

Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs to affirmatively further civil rights and fair housing in all federally assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the FCRHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and FCRHA policies related to these topics in three parts:

- Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of the FCRHA regarding nondiscrimination.
- Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the HCV program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.
- Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the FCRHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the *Federal Register*.

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and participants equally, providing the same opportunity to access services, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The FCRHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Orders 11063 and 13988
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Act (VAWA)

When more than one civil rights law applies to a situation, the laws will be read and applied together.

Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted will also apply.

FCRHA Policy

In addition to the rules and regulations listed above, the FCRHA will fully comply with the following state and local laws, ordinances, and policies:

- **Code of Virginia, Virginia Fair Housing Law**
 - *Declaration of Policy* (§36-96.1.B) It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, military status, or disability, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and ensured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people

of the Commonwealth.

- *Unlawful Discriminatory Housing Practices* (§36-96.3.C.) It shall be an unlawful discriminatory housing practice for any political jurisdiction or its employees or appointed commissions to discriminate in the application of local land use ordinances or guidelines, or in the permitting of housing developments, (i) on the basis of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, military status, or disability; (ii) because the housing development contains or is expected to contain affordable housing units occupied or intended for occupancy by families or individuals with incomes at or below 80 percent of the median income of the area where the housing development is located or is proposed to be located; or (iii) by prohibiting or imposing conditions upon the rental or sale of dwelling units, provided that the provisions of this subsection shall not be construed to prohibit ordinances related to short-term rentals as defined in §15.2-983. It shall not be a violation of this chapter if land use decisions or decisions relating to the permitting of housing developments are based upon considerations of limiting high concentrations of affordable housing.
- **Code of Fairfax County, Virginia**
 - *Fairfax County Human Rights Ordinance* (Article 2.1, Section 11.1-2-1) Under the authority of Virginia Code §§ 15.2-853 and 15.2-965, the Board of Supervisors enacts this Article prohibiting discrimination in employment, public accommodations, credit, and education on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, military status, age, marital status, sexual orientation, gender identity, or disability.
 - *Fairfax County Fair Housing Act* (Article 3, Section 11.1-3-1) It is the policy of the County of Fairfax to provide for fair housing throughout the County, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, military status, source of funds, or disability, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the County may be protected and ensured. This law shall be deemed an exercise of the police power of the County of Fairfax for the protection of the people of the County.
- **One Fairfax** (adopted March 7, 2019, by the FCRHA) Fairfax County embraces its growing diverse population and recognizes it as a tremendous asset but also knows that racial and social inequities still exist. The One Fairfax policy defines expectations for consideration of racial and social equity, and in particular, meaningful community involvement when planning, developing, and

implementing policies, practices, and initiatives. It provides a framework to advance equity in alignment with our stated visions and priorities. One Fairfax informs all other policies and applies to all publicly delivered services in Fairfax County Government and Fairfax County Public Schools.

2-I.B. NONDISCRIMINATION

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as FCRHA policies, can prohibit discrimination based on other factors.

The FCRHA shall not discriminate because of race, color, sex, religion, familial status, age, disability, national origin, marital status, gender identity, or sexual orientation (called “protected classes”). Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

The FCRHA will not use any of these factors to:

- Deny any family the opportunity to apply for housing, nor deny any qualified applicant the opportunity to participate in the HCV program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Subject anyone to sexual harassment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

Providing Information to Families and Owners

The FCRHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, the FCRHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments Contract (HAP Contract) (Form HUD-52641) informs owners of the requirement not to discriminate against any person because of race, color, religion, sex (including sexual orientation and gender identity), national

origin, age, familial status, or disability in connection with the contract.

2-I.C. DISCRIMINATION COMPLAINTS

General Housing Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by the FCRHA or an owner, the family should advise the FCRHA. HUD requires the FCRHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action.

In all cases, the PHA will advise the family that they may file a fair housing complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO) if the family feels they have been discriminated against under the Fair Housing Act.

