

# NOW & NEXT

## Affordable Housing Alert

APRIL 27, 2023

### HUD announces plan to overhaul its Section 504 Regulations

By Harry Kelly

HUD acknowledges existing rules that implement Section 504 of the Rehabilitation Act of 1973 are outdated and need updates.



#### What's the Impact

- / HUD's current Section 504 rules, published in 1988, prohibit specific acts of discrimination and impose accessibility requirements on new construction and alterations to existing buildings.
- / New issues and concerns have arisen in the intervening 35 rules that the existing regulations do not address.
- / HUD's proposed overhaul of its Section 504 rules provide an opportunity to address questions raised by HUD and to offer suggestions about how its Section 504 rules should be updated.

It's 2023—Do you know where your transition plan is? Wait—You don't know what a "transition plan" is? Well, according to HUD's regulations implementing Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination against individuals with disabilities in programs that receive "Federal Financial Assistance" or "FFA," such as Section 8, HOME funds, etc.) , if you are a

housing provider who receives FFA, you were supposed to have a transition plan explaining how you'd modify your property to address accessibility issues in place back in 1989.

If you don't have a transition plan, you aren't alone and that is the issue—much of HUD's current Section 504 rules, first released in 1988, are outdated or simply don't focus on issues that property owners, managers, and tenants face today. To address these concerns, [HUD announced plans earlier this week](#) to overhaul its existing Section 504 regulations and to address questions that have arisen since the rules were released in 1988.

HUD's current Section 504 rules prohibit specific acts of discrimination and impose accessibility requirements on new construction and on alterations to existing structures. Unfortunately, a lot of issues have arisen over the last 35 years that the current rules don't address. For example, does an owner have an affirmative duty to make a pre-1988 property accessible, even the owner hasn't undertaken alterations to the property? When do alterations to specific elements in a unit trigger a duty to make the entire unit accessible? What does it mean to make accessibility alterations "to the maximum extent feasible"? Does an owner become subject to Section 504 obligations only when it directly receives funds from HUD, or do HUD-sourced funds paid through a state or local agency also trigger those duties? Gaps in the current rules have resulted in a lot of ad-hoc decisions by HUD and a lot of uncertainty for property owners and managers and tenants.

In announcing its planned overhaul, HUD acknowledged that its existing Section 504 rules need to be updated to address emerging issues and solicited comments on a variety of questions about the current Section 504 rules and how they should be revised. These include, among others, questions about whether the current definition of an "individual with disabilities" should be changed; whether the current new construction rules, requiring 5% of units be mobility-accessible and 2% of units be visual- and hearing-accessible, adequately meet the needs of persons with disabilities; and whether the accessibility needs of persons receiving housing choice vouchers and other tenant-based assistance are being met. Comments from the public are accepted through July 24, 2023.

Considering the costs and risks they impose; HUD's Section 504 rules have had a tremendous day-to-day impact on housing providers and managers. Section 504 complaints comprise the largest share of program-related civil rights claims handled by HUD, according to this week's announcement. The promised overhaul could impose additional duties on owners and managers, or alternatively, could provide clarity that is missing now. It's important for housing providers and managers to seize this opportunity to share their experiences with HUD and to make sure, as HUD starts to revise its Section 504 rules, that their voices and concerns are heard.

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