STATUE DEFINE SERVICE COORDINATOR QUALIFICATIONS?

A service coordinator must be trained in the aging process, elder services, disability services, eligibility for and procedures of federal and applicable state entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues.

II. WHAT YOU CAN DO: PUBLIC HOUSING

People with disabilities and advocates need to make sure that the Housing and Community Development Act of 1992 doesn't lead to less affordable, accessible and integrated housing for people with disabilities. The law provides a way for people with disabilities to make sure that public housing authorities still provide the a similar share of housing for people with disabilities as before, even if it is different housing. The law requires housing authorities to consult people with disabilities on the Allocation Plan, which states how the similar share of housing will be provided.

Private Section 8 housing owners do not have to consult with anybody before setting a cap on the percentage of under 50 persons with disabilities. Owners of Sections 202, 221, 231, and 236 programs don't have to consult people either before they decide that their housing was originally for seniors. If an owner can prove that the housing was originally for elders, s/he does not have to admit younger people anymore.

If a manager says that you (or someone you know who has a disability) can't live in a particular development or takes you off the waiting list because of this law, you should contact your state's protection and advocacy organization (P & A) to make sure that the owner has done everything correctly. If an owner has made a mistake or done something illegal, you could still be eligible. (A list of these organizations is at the back of this book). Many of the P & A organizations are trying to make sure assisted-housing providers don't close off more housing to persons with disabilities than the law allows.

A. BECOME INVOLVED

1. CONTACT THE PROTECTION AND ADVOCACY ORGANIZATION(S) IN YOUR STATE.

If you find out that any local housing authority plans to create Designated-Elderly or Designated-Disabled housing, you should tell your state's protection and advocacy organization(s), whether or not you take any other action. (See list in the back of this book.) You should also write the

National Association of Protection and Advocacy Systems (NAPAS) at 900 Second, NE, Suite 211; Washington, DC 20002; Attn: Director of Policy.

2. CONTACT THE PUBLIC HOUSING AUTHORITY.

If you are a disability rights advocate or service provider, you should write your local housing authority and say that you want to be notified if and when it begins to make an Allocation Plan to have Designated-Elderly or Designated-Disabled housing. Include your name, address and phone number.

The following is a sample letter. Please send a copy of your letter to the protection and advocacy organization in your state, NAPAS, and HUD's Office of Fair Housing and Equal Opportunity at:

Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 5200
Washington, DC 20410

SAMPLE LETTER

(Date)

Housing Authority Director
Anytown Housing Authority
Anytown, USA

Dear Housing Authority Director (Name, if known):

I am writing to tell you of my concern and interest in the housing needs of people with disabilities. (Agency Name) advocates for (or provides supportive services to) people with disabilities. Many of the people we represent have low incomes and need safe, decent, affordable housing that is integrated in the community. Therefore, we regard with great concern any plan to designate housing as described under Section 633 of the Housing and Community Development Act of 1992 (P.L. 102-550).

(Paragraph describing your agency and involvement in housing for people with disabilities.)

The Act requires housing authorities to "consult with... public and private service providers, advocates for the interests of eligible elderly families, disabled families, and families with children and other interested parties." (Section 7(f)(3) of the U.S. Housing Act of 1937, as amended by Sec. 622). As (a)n public or private service provider/advocate for the interest of eligible disabled families, (Agency Name) requests that we be consulted in the Development of (PHA's) Allocation Plan, if one is being contemplated.

If there are not any plans to designate housing, we would welcome the opportunity to assist you as you seek to meet the housing needs of people with disabilities. It is our strong belief that through cooperation between agencies representing and serving people with disabilities and agencies providing housing, that problems can be avoided or dealt with in a manner to minimize inconvenience to residents and management alike.

We look forward to your response.

Sincerely,

Your Name
Title

cc: Assistant Secretary for Fair Housing, Department of Housing and Urban Development.

3. HELP COLLECT INFORMATION TO SHOW THE NEED FOR AFFORDABLE, INTEGRATED HOUSING CHOICES AND SUPPORTIVE SERVICES FOR PEOPLE WITH DISABILITIES .

It is extremely important that advocates for persons with disabilities help collect information to show the need for affordable integrated housing choices and support services for people with disabilities. If a housing authority has accurate information about housing and service resources in the community, it is more likely to be able to make an Allocation Plan that is fair to all who need housing. In addition, the more information HUD receives through comments, the better it can judge whether the Allocation Plan's information is correct and if the plan to house people with disabilities is fair and makes sense.

There are three important parts of the plan: need for housing, how much housing there is, and what kind and how much services exist.

