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**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

Special Attention of:

Notice PIH-2014-08

Administrators, Offices of Native American Programs; and Tribes, Tribally Designated Housing Entities

Issued: April 30, 2014  
Expires: This Notice remains effective until Amended, Superseded or Rescinded

Cross Reference(s): 24 CFR Part(s) 1000.12  
Native American Housing Assistance and Self Determination Act of 1996  
Section 504 Rehabilitation Act of 1973  
Fair Housing Act  
Uniform Federal Accessibility Standards  
PIH Notice 2009-5, PIH Notice 2010-27, PIH Notice 2011-39

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**Subject:** Reinstatement and Revision of Accessibility Requirements for Native American Programs

**Purpose:** This Notice revises and extends all preceding PIH notices on *Accessibility Requirements for Native American Programs: Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Architectural Barriers Act of 1968; and Fair Housing Amendments Act of 1988.*

The purpose of the Notice is to remind tribes and tribally designated housing entities (TDHE) who are recipients of Federal funds of their obligation to comply with pertinent laws and implementing regulations that provide for non-discrimination and accessibility in federally funded housing and non-housing programs for persons with disabilities. This Notice also revises some terminology in previous Notices. Specific regulations cited below must be reviewed in their entirety to ensure full compliance.

**Applicability:** This Notice applies to HUD programs that fall under the jurisdiction of the Office of Native American Programs (ONAP) and to other programs for which tribes or tribal organizations are eligible. These programs include, but may not be limited to:

- a. Indian Housing Block Grant (IHBG)
- b. Native Hawaiian Housing Block Grant (NHHBG)
- c. Indian Community Development Block Grant (ICDBG)
- d. Resident Opportunity and Self-Sufficiency (ROSS)
- e. Rural Innovation Fund (RIF)

**Notification:** Recipients of Federal funds, including tribes and TDHEs, are responsible for providing this Notice to all current and future contractors and agents participating in covered programs/activities or performing work on behalf of recipients, including resident management corporations, and consultants, etc. that are covered under the above subject legislation and implementing regulations.

**Definitions:** See 24 CFR 8.3 for the definition of terms referred to in the HUD regulations implementing Section 504 of the Rehabilitation Act of 1973. It is important to review the definitions of these terms, as they may be defined differently in other Federal, state, or local laws and building codes.

**Statutory/Regulatory Requirements:** Tribes and tribal entities may be subject to several nondiscrimination and accessibility laws. Tribes and tribal entities must comply with all applicable laws. Where there may be conflicting statutory, regulatory, and code provisions, the most stringent provision applies -- that is, the provision affording the greatest accessibility for individuals with disabilities. This includes any applicable tribal, state, or local laws/regulations/codes, which may be more stringent than Federal requirements. The following Federal laws apply as follows:

- Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR Part 8, apply to any recipient of Federal financial assistance, including Tribes and tribal entities.
- Title II of the Civil Rights Act of 1968 (the Indian Civil Rights Act) applies to federally recognized tribes and their TDHEs.
- Title II of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations in 28 CFR Part 35 does not apply to Indian tribes and their TDHEs. However, tribes or TDHEs that are agencies or instrumentalities of a State, e.g., State-created Indian housing authorities, are covered by Title II of the ADA and implementing regulations.
- The Architectural Barriers Act (ABA) and implementing regulations in 24 CFR Parts 40 and 41 do not apply to Indian tribes and their TDHEs.
- The Federal Fair Housing Act (24 U.S.C. 3601 et seq.) and implementing regulations in 24 CFR Part 100 do not apply to actions under NAHASDA by Federally recognized tribes and the TDHEs of those tribes engaged in NAHASDA-funded activities and to activities of Indian tribes and tribal organizations under the ICDBG program pursuant to Section 106(a)(1) of the Housing and Community Development Act of 1974.
- Non-Federally recognized tribes and entities not exempted from specific Federal civil rights laws indicated above should refer to PIH Notice 2010-27 and subsequent Notices on Nondiscrimination and Accessibility for Persons with Disabilities for more information on compliance with Federal nondiscrimination laws and accessibility requirements.

**Section 504 - Accessibility Requirements Applicable to Indian Programs:** Section 504 requires that no qualified individual with disabilities shall, solely on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance from the department. Section 504 regulations impose specific accessibility requirements for new construction and alteration of housing and non-housing facilities in HUD assisted programs. Facilities owned, built, or used in connection with any such programs or activities are subject to nondiscrimination and accessibility requirements. IHBG funds may be used for a wide range of housing activities, including the construction or rehabilitation of rental or homeownership housing and tenant-based rental assistance. Eligible new construction and rehabilitation includes making housing accessible for persons with disabilities.

