



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

June 30, 2017

Ms. Leilani Farha
Special Rapporteur on adequate housing
as a component of the right to
an adequate standard of living

Dear Ms. Farha:

Thank you for your letter of April 13, 2017, outlining your questionnaire on the right to adequate housing of persons with disabilities. Please find the attached response from the U.S. Government.

Sincerely,

A handwritten signature in black ink that reads "Jason R. Mack".

Jason R. Mack
U.S. Deputy Permanent
Representative to the UN Human
Rights Council

SUBJECT: US Response to Questionnaire on Adequate Housing for Persons with Disabilities

- 1. Please explain how the right to housing of persons with disabilities is guaranteed in domestic law, including constitutional provisions and human rights legislation.*

The United States supports the goal of making adequate housing available to all persons, including persons with disabilities, and we support the need to promote, protect, and respect human rights in carrying out housing policies. This response highlights some key aspects of U.S. law pertaining to housing for persons with disabilities.

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968): The Fair Housing Act prohibits discrimination in the sale or rental of housing, as well as in numerous other housing activities, based on race, color, national origin, religion, disability, sex, and familial status.¹ The Fair Housing Act covers most housing in the United States, including publicly-supported and private housing. For example, it prohibits discrimination when selling or renting housing and in the terms and conditions for the sale or rental of housing. This prohibition extends to the denial of a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. Other covered activities include, for example, financing, zoning practices, new construction design, and advertising.

The Fair Housing Act contains the following protections for persons with disabilities: 1) owners and managers of housing must make reasonable exceptions in their rules and policies to afford people with disabilities equal housing opportunities; 2) landlords must allow tenants with disabilities to make reasonable modifications to their units and common use areas if necessary to afford full enjoyment of the premises; and 3) multifamily housing with four or more units must be designed and constructed to allow access for persons with disabilities, including accessible common use areas, doors that are wide enough for wheelchairs, and kitchens and bathrooms that allow a person using a wheelchair to maneuver.

¹ 42 U.S.C. §§ 3601-19

Section 504 of the Rehabilitation Act of 1973²: Section 504 prohibits various types of discrimination against individuals with disabilities by the federal government and those receiving federal financial assistance. Every recipient of federal financial assistance from the Department of Housing and Urban Development (HUD) is subject to Section 504 and HUD’s Section 504 implementing regulations at 24 C.F.R. Part 8. Among other things, HUD’s Section 504 regulations require HUD and entities that receive federal financial assistance from HUD to administer their programs and activities in the most integrated settings appropriate to the needs of qualified individuals with disabilities.³ An integrated setting is one in which individuals with and without disabilities interact to the fullest extent possible. Section 504 requires recipients of federal financial assistance to make reasonable accommodations (i.e., changes, adaptations, or modifications) in rules, policies, practices, services, and procedures to allow a qualified person with a disability to participate fully in a program or equally participate in a service, including modifications to dwelling units and common areas.⁴ Section 504 further requires that recipients of federal financial assistance ensure effective communication with individuals with disabilities, which may include the provision of qualified interpreters and alternate format documents (e.g., braille, large print, and accessible electronic communications). Finally, Section 504 requires newly constructed, altered, and existing housing and other facilities to comply with physical accessibility requirements, including a standardized accessibility code known as the Uniform Federal Accessibility Standards (UFAS).⁵ HUD and the U.S. Department of Justice (DOJ) are the federal agencies primarily responsible for enforcing Section 504 when it relates to housing.

The Americans with Disabilities Act of 1990 (ADA)⁶: The ADA comprehensively prohibits discrimination against individuals with disabilities in the United States, including various forms of housing-based discrimination. Title II of the ADA prohibits discrimination against individuals with disabilities in all services, programs, and activities administered by public entities (primarily state and local governments) regardless of whether these entities receive federal funding, including housing developed or operated by state and local governments.⁷

² Section 504 states at 29 U.S.C. § 794: “No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his 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 or under any program or activity conducted by any Executive agency or by the United States Postal Service.”

³ 24 C.F.R. §§ 8.4(d), 9.130(d).

