

Fair Housing Laws

- Fair Housing Amendments Act
- Section 504 of the Rehabilitation Act of 1973
- Title II of Americans with Disabilities Act

Fair Housing Amendments Act

- ◎ Two Provisions:
 - To discriminate in the sale or rental, or to otherwise make unavailable or deny housing because of a disability; and
 - To refuse to make reasonable accommodations in rules, policies, practices, or services, when accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy housing.

Section 504 of Rehabilitation Act of 1973

- No otherwise qualified individual with a disability shall, solely by reason of his or her disability, 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.

HUD's Section 504 Regulations

- ◎ Two Provisions: A recipient of federal funds may not, solely on the basis of handicap:
 - Afford a qualified individual with a disability an opportunity to participate in, or benefit from, the housing, aid, benefit, or service that is **not equal** to that afforded to others;
 - Provide a qualified individual with a disability any housing, aid, benefit, or service that is **not 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 others.

Title II of the ADA

- ⦿ Prohibits discrimination by a “public entity”
 - Includes municipalities or other state or local governmental agencies
- ⦿ Generally same provisions as FHA and Rehabilitation Act

Olmstead

- “Public entities” must provide services to individuals with disabilities in community settings rather than institutions when:
 - 1) such services are appropriate to the needs of the individual;
 - 2) the affected persons do not oppose community-based treatment; and
 - 3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability-related services from the entity.

Olmstead

- ◎ Court relied on Congress' findings in enacting the ADA:
 - “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.”

HUD *Olmstead* Guidance

“A critical consideration in each state is the range of housing options available in the community for individuals with disabilities and whether those options are largely limited to living with other individuals with disabilities, or whether those options include substantial opportunities for individuals with disabilities to live and interact with individuals without disabilities.”

HUD *Olmstead* Guidance

- ◎ “The affirmatively furthering fair housing (AFFH) obligation offers an opportunity for HUD and for recipients of HUD assistance to support *Olmstead* implementation by engaging in activities that will benefit individuals transitioning from institutions or at serious risk of institutionalization by providing integrated, affordable and accessible housing options in community-based settings.”

HUD *Olmstead* Guidance

◎ Question 4

- Are there instances where recipients of HUD assistance may operate housing or services limited to individuals with disabilities or individuals with specific disabilities or diagnoses?
- HUD's regulations implementing Section 504 restrict when participation in a federally-funded program or activity can be limited to individuals with disabilities or individuals with specific disabilities, so only by express federal statutory authority or Executive Order.

HUD *Olmstead* Guidance

◎ 24 C.F.R. § 8.4(c)

- “Non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive Order to a different class of individuals.”

HUD *Olmstead* Guidance

- ◎ “Individuals with disabilities, like individuals without disabilities, ***should have choice and self-determination in housing*** and in the health care and related support services they receive. For this reason, HUD is committed to offering individuals with disabilities housing options that enable them to make meaningful choices about housing, health care, and long-term services and supports so they can participate fully in community life.”

FAIR HOUSING ISN'T FAIR

TIMELINE FOR HUD'S VARIOUS POSITIONS REGARDING APACHE ASL TRAILS

Arizona Department of Housing Annual Conference
September 19, 2013

July 31, 2006

Bryan Greene, (Who is Currently)
Acting Assistant Secretary, FHEO,
Issues a Memorandum:

**"Guidance on Housing Limited to
Persons with Specific Disabilities
Under the Fair Housing Act"**

- » Limiting housing to a specific population of persons with disabilities does not violate the Fair Housing Act's prohibition against disability discrimination.
- » Section 504 may prohibit the development of disability-specific housing.

February 4, 2008

Steven B. Sacs, HUD Director of
Community Planning and Development:

- » HUD's Approval Document authorizes HOME Funds for Apache ASL Trails.
- » **Description:** The project involves new construction of a rental property consisting of seventy-five units for seniors (55+) who are deaf, hard of hearing and deaf-blind, located in Tempe, Arizona.

April 8, 2011

Rebecca Flanagan, Director of HUD Phoenix Office, in a letter to Sherri Collins:

» A preference could be granted for individuals with disabilities who can benefit from services and features that are offered as long as the preference was not predicated upon a specific disability.

» In addition, general marketing cannot be done in such a way as to limit opportunities for otherwise qualified individuals, although marketing materials may highlight the special features of the housing.

» It does not violate civil rights laws to affirmatively market accessible features of a property.

Fall 2011

Louis Kislin

CPD Representative

Phoenix HUD Office

» Informs the ADOH and City of Tempe that the law prohibits deaf people from living with deaf people.

March 3, 2011

Memorandum from Kimberly Nash,
Acting Regional Counsel, Office of
Counsel, San Francisco:

» The Fair Housing Act does not prohibit a housing provider from excluding non-disabled persons or limiting housing to persons with a specific disability.

» Absent explicit authorization by statute or executive order, Section 504 generally does not allow housing to be restricted to people with disabilities or to people with a particular type of disability. There are exceptions.

