

U.S. Department of Housing and Urban Development
Fair Housing and Equal Opportunity
and
Public and Indian Housing

SPECIAL ATTENTION OF:
HUD Regional and Field
Office Directors of Public Housing and
Fair Housing and Equal Opportunity;
Agencies that Administer the Public Housing
and Housing Choice Voucher Programs

PIH Notice: PIH-2011-31
Issued: 6/13/11
Expires: Effective until
Amended, Superseded, or
Rescinded

FHEO Notice: FHEO-2011-1
Issued: 6/13/11
Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Guidance on non-discrimination and equal opportunity requirements for PHAs

1. Purpose: The purpose of this notice is to remind public housing agencies (PHAs), including those in the Moving to Work (MTW) demonstration, of their obligation to comply with key non-discrimination and equal opportunity laws and implementing regulations, including those in 24 CFR § 5.105(a). Specific laws and regulations must be viewed in their entirety for full compliance, as the notice does not incorporate a complete discussion of all legal authorities.

Previously published Office of Public and Indian Housing (PIH) notice 2010-26 (HA) presents information on requirements of PHAs regarding non-discrimination and accessibility for persons with disabilities. This notice reiterates those requirements and adds applicable requirements regarding civil rights and environmental justice provisions. This Notice does not supersede PIH notice 2010-26 or any subsequent notice. This notice should be read in conjunction with PIH notice 2010-26 as well as the legal authorities cited.

2. Applicability: This notice applies to all PHAs receiving federal financial assistance from PIH, including those participating in the MTW demonstration.¹ Contractors or other agents of PHAs remain subject to the requirements of this notice.

¹ Congress authorized the MTW demonstration in 1996 (Section 204 of the Omnibus Consolidated Receptions and Appropriations Act of 1996, 42 U.S.C. § 1437f). PHAs selected for the MTW demonstration are permitted to seek exemptions from many existing public housing and Housing Choice Voucher (HCV) program rules found in the United States Housing Act of 1937 (1937 Act) and implementing regulations to pursue three defined statutory objectives:

- Reduce cost and achieve greater cost effectiveness in federal expenditures;
- Give incentives to families with children where the head of household is working, is seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and
- Increase housing choices for low-income families.

- 3. Organization:** The first section of this notice offers a general overview of non-discrimination and equal opportunity laws, regulations and requirements. Sections two through eight present specific information on each law, regulation or requirement and discuss any differences in applicability for MTW PHAs. Section nine gives resources for additional assistance.

Section I: Applicability of non-discrimination and equal opportunity laws to PHAs

The following regulations refer to statutory and regulatory requirements for PHAs, regardless of status in the MTW demonstration, to comply with non-discrimination and equal opportunity requirements:

- 24 CFR § 960.103: PHAs must administer public housing in accordance with equal opportunity requirements imposed by contract or federal law, including the authorities cited in 24 CFR 5.105(a) (see below) and provisions to affirmatively further fair housing.
- 24 CFR § 903.7(o): As part of the annual planning process, PHAs must certify conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and to affirmatively further fair housing.

MTW PHAs meet this certification requirement through the Annual MTW Plan, as described in the Standard MTW Agreement and Attachment B thereto.

- 24 CFR § 903.2(d): Admission and occupancy policies for public housing and Housing Choice Voucher (HCV) must comply with Fair Housing Act requirements and with regulations to affirmatively further fair housing and with all nondiscrimination requirements.
- 24 CFR § 982.53: PHAs administering HUD voucher programs or certificate programs must comply with equal opportunity requirements imposed by contract or federal law pursuant to 24 CFR § 5.105(a) (see below) and § 903.7(o).
- 24 CFR § 5.105(a) lists the federal laws and regulations that apply to HUD programs, including the activities of PHAs. Exemptions to these requirements may not be sought under the MTW demonstration. They include, for example:
 - The Fair Housing Act and implementing regulations at 24 CFR Part 100;
 - Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR Part 1;
 - Age Discrimination Act of 1975 and implementing regulations at 24 CFR Part 146;

PHAs in the MTW demonstration have flexibility to combine federal funds from different program sources into a “block grant” subsidy to better meet the above statutory objectives and address local needs.