- **New Construction:** [24 CFR 8.22 (a) and (b)]. A minimum of 5 percent or at least one unit (whichever is greater) in a housing project containing five or more dwelling units must be made accessible for persons with mobility impairments. An additional 2 percent or at least one unit (whichever is greater) must be made accessible for persons with hearing or vision impairments. In circumstances where greater need is shown, HUD may prescribe higher percentages than those listed above. [See 24 CFR 8.22(c).]

A project is defined as the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site.

- **Substantial Alteration:** [24 CFR 8.23(a)]. If alterations are undertaken to a project that has 15 or more units, and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the alteration is to be treated as if it were new construction, and the requirements for new construction apply.
- **Other Alterations:** [24 CFR 8.23(b)]. When other alterations are undertaken, including (but not limited to) modernization or structural changes, such alterations are required to be accessible to the maximum extent feasible until at least 5 percent of the units in a project are accessible, unless HUD prescribes a higher number or percentage pursuant to 24 CFR 8.23(b)(2). If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit must be made accessible. For purposes of this paragraph, the phrase “to the maximum extent feasible” shall not be interpreted as requiring that a recipient make a dwelling unit, common area, facility, or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project

For additional guidance, there is a list of Frequently Asked Questions on Section 504 accessibility issues at

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504faq](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504faq)

**Alterations to Common Areas** [24 CFR 8.23(b), 8.32(c)]: Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities must, to the maximum extent feasible, be made accessible to and usable by individuals with disabilities. This does not require that a common area be made accessible if doing so would impose undue financial and administrative burdens on the operation of a housing project containing 5 or more dwelling units, or that a recipient of federal assistance must make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. However, these exceptions do not relieve the recipient from the requirement to make common areas accessible if the recipient can utilize other units/buildings or other methods to achieve accessibility

**Reasonable Accommodations:** [24 CFR 8.4(b)(1), 8.24 and 8.33]. Recipients of Federal financial assistance are required to modify their rules, policies, practices, and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit and the common areas of the dwelling or participate in or access other activities conducted/sponsored by the recipient.

**Changes to Rules, Policies, etc.:** When an individual or family member requires an accessible feature(s) or change, exception, or adjustment to a rule, policy, practice, or service to accommodate a disability (a reasonable accommodation), the reasonable accommodation must be provided, unless doing so would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burden.

If providing the reasonable accommodation as requested by the individual or family member would result in such a fundamental alteration or an undue financial and administrative burden, then the recipient must take any other action that would not result in a fundamental alteration or an undue financial and administrative burden, but will ensure that the individual will receive the benefits and services of the program or activity. If a requested accommodation would impose an undue financial and administrative burden or a fundamental alteration, the housing provider must initiate an interactive process in which the housing provider and the requester discuss the requested accommodation, possible alternative accommodations, and the extent to which such alternative accommodations may meet the requester's disability-related needs. This interactive process often results in an effective accommodation for the requester that does not pose a fundamental alteration or an undue financial and administrative burden for the provider.

For example, a recipient of Federal financial assistance that does not allow residents to have pets must modify its policies and allow a tenant with a disability to have an assistance animal, if the animal is needed as a reasonable accommodation. Assistance animals are not pets. An assistance animal is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.<sup>1</sup>

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<sup>1</sup>Those entities that are covered by both Title II of the ADA and Section 504 (*i.e.*, Tribes or TDHEs that are agencies or instrumentalities of a State) must apply both the ADA "service animal" regulation and the reasonable accommodation analysis required by Section 504. For guidance on the distinction between the two, as well as on how to apply multiple laws, see FHEO Notice 2013-01, April 25, 2013

As another example, a recipient of federal financial assistance that does not provide transportation for tenants is not required to provide transportation for individuals with disabilities because doing so would result in a fundamental alteration in the nature of the program or activity. However, a recipient that does provide transportation for tenants to functions or activities must ensure that accessible transportation is provided to accommodate persons with disabilities and their personal or health aides.

**Structural Modifications:** Recipients of Federal financial assistance are required to make and pay for structural modifications to dwelling units and common areas when needed as a reasonable accommodation for tenants or applicants with disabilities, unless the accommodation would cause an undue financial and administrative burden or would fundamentally alter the nature of the program. For example, a recipient may be required to install a ramp to allow a tenant in a wheelchair access to a dwelling unit. If such an accommodation would result in an undue financial and administrative burden or fundamental alteration in the nature of a program, the recipient must provide any accommodation that does not impose a fundamental alteration or an undue financial and administrative burden, such as transferring a family to an available accessible unit or to one that can be modified. Prior to providing an alternative accommodation, the provider must engage in the interactive process described above.