⁴ 24 C.F.R. §§ 8.33; 9.155.

⁵ 24 C.F.R. §§ 8.20-32; 9.149-9.154.

⁶ 42 U.S.C. §§ 12101 et seq.

⁷ 42 U.S.C. §§ 12131-12134.

Title III of the ADA prohibits discrimination against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of accommodation, including rental offices, sales offices, homeless shelters, hotels and motels, and commercial spaces associated with housing, such as daycare centers, social service offices, and sales and retail establishments.⁸ The ADA includes many requirements similar to those of Section 504, but sometimes includes additional or different requirements, to ensure nondiscrimination for individuals with disabilities. For example, the ADA may use different architectural standards for newly constructed, altered, and existing facilities, including UFAS, the 1991 ADA Standards, and the 2010 ADA Standards. HUD and DOJ are the federal agencies primarily responsible for enforcing Title II of the ADA when it relates to housing, and DOJ is responsible for enforcing Title III of the ADA. Individuals with disabilities also have a private right of action to enforce the ADA in court.⁹

The Architectural Barriers Act (ABA) of 1968¹⁰: The ABA requires access to facilities designed, built, altered, or leased using Federal funds. The United States Access Board is the government agency responsible for enforcing this law and for developing and maintaining accessibility guidelines under this law, which are the basis for the standards used to enforce it. Among others, HUD is responsible for promulgating architectural standards under the ABA for its federally assisted programs. Like Section 504, HUD regulations require compliance with the UFAS standard under the ABA.

Prohibition on Unjustified Segregation of Persons with Disabilities: In 1999, the United States Supreme Court issued a landmark decision in *Olmstead v. L.C.*,¹¹ holding that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by the ADA. The U.S. Supreme Court ruled that under the ADA, public entities (usually meaning states and localities) must make reasonable modifications to their service systems in order to provide integrated placement options to people with disabilities such that individuals who are appropriate for and do not oppose such options are not effectively required to reside in segregated settings, such as nursing homes, state psychiatric hospitals, or other institutional settings, to receive necessary services.¹²

⁸ 42 U.S.C. §§ 12181-12189.

⁹ 42 U.S.C. §§ 12133, 12188.

¹⁰ 42 U.S.C. §§ 4151 et seq.

¹¹ 527 U.S. 581 (1999).

¹² *Olmstead*, 527 U.S. at 600-07.

Following the *Olmstead* decision, there have been increased efforts across the country to ensure that individuals with disabilities who are unnecessarily housed in segregated settings, or at risk of such unnecessary segregation, have opportunities to receive services in integrated, community-based settings.

HUD issued guidance in 2013 to provide information about *Olmstead*, to clarify how recipients of federal financial assistance¹³ from HUD can assist state and local efforts to comply with the decision in *Olmstead*, and to encourage housing providers to support *Olmstead* implementation by increasing the integrated housing opportunities that are available for individuals with disabilities who are transitioning from, or at serious risk of entering, institutions, hospitals, nursing homes, adult care facilities, and other restrictive, segregated settings.¹⁴ DOJ has also issued guidance on the enforcement of the integration mandate of Title II of the ADA and *Olmstead*.¹⁵ Since the *Olmstead* decision, HUD, DOJ, and other federally funded organizations called Protection and Advocacy agencies (P&As) and Independent Living Centers (ILCs), among many other organizations and individuals, have sought to enforce the integration mandate, as interpreted by *Olmstead*, across the United States.

Programs Focused on Housing Persons with Disabilities and their Families:

The United States has created numerous housing programs at the federal, state, and local levels. Some examples of these programs include the Housing Opportunities for Persons with AIDS program, the Section 811 Supportive Housing for Persons with Disabilities program, Section 202 housing developments for non-elderly persons with disabilities, and homeless assistance programs created under the McKinney-Vento Homeless Assistance Act, including the Continuum of Care program.