The Standard MTW Agreement and associated attachments, executed by both the PHA and the Department of Housing and Urban Development (HUD), govern participation in the MTW demonstration. While this agreement can exempt MTW PHAs from many provisions in the 1937 Act, all other federal rules and regulations, including those pertaining to civil rights, remain binding on PHAs in the MTW demonstration.

- Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8; and
- Title II of the Americans with Disabilities Act of 1990.

The following documents are also relevant in the context of non-discrimination and equal opportunity requirements:

- Plan Documents: PHAs submit a Five Year Agency Plan and Annual Plan Update (HUD-50075), required by Section 5A of the 1937 Act. Alternatively, MTW PHAs must prepare and submit an Annual MTW Plan in accordance with Attachment B of the Standard MTW Agreement. The Annual MTW Plan is submitted in lieu of the Five Year Agency Plan and Annual Plan Updates. PHAs and MTW PHAs include certifications in these documents.
- Standard MTW Agreement: MTW PHAs enter into an agreement with HUD to govern their participation in the MTW demonstration. This agreement, termed the Standard MTW Agreement, reinforces the applicability of laws and regulations outside the 1937 Act, including those related to civil rights for MTW PHAs.

Section II. The Fair Housing Act

1. Purpose

The Fair Housing Act is Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 – 3619), as amended in 1988, which prohibits discrimination against individuals because of race, color, religion, sex, disability, national origin, or familial status. The Fair Housing Act prohibits discrimination against protected class members in the sale, rental, conditions, and financing of dwellings and in other housing-related transactions. The Fair Housing Act and its implementing regulations at 24 CFR Part 100 define who is protected, what type of housing the law covers and what types of actions constitute illegal discrimination.

2. Specific provisions of the Fair Housing Act

Section 804 of the Fair Housing Act prohibits discrimination against protected classes in housing. For example, it is unlawful for a PHA to:

- Refuse to sell or rent a dwelling to a person who has made a *bona fide* offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling (42 U.S.C. § 3604(a), see also 24 CFR § 100.60);
- Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services and facilities in connection therewith (42 U.S.C. § 3604(b), see also 24 CFR § 100.65);
- Make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination (42 U.S.C. § 3604(c), see also 24 CFR § 100.75);

- Represent that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available (42 U.S.C. § 3604(d), see also 24 CFR § 100.80); or,
- Induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin (42 U.S.C. § 3604(e), see also 24 CFR § 100.85).

24 CFR Part 100 interprets the scope of the Fair Housing Act and similarly prohibits discrimination in the sale or rental of dwellings, the provision of services in connection with housing and the availability of residential real estate-related transactions.

3. Resources

- The Fair Housing Act is posted at: <http://www.usdoj.gov/crt/housing/title8.php> with implementing regulations, including 24 CFR Part 100, posted at: <http://www.archives.gov/federal-register/index.html>.
- HUD's Office of Fair Housing and Equal Opportunity provides guidance on the requirements of the Fair Housing Act with information posted at: www.hud.gov/offices/fheo/index.cfm and a library listing at: <http://www.hud.gov/library/bookshelf08/>.
- Information about fair lending, including subprime and predatory lending, is posted at: http://portal.hud.gov/portal/page/portal/HUD/topics/fair_lending.
- HUD's position on discrimination in real estate advertising and further guidance is posted at: <http://www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf>.
- Supreme Court cases involving discrimination in housing are posted at: <http://public.findlaw.com/civil-rights/housing-discrimination/housing-discrimination-history.html>.

Section III. Affirmatively Furthering Fair Housing

1. Purpose

Section 808(e)(5) of the Fair Housing Act (42 U.S.C. § 3608(e)(5)) requires the Secretary of HUD to administer housing and urban development programs and activities in a manner that affirmatively furthers fair housing. The requirements to affirmatively further fair housing apply to PHAs.

2. Obligations of PHAs to affirmatively further fair housing

PHAs must certify that they are affirmatively furthering fair housing in their Annual Plan. PHAs participating in the MTW demonstration submit this certification as a part of their Annual MTW Plan, referenced in Attachment B of the Standard MTW Agreement.