Note: This requirement to accommodate individual tenants' requests for accessible features in a unit does not mean that the unit counts towards a project's accessible unit requirements. Such units are separate from and in addition to the affirmative obligation to have an inventory of accessible units available for persons with disabilities.

**Existing Housing Programs:** [24 CFR 8.24]. A recipient must operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

Section 8.24(a) does not necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with disabilities. It also does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. However, the recipient must take any alternative action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

Pursuant to 24 CFR 8.24(b), in order to make housing programs and services accessible to individuals with disabilities, a recipient may:

- Reassign services to accessible buildings;
- Assign personal or health aides to beneficiaries
- Provide housing or related services at alternate accessible sites;
- Alter existing facilities and construction of new facilities; or
- Employ any other methods that result in making programs or activities readily accessible to and usable by individuals with disabilities.

A recipient is not required to make structural changes in existing housing facilities where other methods are as effective in making a program or activity available or to provide supportive services that are not part of the program.

In choosing among available methods for making services, programs and activities accessible, the recipient must give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. Once a recipient has made its programs accessible in compliance with 24 CFR 8.23(b) and 8.25, there is no requirement to make structural changes to existing housing facilities where other methods are effective in achieving compliance.

**Distribution of Accessible Dwelling Units:** [24 CFR 8.26]. Accessible dwelling units must, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so that individuals with disabilities have choices of living arrangements comparable to that of other families eligible for assistance under the same program.

This provision must not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level. Regardless of whether a building includes an elevator, the general obligation of recipients under 24 CFR 8.4(d) is to administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities, which includes offering units in different sizes and amenities to individuals with disabilities.

**Occupancy of Accessible Dwelling Units:** [24 CFR 8.27]. Recipients must adopt suitable means to assure that information regarding the availability of accessible units reaches persons with disabilities. Recipients must also take reasonable nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit.

To this end, when an accessible unit becomes vacant, before offering such units to an applicant without a disability, the recipient must: (i) First, offer the unit to a current occupant of another unit of the same project, or comparable projects under common control who requires the accessibility features of the vacant unit (if the current occupant does not have such accessibility features in their current unit); or (ii) If no such occupant exists, offer the accessible unit to a qualified applicant on the waiting list who requires the accessibility features. Given the small number of units required to be accessible under HUD's Section 504 regulations, this procedure is needed to ensure that the accessible units are available for the individuals who have a disability-related need for the accessible features that these units provide.

A recipient may not prohibit an eligible family with a household member with a disability from accepting a non-accessible unit for which the family is eligible and that may become available before an accessible unit. The recipient is required to modify such a non-accessible unit as needed, unless the modification(s) would result in an undue financial and administrative burden. Pursuant to 24 CFR 8.27 (b), when offering an accessible unit to applicants without disabilities,

the recipient may require such applicants to agree to move to a non-accessible unit when available or when a family with a household member with a disability needs the accessible unit. Such an agreement may be incorporated into the lease.

**Non-Housing Facilities:** [24 CFR 8.21]. Newly constructed non-housing facilities must be designed to be readily accessible to and usable by, persons with disabilities. Examples of such facilities include community centers and recreation buildings that are shared by tenants of a project. Alterations to existing facilities must make existing facilities accessible to the maximum extent feasible. For purposes of this paragraph, the phrase to the maximum extent feasible shall not be interpreted as requiring that a recipient make a non-housing facility, or element, accessible if doing so would impose an undue financial and administrative burden on the operations of the recipient's program or activity. For existing non-housing facilities, recipients must operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

**Accessibility in Existing Non-Housing Programs:** [24 CFR 8.21(c)(2)]. Methods that may be used to accomplish accessibility in existing non-housing programs and activities include:

- (1) Locating programs or services to accessible facilities or accessible portions of facilities;
- (2) Assignment of aides to beneficiaries;
- (3) Home visits;
- (4) The addition or redesign of equipment (e.g., appliances or furnishings);
- (5) Changes in management policies or procedures;
- (6) Acquisition or construction of additional facilities;
- (7) Alterations to existing facilities on a selective basis; and
- (8) Any other methods that result in making its programs or activities accessible to individuals with disabilities.

**Historic Properties:** If a historic property becomes subject to alterations, the requirements of Sec. 4.1.7 of the Uniform Federal Accessibility Standards (UFAS) apply. Accessibility to historic properties subject to alterations need not be provided if such accessibility would substantially impair the significant historic features of the property or result in undue financial and administrative burdens. When a recipient is operating a historic preservation program or activity with respect to a non-housing facility so as to make the program or activity readily accessible to and usable by individuals with disabilities, the recipient shall give priority to methods that provide physical access to individuals with disabilities. Where a physical alteration to a non-housing historic property under such a historic preservation program is not required, alternative methods of achieving program accessibility include: (1) using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible, (2) assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible, or (3) adopting other innovative methods.