FCRHA Policy

The FCRHA will strongly encourage applicants or participants who believe they have been subject to unlawful discrimination to submit a complaint in writing. The FCRHA will also accept an oral complaint.

Upon receipt of an oral or written complaint, the FCRHA will provide the applicant or participant with information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO). The FCRHA will attempt to remedy discrimination complaints made against it and when appropriate, will conduct an internal investigation into allegations of discrimination.

All written complaints made against an owner and/or landlord other than the FCRHA will be forwarded to the Fairfax County Office of Human Rights and Equity Programs (OHREP) for an investigation into all allegations of discrimination. (Fairfax County Fair Housing Act Article 3, Section 11.1-3-11)

The FCRHA will keep a record of all landlord complaints that are received by the FCRHA and then forwarded to OHREP. The FCRHA will also keep a record of all complaints, investigations, notices, and corrective actions regarding complaints made against the FCRHA. (Reference Chapter 16)

Complaints under the Equal Access Final Rule [Notice PIH 2014-20]

Notice PIH 2014-20 requires an articulated complaint process for allegations of discrimination under the Equal Access Final rule. The Equal Access Final Rule requires that PHAs provide equal access regardless of marital status, gender identity, or sexual orientation. The FCRHA will be informed of these obligations by the HUD Field Office or FHEO when an Equal Access complaint investigation begins.

FCRHA Policy

The FCRHA will strongly encourage applicants or participants who believe they have been subject to unlawful discrimination to submit a complaint in writing. The FCRHA will also accept an oral complaint.

Upon receipt of an oral or written complaint, the FCRHA will provide the applicant or participant with information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity.

The FCRHA will attempt to remedy discrimination complaints made against it and when appropriate, will conduct an internal investigation into allegations of discrimination. The FCRHA will provide a written notice to those alleged to have violated the rule. The FCRHA will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule. Following an investigation of the allegations, the FCRHA will provide the complainant and those alleged to have violated the rule with findings from the investigation and either a proposed corrective action to resolve any violation or an explanation as to why corrective action is not warranted.

All written complaints made against an owner and/or landlord other than the FCRHA will be forwarded to the Fairfax County Office of Human Rights and Equity Programs (OHREP) for an investigation into all allegations of discrimination. (Fairfax County Fair Housing Act Article 3, Section 11.1-3-11)

The FCRHA will keep a record of all complaints, investigations, notices, and corrective actions regarding complaints made against the FCRHA. (Reference Chapter 16)

VAWA Complaint Processing [Notice FHEO 2023-01]

A complainant may, not later than one year after an alleged VAWA violation has occurred or terminated, file a complaint with FHEO alleging such violation. If there is a violation that began prior to a year before the complaint is filed, but it continues into the one-year time period, HUD will accept the complaint. FHEO will investigate the complaint if it is timely and FHEO otherwise has jurisdiction. If a complaint is filed more than one year after the alleged violation occurred or terminated, FHEO may, but is not required to, investigate the allegations under the additional authority and procedures described in FHEO 2023-01.

Complaints do not need to allege a violation of the Fair Housing Act for FHEO to accept and investigate the complaint.

FCRHA Policy

The FCRHA will strongly encourage applicants or participants who wish to file a VAWA complaint against the FCRHA to do so in writing. The FCRHA will also accept an oral complaint.

The FCRHA will advise the family of their right to file a VAWA complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The FCRHA will inform the

family that not later than one year after an alleged VAWA violation has occurred or terminated, applicants and tenants who believe they have been injured by a VAWA violation or will be injured by such a violation that is about to occur may file a VAWA complaint using FHEO's online complaint form via mail, email, or telephone.

The FCRHA will attempt to remedy discrimination complaints made against it and when appropriate, will conduct an internal investigation into allegations of discrimination.

The FCRHA will keep a record of all complaints, investigations, notices, and corrective actions regarding complaints made against the FCRHA. (Reference Chapter 16)

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

The FCRHA must ensure that persons with disabilities have full access to the FCRHA's programs and services. This responsibility begins with the first contact by an interested family and continues through every aspect of the program.