The specific certification requirements detailed at 24 CFR § 903.7(o) provide that a PHA is compliant in affirmatively furthering fair housing if the PHA fulfills section 903.2(b) and takes action to:

1. Examine programs or proposed programs;
2. Identify any impediments to fair housing choice within those programs;
3. Address those impediments in a reasonable fashion in view of the resources available;
4. Work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require PHA involvement; and
5. Maintain records reflecting these analyses and actions.

Section 24 CFR 903.2(d) reinforces the obligations among PHAs to follow Fair Housing Act requirements and affirmatively further fair housing in admission and occupancy policies; prevent discrimination against and/or segregation because of race, color, religion, sex, disability, familial status or national origin; reduce racial and national origin concentrations in the design of eligibility, selection and admissions policies; and take affirmative steps to overcome the effects of conditions which resulted in limited participation of persons because of their race, national origin, or other prohibited basis.

3. Resources

A comprehensive manual on affirmatively furthering fair housing and the analysis of impediments is entitled “The Fair Housing Planning Guide.” This manual offers examples of strategies to enhance fair housing choice and is posted at:

<http://www.hud.gov/offices/fheo/images/fhpg.pdf>. The examples include PHA actions to overcome impediments to fair housing and other best practices.

Section IV. Title VI of the Civil Rights Act of 1964

1. Purpose

One of the earliest enacted civil rights laws applicable to recipients of HUD funding is Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq). HUD’s Title VI regulation states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from HUD (24 CFR § 1.1). All PHAs, including those that participate in the MTW demonstration, must fully comply with the non-discrimination provisions of Title VI and 24 CFR Part 1, which includes the prohibition on discrimination in providing accommodations, facilities, services, financial aid, and any other benefits provided by MTW PHAs (see 24 CFR §§ 1.1, 1.2).

2. Specific provisions of Title VI

HUD’s Title VI regulations specify types of prohibited discrimination. PHAs must not, for example, based on race, color, or national origin:

- Deny a person housing or services (see 24 CFR § 1.4(b)(1)(i));
- Provide different housing or services than those provided others (see 24 CFR § 1.4(b)(1)(ii));
- Subject a person to segregation or separate treatment in the receipt of housing or services (see 24 CFR § 1.4(b)(1)(iii));

- Use different admission or eligibility requirements for housing or services (see 24 CFR § 1.4(b)(1)(v)); or
- Select a housing site or location with the purpose or effect of excluding or denying benefits to persons in protected classes (24 CFR § 1.4(b)(3)).

PHA contracts must contain assurances that contractors comply with Title VI. Real property acquired through federal financial assistance must have a recorded covenant that assures nondiscrimination (24 CFR § 1.5).

24 CFR § 1.4(b)(6) provides that if a recipient of federal funds has previously discriminated against persons on the ground of race, color, or national origin, then the recipient must take affirmative action to overcome or correct the effects of prior discrimination in program administration. In the absence of such prior discrimination, a recipient of federal assistance should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin (24 CFR § 1.4(b)(6)(ii)).

3. Compliance reporting

HUD's Title VI regulations require PHAs to complete compliance reports. PHAs submit compliance reports to the appropriate field civil rights official in a timely, complete and accurate manner at such times as the civil rights official determines necessary. Reports include racial and ethnic data of the beneficiaries of federally-assisted programs. The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with part 1. PHAs must not retaliate against a person who makes a complaint or assists in an investigation. Consequences for violations include informal resolution, termination of federal financial assistance, referral to the Department of Justice and the initiation of debarment proceedings (see 24 CFR §§ 1.6, 1.7, and 1.8).

PHAs complete HUD Form 50058 for every applicant at the time of initial examination, annually at reexaminations and when other administrative actions are taken. Required information includes the race and ethnicity of the head of household. The choices offered for race are American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. Family members are permitted to identify themselves using more than one racial category or identify themselves using other racial categories. The choices for ethnicity are Hispanic or Latino and Not-Hispanic or Latino. If an applicant refuses to self-identify under one of the racial and/or ethnic categories, the PHA chooses an appropriate category based on observation. The analogous form for MTW PHAs is the HUD Form 50058-MTW.

4. Resources

- Title VI is posted at: <http://www.justice.gov/crt/cor/coord/titlevi.php> with implementing regulations at: <http://www.justice.gov/crt/cor/byagency/hudvi.php>.
- HUD's Race and Ethnicity Reporting Form is available at: <http://www.hud.gov/offices/adm/hudclips/forms/files/27061.pdf>.