**Accessibility Standards:** [24 CFR 8.32]. Currently the design, construction or alteration of buildings in conformance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with accessibility requirements of 24 CFR 8.21, 8.22, 8.23 and 8.25 with respect to

those buildings. The following UFAS notes also apply to activities conducted under 24 CFR Part 8:

- The exception for bathrooms found at UFAS 4.22.3 cannot be used for dwelling unit bathrooms.
- UFAS does not permit the water closet to encroach on the clear unobstructed floor space required to provide an unobstructed turning radius of 60 inches.
- UFAS includes a definition of structural impracticability that does not require changes if such changes would result in the removal or alteration of a load-bearing structural member and/or an increased cost of 50 percent or more of the value of the element of the building or facility (see UFAS3.5). This does not alleviate the recipient's responsibility for making its programs and units accessible to persons with disabilities.
- HUD regulations at 24 CFR 8.4(b)(1)(ii) state that recipients must provide qualified individuals with disabilities an opportunity to participate in, or benefit from, housing or other aid and services that are equal to services offered to other participants; and (iii) recipients must provide qualified individuals with disabilities housing, aid, benefit, or other services that is as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to all others.
- In light of these regulatory provisions, PIH has determined that the following departures from UFAS are warranted in its housing programs. In addition to the UFAS standard at 4.34(15)©, all sleeping areas must be on an accessible route. (The UFAS standard , permits the possibility of inaccessible sleeping spaces in otherwise accessible housing units). For new construction and substantially rehabilitated accessible units, when more than one bathroom is provided, additional bathrooms must be accessible.

**Effective Communication:** [24 CFR 8.6]: The recipient must take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public. The recipient must furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of a program or activity receiving Federal financial assistance.

In determining what auxiliary aids are necessary, the recipient must give primary consideration to the requests of the individual with disabilities. The recipient is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. Examples of alternative forms of communication might include, but are not limited to:

- The provision of a qualified sign language interpreter;
- Having written materials read orally or, if the individual prefers, explained orally by staff either in person or by telephone;
- The provision of written materials in large/bold font;



- Information in accessible electronic format (email or MS Word document), information on audiocassette or other recorded format the individual can access; use of TDD, TTY or relay service;
- Assisting applicants in filling out forms or applications;
- Permitting applicants to file applications by mail;
- Accessible websites; and
- Permitting alternative sites for the receipt of applications.

The recipient may never require the applicant to provide, or pay for, his/her own sign language interpreter. The recipient also may not require an applicant to have a family member or friend serve as an interpreter. Rather, it is always the recipient's responsibility to provide, upon request, a qualified sign language interpreter. However, the recipient's responsibility to provide a qualified sign language interpreter does not preclude an individual's right to have a friend, relative or advocate accompany him/her for purposes of conducting business with the recipient.

The recipient is not required to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of the program or activity or an undue financial and administrative burden. If an action would result in such an alteration or such burdens, the recipient must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

**Visitability:** Although not a requirement, it is recommended that all design, construction, and alterations incorporate, whenever practical, the concept of visitability in addition to the accessibility requirements under Section 504. Visitability is a design concept that, for very little or no additional cost, enhances the ability of persons with disabilities to interact with their neighbors, friends and associates in the community by visiting their homes and community areas.

Visitability design incorporates the following in all construction or alterations in addition to the accessibility requirements whenever practical and possible for as many units as possible within a development. This includes:

- Providing at least one entrance grade (no steps) approached by an accessible route such as a sidewalk for each unit; and
- A 32-inch clear opening in all bathrooms and interior doorways. Note: Clear opening is measured between the face of the door and the opposing stop when the door is open 90 degrees.

**Universal Design:** Although not a requirement, it is recommended that all design, construction and alterations incorporate, wherever practical, the concept of Universal Design in addition to existing accessibility requirements applicable to tribes and TDHE. Universal Design is a concept that encourages the construction or rehabilitation of housing and elements of the living environment in a manner that makes them usable by all people, regardless of ability, without the need for adaptation or specialized design. The intent of Universal Design is to simplify life for everyone by making products and the built environment more usable by as many people as possible at little or no extra cost. Universal Design should strive for social integration and

avoidance of discrimination, stigma, and dependency. By designing housing that is accessible to all there will be an increase in the availability of affordable housing for all, regardless of age or ability.

**ADDITIONAL INFORMATION:** If you have any questions or require further information, please contact your Area ONAP. Persons with hearing or speech impairments may access their Area ONAP via TTY by calling the Federal Information Relay Service at (800) 877-8339.

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/s/

Sandra B. Henriquez, Assistant Secretary  
for Public and Indian Housing