FCRHA Policy

The FCRHA will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the FCRHA, by including the following language:

Fairfax County is committed to nondiscrimination on the basis of disability in all County programs, services and activities. Special accommodations will be provided upon request. For more information call 703-246-5101 or TTY 711.

In addition to asking in writing, the FCRHA will orally ask applicants or participants throughout all aspects of the program if they require any type of accommodations when applicants or participants express the need for an adjustment to a rule, policy, practice, or service as a result of a disability.

A specific name and phone number of designated staff will be provided to process requests for accommodation.

The FCRHA will display posters and other housing information and signage in FCRHA offices in such a manner as to be easily readable from a wheelchair.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the HCV program. For example, reasonable accommodations may include making home visits, extending the voucher term, or approving an exception payment standard in order for a participant to lease an accessible dwelling unit.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the FCRHA, or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

Types of Reasonable Accommodations

When needed, the FCRHA will modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Providing reasonable assistance with completing an online application when the HCV waiting list is open
- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the FCRHA range) if the FCRHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with FCRHA staff

2-II.C. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the FCRHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to the FCRHA's programs and services.

If the need for the accommodation is not readily apparent or known to the FCRHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable connection, or nexus, between the requested accommodation and the individual's disability.

FCRHA Policy

The FCRHA will encourage the family to make its request in writing using the Reasonable Accommodation Request form. However, the FCRHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

2-II.D. VERIFICATION OF DISABILITY

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used

for waiting list preferences and income allowances.

Before providing an accommodation, the FCRHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to the FCRHA's programs and services.

If a person's disability is obvious or otherwise known to the FCRHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the FCRHA, the FCRHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the FCRHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- The FCRHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The FCRHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that the FCRHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the FCRHA will dispose of it. In place of the information, the FCRHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION

[Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26].

The FCRHA must approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the FCRHA, or fundamentally alter the nature of the FCRHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the overall size of the FCRHA's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the FCRHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the FCRHA may verify the need for the requested accommodation.

FCRHA Policy

After a request for an accommodation is presented, the FCRHA will respond, in writing, within five (5) business days to the requestor acknowledging receipt of the request and to request additional information or verifications. The FCRHA will strive to make a decision on all reasonable accommodations within twenty (20) business days of receipt, although some requests may take longer due to extenuating circumstances. Before a final decision is made in writing, the FCRHA may engage in an interactive process to determine appropriate accommodations as necessary. The FCRHA may discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden.

If the FCRHA believes that the family has failed to identify a reasonable alternative accommodation after discussion and negotiation, the FCRHA will notify the family, in writing, of its determination within ten (10) business days from the date of the most recent discussion or communication with the family.

If the FCRHA denies a request for an accommodation, because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the FCRHA's operations), the FCRHA will explain the reasons in writing.

The FCRHA will notify the applicant or participant of its right to an informal review/informal hearing at the time of the reasonable accommodation determination. Reference Chapter 16 for a full discussion of informal reviews/informal hearings.

2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

HUD regulations require the FCRHA to ensure that persons with disabilities related to hearing and vision have reasonable access to the FCRHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, the FCRHA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

FCRHA Policy

To meet the needs of persons with hearing impairments, TTY (text telephone teletype) communication will be available.

To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with FCRHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are:

- sign language interpretation
- having material explained orally by staff
- having a third-party representative named by the applicant to receive, interpret and explain housing materials and be present at all meetings.

2-II.G. PHYSICAL ACCESSIBILITY

The FCRHA must comply with a variety of regulations pertaining to physical accessibility, including the following:

- Notice PIH 2010-26
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

The FCRHA's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in two key documents:

- The HCV Administrative Plan describes the key policies that govern the FCRHA's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination and accessibility in federally-funded housing programs.

The design, construction, or alteration of FCRHA facilities must conform to the Uniform Federal

Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the FCRHA will include a current list of available accessible units known to the FCRHA and will assist the family in locating an available accessible unit, if necessary.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves.