Section V. Civil rights protections for persons with disabilities

This section provides an overview of federal statutes and their implementing regulations which provide significant protections for persons with disabilities. Information on specific laws and regulations which mandate non-discrimination and accessibility in federally funded housing programs for persons with disabilities is the subject of PIH Notice 2010-26 (HA), titled “Non Discrimination and Accessibility for Persons with Disabilities” posted at: <http://www.hud.gov/utilities/intercept.cfm?/offices/pih/publications/notices/10/pih2010-26/pdf>.

1. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) prohibits discrimination based on disability in programs or activities operated by recipients of federal financial assistance, including PHAs. This coverage extends to all aspects of program administration and implementation by PHAs, as well as the actual housing owned or managed by PHAs.

Under Section 504, an individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment (24 CFR § 8.3). Generally, the determination is measured without consideration of the ameliorative effects of medicine or devices. Major life activities include, for example, taking care of oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working (See 24 CFR § 8.3 concerning the section 504 provisions for alcohol and drug abusers).

Section 504 and its implementing regulations at 24 CFR Part 8 obligate recipients to assure program accessibility to persons with disabilities, including actions to:

- Provide a policy, practice, or rule modification, or an accessible feature in a unit or common area, if needed as an accommodation by an applicant or tenant with a disability, unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden;
- Provide auxiliary aids and services necessary for communication with persons with disabilities;
- Operate housing that is not segregated based on disability or type of disability unless authorized by federal statute or executive order or unless necessary to provide as effective housing, aid, benefit, or services as those provided to others; and
- Perform a self-evaluation of their programs and policies to ensure that they do not discriminate based on disability.
- Ensure that new housing facilities and alterations to existing facilities are designed and constructed to be readily accessible to and usable by persons with disabilities according to established requirements for persons with mobility and sensory impairments.
- Distribute required accessible dwelling units to the maximum extent feasible throughout projects and sites in a sufficient range of sizes and amenities.
- Adopt suitable means to ensure that information regarding the availability of accessible units reaches eligible persons with disabilities and take reasonable, non-discriminatory steps to maximize the utilization of such units by eligible individuals.

See PIH Notice 2010-26 for more in-depth information on physical accessibility requirements concerning persons with disabilities.

Reasonable Accommodations

PHAs are required to make reasonable adjustments to 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 housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the PHA (see 24 CFR §§ 8.20, 8.21, 8.24 and 8.33). When a family member requires a policy modification to accommodate a disability, PHAs must make the policy modification unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. For example:

- A PHA that has a no pets policy must permit the use of an assistance animal as a reasonable accommodation if the animal is needed to provide the resident with a disability an equal opportunity to use and enjoy the housing;
- A PHA gives priority parking for a person with a mobility disability who requests an assigned parking spot.

PHAs are also required to provide reasonable accommodations to tenants and applicants with disabilities who need structural modifications to existing dwelling units and public use and common use areas in order to make effective use of the PHA's program. See 24 CFR § 8.20, 8.21(c), 8.24. This obligation may be met either by making and paying for requested structural modifications or by using other equally effective methods (see 24 CFR §§ 8.20, 8.21(c), 8.24). For example:

- A PHA pays for and installs a ramp to allow a resident who uses a wheelchair to have access to a dwelling unit that has a step at the front door if the resident cannot be accommodated by relocation to a different unit that meets the resident's needs;
- A PHA may be required to pay for and install grab bars in the resident's dwelling unit in order to accommodate a resident who has a mobility impairment.

Recipients are not required to provide structural modifications if doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. Whether a particular accommodation would be an undue financial and administrative burden will depend on the facts and circumstances of the individual case. For example:

- A PHA has a certain number of parking spaces located outside the main entrance to a residential building and another parking lot with additional spaces a half block away. All the parking spaces near the main entrance are already assigned to tenants with disabilities who need a parking space near the entrance because of their disabilities. Another tenant with a mobility impairment requests a parking space near the building's main entrance. After exploring options, the PHA concludes the only way to provide more parking spaces near the entrance is to widen the parking area by purchasing valuable real estate adjacent to the building. It may be an undue financial and administrative burden to provide the

requested accommodation; however, it would be an appropriate accommodation for the owner to provide the tenant with a mobility impairment with a parking space at the farther location until one of the parking spaces near the building's main entrance becomes available.