B. NEED FOR HOUSING

Keep information on the needs of people with disabilities for decent, integrated, and affordable housing in the community. This should include information on people now living in institutions, nursing homes, group homes, board and-care homes, at home with their families and people who are homeless whether living in shelters or on the street. This information should be used in addition to the Housing Authority's waiting list and current tenant list. Be sure to collect your own information about the need for housing because the housing authority's may not be accurate. If possible, make sure that the people you find who need housing get on the PHA's waiting list. Be prepared to offer help. Some people may need information about how to apply and what housing choices are available. Others may need help in submitting an application. Whatever it takes, it is very important that as many people apply as possible to show the correct need.

If the Housing Authority has closed its waiting list, then make sure that information is included in the Allocation Plan showing how many more people with disabilities would be on the waiting list if it were not closed.

The important points to include are:

1. How many people with disabilities need an affordable place to live in the community?
2. What size apartments do people need?
(based on family size or need for live-in personal assistance)
3. Do they need supportive services? If so, what services do people need? (This information should be specific, but it should not have a person's name on it so privacy is protected.)
4. How many people need accessible apartments for persons (or family members) who use wheelchairs or who need special things (like flashing doorbells) because of hearing or seeing problems?

C. HOUSING SUPPLY (OR HOW MUCH HOUSING THERE IS NOW)

How much and what kind of housing (bedrooms, accessible) does the housing authority have (including Section 8 certificates and vouchers) for people with disabilities under the age of 62? This is not the same as the number of people with disabilities now living in the authority's housing. Housing authorities who separate elderly and disabled housing are supposed to have about as much housing for people with disabilities as they would have if they did not make separate housing for elderly people and people with disabilities. You need to know how much housing the housing authority has that people with disabilities could be eligible for today so that you can make sure there isn't less in the future.

D. HOW MUCH AND WHAT KIND OF SUPPORTIVE SERVICES ARE THERE?

How much and what kind of supportive services are there now for people with disabilities who live in public housing or who have Section 8 certificates or vouchers? Does the housing authority have any agreement with the community mental health system, developmental disabilities agency, homemaker services or other service providers? Are there service coordinators? Does this work very well?

This information will be very important in figuring out whether any supportive service plan the housing authority makes is a good one. These three things:

1. showing how many people with disabilities have applied or want to apply for public housing or Section 8's;
2. figuring out how much affordable housing there is now, including accessible units; and
3. finding out what services exist

are very important as you try to make sure that people with disabilities get a fair share of the public housing authority's housing. Without this information you will not be able to know whether the housing authority is planning to provide enough housing for people with disabilities. If you cannot show that people with disabilities need more housing, a housing authority could write a plan which offers less housing to people with disabilities than they have now.

APPENDIX

GLOSSARY

ANTI-HANDICAP DISCRIMINATION LAW:

Laws which say that public housing or assisted-housing can't discriminate against you because of your disability. It also means public housing and assisted-housing managers have to make changes in your apartment, in the building or grounds, and in the way things are done if you need these changes and if they are not too expensive or too difficult.

BOLI:

The Civil Rights Division of the Bureau of Labor and Industries is an agency that enforces Oregon anti-discrimination laws.

CONCILIATION AGREEMENT:

An agreement reached by both tenant and housing manager about how a problem will be resolved.

DISABILITY:

The civil rights definition is if s/he: (1) has a physical or psychiatric disability which limits a person's daily activity in a major way. (2) has a record or history of a disability which limits a person's daily activity in a major way, even if the person no longer has the disability or if the disability no longer limits the person; or (3) if someone thinks s/he has a disability.

FEDERAL PREFERENCE:

In public housing or assisted-housing, this gives you priority ahead of other people because you are homeless, living in sub-standard housing, fleeing domestic violence, civil rights violations or retaliation from assisting a criminal investigation, involuntarily dislocated, or spending more than 50% of your income on housing, or if your current housing requires a physical modification as an accommodation to your disability which the owner is unable or not required to make.

GRIEVANCE:

An official written complaint to a housing authority because you believe that you have been discriminated against. Then the housing authority has to decide if something wrong was done and if so, how to correct it. You get a written answer. Assisted-housing does not have official grievance proceedings, but you can make written complaints that get handled in a similar manner.

**HANDICAPPED PERSON OR A "PERSON WITH A DISABILITY" FOR PURPOSES OF CIVIL RIGHTS PROTECTIONS
- IF S/HE:**

- a.** has a physical or psychiatric disability that substantially limits one or more major life activities;
- b.** has a record of such disability; or
- c.** is regarded as having such a disability.