- 2. Please provide any useful statistical indicators, analysis or reports regarding housing condition of persons with disabilities, the extent of homelessness and discrimination, (including failure to provide reasonable accommodation) in the private or public sectors. Please also provide*

¹³ Recipients of HUD assistance include, but are not limited, to: states, units of local government, Public Housing Agencies, nonprofit organizations, and developers of multifamily properties. Recipients do not include the individual beneficiaries of HUD-funded programs and activities.

¹⁴ See Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, available at: <https://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

¹⁵ In 2011, DOJ issued guidance on enforcement of the integration mandate of Title II of the ADA and *Olmstead v. L.C.* to assist individuals in understanding their rights under the ADA and to assist state and local governments in complying with the ADA. The guidance is available at: https://www.ada.gov/olmstead/q&a_olmstead.htm.

references to any documentation (written, visual or otherwise) of the lived experiences of the housing conditions of people with disabilities.

HUD, Office of Fair Housing and Equal Opportunity (FHEO) Annual

Reports: The mission of FHEO within HUD is to eliminate housing discrimination, promote economic opportunity, and achieve diverse, inclusive communities by leading the nation in the enforcement, administration, development, and public understanding of federal fair housing policies and laws. FHEO reports to Congress and to the public on an annual basis data on disability and other protected classes who are applicants for, participants in, or beneficiaries or potential beneficiaries of programs administered by HUD. In fiscal year 2016 (October 1, 2015-September 30, 2016), HUD reported that it and its Fair Housing Assistance Program (FHAP) agencies received 4,908 complaints of disability discrimination in housing and other HUD funded programs, which is the most common type of complaint HUD receives – more than 50% of all complaints for the year. In FY 2016, FHEO also closed 462 investigations under Section 504 and 170 cases under Title II of the ADA.

FHEO regularly reviews recipients of HUD funding, largely housing providers, for their compliance with civil rights laws, and violations are often resolved through Voluntary Compliance Agreements (VCAs). For example, the City of Phoenix, Arizona entered into a VCA with FHEO to provide greater access to housing choice voucher programs for persons with disabilities by establishing a better reasonable accommodation policy for applications. Additionally, under an October 2016 VCA with the Puerto Rico Public Housing Administration, \$65 million was committed for retrofitting 2,560 housing units to make them accessible by December 31, 2021. The five-year agreement also includes flexibility for the housing administration to meet that requirement through a combination of actions.

The reports identify the activities of HUD, DOJ, FHAP agencies, and recipients of HUD's Fair Housing Initiatives Program (FHIP) grants across the United States, including efforts to address disability discrimination. The reports also provide statistical information regarding the participation of individuals with disabilities in various HUD programs. Such reports are available at <https://portal.hud.gov/hudportal/HUD?src=/annualreport>.

Persons with Disabilities Housing Data: The American Housing Survey (AHS), produced by the U.S. Census Bureau, has collected data on housing for persons with disabilities since 2009. The latest data, which are from the 2015 survey, can be accessed and produced in customized tables

at <https://www.census.gov/programs-surveys/ahs.html>. In 2011, the AHS ran a topical module on accessibility features in the housing stock. The 2011 data related to accessibility are available in Table S-02 at <https://www.census.gov/programs-surveys/ahs/data/2011/ahs-2011-summary-tables/h150-11.html>.

We assume that “residential institutions,” as used later in this questionnaire, refers to group quarters rather than housing units. While the AHS does not cover group quarters, the American Community Survey (ACS), also produced by the U.S. Census Bureau, does have information on group quarters and is available at <https://www.census.gov/acs/www/data/data-tables-and-tools/subject-tables/>.

Homelessness with Disabilities Data: HUD annually provides an Annual Homeless Assessment Report to Congress, which provides Point-in-Time (PIT) estimates to offer a snapshot of homelessness—both sheltered and unsheltered—on a single night across the United States. The PIT counts also provide an estimate of the number of people experiencing homelessness within particular populations, such as people with chronic patterns of homelessness, veterans experiencing homelessness, and people under the age of 25 who are experiencing homelessness on their own, not in the company of their parent or guardian. The 2016 Annual Homeless Assessment Report to Congress¹⁶ provides the most recent figures regarding the state of homelessness in the United States, which is based on PIT estimates.