Those are stated in **24 CFR 8.4(b)(1)(iv)**.

» A housing provider may, solely on the basis of handicap, provide different or separate housing, aid, benefits, or services to individuals with handicaps from that provided to others if such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others.

» “FHEO would need to make the requisite determination of necessity based on the particular circumstances of a given housing project.”

HUD's Website: Section 504 Frequently Asked Questions

[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)

» **Question:** What limits does Section 504 impose on the ability of federally assisted housing providers to require persons with disabilities to live in segregated housing, i.e., housing for elderly and/or disabled individuals?

» **Answer:** Section 504 limits housing providers from providing, or requiring persons with disabilities to accept, housing that is different or separate, and instead, requires that housing programs be integrated and offer the same benefits as provided to persons without disabilities, with only a few limited exceptions.

» These exceptions are (1) when it can be demonstrated that such segregation is necessary in order to provide persons with disabilities housing that is as effective as housing that is provided to others, or (2) when authorized by a Federal statute, such as the Housing Opportunities for Persons with AIDS (HOPWA) program, or the Section 811 Supportive Housing Program for Persons With Disabilities.

August 16, 2011

Fred Karnas, Senior Advisor to the HUD Secretary, in an email:

» Currently, the HUD position on targeting housing to a specific disability is clear. Except in cases where statute permits, targeting housing to a specific disability is forbidden.

» Housing can be designed around a set of services that may be more beneficial to someone with a certain set of needs. However, it cannot be limited to a specific disability and it cannot be marketed to **only** persons with that disability.

» Project marketing can highlight the features/services available and **if two persons are competing for a single unit, preference can be given to the person with the disability that best aligns with the services available.**

June 8, 2012

Charles Hauptman, Director FHEO, San Francisco HUD Office,
Letter of Findings against the State of Arizona
Department of Housing:

» The investigation showed Apache ASL Trails gives a preference to persons who would benefit from the accessible features of a unit. All units have special accessible features for persons who are deaf and mobility impaired.

» Marketing and the preference must have resulted in most of the residents who have been housed at Apache ASL Trails having a specific disability.

» This is a violation of Section 504.

July 13, 2012

Sara Pratt, Deputy Assistant Secretary for Enforcement Programs:

» Diagnosis-specific housing is never appropriate unless authorized by statute, according to 24 CFR 8.4(c)(1).

24 CFR 8.4(b)(1)(iv):

» Recipients may not provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps from that provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others.

» HUD does not recognize that Section 504 permits an exception to its general rule prohibiting disability-specific housing unless authorized by statute or regulation.

- » *Olmstead* implementation will be patterned after policies intended to address racial segregation.
- » A property where most of the residents are disabled creates a “disabled ghetto” just like a property where the residents are all Black effectively creates a racial “ghetto.”

- » It is not relevant to this analogy that housing for disabled residents has uniquely accessible features and services that were designed into the property to benefit a specific type of disability.
- » The racial analogy still applies.

» Section 504 creates a limit on the percentage of units that can offer a preference to disabled persons based on the units' accessible features.

» If a property has more than 5% of its units accessibly designed and wants to offer a preference for those features, it must first receive HUD approval.

» Properties that receive federal funds will be generally limited to providing a preference for disabled individuals who need the amenities of a particular unit for no more than 25% of the property's units that have such amenities.

» This percentage is based upon the general interpretation of the ADA and Section 504 by HUD and DOJ, and appears to be borrowed from Section 811 funding.

January 2013

HUD OGC:

- » 24 CFR 8.4(b)(1)(iv) is supposed to be very narrowly construed.
- » This exception applies only to conditions like spina bifida or tuberculosis where different or separate housing is necessary for survival reasons, and it does not apply to conditions such as sight or hearing impairments.

March 27, 2013

» Primary attorney with HUD's OGC acknowledges there is no case law supporting HUD's interpretation of 24 CFR 8.4(b)(1)(iv).

June 4, 2013

HUD issues *Olmstead* guidance

» . . .any preference that targets individuals with specific disabilities must be reviewed and approved by the Office of General Counsel's Office of Fair Housing at HUD. PHAs must also request a waiver of HUD's program regulations precluding disability-specific preferences. HUD is working to streamline the approval process and will work with PHAs and other recipients to complete the approval process expeditiously.

July 18, 2013

» HUD issues proposed regulations setting forth requirements for program participants to affirmatively further fair housing.

» The proposed regulations define segregation as: “For persons with disabilities, segregation includes the failure to provide housing in the most integrated setting possible.”

August 5, 2013

Maurice Jones, HUD's Deputy Secretary:

- » There does not appear to be a need for a preference to rent the accessible units to those who are best accommodated by the units.
- » Since 85% of Apache ASL Trails is occupied by deaf, deaf-blind, and hard of hearing residents, and
- » The preference has not been applied yet and no one has been turned down.

“WHY?”

“BECAUSE I SAID SO”