The physical or psychiatric disability can include practically any condition, disease, illness, disfigurement or disorder (e.g. alcoholism, AIDS, emotional disorder, drug addiction, mental retardation, cerebral palsy, cancer, deafness, or HIV infection) so long as the disability substantially limits one or more major life activities.

HOUSING MANAGER:

A person who oversees the physical plant and the administration of a housing development.

INTERNAL GRIEVANCE PROCEDURE:

Any agency that receives federal money and has at least fifteen employees must have an internal grievance procedure. This procedure is a process of having your complaint heard within the agency.

MITIGATING CIRCUMSTANCES :

Explanations of events or circumstances that could explain and give reasons why a person has a bad tenant history and why these problems probably won't happen again.

PCA:

A Personal Care Attendant is the person employed by the person who has the disability in order to assist them with their needs.

PSYCHIATRIC DISABILITY:

A psychiatric illness that interferes with your daily functioning.

REASONABLE ACCOMMODATION (MODIFICATION):

Changes in the building, the apartment or in rules and procedures to ensure equal access to housing if you have a disability.

SUMMARY PROCESS:

A eviction notice given by the court.

SUPPORTIVE SERVICES :

Services that will assist the person to maintain their tenancy or ability to live independently.

UNDUE FINANCIAL AND ADMINISTRATIVE BURDEN:

When the housing provider does not have enough resources to provide or make available reasonable accommodation or accessibility. Undue financial burden is determined by taking into account the size and budget of the housing, the type of housing and the cost of the accommodation needed.

LISTING OF PROTECTION & ADVOCACY ORGANIZATIONS

(Updated: 6/95)

ALABAMA

Alabama Disabilities Advocacy Program
The University of Alabama
Bryant Drive at 7th Avenue, Rm. 526
P.O. Box 870395
Tuscaloosa, AL 35487-0395

(205) 348-4928
TTD: (205) 348-9484

ALASKA

Advocacy Services of Alaska
615 East 82nd Avenue, Suite 101
Anchorage, AK 99518

(907) 344-1002

ARIZONA

Arizona Center for Law in the Public
Interest
3724 North Third Street, Suite 300
Phoenix, AZ 85012

(602) 274-6287
TTD: (602) 274-6287

ARKANSAS

Advocacy Services, Inc.
1100 North University, Suite 201
Little Rock, AR 72207

(501) 296-1775
TTD: (501) 296-1775

CALIFORNIA

Protection & Advocacy, Inc.
100 Howe Avenue, Suite 185 North
Sacramento, CA 95825

(916) 488-9950
TTD: (916) 488-9950

COLORADO

The Legal Center
455 Sherman Street, Suite 130
Denver, CO 80203

(303) 722-0300
Toll Free (800) 332-6256
TTD: (303) 722-0300

CONNECTICUT

Office of Protection and Advocacy for
Persons with Disabilities
60-B Weston Street
Hartford, CT 06120

(203) 297-4326
Toll Free (800) 842-7303
TTD: (203) 566-2102

DELAWARE

Disabilities Law Program
144 East Market Street
George Town, DE 19947

(302) 856-0083

DISTRICT OF COLUMBIA

Information, Protection, and Advocacy
Center for Handicapped Individuals
4455 Connecticut Avenue, NW, Suite B-100
Washington, DC 20008

(202) 966-8081
TTD: (202) 966-8081

FLORIDA

Advocacy Center for Persons with
Disabilities
Webster Building, Suite 100
2671 Executive Center Circle West
Tallahassee, FL 32301

(904) 488-9071
TTD: (800) 346-4127

GEORGIA

Georgia Advocacy Office, Inc.
999 Peachtree Street, NW, Suite 870
Atlanta, GA 30309

(404) 885-1234

IDAHO

Coalition of Advocates for the Disabled
4477 Emerald, Suite B-100
Boise, ID 83706

(208) 336-5252

ILLINOIS

Equip for Equality

11 East Adams, Suite 1200
Chicago, IL 60603

(312) 341-0022
TTD: (312) 341-0022

INDIANA

Indiana Protection & Advocacy Services
850 N. Meridian Street, Suite 2-C
Indianapolis, IN 46204

(317) 232-1150
TTD: (317) 232-1150

IOWA

Iowa Protection and Advocacy Service, Inc.
3015 Merle Hay Road, Suite 6
Des Moines, IA 50310

(515) 278-2502
TTD: (515) 278-0571

KANSAS

Kansas Advocacy and Protective
Services, Inc.
6700 Squibb Road, Suite 104
Mission, KS 66202