Reports on the State of Housing for Persons with Disabilities: The National Council on Disability (NCD), an independent U.S. agency, regularly produces reports detailing findings and recommendations regarding laws, policies, barriers, promising practices, and housing models for persons with disabilities. Reports consider: developer compliance; visitability of homes (the measure of a place’s ease of access for individuals with disabilities); affordable, accessible, and appropriate housing; voucher use; and fair housing enforcement of disability rights. NCD housing reports are available at <http://www.ncd.gov/policy/housing>.

- 3. Please provide data on the number of persons with disabilities living in residential institutions and relevant information on the progress towards developing or implementing deinstitutionalisation strategies to facilitate a*

¹⁶ 2016 Annual Homeless Assessment Report to Congress (November 2016), Available at: <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf>.

sustained transition from institutions to community based living arrangements.

There are a number of resources to estimate the total number of persons with disabilities living in institutional settings:

- The Money Follows the Person Rebalancing Demonstration Grant is a demonstration program by the Center for Medicaid and Medicare Services (CMS) within the Department of Health and Human Services that is helping move people with disabilities out of institutions and into community setting through transitions and incentivizing states to rebalance Long-Term Services and Support from institutional setting to community settings. More information is available at <https://www.medicaid.gov/medicaid/ltss/money-follows-the-person/index.html> and <https://www.mathematica-mpr.com/our-publications-and-findings/projects/research-and-evaluation-of-the-money-follows-the-person-mfp-demonstration-grants>.
- Community First Choice Program, which also incentivizes states to rebalance long term services and support from institutional to community settings. See: <https://www.medicaid.gov/medicaid/hcbs/authorities/index.html>.
- CMS also supports Home and Community Based Services in partnership with the states, through waivers and state plan options, with information available at: <https://www.medicaid.gov/medicaid/hcbs/>.
- CMS' MDS 3.0 survey collects data on persons with disabilities in institutions, and Section Q gathers data on persons with disabilities seeking to transition from institutional to community settings. For more, see <https://www.medicaid.gov/medicaid/ltss/downloads/community-living/mds-3-0-section-q-implementation-q-a.pdf> and <https://www.hhs.gov/sites/default/files/mds-guidance-2016.pdf>.
- A report commissioned by CMS shows the increase in home and community based services by population type: <https://www.medicaid.gov/medicaid/ltss/downloads/reports-and-evaluations/ltss expenditures ffy2015 final.pdf>.
- HUD has initiatives to support community living (Non-Elderly Persons with Disabilities (NED)-vouchers,¹⁷ 811 Project Rental Assistance (PRA) program¹⁸)

¹⁷ In 2009, Congress appropriated funding for NED-vouchers as a response to the need for new, integrated supportive housing options to allow persons with disabilities to have the choice to live in housing with individuals without disabilities while also having access to services they need and service providers they choose. Information on NED-vouchers can be found at: https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/ned.

¹⁸ The Section 811 PRA Program allows for disability-specific preferences in public housing, which is otherwise prohibited by HUD regulations, which only allow for a PHA to have a general preference for disability. This statutory exemption is intended to support states implementing *Olmstead* settlements, or undertaking voluntary,

For HUD Olmstead guidance, see <https://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

- Administration for Community Living is dedicated to supporting older adults and individuals with disabilities throughout their life and has considerable expertise on this topic. Its website www.acl.gov is being revised. See also National Institute of Disability, Independent Living and Rehabilitation Research's searchable database of research and publications for relevant resources. http://search.naric.com/research/pd/redesign_results.cfm?type=priority&display=detailed&criteria=Community%20Living%20and%20Participation.
- The University of Minnesota's Institute on Community Integration provides estimates of persons with developmental disabilities in different housing settings: <https://ici.umn.edu/index.php?topics/view/32/>.

