

NON-DISCRIMINATION RELATED TO DISABILITY

RESOURCES

CONSULT THE CoC RULE

CoC Program Interim Rule

– 578.93 Fair Housing & Equal Opportunity:

<https://www.govinfo.gov/content/pkg/CFR-2017-title24-vol3/xml/CFR-2017-title24-vol3-part578.xml#seqnum578>

RESOURCES AT A GLANCE

Fair Housing Landing Page:

https://www.hud.gov/program_offices/fair_housing_equal_opp

Disabilities – Section 504 and related requirements:

<https://www.hud.gov/fairhousing>

Code of Federal Regulations

– 24 CFR 100.202 – Prohibitions against discrimination because of handicap

– 24 CFR 100.203 – Reasonable modifications of existing premises:

<https://www.govinfo.gov/content/pkg/CFR-2016-title24-vol1/pdf/CFR-2016-title24-vol1-sec100-202.pdf>

This resource is prepared by technical assistance providers and intended only to provide guidance. The contents of this document, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

SUMMARY

The CoC Program is subject to a range of federal civil rights laws related to nondiscrimination requirements and to affirmative accessibility obligations. CoC Program recipients and subrecipients are strongly encouraged to become familiar with these requirements and with any applicable state or local civil rights laws. Please also see the accompanying [one pager on Fair Housing](#) and the [Equal Access Rule](#). Additionally, [see sidebar links](#).

DEFINITION OF PERSONS WITH DISABILITIES

These three federal civil rights laws (the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act) define a person with a disability as: 1) has a physical or mental impairment that substantially limits one or more major life activities; 2) has a record of such impairment; or 3) is regarded as having such an impairment. Many HUD programs have different definitions of “disability.” For example, while a person currently engaged in the use of illegal drugs may not be protected under federal civil rights laws, he or she may be eligible for CoC-funded programs. Carefully review the [Disability Definition one pager](#) for details.

NONDISCRIMINATION REQUIREMENTS RELATED TO DISABILITY

Reasonable Accommodations: The Fair Housing Act requires housing facility owners to provide reasonable accommodations to persons with disabilities, meaning changes, exceptions, or adjustments to a program, service, or procedure to allow a person with a disability to have equal enjoyment of the housing program.

There must be an identifiable relationship between the requested accommodation and the person’s disability. The accommodations need not be provided if they would constitute an undue financial and/or administrative burden, or a fundamental alteration of the program.

Section 504 of the Rehabilitation Act of 1973: Prohibits discrimination based on disability in programs offering housing or non-housing services or benefits, including the CoC Program. Requirements for new construction, acquisition, and rehabilitation projects, include:

- Affirmative physical accessibility requirements, including accessible public and common use areas;
- Five percent of units must be made accessible to persons with mobility disabilities; an additional two percent to persons with communication disabilities; and
- Recipients and subrecipients must consider physical accessibility when determining the site or location of a project.

CoC Program projects must: take steps to ensure effective communication with current and prospective participants, and the public, with communication disabilities; ensure that their application and admissions process and services are accessible/understandable by persons with disabilities.

Reasonable Modifications: The Fair Housing Act does not require owners and homeowner associations to make and pay for structural modifications. Instead, owners must allow tenants with disabilities to make reasonable access-related modifications to their private living space and common use spaces at the tenant's expense. Private owners (e.g. a landlord that may accept CoC Program tenant-based rental assistance) would not have to pay for modifications, unless state or local law requires it. [See sidebar for 24 CFR 100.203.](#)

CoC Program recipients/subrecipients are subject to Section 504's more stringent requirements: they must make and pay for structural modifications to dwellings and public and common areas needed as a reasonable accommodation for persons with disabilities, unless providing the accommodation would constitute a fundamental alteration of the program or an undue financial and administrative burden.

Affirmative Minimum Accessibility Requirements: The Fair Housing Act requires new multifamily housing (for rent or sale) with four or more units built after March 13, 1991, contain a minimum level of accessibility features for persons with disabilities. These requirements are in addition to those in [Section 504 \(see sidebar\)](#). Accessibility features include:

- Accessible public and common use areas;
- Doors that are wide enough for wheelchairs;
- Kitchens and bathrooms that are maneuverable by a person using a wheelchair;
- Other adaptable features within the units; and
- Sleeping rooms that share kitchen facilities and dormitory style housing are also subject to these requirements

Inquiries Related to Disability: The Fair Housing Act places limitations on housing providers to inquire about the *nature* and *severity* of an applicant's disability. However, a housing provider that offers housing for persons with disabilities may inquire whether an applicant meets eligibility requirements. [See sidebar for 24 CFR 100.202\(c\)](#). Thus, a CoC Program recipient/subrecipient of PSH/other projects serving people with disabilities may do the following with applicants and residents:

- Ask whether they have a disability as defined in the CoC Program regulations to help determine eligibility;
- Make inquiries appropriately connected to determining their service needs;
- Ask whether they need units with special features or if they have special needs related to communication; however they should make these inquiries of all program participants.

CoC Program – Targeting of Subpopulations by Disability: Recipients and subrecipients may limit admission to, or provide a housing preference to, subpopulations that need specialized supportive services offered in the housing (e.g., addiction treatment). However, no otherwise eligible person who may benefit from the services may be excluded on the grounds that they don't have the particular disability. [See sidebar for CoC Program Interim Rule.](#)

- **Note:** Projects originally awarded under the Shelter Plus Care or Supportive Housing Program and subsequently renewed may limit assistance to persons with specific disabilities so long as they abide by the requirements in CoC Program Interim Rule – 578.33(d)(1).