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## MEMORANDUM

April 28, 2023

TO: TRIBAL HOUSING CLIENTS

FROM: Edmund Clay Goodman and Cari L. Baermann  
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***HUD Releases Advanced Notice of Proposed Rulemaking on Changes to Section 504 Regulations***

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### INTRODUCTION

On April 25, 2023, the United States Department of Housing and Urban Development (HUD or “Department”) released an [advanced notice of proposed rulemaking](#) (“Notice”) seeking input on changes to Section 504 of the Rehabilitation Act of 1973 (“Section 504”) for federally supported and HUD conducted programs and activities. Comments are due by July 24, 2023, and can be submitted [here](#). Background information on Section 504, a summary of HUD’s intent for updated regulations, and a summary of feedback that HUD hopes to receive from tribes and tribal entities follows.

#### Section 504 of the Rehabilitation Act of 1973

Section 504 provides that:

“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.”  
29 U.S.C. 794(a).

Consequently, all executive agencies are required to promulgate regulations implementing this statute, and HUD issued its implementing regulations in 1988 at [24 CFR part 8](#) and [24 CFR part 9](#). HUD has enforced these regulations against tribal entities receiving federal financial assistance from the Department.

HUD’s Section 504 regulations apply to “all programs and activities of recipients of funds from HUD,” including but not limited to: tenant admission and participation in programs, site selection, service delivery, and application processes. These regulations generally prohibit discrimination against otherwise qualified individuals with disabilities, and require recipients of

HUD funds to “ensure that their programs and activities are readily accessible to and usable by individuals with disabilities.” To this end, HUD recipients must provide reasonable accommodations to allow individuals with disabilities to equally participate in and benefit from programs and activities, and recipients are required to “ensure that designated accessible dwelling units” of varying sizes “are dispersed throughout projects and sites”. The Department monitors enforcement and compliance with Section 504 regulations through HUD’s Office of Fair Housing and Equal Opportunity (FHEO).

The Uniform Federal Accessibility Standards (UFAS) currently serve as the Department’s accessibility standard for compliance with HUD’s Section 504 requirements. However, the Department released its “[Deeming Notice](#)” in 2014, which allows HUD recipients to use the U.S. Department of Justice’s (DOJ) accessibility standard under Title II of the Americans with Disabilities Act (ADA) in lieu of UFAS for evaluating compliance with Section 504.

### *The Need for Updated Regulations*

The Department shared in its Notice that HUD’s Section 504 regulations have not been wholly updated since initial publication in 1988. HUD acknowledged that several significant factors can impact HUD and HUD-affiliated programs’ ability to adhere to Section 504 regulations. They noted that the number of Americans with disabilities seeking housing assistance through HUD and HUD conducted programs has increased, and the United States is “experiencing an immediate and increasing need for affordable” and accessible housing. They also acknowledged that HUD’s responsibility to provide affordable housing to individuals with disabilities will likely increase as the population ages. However, HUD recognized that recent developments in construction techniques and accessibility technology can help improve compliance with Section 504 regulations, and innovative approaches to construction of affordable housing can lessen the effects of the nationwide housing shortage. In order to develop and promulgate regulations that help HUD and federally supported housing programs maintain compliance with Section 504 requirements, the Department has asked for feedback on these issues from all stakeholders.

### *Section 504 and Tribes/Tribal Entities*

As mentioned previously, HUD explicitly states in its Notice that the Department “has enforced Section 504 requirements against Tribal entities that receive Federal financial assistance from HUD.” Federal financial assistance is broadly defined as support provided or made available by HUD “through any grant, loan, contract, or any other arrangement in the form of funds, services, or property interest, excluding assistance through direct Federal procurement contracts or payments made under those contracts.” Because tribes and tribal entities are subject to HUD’s 504 regulations, HUD directed the questions below to tribes and tribal entities. These questions can be used to develop comments responding to HUD’s Section 504 regulations.

*Questions for Comment 12:* HUD has enforced Section 504 requirements against Tribes and Tribal entities that receive HUD Federal financial assistance. While the Department recognizes Section 504 obligations are

consistent across all recipients of HUD Federal financial assistance, the Department also recognizes the unique relationship between the Federal Government and Tribes and seeks comment from Tribes and Tribal entities in accordance with HUD's Government-to-Government Tribal Consultation Policy.

(a) Are there tribal specific circumstances that HUD should consider regarding Tribes and tribal entities, particularly with respect to the construction of accessible facilities?

(b) Are there unique types of discrimination members of Tribes with disabilities experience, particularly with respect to non-Tribal grantees or other entities covered by Section 504?

(c) Are there unique types of discrimination members of Tribes with disabilities experience with respect to the provision of reasonable accommodations, the provision of appropriate auxiliary aids and services necessary to ensure effective communication, access to accessible facilities, or accessing services and programs in the most integrated setting appropriate to the needs of members of Tribes with disabilities?

#### CONCLUSION

We can assist with preparing and submitting comments in response to this Notice. If you would like such assistance, or have any questions related to the topics discussed in this memorandum, please do not hesitate to reach out to us. Ed Clay Goodman may be reached at [egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com), and Cari Baermann can be reached at [cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com); both may also be contacted at 503-242-1745.