FCRHA Policy

If a request for a modification is received for a RAD-PBV unit owned by the FCRHA, the FCRHA will respond, in writing, within five (5) business days to the requestor acknowledging receipt of the request and if needed, to request additional information or verifications. The FCRHA will strive to make a decision on all reasonable modifications within twenty (20) business days of receipt, although some requests may take longer due to extenuating circumstances. Before a final decision is made in writing, the FCRHA may engage in an interactive process to determine appropriate modifications as necessary. The FCRHA may discuss with the family whether an alternative modification could effectively address the family's physical accessibility needs without imposing an undue financial and administrative burden on the FCRHA.

If the FCRHA believes that the family has failed to identify a reasonable alternative modification after discussion and negotiation, the FCRHA will notify the family, in writing, of its determination within ten (10) business days from the date of the most recent discussion or communication with the family.

If the FCRHA denies a request for a modification because it is not reasonable (it would impose an undue financial and administrative burden on the FCRHA), the FCRHA will explain the reasons in writing.

The FCRHA will notify the applicant or participant of its right to an informal review/informal hearing at the time of the reasonable modification determination. Reference Chapter 16 for a full discussion of informal reviews/informal hearings.

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

The FCRHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of the FCRHA's informal review process and their right to request an informal review. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review process.

When a participant family's assistance is terminated, the notice of termination must inform them of the FCRHA's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, the FCRHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the FCRHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the FCRHA must make the accommodation.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

The FCRHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this administrative plan, LEP persons are HCV applicants and participants, and parents and family members of applicants and participants.

In order to determine the level of access needed by LEP persons, the FCRHA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the HCV program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the FCRHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the FCRHA.

2-III.B. ORAL INTERPRETATION

The FCRHA will offer competent interpretation services free of charge, upon request, to the LEP person.

FCRHA Policy

If LEP persons desire to use an in-person interpreter, the FCRHA will recommend the use of an interpreter provided through its free language services. If the free language services offered by the FCRHA are refused, then LEP persons shall sign an oral interpretation waiver form, waiving their right to the interpreter offered by the FCRHA. LEP persons are permitted to use, at their own expense, an interpreter of their own choosing in place of or as a supplement to the free language services offered by the FCRHA. The interpreter chosen by LEP persons may be a family member or friend.

However, if the interpreter chosen by LEP persons is a minor, the FCRHA will not rely on the minor to serve as the interpreter.

The FCRHA will analyze the various kinds of contacts it has with the public to assess language needs and decide what reasonable steps should be taken. “Reasonable steps” may not be deemed reasonable where the potential costs imposed on the FCRHA would substantially exceed the benefits.

The FCRHA will use a language line for telephone interpreter services.

2-III.C. WRITTEN TRANSLATION

Translation is the replacement of a written text from one language into an equivalent written text in another language.

FCRHA Policy

In order to comply with written-translation obligations, the FCRHA will take the following steps:

- The FCRHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered, or as identified in the Fairfax County Language Access Policy. Translation of other documents, if needed, can be provided orally; or
- If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, the FCRHA does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

2-III.D. IMPLEMENTATION PLAN

After completing the four-factor analysis and deciding what language assistance services are appropriate, the FCRHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If the FCRHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the FCRHA’s HCV program and services.

FCRHA Policy

The Fairfax County Department of Housing and Community Development (HCD) will follow its written Limited English Proficiency (LEP) plan, as provided to HCD staff via an LEP Internal Procedural Memorandum. The LEP procedure outlined in the

memorandum will be reviewed annually to determine if the LEP language groups require updating.

**EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER
FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 and 100.201]**

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or
- Has a record of such impairment, or
- Is regarded as having such impairment

The phrase “physical or mental impairment” includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities” includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

“Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the FCRHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the HCV program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the \$480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the HCV program, yet an accommodation is needed to provide equal opportunity.