In addition, 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. As described above, the federal disability rights laws and the *Olmstead* decision marked a landmark shift in the way services must be delivered to ensure equal opportunity and integration for individuals with disabilities. As part of these efforts, HUD is working with its federal partners to align policies and promote understanding of the integration mandate of the ADA and Section 504. HUD encourages public housing agencies (PHAs) and other recipients of HUD assistance to partner with state (particularly state Medicaid agencies) and local governments in *Olmstead* implementation. For example, in addition to the Section 811 PRA Program described above, PHAs, pursuant to PIH (Public Indian Housing) Notice 2012-31, and other recipients of HUD assistance may offer certain preferences that will enable individuals with disabilities to transition from institutions more quickly or enable an individual at serious risk of institutionalization to remain in integrated, affordable housing in the community.

An estimated 20 percent of households receiving HUD assistance have a member with a disability. HUD programs, such as the Housing Choice Voucher program, have a high prevalence of households with a member with a disability.¹⁹ HUD programs such as these are another way that HUD assists in ensuring access to housing in the most integrated setting appropriate to the needs of each individual with a disability. HUD programs serve as an important resource for affordable

affirmative *Olmstead* implementation efforts. Information on the HUD Section 811 PRA program is available at <https://www.hudexchange.info/programs/811-pra/>

¹⁹ See https://www.huduser.gov/portal/pdredge/pdr_edge_research_092815.html.

housing opportunities for individuals with disabilities, including individuals who are transitioning out of, or at serious risk of entering, institutions. HUD funds the operation, management, development, preservation, and rehabilitation of affordable housing. HUD's portfolio includes tenant-based housing vouchers, apartment buildings that serve a wide variety of individuals and families, and numerous other programs that provide permanent and transitional housing with or without supportive services to individuals with and without disabilities. HUD encourages PHAs and other housing providers receiving Federal financial assistance from HUD to partner with state and local governments to provide additional community-based, integrated housing opportunities for individuals with disabilities transitioning out of, or at serious risk of entering, institutions or other segregated settings.

CMS has supported efforts by states to rebalance their health care systems from institutional to community-based care. For example, the Money Follows the Person program, referred to above, authorizes CMS to offer incentives to states to assist them in rebalancing their long-term care system to a more home-and-community-based orientation by, among other things, providing an enhanced federal match on services and supports for individuals who transition to community-based settings from institutional care.

Both ending chronic homelessness and implementing the directives of *Olmstead* and the ADA include expansion of housing opportunities and community supports — often for an overlapping population, homeless individuals and individuals with disabilities. To better align state and local efforts, the United States Interagency Council on Homelessness produced guidance, [Fulfilling the Dream: Aligning State Efforts to Implement Olmstead and End Chronic Homelessness](#) (https://www.usich.gov/resources/uploads/asset_library/Olmstead_Brief_02_2016_Final.pdf), for communities seeking to align efforts to end chronic homelessness and ensure community integration for individuals with disabilities.²⁰ This Guidance recommends that communities seeking to align these efforts should develop a local action plan linking individuals with disabilities to permanent housing opportunities, along with the appropriate services and supports necessary to ensure *Olmstead* compliance.

This Guidance also makes the case for greater alignment of state and local efforts to end chronic homelessness and efforts to comply with the community integration

²⁰ See also <https://www.usich.gov/tools-for-action/fulfilling-the-dream-aligning-state-efforts-to-implement-olmstead>.

mandate under Title II of the ADA. States and communities can more effectively assist individuals with disabilities by approaching these efforts through a unified strategy, guided by a single vision of expanding housing and services (e.g., permanent supportive housing) to support community living. The Guidance outlines numerous benefits to aligning these efforts and goes on to highlight similarities among efforts to end chronic homelessness and to achieve community integration of individuals with disabilities. The Guidance also outlines ways that communities can achieve alignment by developing a local action plan that engages an array of community partners. By unifying efforts, communities can not only reduce the likelihood of facing litigation related to the ADA and *Olmstead*, but also improve services by implementing actions that link individuals with disabilities to permanent housing opportunities so that they can live with dignity, integrated into community life.

4. *Please provide information on relevant legislation, policies or programmes that are intended to ensure equal access to and enjoyment of the right to adequate housing by persons with disabilities and provide an assessment of their effectiveness and shortcomings.*

Please see the information identified in responses in Questions 1-3.