(913) 236-5207
TTD: (913) 236-5207

KENTUCKY

Protection and Advocacy Division
Department of Public Advocacy
100 Fair Oaks Lane, 3rd Floor
Frankfort, KY 40601

(502) 564-2967
TTD: (800) 372-2988

LOUISIANA

Advocacy Center for the Elderly and
Disabled
210 O'Keefe., Suite 700
New Orleans, LA 70112

(504) 522-2337
TTD: (504) 522-2337

MAINE

Maine Advocacy Services
32 Winthrop Street
Box 2007
Augusta, ME 04338

(207) 626-2774
Toll Free (800) 452-1948
TTD: (207) 626-2774 or (800) 452-1948

MARYLAND

Maryland Disability Law Center, Inc.
2510 St. Paul Street
Baltimore, MD 21218

(410) 235-4700
TTD: (410) 235-4700

MASSACHUSETTS

The Disability Law Center, Inc.
11 Beacon Street, Suite 925
Boston, MA 02108

(617) 723-8455
TTD: (617) 723-8455

MICHIGAN

Mental Health Advocacy Services Division
Michigan Protection and Advocacy Service
106 W. Allegan Street, Suite 210
Lansing, MI 48933

(517) 487-1755
TTD: (517) 487-1755

MINNESOTA

Minnesota Mental Health Law Project
430 First Avenue North, Suite 300
Minneapolis, MN 55401

(612) 332-1441
TTD: (612) 332-1668

MISSISSIPPI

Mississippi Protection and Advocacy
System, Inc.
5330 Executive Place, Suite A
Jackson, MS 39206

(601) 981-8207

MISSOURI

Missouri Protection & Advocacy Services
925 South Country Club Drive
Jefferson City, MO 65109

(314) 893-3333
TTD: (800) 392-8667

MONTANA

Montana Advocacy Program, Inc.
Box 1680
Helena, MT 59624

(406) 444-3889
TTD: (406) 444-3889

NEBRASKA

Nebraska Advocacy Services
522 Lincoln Center Building
215 Centennial Mall South
Lincoln, NE 68508

(402) 474-3183

NEVADA

Office of Protection and Advocacy
1135 Terminal Way, Suite 105
Reno, NV 89502

(702) 688-1233
TTD: (702) 688-1234

NEW HAMPSHIRE

New Hampshire Disabilities Rights
Center, Inc.
18 Low Avenue
Concord, NH 03302

(603) 228-0432
TTD: (603) 228-0432

NEW JERSEY

Division of Mental Health and Guardianship
Advocacy
Hughes Justice Complex CN 850
Trenton, NJ 08625

(609) 292-1780

NEW MEXICO

Protection and Advocacy System
1720 Louisiana NE, Suite 204

Albuquerque, NM 87110

(505) 256-3100
TTD: (800) 432-6301

NEW YORK

NY State Commission on Quality of Care
for the Mentally Disabled
99 Washington Avenue, Room 1002
Albany, NY 12210

(518) 473-4057

NORTH CAROLINA

Governor's Advocacy Council for Persons
with Disabilities
2113 Cameron Street, Suite 218
Raleigh, NC 27605

(919) 733-9250
TTD: (800) 821-6922

NORTH DAKOTA

Protection and Advocacy Project
400 East Broadway, Suite 515
Bismarck, ND 58501

(701) 328-2972

OHIO

Ohio Legal Rights Service
8 East Long Street, 5th Floor
Columbus, OH 43215

(614) 466-7264
TTD: (614) 728-2553

Tulsa, OK 74146

OKLAHOMA

Oklahoma Disability Law Center, Inc.
Suite 21, Cherokee Building
4150 South 100th East Avenue

(918) 664-5883

TTD: (918) 664-5883

OREGON

Oregon Advocacy Center
620 SW 5th Avenue, Fifth Floor
Portland, OR 97204

(803) 782-0639

TTD: (803) 782-0679

(503) 243-2081

TDD: (503) 323-9161

Toll Free Voice: 1-800-452-1694

Toll Free TDD: 1-800-556-5351

PENNSYLVANIA

Pennsylvania Protection and Advocacy, Inc.
116 Pine Street
Harrisburg, PA 17101

(717) 236-8110

TTD: (717) 236-8110

RHODE ISLAND

Rhode Island Protection and Advocacy
System, Inc.
151 Broadway Street
Providence, RI 02903

(401) 831-3150

TTD: (401) 831-5335

SOUTH CAROLINA

Protection and Advocacy System for
the Handicapped, Inc.
3710 Landmark Drive, Suite 208
Columbia, SC 29204