2. The Fair Housing Act

The Fair Housing Act prohibits discrimination because of, *inter alia*, disability, in the sale, rental, conditions, and financing of dwellings and in other housing-related transactions. The Fair Housing Act requires that covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, be accessible to persons with disabilities, as explained in the regulations at 24 CFR § 100.205. Covered multifamily dwellings means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor units in other buildings consisting of 4 or more dwelling units. 24 CFR § 100.201.

Reasonable Accommodations

The Fair Housing Act makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (24 CFR § 100.204). This applies to private owners participating in the Housing Choice Voucher programs as well as to PHAs.

Reasonable Modifications

Under the Fair Housing Act, it is unlawful for an owner to refuse to permit a person with a disability, at his or her own expense, to make reasonable modifications of existing premises occupied or about to be occupied by a person with a disability if such modification may be necessary to afford the person with a disability full enjoyment of the premises. 24 CFR § 100.203. This applies to private owners participating in housing choice voucher programs or other tenant-based programs. This also applies to PHA owners of existing public housing units, however, PHAs must follow the more stringent reasonable accommodation requirements of 24 CFR §§ 8.4, 8.20, 8.21(c), 8.24, and 8.33, which require PHAs to pay the cost of structural changes to facilities unless the PHA can accommodate the individual with a disability by equally effective means, or unless such structural changes would result in an undue financial and administrative burden.

3. The Americans with Disabilities Act

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by public entities. Public entity means any state or local government; or any department, agency, special purpose district or other instrumentality of a state or states or local government, including a PHA. See 28 CFR 35.102 and 35.104. A public entity shall operate each service, program or activity so that when viewed in its entirety, each service, program or activity is readily accessible to and usable by individuals with disabilities (see 28 CFR § 35.151(a)).

The title II regulations at 28 CFR Part 35 contain extensive requirements that apply to public entities, including PHAs, and should be reviewed in their entirety to ensure compliance with the ADA.

4. Compliance reporting

HUD's Section 504 regulations require PHAs to complete compliance reports. PHAs submit compliance reports to the appropriate field civil rights official in a timely, complete and accurate manner at such times as the civil rights official determines necessary. Reports include the number of persons with disabilities the PHA serves. The civil rights official conducts periodic investigations where there is a reasonable basis for the review, including for complaints. PHAs must not retaliate against a person who makes a complaint or assists in an investigation. Consequences for violations include informal resolution, termination of federal financial assistance, referral to the Department of Justice and the initiation of debarment proceedings (see 24 CFR §§ 8.55, 8.56, 8.57). PHAs complete HUD Form 50058 for every applicant at the time of initial examination, annually at reexaminations and when other administrative actions are taken PHAs report whether a participant has a disability, but the nature of the disability is not reported. The analogous form for MTW PHAs is the HUD Form 50058-MTW.

5. Resources

- For more on reasonable accommodations, see the Department of Justice and Housing and Urban Development Joint Guidance, available at:
<http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.
- For more on reasonable modifications, see the Department of Justice and Housing and Urban Development Joint Guidance, available at:
http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.
- Section 504 notices, regulations (including 24 CFR Part 8), accessibility standards, and supportive documents are posted at:
<http://www.hud.gov/offices/fheo/disabilities/sect504docs.cfm>.
- HUD documents on reasonable accommodations and reasonable modifications to persons with disabilities are posted on the Office of Fair Housing and Equal Opportunity's website at:
<http://www.hud.gov/offices/fheo/disabilities/index.cfm>.

Section VI. Site and neighborhood standards

1. Purpose

HUD's site and neighborhood standards facilitate and further compliance with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, various Executive Orders and implementing regulations. Site and neighborhood standards apply when PHAs use HUD financial assistance to construct, acquire or site housing.