Additionally, HUD, through a competitive grant program commissions various advertising campaigns and public service announcements relating to the rights of individuals with disabilities under the Fair Housing Act, Section 504, and the ADA. These campaigns may be accessed at <https://fairhousingresourcecenter.wordpress.com/>. The campaigns include print ads, brochures, television ads, and radio ads. For example of one of the television ads, please see <https://fairhousingresourcecenter.wordpress.com/fair-housing-videos/>.

5. *Please indicate what programmes, policies and strategies are in place to: i/progressively close institutions; ii/ protect the human rights of people with disabilities still living in institutions; iii/ to ensure that persons with disabilities can challenge their placement in institutions; and iv/ to ensure that upon leaving institutions persons with disabilities can access adequate housing and support services in the community. Please also provide any information on policies or programs concerning reasonable accommodation and accessibility for persons with disabilities in relation to housing in both the formal and informal housing sectors. What measures have been taken to*

increase the number of "universally designed" flats or houses in communities?

Please see the information identified in responses in Questions 1-3.

- 6. Please indicate what national and sub-national institutions are primarily responsible for overseeing compliance with the right to housing of persons with disabilities, such as the National Human Rights Institutions; an office on disability issues; an ombudsperson or commissioner.*

While HUD has primary authority, DOJ, HHS, NCD, the Access Board, the U.S. Department of Education, and the U.S. Department of Agriculture are all responsible for overseeing compliance with housing-related rights for persons with disabilities. For additional information, please see the information identified in responses in Questions 1-3, and 7.

- 7. Please explain whether and in what ways courts, national human rights bodies and/or independent monitoring mechanisms have recognized the right to housing of people with disabilities, including those who remain institutionalized. Please also indicate what judicial or other appropriate remedies have been required where violations have been identified and describe the extent to which these have been successfully implemented. Please provide links or documents relating to relevant jurisprudence.*

The *Olmstead* decision affirms the right of people with disabilities to receive public services in the most integrated settings according to their needs and preferences. The Department of Justice is responsible for the enforcement of the ADA, including the integration mandate of *Olmstead*. For a list of ADA and *Olmstead* enforcement matters brought by the Department of Justice, see https://www.ada.gov/enforce_current.htm. HHS is also critical to ensuring that individuals with disabilities receive the services they need while living in the most integrated setting appropriate to their needs. State and local government officials, disability rights non-governmental organizations (including the FHAPs, FHIPs, P&As, and ILCs), and private attorneys across the United States are also involved in ensuring that individuals with disabilities are not subjected to discrimination. Finally, the U.S. Congress, state legislatures, and federal and state judicial systems play a significant role in monitoring the role of housing for people with disabilities, including their civil rights to be free from discrimination in such housing.

8. *Please refer to any innovative initiatives that have been taken at the local, regional or national level to promote and ensure the right to housing of people with disabilities and identify lessons learned from these. Please also identify ways in which your Government or organization considers that the Special Rapporteur on the right to housing and other international human rights bodies or procedures could play a role in ensuring the right to adequate housing of people with disabilities.*

As we have stated in other places, the United States considers the phrase “the right to housing” to be synonymous with “adequate housing as a component of the right to an adequate standard of living,” and with similar language in Article 25 of the Universal Declaration of Human Rights. The United States reviewed the background note that accompanied the questionnaire and recommends that the Special Rapporteur focus in her next report on identifying concrete and practical steps that States may wish to undertake to promote access to housing for persons with disabilities and combat discrimination against persons with disabilities in housing. An attempt to “clarify the nature of state obligations to address systemic violations of the right to housing of persons with disabilities” and address “interdependence” between this right and other rights is unlikely to be useful to States. Instead, we therefore urge the Special Rapporteur to draw from the responses States provide with a view toward developing a list of good practices. Any discussion of the meaning of adequate housing as a component of the right to an adequate standard of living, or the interrelationship between that right and other rights, should be grounded in established rules of treaty interpretation.