SOUTH DAKOTA

South Dakota Advocacy Services
221 Central Avenue
Pierre, SD 57501

(605) 224-8294
TTD: (800) 658-4782

TENNESSEE

Tennessee Protection and Advocacy, Inc.
Box 121257
Nashville, TN 37212

(615) 298-1080

TEXAS

Advocacy, Inc.
7800 Shoal Creek Boulevard, Suite 171-E
Austin, TX 78757

(512) 454-4816

VIRGINIA

Department for Rights Virginians with
Disabilities
James Monroe Building
101 N. 14th Street, 17th Floor
Richmond, VA 23219

(804) 225-2042
TTD: (804) 225-2042

WASHINGTON

Washington Protection and Advocacy
1401 East Jefferson Street, Suite 506
Seattle, WA 98122

(206) 324-1521
TTD: (206) 324-1521

UTAH

Legal Center for People with Disabilities
455 East 400 South, Suite 410
Salt Lake City, UT 84111

(801) 363-1347
TTD: (801) 363-1347

VERMONT

Vermont Protection & Advocacy
21 East State Street
Montpelier, VT 05602

(802) 229-1355
TTD: (802) 229-1355

WEST VIRGINIA

West Virginia Advocates
Litton Building, 4th Floor
1207 Quarrier Street
Charleston, WV 25311

(304) 346-0847
TTD: (800) 950-5250

WISCONSIN

Wisconsin Coalition for Advocacy
16 N. Carroll Street, Suite 400
Madison, WI 53703

(608) 267-0214
TTD: (608) 267-0368

WYOMING

Protection and Advocacy System, Inc.
2424 Pioneer Avenue, Suite 101
Cheyenne, WY 82001

(307) 632-3496

TTD: (307) 632-3496

HUD REGIONAL OFFICES

REGION I: Boston

HUD - Fair Housing and Equal Opportunity (FHEO)
Boston Federal Office Building
10 Causeway Street
Boston, Massachusetts 02222-1092

(617) 565-5304

(Connecticut, Maine,
Massachusetts, New Hampshire,
Rhode Island, and Vermont)

(New York and New Jersey)

REGION II: New York

HUD - Fair Housing and Equal Opportunity (FHEO)
26 Federal Plaza
New York, New York 10278-0068

(212) 264-1290

REGION III: Philadelphia

HUD - Fair Housing and Equal Opportunity (FHEO)
Liberty Square Building
105 S. 7th. Street
Philadelphia, Pennsylvania 19106-3392

(215) 597-2338

(Delaware, District of Columbia,
Maryland, Pennsylvania,
Virginia, and West Virginia)

REGION IV: Atlanta

HUD - Fair Housing and Equal Opportunity (FHEO)
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303-3388

(404) 331-3356

(Alabama, Florida, Georgia,
Kentucky, Mississippi,
North Carolina, South Carolina,
Tennessee, Puerto Rico, and the
Virgin Islands)

REGION V: Chicago

HUD - Fair Housing and Equal Opportunity (FHEO)
Ralph H. Metcalf Federal Building
77 West Jackson Boulevard
Chicago, Illinois 60604-3507

(312) 353-7776

(Illinois, Indiana, Michigan,
Minnesota, Ohio, and
Wisconsin)

REGION VI: Fort Worth

HUD - Fair Housing and Equal Opportunity (FHEO)
1600 Throckmorton
P.O. Box 2905
Fort Worth, Texas 76113-2905

(817) 885-5541

(Arkansas, Louisiana,
New Mexico, Oklahoma, and
Texas)

REGION VII: Kansas City

HUD - Fair Housing and Equal Opportunity (FHEO)
Gateway Tower II
400 State Avenue
Kansas City, Kansas 66101-2406

(913) 551-6993

(Iowa, Kansas, Missouri, and
Nebraska)

REGION VIII: Denver

HUD - Fair Housing and Equal Opportunity (FHEO)
Executive Tower Building
1405 Curtis Street
Denver, Colorado 80202-2349

(303) 672-5343

(Colorado, Montana,
North Dakota, South Dakota,
Utah, and Wyoming)

REGION IX: San Francisco

HUD - Fair Housing and Equal Opportunity (FHEO)
450 Golden Gate Avenue
San Francisco, California

(800) 347-3739

(Arizona, California, Hawaii,
Nevada, Guam, and American
Samoa)

REGION X: Seattle

HUD - Fair Housing and Equal Opportunity (FHEO)
4Suite 200 Seattle Federal Building
909 1st. Avenue
Seattle, Washington 98104-1000

(206) 220-5172

(Alaska, Idaho, Oregon, and
Washington)

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