2. Specific Provisions

a. Nondiscrimination based on race, color and national origin

Provisions of 24 CFR § 1.4 apply to the sites and locations of housing and facilities. Specifically, PHAs must not select sites or locations with a discriminatory purpose and selections must not have a discriminatory effect. This includes siting decisions that segregate minority populations (see 24 CFR §§ 1.4(b)(1)(iii) and 1.4(b)(3)).

b. Nondiscrimination based on disability

Provisions of 24 CFR part 8 apply to the sites and locations of housing and facilities. Specifically, PHAs must not select sites or locations of a federally assisted facility which has the purpose or effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under the Federally assisted program or activity (see 24 CFR § 8.4(b)(5)).

c. Standards regarding site and neighborhood characteristics and minority concentration

24 CFR § 941.202 specifies among other requirements that proposed sites for public housing projects to be newly constructed or rehabilitated must be approved by the appropriate HUD field office as being suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights, Executive Order 11063, and HUD implementing regulations.

24 CFR 941.202(c)(1) provides that the site for new construction must not be located in an area of minority concentration unless sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. An overriding need may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex or national origin renders sites outside of minority concentration unavailable; or a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

Notwithstanding 24 CFR 941.202(c)(1), 24 CFR § 941.202(c)(2) provides that public housing units constructed after demolition of public housing units may be built on the original public housing site, or in the same neighborhood, if one of the following criteria is satisfied:

- The number of public housing units being constructed is no more than 50 percent of the number of units in the original project;

- In the case of replacement of a currently occupied project, the number of public housing units being constructed is the minimum number needed to house current residents who want to remain at the site; or
- The public housing units being constructed constitute no more than twenty-five units.

24 CFR 941.202(d) provides that the site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

d. Standards regarding site and neighborhood access, facilities and amenities

24 CFR § 941.202 also requires new construction or rehabilitation projects to:

- Avoid sites that have current occupants unless relocation requirements in § 941.207 are met;
- Provide access to municipal facilities such as schools, hospitals, and other services that are at least equivalent to those typically found in neighborhoods consisting largely of similar unassisted standard housing; and,
- Avoid excessive travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for low-income workers.

e. Standards regarding site and neighborhood environmental conditions

24 CFR § 941.202(e) requires new public housing project sites to be free from adverse environmental conditions, both natural and manmade. Examples include:

- Sewage hazards
- Air pollution
- Excessive noise vibration
- Smoke or dust
- Rodent or vermin infestation
- Fire hazards
- Flooding
- Septic tank back-ups, and
- Vehicular traffic.

PHAs must consider the site and neighborhood of proposed public housing projects, and choose environmentally safe sites and safe neighborhoods.

3. Flexibilities in implementing site and neighborhood standards under MTW

The Standard MTW Agreements of some PHAs in the MTW demonstration contain flexibilities in how site and neighborhood standards are implemented. Such flexibilities are found in Attachment D, Legacy and Community-Specific Authorizations.

These MTW PHAs are authorized to adopt alternate standards for determining the location of existing, newly constructed or substantially rehabilitated housing to receive subsidy. MTW PHAs with this flexibility must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964 and implementing regulations, as well as other requirements detailed in the Standard MTW Agreement. MTW PHAs implementing flexibility to program operations must present the alternate standards to HUD as a new MTW activity in their Annual MTW Plan or as an amendment to an existing Annual MTW Plan. HUD must then evaluate the activity and approve it before the alternate standards may be implemented by the MTW PHA.

4. Resources

- Guidance on environmental standards entitled “Choosing an Environmentally Safe Site,” is posted at: <http://www.hud.gov/offices/cpd/environment/library/safesite.pdf>.

Section VII. Environmental reviews and environmental justice

1. Environmental Justice

Title VI of the Civil Rights Act prohibits discrimination against protected classes under any program or activity receiving federal financial assistance, including MTW PHAs. Regulations implementing Title VI specifically prohibit discrimination in siting decisions (see 24 CFR § 1.4(b)(3)).

Executive Order 12898 requires federal agencies to further environmental justice by identifying and addressing disproportionately high and adverse human environmental effects of their programs, policies and activities on minority and low-income populations. To satisfy this goal, PHAs must select and maintain a healthy environment for all people regardless of race, color, national origin, or income. PHAs’ siting of new dwellings must comply with all environmental regulations and ensure that adverse environmental effects do not concentrate in areas where minority or low-income populations live.

2. National Environmental Policy Act

HUD regulations implementing the National Environmental Policy Act (NEPA) require responsible entities to consider the environmental impact of proposed actions by beginning the environmental review process as soon as the recipient determines the projected use of HUD assistance (24 CFR § 58.30(b)). One purpose of NEPA is to create transparency in government actions that may affect the environment. NEPA requires federal agencies to notify the public, solicit public input, analyze the impact of the project, and consider alternatives to the project prior to committing HUD or non-HUD funds or undertaking an activity or project (24 CFR § 58.22(a)).

Regulations under NEPA include a public process designed to encourage public participation and requires that documents and filings be available to the public (40 CFR § 1500.1(b)). Environmental review under NEPA can also require analysis of the availability of services

including health care, grocery stores, transportation, social services, and fire and emergency services for some actions.

3. Environmental Review

Nearly all development activities and projects using federal funds, including those initiated by PHAs, require an environmental review. An environmental review is the process for complying with NEPA and other environmental laws in 24 CFR § 58.5 and 24 CFR § 58.6. Generally acquisition and physical activities cannot take place until the environmental review is complete.

The responsible entity conducts the environmental review for the PHA pursuant to HUD regulations at 24 CFR § 58. The “responsible entity” is the unit of general local government where the project is located, and it assumes HUD’s federal role for environmental review compliance (24 CFR § 58.2(a)(7)). If the responsible entity refuses to conduct the environmental review, HUD will conduct the environmental review pursuant to HUD regulations (24 CFR § 50). In either case, the PHA is required to provide the information necessary to complete the environmental review and agree to abide by the special conditions, procedures, and requirements of the environmental review. The PHA must also advise the responsible entity or HUD of any proposed change in the scope of the project or any change in environmental conditions.

An environmental review can require analysis of the project’s impact on historic and cultural resources, floodplains, wetlands, noise, toxics, and other factors listed at 24 CFR § 58.5 and 24 CFR § 58.6 or 24 CFR § 50.4.

4. HUD’s Hazard Free Policy

Properties proposed for use in HUD programs are to be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property (24 CFR § 58.5(i)(2)(i)). The responsible entity (for Part 58 reviews) or HUD (for Part 50 reviews) must use current techniques by qualified professionals to undertake the necessary investigations.

The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by hazards (24 CFR 58.5(i)(2)(ii)). Particular attention must be paid to proposed sites on or near:

- Dumps,
- Landfills,
- Industrial sites, and
- Hazardous waste storage sites (see 24 CFR § 50.3(i)(3) and 24 CFR § 58.5(i)).

HUD rejects housing proposals with significant adverse environmental impacts; HUD encourages modifications of projects to enhance environmental quality and minimize environmental harm (24 CFR § 50.3(a)).

5. Resources

- For guidance on all environmental review compliance requirements including the National Environmental Policy Act and related laws and the environmental review components of Executive Order 12898 and HUD hazards policies, contact your Field Environmental Officer.
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, is posted at: <http://www.hud.gov/offices/fheo/FHLaws/EXO12898.cfm>.
- HUD guidance to determine what level of environmental review is posted at: <http://www.hud.gov/offices/cpd/environment/review/>, and assessment tools for various environmental regulations is posted at: <http://www.hud.gov/offices/cpd/environment/atec.cfm>
- HUD environmental contacts are posted at: <http://www.hud.gov/offices/cpd/environment/contact/>.
- HUD guidance on environmental justice is posted at: <http://hud.gov/offices/cpd/environment/review/justice.cfm>.
- Environmental justice assistance includes:
 - The EPA’s mapping tool to create maps and generate detailed geographic areas and data sets is posted at: <http://epamap14.epa.gov/ejmap/entry.html>;
 - EPA listings of superfund sites (an uncontrolled or abandoned place where hazardous waste is located, possibly affecting local ecosystems or people) by state, is posted at: <http://www.epa.gov/superfund/sites/query/queryhtm/nplfin.htm>; and
 - Maps of previous/historical uses of land are posted at: <http://www.sanborn.com/>.
- The U.S. Commission on Civil Rights 2003 publication, “Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice,” is posted at: <http://www.usccr.gov/pubs/envjust/ej0104.pdf>.

Section VIII. Improving Access to Services for Persons with Limited English Proficiency

1. Executive Order 13166

Executive Order 13166 (EO 13166) seeks to eliminate, to the extent possible, limited English proficiency (LEP) as a barrier to full and meaningful participation by beneficiaries in all federally-assisted and federally-conducted programs and activities. Persons qualify as LEP when they have limited ability to read, write, speak or understand English. EO 13166 requires recipients of federal financial assistance to take reasonable steps to ensure meaningful access in their programs and activities to their LEP applicants and beneficiaries in compliance with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964.

On January 22, 2007, HUD issued “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons” (LEP Guidance), posted at: http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

HUD determines a PHA's reasonable efforts to ensure participation of LEP persons in programs by objectively balancing the need to ensure meaningful access by LEP persons without imposing undue burdens on recipients. The following four-factor analysis is instrumental in that determination, weighing:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered in the eligible service population;
2. The frequency with which LEP persons encounter the program;
3. The nature and importance of the program, activity or service provided by the program; and
4. The resources available to the PHA and costs.

In determining whether a PHA fulfills obligations under Title VI and EO 13166 to take reasonable steps to ensure meaningful access to LEP persons on the basis of national origin, HUD considers whether a PHA adopts a Language Access Plan (LAP) reflecting LEP needs, whether the PHA implements that LAP, in the event a PHA does not develop a written plan, whether it has considered alternative ways to articulate, in some other reasonable manner, a plan for providing meaningful access, and whether the PHA maintains Title VI compliance records demonstrating services provided to LEP persons. A completed LAP includes provisions that:

1. Identify LEP individuals who need language assistance;
2. State the PHA's language-assistance measures;
3. Train staff on access to information and services for LEP persons;
4. Provide notice to LEP persons of the services offered; and
5. Monitor and update the LAP.

With respect to translation of written documents, HUD's safe harbor measures if PHAs follow the specific provisions set forth in the January 22, 2007 guidance. A safe harbor means that written translations of vital and widely used documents serve as strong evidence of compliance with the recipient's written translation obligation. Vital documents include leases, intake forms, rental notices, rules of conduct and eviction notices. If these vital documents are translated for LEP groups that constitute 5 percent or 1,000 persons of the population of persons eligible to be served or likely to be affected or encountered, or translated written notice of LEP services are provided for LEP groups that are less than 50 persons and constitute more than 5 percent, the PHA meets a safe harbor for compliance purposes. Safe harbor applies only to written translation obligations. There are no "safe harbors" for oral interpretation services. Recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP. Depending on the circumstances, reasonable oral language assistance might be an in-person interpreter or telephone interpreter line.

2. Resources

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, is posted at: <http://www.hud.gov/offices/ftheo/FHLaws/EXO13166.cfm>.

- The referenced January 22, 2007 document on LEP is posted at: http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.
- Housing documents translated into various languages, including model leases, requests for tenancy approval and homeowner obligation statements are posted at: <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>.
- The federal-wide LEP website is www.lep.gov.

Section IX. Additional Assistance

PHAs may request technical assistance concerning compliance with fair housing and other civil rights requirements and may collaborate with fair housing organizations in the Fair Housing Initiatives Program (FHIP) (<http://www.hud.gov/offices/fheo/partners/FHIP/FY2009FHIP.cfm>) or Fair Housing Assistance Program (FHAP) (<http://www.hud.gov/offices/fheo/partners/FHAP/agencies.cfm>) for assistance on civil rights compliance.

Pursuant to 24 CFR Part 125 and 24 CFR Part 115, respectively, FHIP and FHAP organizations offer guidance on fair housing compliance to housing providers and assist people who believe that they have been victims of housing discrimination. These fair housing organizations can help PHAs identify impediments to fair housing choice within their jurisdictions and devise strategies for administering programs in a manner that affirmatively furthers fair housing.

HUD recipients may contact their local Office of Fair Housing and Equal Opportunity to request training and technical assistance. A listing of regional and local Fair Housing and Equal Opportunity offices is posted at: <http://www.hud.gov/offices/fheo/aboutfheo/fhhubs.cfm>.

Technical assistance on the MTW demonstration is posted at (<http://www.hud.gov/offices/pih/programs/ph/mtw/index.cfm>). A listing of PIH field offices for technical assistance on public housing programs is posted at: http://www.hud.gov/offices/pih/about/field_office.cfm.

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

/s/
John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity