

Access Denied

An Overview of the Housing Crisis for People with Disabilities

Allen Hines, Housing Access Director
Community Vision

April 2024



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About Community Vision

Mission

Community Vision provides services, education, and advocacy to ensure that people with disabilities direct their own lives.

Vision

We envision a world where people with disabilities are included, accepted, and able to live a life they choose.

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Biographical Statement

Allen Hines is the Housing Access Director at Community Vision. He received a bachelor's degree in political science from Kent State University and has worked in disability services and advocacy for more than a decade. He is a lifelong wheelchair user, and his work has focused on housing for people with disabilities since 2018.

Abstract

After decades of social and institutional exclusion, people with disabilities struggle to afford the cost of housing, find accessible dwelling units, and assert their rights as applicants or tenants. This paper examines available research on financial resources available to people with disabilities, including rent assistance, and, as many people with disabilities earn less than 30% of area median income (AMI), affordability for extremely low-income households. We also explore inconsistencies among estimates of disability prevalence in the American Community Survey (ACS), the Behavioral Risk Factor Surveillance System (BRFSS), and the American Housing Survey (AHS) to assess the legally required number of dwelling units that incorporate accessibility features. Finally, we examine the increasing proportion of fair housing complaints based on disability and the most common forms of housing discrimination toward people with disabilities. While the analysis presented here outlines issues that people with disabilities face across the United States, we pay special attention to data and policy proposals specific to the state of Oregon.

Introduction

For much of the twentieth century, disability was seen as a problem to be hidden. For a variety of dehumanizing reasons, authorities, physicians, and eugenicists advocated for segregating people with disabilities from society, even going so far as to say that every person with intellectual disability should be permanently placed in institutions.¹ While the stated target of exclusion was people with intellectual disabilities, the diagnostic criteria at the time included a variety of disabilities that impacted self-care.² Mobility disabilities and epilepsy were commonly grounds for institutionalization.

Institutionalization due to disability status peaked in the United States in the mid-1960s with 255,000 people with disabilities living in public and private institutions and state mental hospitals.³ In subsequent years, numerous exposés, lawsuits, and advocacy efforts showed rampant abuse and conditions that stunted the healthy development of residents of institutions. Such demonstrations of abuse and neglect accelerated the decline of the population living in large institutions.

Normalization—the view that people with disabilities are more likely to thrive in environments of their choosing, around a variety of people—took hold in the United States in the late 1960s,⁴ and, slowly, government agencies and service providers expanded community-based services. Though institutions still exist across the United States, they house far fewer people with disabilities, and advocates continue to press to expand housing options in the community.

This history is important when discussing today’s housing landscape. Throughout the period of exclusion, disability received little consideration in the design and building of housing units. People with disabilities had few opportunities to influence public policy and building codes. And, arguably, the current high percentage of fair housing complaints related to disability largely stems from ignorance of protections for people with disabilities.⁵

This paper argues that exclusionary practices have created or enhanced the structural barriers that exist for people with disabilities related to affordability, accessibility, fair housing,

¹ Several source titles and a publisher are redacted in the footnotes due to use of offensive and antiquated terms. The works-cited entries are not redacted. Steven Noll and James W. Trent Jr., eds., introduction to *Mental R— in America* (New York: New York University Press, 2004), 3.

² The diagnostic criteria for the anachronistic term for intellectual disability used in this era centered on a person’s ability to “manage himself (sic) or his affairs.” W. E. Fernald et al, “Report of Committee on Classification of F—,” *Journal of Psycho-Asthenics*, 1910, quoted in Noll and Trent Jr., eds., *Mental R— in America*, 87–88.

³ Philip Roos, *Trends in Residential Institutions for the Mentally R—* (Columbus, Ohio: University Council for Educational Administration, 1976), 7.

⁴ Wolf Wolfensberger, *The Principle of Normalization in Human Services* (Toronto: National Institute on Mental R—, 1972).

⁵ Martin D. Abravanel, *Do We Know More Now?: Trends in Public Knowledge Support and Use of Fair Housing Law* (Washington, D.C.: U.S. Department of Housing and Urban Development, 2006).

and equal opportunity to housing. We will explore how inequities in income from employment, restrictions on Social Security income, and inadequate investment in rental assistance impact housing choice. We will also discuss accessibility standards, their disconnect from estimates of the prevalence of disability, and the difficulties of locating accessible housing due to noncompliance with accessibility standards. Finally, we will examine fair housing and equal opportunity as it relates to housing providers' duties to grant reasonable accommodation requests and match people with disabilities to accessible dwelling units.

Community Vision is a service provider in Portland, Oregon, and as such, we note issues, policies, and data specific to the state of Oregon. This paper examines existing federal, state, and local policies—and policy proposals—that could impact housing for people with disabilities in the regional context.

Housing Affordability

Housing affordability is a product of a person’s income and rent assistance on one hand and the cost of housing on the other. Affordability is a key factor for housing choice because low-wage and part-time work is prevalent among working people with disabilities, while others with disabilities struggle to participate in the labor market at all.

Area median income, or AMI, is a metric that the Department of Housing and Urban Development (HUD) updates annually. It is used to determine a household’s eligibility for affordable housing and rent assistance. HUD defines three tiers of low-income households in order to prioritize households with the lowest income for assistance. The tiers are:

- Low income: 80% of AMI;
- Very low income (VLI): 50% of AMI; and
- Extremely low income (ELI): 30% of AMI or the federal poverty threshold, whichever is lower.

For 2023, the median income for a household of one⁶ in the Portland-Vancouver-Hillsboro Metropolitan Statistical Area is \$80,080, or \$6,673 per month (see table 1). Our analysis will show that employed people with disabilities, as well as those who receive Social Security benefits, often have extremely low incomes.

Table 1. Median Income Percentages for Household Size of One Person in 2023

30%	40%	45%	50%	55%	60%	65%	80%	100%
\$23,700	\$31,600	\$35,550	\$39,500	\$43,450	\$47,400	\$51,350	\$63,200	\$80,080

Source: Portland Housing Bureau, *Median Income Percentages 2023* (Portland, Ore.: Portland Housing Bureau, 2023).

In the following sections, we will examine common sources of income for people with disabilities. We will also show that housing units that are affordable to people with extremely low incomes are in highest demand. Finally, we will discuss the impacts of unbalanced income and housing costs on people with disabilities and offer solutions.

⁶ People with disabilities are twice as likely to live in a single-person household than nondisabled people. Christiane von Reichert, "Disability and the Household Context: Findings for the United States from the Public Use Microdata Sample of the American Community Survey," *Front. Rehabil. Sci.* 12 (August 2022), doi: 10.3389/frsc.2022.875966.

Income from work

According to the Bureau of Labor Statistics (BLS), in 2022, the percentage of employed people with disabilities between the ages of 18 and 65 was 35%, compared to 74% among their nondisabled counterparts.⁷ Nearly one third (30%) of those workers were employed part time, compared to 16% among their nondisabled counterparts. The BLS report also found that people with disabilities were more likely to work in service, production, and transportation and material moving occupations. The average wage of these occupations was \$8 to \$12 lower than the average wage across all occupations.⁸

BLS does not offer disaggregated data on the number of hours people with disabilities work, and part-time work is defined as fewer than 35 hours per week.⁹ Part-time employees with disabilities may work significantly fewer hours. Table 2 shows the average hourly wage for the sectors in which people with disabilities are more likely to work, along with the corresponding full-time annual wage for Oregon and nationally. The annual wages for Oregon for the occupations presented here are all below 60% of AMI for the Portland area.

Table 2. Wages for Occupations in which People with Disabilities Are More Likely to Work

	Service	Production	Transportation and Material Moving	All Occupations
National				
Average wage	\$17.41	\$21.81	\$21.12	\$29.76
Average annual wage	\$36,210	\$45,370	\$43,930	\$61,900
Oregon				
Average wage	\$16.78	\$19.72	\$22.80	Unavailable
Average annual wage	\$34,900	\$41,020	\$47,420	Unavailable

Sources: Data from U.S. Bureau of Labor Statistics. "May 2022 National Occupational Employment and Wage Estimates." Last modified April 25, 2023. https://www.bls.gov/oes/current/oes_nat.htm; U.S. Bureau of Labor Statistics. "May 2022 OEWS Maps." Accessed on December 10, 2023. https://www.bls.gov/oes/current/map_changer.htm.

⁷ U.S. Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics—2022* (Washington, D.C.: Bureau of Labor Statistics, 2023).

⁸ "May 2022 National Occupational Employment and Wage Estimates," U.S. Bureau of Labor Statistics, last modified April 25, 2023, https://www.bls.gov/oes/current/oes_nat.htm.

⁹ "Concepts and Definitions (CPS)," U.S. Bureau of Labor Statistics, accessed December 10, 2023, <https://www.bls.gov/cps/definitions.htm#fullparttime>.

Income from Social Security

Of the more than 71 million people who receive monthly payments from the Social Security Administration, 8.6 million receive payments through the Disability Insurance program. In 2023, the average Disability benefit was \$1,350 per month,¹⁰ or 20% of AMI for the Portland area.

Those who can work while on Disability can earn some additional income without impacting their benefits. In 2024, they may earn up to \$1,110 before meeting the Social Security threshold for a trial work period.¹¹ This additional income would increase beneficiaries' percentage of AMI to slightly over 35% for the Portland area.

However, working while receiving Disability has its risks. Earning income over the trial work period threshold nine times over the course of five years triggers a three-year period during which earning more than \$1,550 in a month (less than 25% of AMI)—or \$2,590 (less than 40% of AMI) if the beneficiary is blind—means losing benefits for that month.¹² Following this three-year period, earning more than these amounts can mean that, under SSA rules, the person's benefits may stop entirely.¹³

About five million people receive Supplemental Security Income (SSI), which supports older adults and people with disabilities with little or no income. Many states and the District of Columbia offer supplementary payments to SSI recipients, but typically only when they live in a facility.¹⁴ The current Federal Benefit Rate is \$943 (less than 15% of AMI), but this benefit can be reduced drastically if the beneficiary earns money through work or receives in-kind support for housing or food. A report from the Social Security Administration found that, in 2022, the average SSI benefit by state was generally hundreds of dollars less than that year's maximum benefit of \$841.¹⁵

The example of an Oregonian who received the average SSI payment for the state in 2022—\$610—may illustrate the housing landscape for SSI recipients. Table 3 shows the Social Security Administration's somewhat complex method for determining how much a person's other income reduces their SSI payment.¹⁶ The person's first \$20 of any type of income is

¹⁰ Benefit amounts and income thresholds change annually. Social Security Administration, *Monthly Statistical Snapshot* (Washington, D.C.: Social Security Administration, 2023), Table 2.

¹¹ Social Security Administration, *Working While Disabled* (Washington, D.C.: Social Security Administration, 2024), 3.

¹² *Ibid.*, 3–5. The dollar amounts are for 2024.

¹³ "Your Continuing Eligibility," Social Security Administration, accessed February 20, 2024, <https://www.ssa.gov/benefits/disability/work.html>.

¹⁴ Social Security Administration, *Understanding Supplemental Security Income—2023 Edition* (Washington, D.C.: Social Security Administration, 2023), 12.

¹⁵ This report was published in 2023 using data from December 2022. Cost-of-living adjustments typically go into effect in January. Social Security Administration, *Annual Statistical Supplement to the Social Security Bulletin* (Washington, D.C.: Social Security Administration, 2023), Table 7.B3.

¹⁶ *Ibid.*, 17.

exempt from impacting benefits. A further \$65 is exempt if the income is earned income, often from working. Beyond those exemptions, for every two dollars the person earns, they lose one dollar of SSI. The average SSI payment for Oregon for 2022 corresponded to \$547 in earned income for a given month. With the \$610 SSI payment, the person’s monthly income was \$1,157 or less than 20% of current AMI in the Portland area.

Table 3. Monthly Income of SSI Recipient who Received the Average Payment for Oregon in 2022

		<u>Reduction from SSI</u>		<u>Total monthly income</u>
\$547 Earned income	+	\$841 SSI maximum benefit	-	= \$1,157
			{ (\$547 Earned income - \$20 Exemption for the first \$20 - \$65) Earned income exemption ÷ 2 }	

Source: Social Security Administration, Understanding Supplemental Security Income SSI Income—2023 Edition. Washington, D.C.: Social Security Administration, 2023. Accessed December 10, 2023. <https://www.ssa.gov/ssi/text-income-ussi.htm>; Social Security Administration, Annual Statistical Supplement.

Cost-of-living adjustments since 2022 have increased the Federal Benefit Rate by more than \$100. A proportional increase to the average SSI payment for Oregon for 2024 would increase the person’s monthly income to \$1,286, still less than 20% of current AMI.

Each year, about 9% of SSI recipients have their benefits reduced because they receive in-kind support and maintenance for housing or food.¹⁷ This may happen if the person lives rent free with a family member or they are unable to afford their share of housing costs divided equally among the adults living in the home. Under SSA regulations, the person’s benefits may be reduced by one-third of the Federal Benefit Rate, leaving \$629 per month for 2024,¹⁸ which is less than 10% of AMI in the Portland area. If the recipient also has other income, their benefits may be reduced further, as shown above.

These regulations may leave people with intellectual and developmental disabilities (IDD) particularly vulnerable. Nearly four in 10 people with IDD live in a parent or relative’s home, many of whom are 55 or older.¹⁹ In the event that a person with IDD needs to move from

¹⁷ Joyce Nicholas, “Source, Form, and Amount of In-kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients,” *Social Security Bulletin* 74, no. 3 (2014).
¹⁸ “Will the One-Third Reduction Provision Affect My SSI Benefits?” Social Security Administration, accessed February 25, 2024, <https://www.ssa.gov/ssi/spotlights/spot-one-third-reduction.htm>.
¹⁹ Human Services Research Institute and the National Association of State Directors of Developmental Disabilities Services, “Demographics,” in *National Core Indicators—Intellectual and Developmental Disabilities*

their family home and their SSI has been reduced due to in-kind support and maintenance, they have \$300 less to use for housing. As a result, their options are much more limited, and the time they spend on housing waitlists may be longer. They may seek a redetermination of benefits if the in-kind support has ended, but the process may take more time than a person has to make other living arrangements.

In many states, the path into group settings and institutions is better known to case managers and service providers than ways to support people with disabilities, particularly those with extremely low incomes, to find integrated housing. As family caregivers continue to age, people with IDD will have fewer housing options, and restrictive settings may become the default solution.

Rent Assistance

Of the more than 10 million people in the U.S. who receive federal rent assistance, 20% are older adults, and 25% are people with disabilities.²⁰ The majority of this assistance flows through two programs—Housing Choice Vouchers and Project-Based Rental Assistance—both designed to provide housing at a reduced cost. Households that earn up to 80% of the area median income are eligible for federal rental assistance. Most households that receive assistance pay about 30% of their income to rent and utilities.

But while rent assistance provides increased housing stability for assisted households, federal funding is insufficient to meet the need. Currently, one in four households that are eligible for assistance receives it.²¹ Further, the Urban Institute estimates that 16% of the 21 million low-income people with disabilities in the U.S. live in public housing or receive rent assistance. Conversely, 18 million people with disabilities do not have access to this assistance, though they qualify for it.²²

In today's battles over social spending, federal appropriators have struggled to fully fund all existing Housing Choice Vouchers. No funds have been appropriated for new Project-Based Rental Assistance contracts since 1983 or for new public housing since the mid-1990s.

(Cambridge, Mass.: Human Services Research Institute, 2023), Table 10; Popkin et al., *People with Disabilities Living in the U.S. Face Urgent Barriers to Housing* (Washington, D.C.: Urban Institute, 2022), 2.

²⁰ "Federal Rental Assistance Fact Sheets," Center for Budget and Policy Priorities, last modified January 19, 2022, <https://www.cbpp.org/research/federal-rental-assistance-fact-sheets#US>.

²¹ Thyna A. Alvarez and Barry L. Steffen, *Worst Case Housing Needs: 2023 Report to Congress* (Washington, D.C.: U.S. Department of Housing and Urban Development Office of Policy Development and Research, 2023), 17.

²² Susan J. Popkin et al., *Urgent Barriers to Housing*, 3.

Without significant investment in rental assistance, low-income people, including those with disabilities, will continue to face overcrowded housing, frequent moves, and homelessness.²³

State and local governments have also developed rental assistance programs. Research from the National Low-Income Housing Coalition shows that 38 states and 17 cities across the United States have active rental assistance programs.²⁴ While roughly half of these 133 programs had income eligibility thresholds at or below 50% of AMI or at or below 80% of AMI, just 15% had eligibility thresholds at 30% of AMI to focus resources on extremely low-income households.²⁵ Disability status or status as an older adult are listed as eligibility criteria for 30% of the programs.²⁶ One-third of the programs prioritize people with disabilities or mental illness.²⁷

Oregon has three ongoing rental assistance programs—Elderly Rental Assistance, HOME Tenant-Based Assistance, and Housing Stabilization. Between July 1, 2022, and June 30, 2023, the Elderly Rental Assistance program had served 364 individuals in 261 households.²⁸ The Tenant-Based Assistance program had served 1,507 individuals in 598 households. Housing Stabilization had served 1,824 individuals in 534 households. By comparison, more than 36,000 Oregon households utilize Housing Choice Vouchers.²⁹

Oregon Housing and Community Services (OHCS) distributed \$426 million in pandemic rent assistance between May 2021 and June 2023.³⁰ The program has now ended. Given the urgency of this time period and the influx of assistance, OHCS did a commendable job of supporting Oregonians to maintain housing. Returning to the status quo, however, where rent assistance is much harder to access, again highlights the immense need of low-income households.

²³ Michelle Wood, Jennifer Turnham, and Gregory Mills, "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation," *Housing Policy Debate* 19, no. 2 (January 2008), accessed on December 10, 2023, <http://dx.doi.org/10.1080/10511482.2008.9521639>.

²⁴ Sarah Abdelhadi and Andrew Surand, *State and Local Investments in Rental Housing: A Summary of Findings from the 2023 Rental Housing Programs Database* (Washington, D.C.: National Low Income Housing Coalition, 2023), 3.

²⁵ *Ibid.*, 4.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ "OHCS Housing Instability Dashboard," Oregon Housing and Community Services, last modified November 2, 2023, <https://public.tableau.com/app/profile/oregon.housing.and.community.services/viz/OHCSFY22HousingInstability/ProgramsDashboard/CommunityProfiles>.

²⁹ "Housing Choice Voucher—Summary Page," U.S. Department of Housing and Urban Development Office of Public and Indian Housing, last modified September 2023, <https://app.powerbigov.us/view?r=eyJrIjoiM2Y2OTQ2MTAtODVhNC00YmM2LTlhOWEtZWY4MGU5YWFmZDFmIiwidCI6IjYxNTUyNGM1LTlyZTk0NGJjZC1hODkzLTExODhNTNmYzdiMjI9>.

³⁰ Kip Memmott, *OHCS Prioritized Providing Emergency Rental Assistance Funds to Oregonians in Crisis but Could Have Done More to Ensure Funds Were Properly Distributed* (Salem, Ore.: Oregon Audits Division, 2024).

Between July 1 and September 30, 2023, another 1,926 households in the Portland area received rent assistance through the Supportive Housing Services bond.³¹ Passed by voters in 2020 to fund homeless services and prevent homelessness, bond funding pays for Regional Long-Term Rent Assistance (RLRA). At least 75% of RLRA funds are devoted to extremely low-income households with at least one person with disabilities who is experiencing or at risk of homelessness.³² Such emphasis on serving households with disabilities could be critical to resolving the housing crisis if RLRA were expanded and other rent assistance programs adopted similar eligibility criteria.

Rent assistance is unavailable to a discouragingly large number of low-income households, regardless of disability status. Waitlists for vouchers across the country are several years long, and they open to new applicants infrequently. When the waitlists open, there are often several times more applicants than available vouchers, and recipients may be chosen by lottery.³³ Waitlists often open only for a short period of time, and people with disabilities may struggle to apply themselves or find timely support to do so. These issues create uncertainty and pessimism about assistance that can be crucial for extremely low-income households. Without assistance, low-income people with disabilities will struggle to plan to leave family homes or may opt for residential facilities, which are primarily paid for by Medicaid.

Cost of Housing

As we have seen, fewer people with disabilities participate in the workforce and are more likely to work in low-wage jobs compared to nondisabled people. Federal and state benefits for people with disabilities are limited, and those benefits can be reduced when recipients work or receive help from others. And, with waitlist closures and years-long waiting times, anticipating rental assistance can be a fruitless exercise. The result is that people with disabilities have precious few resources to put toward housing. In this section, we will examine how far these limited resources go on the housing market.

In 2022, the most recent year the Portland Housing Bureau (PHB) published its *State of Housing* report, the average rent in Portland was \$1,614, an increase of nearly 4% from

³¹ Clackamas County (Ore.), *Supportive Housing Services Quarterly Report*, n.p., accessed February 18, 2024, <https://www.oregonmetro.gov/sites/default/files/2023/12/06/shs-fy23-24-Q1-report-clackamas-county.pdf>; Multnomah County (Ore.), *Supportive Housing Services Quarterly Report*, n.p., accessed February 18, 2024, <https://www.oregonmetro.gov/sites/default/files/2023/12/06/shs-fy23-24-Q1-report-multnomah-county.pdf>; Washington County (Ore.), *Supportive Housing Services Quarterly Report*, n.p., accessed February 18, 2024, <https://www.oregonmetro.gov/sites/default/files/2023/12/28/shs-fy23-24-Q1-report-washington-county-updated.pdf>.

³² Metro (Ore.), *Supportive Housing Services Program Regional Long-term Rent Assistance Program Policies*, n.p., 2023, <https://www.oregonmetro.gov/sites/default/files/2023/06/05/RLRA-Policies-Updated-06-01-23.pdf>, 3.

³³ This process may disadvantage people with disabilities due to the digital divide the community faces, among other factors.

2021.³⁴ To determine the affordability of rent, the city uses a widely accepted but imperfect measure called the 30% rule,³⁵ which holds that households should spend no more than 30% of their income on housing costs and that households spending more than this amount are cost burdened.³⁶ For the average Portland rent to be considered affordable, a household would need an income of \$5,380 per month—nearly six times the current SSI Federal Benefit Rate.

In its report, PHB provides an example of a three-person, extremely low-income household.³⁷ At 30% of AMI, the household's income was \$2,398, meaning the maximum affordable rent was \$719. The report listed average rent price by neighborhood and unit size and showed that \$719 is insufficient to sustainably rent housing in any neighborhood in the city.³⁸ Increasing the rent the household paid to 50% of income (\$1,198) would allow the household to afford unit sizes up to two bedrooms in two Portland neighborhoods and smaller units in a handful of neighborhoods.³⁹ A second example showed that a household of three with an income at 60% of AMI could sustainably rent an average-priced, two-bedroom unit in 40% of Portland's neighborhoods.⁴⁰

PHB's *State of Housing* report makes clear that market-rate housing is largely unaffordable to extremely low-income and very low-income Portland residents. For this reason, regulated affordable housing is critical for the housing stability of people with disabilities. Regulated affordable dwelling units are publicly subsidized and limit rent prices so low-income households can afford them.

The Portland Housing Bureau works to expand the number of regulated affordable housing units by providing subsidies for construction and rehabilitation. As of 2022, Portland had 16,545 regulated rental units, of which 2,785 were 30% AMI units and more than half targeted affordability levels of 60% AMI or higher.⁴¹ Between 2016 and 2022, the Bureau supported the construction of 3,903 units and the rehabilitation of 917 units.⁴² About two-thirds of new construction and one-third of rehabilitated units were regulated at 60% AMI or higher.

³⁴ Portland Housing Bureau, *2022 State of Housing in Portland* (Portland, Ore.: Portland Housing Bureau, 2022), 10.

³⁵ *Ibid.*, 33.

³⁶ "Rental Burdens: Rethinking Affordability Measures," U.S. Department of Housing and Urban Development, accessed December 10, 2023, https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html.

³⁷ Portland Housing Bureau, *2022 State of Housing*, 36.

³⁸ *Ibid.*

³⁹ Housing providers often enforce screening criteria that require household income to be 2 or 2.5 times the rent, limiting a household's ability to stretch its budget.

⁴⁰ Portland Housing Bureau, *2022 State of Housing*, 37.

⁴¹ *Ibid.*, 124.

⁴² *Ibid.*

HUD's 2023 *Worst Case Housing Needs* report, released every two years using data from the previous biennium, tracks a variety of problems facing low-income renters, including competition for affordable housing. This competition is caused by three factors: affordability of housing units, the availability of those units, and their habitability.

Households with less income have fewer choices of the affordability level of the housing they live in. That is, extremely low-income households may be able to stretch their budgets to rent a 50% AMI unit, but higher affordability levels may be cost prohibitive. Meanwhile, low-income households at 60% or more of AMI may apply for units at lower levels of affordability. So, while 7.5 million affordable housing units rented nationwide for 30% or less of AMI in 2021, 40% of those units were occupied by higher-income households.⁴³ A similar percentage of higher-income households occupied the 9.4 million units that rent at 30% to 50% of AMI.⁴⁴

For projects built with support from the four federal programs that subsidize the creation of affordable housing,⁴⁵ some or all dwelling units have income targeting requirements so that, for instance, a household at 80% of AMI cannot occupy a dwelling unit intended for a household at or below 50% of AMI. The income limits for three of the four programs are 50%, 60%, and 80% of AMI,⁴⁶ providing little relief for extremely low-income households in the competition for affordable units. Housing built with dollars from the National Housing Trust Fund, though, must primarily benefit households at or below 30% of AMI.

The availability of affordable housing is further constrained by moderate to severe habitability concerns, such as problems with plumbing, heating, electricity, or upkeep.⁴⁷ Nearly 3 million renter households lived in inadequate housing in 2021.⁴⁸ Taking these factors together, in 2021, for every 100 extremely low-income households, 61 units were affordable to them. Only 36 of those 61 units were available to move into. Habitability concerns further reduced that number to 32 units for every 100 extremely low-income households.⁴⁹ Meanwhile, 83 units were affordable, available, and habitable for every 100 households at 80% of AMI.⁵⁰

The loss of affordable housing has increasingly become a concern for housing advocates and policymakers since the turn of the century. Between 2000 and 2017, 2.4 million dwelling units

⁴³ Alvarez and Steffen, executive summary to *Worst Case Housing Needs*, xi.

⁴⁴ *Ibid.*, 20.

⁴⁵ These programs are the Low-Income Housing Tax Credit program, HOME Investment Partnerships, the Affordable Housing Program of the Federal Home Loan Banks, and the National Housing Trust Fund. Annual funding totals for fiscal year 2023 are, respectively, \$13.2 billion, \$1.5 billion, \$267 million, and \$382 million. National Low Income Housing Coalition, *Advocates' Guide '24: A Primer on Federal Affordable Housing and Community Development Programs and Policies* (Washington, D.C.: National Low Income Housing Coalition, 2024), pp. 1–20-1-21.

⁴⁶ *Ibid.*

⁴⁷ Alvarez and Steffen, appendix E to *Worst Case Housing Needs*, 81.

⁴⁸ Alvarez and Steffen, appendix A to *Worst Case Housing Needs*, Exhibit A-1A, 35.

⁴⁹ Alvarez and Steffen, *Worst Case Housing Needs*, 23.

⁵⁰ *Ibid.*

renting for less than \$600 were lost from the national housing stock.⁵¹ In 2018 alone, more than 400,000 such units were lost as a result of redevelopment, rent increases, or removal.⁵² These losses are a key factor in the lack of affordable units for extremely low-income households.

Over the last 20 years, the supply of homes in Oregon has not kept pace with the number of households in need of housing they can afford. A quarter of renter households in the state pay more than half of their income on rent, and the state has a deficit of over 110,000 homes.⁵³ In the past few years, Oregon has taken important steps to address its housing crisis by eliminating exclusive single-family zoning, increasing funding to cities for housing, and committing to build 36,000 homes annually.

Oregon is now in the midst of planning to meet housing need in communities across the state for the next 20 years with the Oregon Housing Needs Analysis. House Bill 2003, passed in the 2019 legislative session, requires local governments to develop housing production strategies and has led to the development of a methodology for estimating statewide housing need. Since then, state agencies have put effort into implementation to ensure that needed housing is, in fact, built.

In a report prepared for the state housing agency, ECONorthwest estimates that 29% of the need—171,000 housing units—is for households whose income is below 50% of AMI.⁵⁴ Of these, 99,000 units will be needed for extremely low-income Oregonians. The report recommends that local governments plan for public funding to build all housing to serve households at or below 50% of AMI and at least some public funding for units up to 80%.⁵⁵

At a time when underproduction and loss of affordable housing has left extremely low-income households with long odds of finding affordable, available, and adequate housing, advocates' suspicions of such plans may be well founded. According to OHCS' Affordable Rental Housing Dashboard, between July 1, 2022, and June 30, 2023, the agency approved funding for 5,323 affordable dwelling units at 62 projects.⁵⁶ One-quarter of these units, or 1,324, were intended to serve households at or below 50% of AMI. A total of \$373 million went to these units. Creating the 171,000 dwelling units needed for households across the state that are at or

⁵¹ Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2020* (Cambridge, Mass.: Harvard University, 2020), 31.

⁵² Ibid.

⁵³ Josh Lehner, "Construction, Housing Supply, and Affordability," *Oregon Economic News, Analysis and Outlook*, February 15, 2022, <https://oregoneconomicanalysis.com/2022/02/15/construction-housing-supply-and-affordability/>.

⁵⁴ ECONorthwest, *Implementing a Regional Housing Needs Analysis* (Portland, Ore.: ECONorthwest, 2021), 48.

⁵⁵ ECONorthwest, *Regional Housing Needs Analysis*, 102.

⁵⁶ "Affordable Rental Housing Dashboard," Oregon Housing and Community Services, accessed February 25, 2024, <https://public.tableau.com/app/profile/oregon.housing.and.community.services/viz/AffordableRentalHousingDashboard/Story1>.

below 50% of AMI will require much more funding and greater commitment to serving households with the least income.

Proponents of the housing needs analysis, legislators, and other decision makers have emphasized equity and the need to ensure that people at all income levels have adequate choice and agency to live where they want.⁵⁷ People with disabilities face disproportionate impacts as a result of the lack of affordable housing and rent assistance, as well as disincentives and discrimination in employment. While these impacts are a consequence of historical exclusion and discrimination, people with disabilities continue to be left out of efforts to promote equity. We hope for meaningful inclusion and action from officials on behalf of the disability community. We propose a wide-ranging approach to address issues related to housing affordability for people with disabilities:

- **Raise the floor.** Many people with disabilities and older adults simply cannot afford housing, especially in markets where increases in the cost of rent regularly exceed cost-of-living increases to federal benefits. Increasing the number of people with disabilities who are valued in the workplace and able to earn a living wage will take social and cultural shifts, as well as the removal of punitive policies that deter people with disabilities from earning money for fear of losing access to benefits. Federal legislators have proposed several fixes, including the SSI Restoration Act, which would increase SSI benefits to 100% of the federal poverty level and increase the earned income exemption to \$4,992 per year, as well as the Social Security 2100 Act, which would increase benefit amounts across the board for disabled workers and retirees and eliminate the termination of Disability benefits based on earnings through 2034. States may also create or expand supplementary payments to SSI recipients, including those who live in their own homes.
- **Expand rental assistance.** With the current political landscape on the federal level, logical solutions to major problems affecting low-income people rarely seem feasible. This is the case with the Ending Homelessness Act, which would make the Housing Choice Voucher program into an entitlement, allowing anyone eligible for the program to receive a voucher. In the face of federal budget constraints, state and local policy makers can step up and devote more resources to rental assistance programs. Such programs should prioritize serving people with disabilities.
- **Preserve and expand affordable housing.** Households at 50% of AMI and below are the least well served in the rental market. HUD and state and local housing agencies must prioritize preservation and development of affordable housing for households with the fewest resources. This kind of commitment will require substantial

⁵⁷ ECONorthwest, *Regional Housing Needs Analysis*, 8–10.

public funding, but there is no resolution to the housing crisis without a focus on households with the fewest resources.

Accessibility of Housing

The United States Census did not include questions about disability between 1910 and 1970.⁵⁸ Questions about disability were reintroduced in the 1970 census but focused on the impacts of disability on employment.⁵⁹ And though more questions about disability were included in the 1980 and 1990 censuses, pre-testing showed the items had reliability issues.⁶⁰

Accurate data are an important component of policy decisions. Meaningful data would have been invaluable following the period of exclusion, when people with disabilities were again enjoying some level of inclusion in community life and some began looking for housing. However, because the data largely did not exist when society was again learning how to accommodate people with disabilities, policy makers lacked any tools for assessing the housing needs of people with disabilities. The standards put in place in absence of data have never come close to meeting the actual need for accessible housing, and the consequent need for housing for people with disabilities presents an increasingly immense challenge for autonomy and choice as the population ages and the need grows.

As Oregon embarks on its project to meet the state's housing needs for the next 20 years, the need for reliable data about disability and accessible housing is clear. In its report to the state housing agency, ECONorthwest noted that "the lack of complete data on accessible housing stock hampered our ability to incorporate an estimate for ... unmet need [for people with disabilities] into our methodology."⁶¹

The data challenges regarding accessible housing are two-fold:

1. There is no accurate measure of the number of existing accessible dwelling units, largely due to uneven but extensive noncompliance with standards for building accessible housing; and
2. There is disagreement about which measure of disability prevalence is most accurate.

So again, the absence of accurate data presents the risk of failing to meet the need and continuing inequitable access to housing for people with disabilities. The policy question becomes, how do we plan for the housing needs of up to one-quarter of the population given an unknown but demonstrably insufficient number of existing accessible dwelling units?

The American Community Survey (ACS) tracks many of the finer data points included in previous long-form census surveys, such as data on disability. Starting in 2008, the ACS has

⁵⁸ Matthew Brault, Sharon Stern, and David Raglin, *2006 American Community Survey Content Test Report P.4: Evaluation Report Covering Disability* (Washington, D.C.: U.S. Census Bureau, 2007), 2.

⁵⁹ Ibid.

⁶⁰ Ibid., 3.

⁶¹ ECONorthwest, *Regional Housing Needs Analysis*, 15.

used a set of six questions about functional limitations when performing activities of daily living. The ACS relies on self-identification of limitations in a society that tends to downplay them. The ACS may also fail to capture short-term disabilities. Still, the ACS estimates that more than 44 million people have a disability, a prevalence rate of 13.4%.⁶²

Several other population surveys use the set of six disability questions developed for the ACS, among them the Behavioral Risk Factor Surveillance System (BRFSS) and the American Housing Survey. The BRFSS is sponsored by the Centers for Disease Control and Prevention, and it tracks health risks among adults in the United States. Since it began using five of the six ACS questions in 2016,⁶³ BRFSS has consistently reported disability prevalence rates of between 24% and 27%. Table 4 shows the percentages of people impacted by each of the six categories of functional impairments for the ACS and BRFSS.

Table 4. Prevalence of Functional Limitations in the American Community Survey (ACS) and the Behavioral Risk Factor Surveillance System (BRFSS)

Functional impairment	ACS	BRFSS
Hearing difficulty	3.7%	N/A
Vision difficulty	2.5%	5.3%
Cognitive difficulty	5.7%	13.4%
Ambulatory difficulty	6.7%	13.3%
Self-care difficulty	2.6%	3.5%
Independent living difficulty	6.0%	7.6%

Sources: U.S. Census Bureau. "Disability Characteristics." Accessed December 10, 2023. <https://data.census.gov/table/ACSST1Y2022.S1810?q=Disability>; Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Population Health. "BRFSS Prevalence & Trends Data." Accessed December 10, 2023. <https://www.cdc.gov/brfss/brfssprevalence/>.

Note: The BRFSS does not include a question about hearing impairments.

One analysis suggests that the BRFSS prevalence rate is higher than that of the ACS because people with disabilities may be more likely to participate.⁶⁴ A related explanation may be that

⁶² "Disability Characteristics," U.S. Census Bureau, accessed December 10, 2023, <https://data.census.gov/table/ACSST1Y2022.S1810?q=Disability>.

⁶³ Centers for Disease Control and Prevention, *A Data Users' Guide to the Disability Questions Included in the Behavioral Risk Factor Surveillance System* (Washington, D.C.: Centers for Disease Control and Prevention, 2018), accessed on December 10, 2023, https://www.cdc.gov/brfss/data_documentation/pdf/BRFSS_Data_Users_Guide_on_Disability_Questions_2018-508.pdf, 6.

⁶⁴ Jack Gettens, Pei-Pei Lei, and Alexis D. Henry, "Using American Community Survey Disability Data to Improve the Behavioral Risk Factor Surveillance System Accuracy," *DRC Data Brief* 2015-05 (September).

people with health concerns may feel more comfortable identifying with functional impairments on a health-focused survey than they otherwise would.

The American Housing Survey (AHS) is a longitudinal study of tens of thousands of housing units and their occupants across the country. In a report on housing accessibility submitted to HUD, SP Group analyzed the 2019 AHS data. By grouping households that included people who use mobility devices (13%), households with people who have difficulty entering their home or accessing or using parts of their home (6%), and households with people who have functional limitations (12%), the analysts found that a total of 19% of households included at least one person with accessibility needs.⁶⁵ For 2021, the latest data available, 22.7% of households included someone with accessibility needs.⁶⁶ Table 5 shows the percentages of households impacted by the six categories of functional impairments for the AHS.

Table 5. Prevalence of Functional Limitations in the American Housing Survey (AHS)

Functional impairment	AHS
Hearing difficulty	8.8%
Vision difficulty	4.8%
Cognitive difficulty	7.4%
Ambulatory difficulty	11.9%
Self-care difficulty	3.7%
Independent living difficulty	7.2%

Source: U.S. Census Bureau, American Housing Survey. “2021 National—Disabilities—All Occupied Units.” Accessed December 10, 2023. https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=00000&s_year=2021&s_tablename=TABLE8B&s_bygroup1=1&s_bygroup2=1&s_filtergroup1=1&s_filtergroup2=1.

The AHS included a module on housing accessibility for the first time in 2011. The module was dropped from the latest AHS,⁶⁷ though data from the 2019 AHS suggest a troubling lack of accessibility in the U.S. housing stock. In 2019, the entrances to 47% of homes required the use of stairs, and for households that included someone with accessibility needs, 40% of

⁶⁵ SP Group, *Accessibility in Housing: Findings from the 2019 American Housing Survey* (Washington, D.C.: U.S. Department of Housing and Urban Development Office of Policy Development and Research, 2021), 2.

⁶⁶ “2021 National—Disabilities—All Occupied Units,” U.S. Census Bureau, American Housing Survey, accessed December 10, 2023, https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=00000&s_year=2021&s_tablename=TABLE8B&s_bygroup1=1&s_bygroup2=1&s_filtergroup1=1&s_filtergroup2=1.

⁶⁷ U.S. Census Bureau, appendix C to *American Housing Survey 2021* (Washington, D.C.: U.S. Census Bureau, n.d.), accessed on December 10, 2023, <https://www2.census.gov/programs-surveys/ahs/2021/2021%20AHS%20Historical%20Changes.pdf>.

homes required the use of stairs.⁶⁸ Less than half of homes have a full bathroom and a bedroom on the entry level.⁶⁹ Stated differently, half of the housing supply is inadequate for households with accessibility needs.

Visitability is an accessibility standard oriented to single-family homes, which account for two-thirds of the housing in the United States⁷⁰ and are generally exempt from accessibility requirements. Visitable homes have a no-step entry, doorways and hallways that are wide enough for mobility devices to pass through, and a bathroom on the entry level. Lacking the requirement of a bedroom on the entry level, the standard is not well suited as a benchmark for accessible housing. Instead, it is a marker of community integration and supports people with disabilities to visit friends and relatives in their homes. Yet, because single-family homes rarely fall within the purview of enforceable accessibility requirements, a visitable home may be a viable form of short-term shelter in the midst of a housing crisis.

National accessibility requirements for housing are contained in four laws: the Architectural Barriers Act, the Americans with Disabilities Act, the Fair Housing Act, as amended in 1988, and Section 504 of the Rehabilitation Act of 1973. These are the civil rights laws for the disability community, and each may apply to different aspects of particular housing developments. In the next section, we will discuss the equal opportunity provisions of Section 504. Here, we will explore the accessibility requirements of these laws and why they fail to meet the need for accessible housing.

The accessibility requirements focus primarily on physical, visual, and hearing disabilities. Accessibility improvements oriented to these disabilities may benefit people with other types of disabilities and those with co-occurring disabilities. Yet, existing requirements largely fail to address some types of disability, such as chemical sensitivities, sensory sensitivities, chronic illness, and psychiatric disabilities. No requirement exists, for instance, requiring increased soundproofing of units for people who are sensitive to noise. Likewise, the wraparound services provided through the Permanent Supportive Housing model may be necessary to support people with complex medical, mental health, and substance use issues to find and maintain housing, but these services are not required by law.

The Architectural Barriers Act, passed in 1968, was the first law to mandate that people with disabilities have access to public buildings. The law covers federal offices, courthouses, prisons, national parks, mass transit systems, and public housing. Public housing is subsidized by the federal government and managed by local agencies to provide affordable dwelling

⁶⁸ SP Group, *Accessibility in Housing*, 3.

⁶⁹ Ibid.

⁷⁰ "2021 National—General Housing Data—All Occupied Units," U.S. Census Bureau, American Housing Survey, accessed December 10, 2023, https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=00000&s_year=2021&s_tablename=TABLE1&s_bygroup1=1&s_bygroup2=1&s_filtergroup1=1&s_filtergroup2=1.

units.⁷¹ Legislators, though, have not made investments in new public housing since the 1990s.⁷²

The Americans with Disabilities Act (ADA), passed some 30 years later, applies to private businesses and to state and local government facilities. The Supreme Court decided in *Olmstead* that, under title II of the ADA, public entities must ensure that people with disabilities have the opportunity to live in the most integrated setting available to them.⁷³ The *Olmstead* decision, though, has had a bigger impact on the availability of in-home care than the availability of affordable, accessible housing. Title III of the ADA requires public spaces within housing developments be accessible. Outside of housing at state universities, the ADA largely does not apply to dwelling units themselves.⁷⁴

The Fair Housing Act (FHA) covers all dwelling units in buildings with elevators that contain four or more units. For buildings without elevators that contain four or more dwelling units, FHA covers all units on the ground floor. The FHA's design and construction requirements call on housing providers to incorporate elements that allow people with disabilities the basic enjoyment of a dwelling unit. Only buildings built "for first occupancy" after March 13, 1991, are covered under these requirements, and they do not apply to older buildings, even if they are renovated.⁷⁵ Preservation of affordable housing—a priority for many states and cities—may entail rehabilitation or renovations, though this housing would not be required to meet the FHA requirements. Multi-story dwelling units, including many townhomes, are also not covered by the design and construction requirements.⁷⁶

The seven basic design and construction requirements are:

- Access to the building on an accessible route;
- Access to common areas;
- Sufficiently wide doorways;
- An accessible route into and through the dwelling unit;
- Proper positioning of light switches, electrical outlets, and thermostats;
- Reinforcements in bathroom walls and floors to allow for the installation of grab bars; and
- Usable kitchens and bathrooms.

⁷¹ Maggie McCarty, *Introduction to Public Housing* (Washington, D.C.: Congressional Research Service, 2014), 1.

⁷² *Ibid.*, 8.

⁷³ *Olmstead v. L.C.* 527 U.S. 581 (S.Ct. 1999).

⁷⁴ U.S. Access Board, *Using the ADA Standards* (Washington, D.C.: U.S. Access Board, 2014), 2.

⁷⁵ Barrier-Free Environments, *Fair Housing Act Design Manual: A Manual to Assist Designers and Builder in Meeting the Accessibility Requirements of the Fair Housing Act* (Raleigh, N.C.: Barrier-Free Environments, 1998), 11.

⁷⁶ U.S. Department of Housing and Urban Development, "Final Fair Housing Accessibility Guidelines," *Federal Register* 56, 44 (March 6, 1991), p. 9481.

These requirements are the minimum for accessible design. It should be noted that the guidelines allow for inaccessible areas in a dwelling unit, such as sunken or raised living rooms. Bathrooms and kitchens are not required to have enough space to turn around with a mobility device, which raises the risks for falls and kitchen accidents. Such kitchens and bathrooms create functional impairments for some people with disabilities who could use better designed rooms.

The units required under FHA are sometimes called Type B dwelling units.⁷⁷ Type B refers to a section of the accessibility standards of the American National Standards Institute (ANSI). ANSI also has specifications for Type A units and Accessible units, which have more accessibility features than Type B units. Type A units, for instance, cannot have sunken or raised floors and feature more space to turn in bathrooms and U-shaped kitchens. Type A and Type B units are considered adaptable because they allow occupants to modify them to meet accessibility needs. For example, the base cabinet around a sink may be removable, or countertop heights may be adjustable. Renter households are often responsible for securing permission to adapt the units and covering the associated costs.

Accessible dwelling units are built to be accessible at first occupancy. Grab bars are in place in the bathroom. Turning spaces are incorporated into every room. Kitchen counters and appliances are lowered. Sinks do not have cabinets underneath, allowing for better access. Neither Type A nor Accessible units are required under federal law, but they may be required by state and local jurisdictions. Oregon's Specialty Structural Code, for instance, has additional requirements for buildings containing permanent housing, such as apartment buildings (also called R-2 occupancy type), when they have more than 20 dwelling units. In such buildings, 2% of dwelling units, or at least one unit, have to meet the Type A specifications.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against people with disabilities in all programs that receive federal funding. Failing to build accessible housing is a form of discrimination. Housing providers satisfy the accessibility requirements of Section 504 by applying the Uniform Federal Accessibility Standards (UFAS), which are in many respects as stringent or more stringent than standards for ANSI Accessible dwelling units. Five percent of dwelling units, or at least one unit, in such projects should be constructed for use by occupants with physical impairments, and an additional 2% of units, or at least one unit, should have features for occupants with sensory impairments. Some jurisdictions require stricter standards, such as compliance with Section 504, regardless of a housing

⁷⁷ Kimberly Pearlberg, "Alphabet Soup for Dwelling and Sleeping Units," *Building Safety Journal*, February 15, 2018, <https://www.iccsafe.org/building-safety-journal/bsj-technical/alphabet-soup-for-dwelling-and-sleeping-units-2/>.

development's funding sources or a larger percentage of UFAS-compliant units, though without dedicated funding, these requirements may be unenforceable.⁷⁸

Compared with the disability prevalence rates discussed above, the number of units required under Section 504 is far below the number of households that need them. Yet, housing providers are failing to build even this limited number of accessible units. The National Council on Disabilities cites lack of compliance with the requirements of Section 504 as a contributing factor for the mismatch between existing accessible housing and the need within the disability community.⁷⁹

Though HUD is responsible for the compliance of recipients of funding, the department lacks the funding to monitor developments covered under Section 504.⁸⁰ Housing providers' failure to include compliant dwelling units is rarely discovered before the developments have been completed, and if noncompliance is discovered—typically by prospective occupants or disability organizations—retrofitting the units to meet the standards will likely be much costlier than designing and building them properly from the start. Since federal funding typically supports affordable developments, filling gaps in the market, these corrective retrofits potentially reduce funds that would be available to other affordable housing developments.

Case law has granted some exceptions in instances when noncompliance is discovered. In *Garcia v. Brockway*, the Ninth Circuit Court of Appeals created a two-year time limit after the conclusion of construction of a building to raise design and construction claims.⁸¹ This ruling limited the already inadequate enforcement mechanisms available to hold housing providers accountable to the requirements to build accessible dwelling units and may have emboldened some providers to flout the rules.

In 2005, HUD issued a notice "to remind recipients of Federal funds under the Community Development Block Grant (CDBG) Program of their obligation to comply with Section 504" and other accessibility regulations.⁸² The following year, HUD released a list of 75 current and inactive programs that were subject to Section 504.⁸³ This list included many of HUD's

⁷⁸ Miriam Axel-Lute, "Disability Justice and Equity in Housing," *ShelterForce*, June 12, 2023, <https://shelterforce.org/2023/06/12/disability-justice-and-equity-in-housing>.

⁷⁹ "NCD Comments on HUD's Section 504 Advanced Notice of Proposed Rulemaking," National Council on Disability, last modified July 24, 2023, <https://ncd.gov/publications/2023/ncd-comments-hud-section-504-advanced-notice-proposed-rulemaking>.

⁸⁰ Ibid.

⁸¹ *Garcia v. Brockway*, 526 F. 3d 456 (9th Cir 2008).

⁸² U.S. Department of Housing and Urban Development, *Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds—Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and the Architectural Barriers Act* (Washington, D.C.: U.S. Department of Housing and Urban Development, 2005).

⁸³ U.S. Department of Housing and Urban Development, "List of HUD Programs Subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973," *Federal Register* 71, no. 145 (July 28,

community planning and development programs, such as CDBG and the HOME Investment Partnerships Program. The issuance of these documents may have indicated HUD's intention to begin enforcing compliance with Section 504 prior to the collapse of the housing market in the Great Recession. HUD has yet to take significant action to enforce these regulations.

In April 2023, however, HUD issued a notice of proposed rulemaking around the Section 504 regulations. It stated that HUD has found "widespread discrimination" and "[s]ignificant noncompliance ... with respect to physical accessibility requirements within HUD-assisted affordable housing programs."⁸⁴ This may be a hopeful sign that HUD is again preparing to enforce the accessibility requirements—some 35 years after HUD issued its initial Section 504 regulations.

Despite the compliance issues with Section 504, it is important to note that HUD's "most important resource for creating affordable housing in the United States today," the Low-Income Housing Tax Credit,⁸⁵ is not subject to Section 504. Because LIHTC funding comes in the form of tax credits, as opposed to direct assistance, the program is not subject to Section 504 and therefore exempt from the law's accessibility requirements. HUD's database of LIHTC properties shows that, on average, between 2017 and 2021, housing providers created about 70,000 dwelling units using the tax credit.⁸⁶ A number of these projects may also receive direct federal funding, which would trigger the UFAS accessibility requirements, or be located within jurisdictions that have independent accessibility requirements. Advocates may argue that such an important tool for creating affordable housing should, itself, also improve the stock of accessible housing.

The impacts of the lack of accessible housing are numerous and profound. Navigating inaccessible homes can be exhausting and limit a person's ability to participate in other activities at home and in the community. People with disabilities who struggle to enter and leave an inaccessible home entrance may be more likely to stay home, adding to social isolation. And inaccessible homes often necessitate in-home care, which is in the midst of its own crisis.

As with solutions to housing affordability issues for people with disabilities, solutions for the lack of accessible housing need to be broad in scope to ensure members of the disability

2006), accessed on December 10, 2023, <https://www.govinfo.gov/content/pkg/FR-2006-07-28/pdf/06-6516.pdf>.

⁸⁴ U.S. Department of Housing and Urban Development, "Nondiscrimination on the Basis of Disability: Updates to HUD's Section 504 Regulations," *Federal Register* 88, no. 79 (April 25, 2023), p. 24940, accessed on December 10, 2023, <https://www.govinfo.gov/content/pkg/FR-2023-04-25/pdf/2023-08464.pdf>.

⁸⁵ U.S. Department of Housing and Urban Development, "Low-Income Housing Tax Credit," accessed December 10, 2023, <https://www.huduser.gov/portal/datasets/lihtc.html>; Adam Cowing, "Section 504 Protections Apply to ARRA-funded LIHTC Projects," *Housing Law Bulletin* 39 (July 2009), 182.

⁸⁶ Department of Housing and Urban Development, *LIHTC Database Access*, accessed of December 10, 2023, <https://lihtc.huduser.gov>.

community can live in and be part of the communities around them. We propose the following:

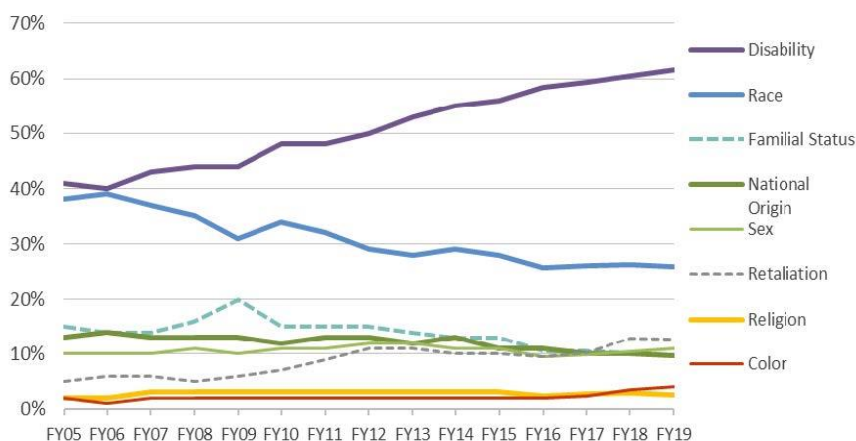
- **Enforce and expand existing laws and regulations.** Strict compliance with Section 504 of the Rehabilitation Act would have allowed policy makers to infer an answer to questions about the number of existing accessible dwelling units and better plan for future housing needs. At this point, we have clear calls from the disability community that the current stock is insufficient to meet their needs. HUD’s proposed update to its Section 504 should heed these calls and signal changes in enforcement of accessibility standards. Where state and local governments have additional regulations—such as additional Type A units or requiring UFAS-compliant dwelling units, no matter the funding source—these entities should also prioritize their enforcement. State and local officials should consider increased accessibility requirements as part of their work to further equity for marginalized communities.
- **Fund retrofit and retrofit removal programs.** While housing providers should grant tenants’ reasonable modification requests to make inaccessible units more accessible, they may also require them to pay for the modifications and remove modifications at the end of the tenancy. This requirement often prevents people with disabilities from modifying the unit in the first place. Some programs exist to help with home modifications, but owning the home is often a requirement for receiving assistance. State and local jurisdictions should establish funds to support tenants with disabilities to modify their homes.
- **Fund housing navigation services.** Waitlists for affordable housing across the United States are years long, and contacting properties to get answers about accessibility features can take a considerable amount of time and effort. In this harsh environment, people with disabilities struggle to find housing that meets their needs. To relieve some of their burden, states should include housing navigation as part of their Medicaid Section 1115 Demonstration programs to allow for disability service providers to support their customers in accessing housing.
- **Commit to improving data on people with disabilities.** A contributing factor to the housing crisis—alongside noncompliance with federal laws and enforced poverty for beneficiaries of anti-poverty programs—is the 70 years of missing data on people with disabilities prior to the 1980 Census. Researchers have been slow to roll out systemic data collection procedures. Data modules about disability are sometimes dropped from surveys from year to year, as happened with the most recent American Housing Survey. Advocates and policy makers are hungry for data about disability to inform decisions about the future.

Fair Housing and Equal Opportunity

Our discussion of accessible housing included the design and construction requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act. Nondiscrimination in housing, though, extends beyond simply creating dwelling units that people with disabilities can use. Rental housing providers are also required to treat people with disabilities fairly during tenant selection and subsequent tenancy, as well as grant reasonable accommodations and modifications to allow for the use and enjoyment of dwelling units and common areas. Federal funding further requires housing providers to make efforts to match dwelling units with accessibility features to the tenants that need them the most. But as with the construction requirements, particularly those of Section 504, compliance with the procedural requirements of the disability community’s civil rights laws is uneven and lightly enforced.

In fiscal year 2022, 60% of fair housing complaints filed with HUD or state fair housing agencies were based on disability.⁸⁷ At 29%, the next highest incidence of discrimination was related to race.⁸⁸ Over the past 20 years, the percentage of complaints based on disability has increased by 20 points, while complaints based on other forms of discrimination have trended downward.⁸⁹ Discrimination based on sex and color also increased to a lesser degree in this period of time.⁹⁰ Figure 1 shows the percentage of complaints by protected class since 2005.

Figure 1: HUD and Fair Housing Assistance Program Complaints Filed by Protected Status, Fiscal Years 2005–2019



Source: HUD Annual Reports on Fair Housing, FY2008-FY2016, available at <http://portal.hud.gov/hudportal/HUD?src=/annualreport>.

Note: Percentages represent the number of discrimination complaints as a percentage of all cases filed. Cases may contain more than one complaint of discrimination (for example, race and sex). As a result, the sum of percentages each year exceeds 100%.

⁸⁷ U.S. Department of Housing and Urban Development, *FY22 State of Fair Housing Annual Report to Congress* (Washington, D.C.: U.S. Department of Housing and Urban Development, n.d.), 65.

⁸⁸ Ibid.

⁸⁹ “FHEO Annual Reports on Fair Housing,” U.S. Department of Housing and Urban Development, accessed on January 20, 2024, https://www.hud.gov/program_offices/fair_housing_equal_opp/annualreport.

⁹⁰ Ibid.

A 2021 report from the Congressional Research Service suggests that complaints based on disability may be higher than other forms of discrimination because of housing providers' responsibility to grant reasonable accommodation and modification requests under the Fair Housing Act.⁹¹ However, the FHA was amended to cover disability discrimination and allow for such requests in 1988, and the rise in the number and percentage of complaints based on disability is ongoing,⁹² pointing to problems with compliance, not the additional requirements. In recent years, one of the most common fair housing complaints HUD received has involved reasonable accommodations for assistance animals, prompting the agency to issue a notice to housing providers on assessing these requests.⁹³

A reasonable accommodation is "a change, exception, or adjustment to a rule, policy, practice, or service" that is necessary for a person with a disability to have equal enjoyment of a dwelling unit, while a reasonable modification allows an occupant with disabilities to make physical adjustments to their homes to meet their accessibility needs.⁹⁴ Housing providers are required to grant accommodation requests unless the requests create undue financial or administrative burden or if they would require providers to perform work outside of their normal duties.⁹⁵ Housing laws stipulate that providers must engage in an interactive process regarding the occupant's needs and attempt to provide alternative accommodations that would not constitute an undue burden.⁹⁶

HUD does not clearly define undue burden or propose any test for determining when housing providers may justify such claims. The agency states that determinations of undue burden "must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs."⁹⁷ This guidance is of little help to advocates looking to defend their rights, as they have no role in the assessment of burden and instead are subject to the judgment of the housing provider.

⁹¹ Libby Perl, *The Fair Housing Act: HUD Oversight, Programs, and Activities* (Washington, D.C.: Congressional Research Service, 2021), 10.

⁹² U.S. Department of Housing and Urban Development, "FHEO Annual Reports."

⁹³ U.S. Department of Housing and Urban Development, *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act* (Washington, D.C.: U.S. Department of Housing and Urban Development, 2020), 4.

⁹⁴ "Reasonable Accommodations and Modifications," U.S. Department of Housing and Urban Development, accessed on January 20, 2024, https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ U.S. Department of Housing and Urban Development and U.S. Department of Justice, *Reasonable Accommodations under the Fair Housing Act* (Washington, D.C.: U.S. Department of Housing and Urban Development, 2004), 7.

In a 2023 report, the Government Accountability Office (GAO) found that HUD does not collect data on reasonable accommodation requests, nor does it have a strategy to oversee housing provider compliance.⁹⁸ Instead, it relies on complaints filed by tenants because the agency has limited resources to conduct compliance reviews.⁹⁹ The GAO report recommends that HUD should begin collecting data on reasonable accommodation requests and develop a proactive approach to compliance, which may reduce the number of complaints based on disability.¹⁰⁰ In response to the report, HUD claimed that collecting the data would pose a large administrative burden on housing providers and deter participation in HUD programs.¹⁰¹

Despite constituting the majority of fair housing complaints, disability has only recently been emphasized in efforts to monitor compliance. Turner et al., in 2005, was the first team of researchers to develop a methodology for testing for housing discrimination based on disability, focused on renters who were deaf and renters who used wheelchairs.¹⁰² Turner's team found that housing providers refused to speak to deaf people in a quarter of calls about dwelling units.¹⁰³ Both groups that Turner's team studied received less information about available units than nondisabled people.¹⁰⁴

Like previous housing discrimination studies, the study conducted by Turner's team utilized paired testing, a methodology which compares a housing provider's reactions to someone with a disability and someone without a disability.¹⁰⁵ The people interacting with the housing provider, called testers, note what information they were given by the provider and how they were treated, and the researchers determine whether they received differential treatment.¹⁰⁶ This methodology had been used in national studies to test for discrimination based on race since 1977.¹⁰⁷

Turner's findings of significant adverse treatment of people with disabilities were confirmed by a subsequent study by Levy et al.¹⁰⁸ Housing providers are less likely to communicate with testers who are deaf or hard of hearing and less likely to tell them about available dwelling

⁹⁸ Alicia Puente Cackley, *HUD Rental Assistance: Enhanced Data and Strategy Could Improve Oversight of Accessibility Requirements* (Washington, D.C.: Government Accountability Office, 2023), 16.

⁹⁹ *Ibid.*, 14.

¹⁰⁰ *Ibid.*, 16.

¹⁰¹ *Ibid.*, 19.

¹⁰² Margery Austin Turner et al., *Discrimination against Persons with Disabilities: Barriers at Every Step* (Washington, D.C.: Urban Institute, 2005), 1–2.

¹⁰³ *Ibid.*, 2–3.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, 16.

¹⁰⁶ *Ibid.*, 27–28.

¹⁰⁷ U.S. Department of Housing and Urban Development Office of Policy Development and Research, "Paired Testing and the Housing Discrimination Studies," *Evidence Matters* (Spring/Summer 2014), accessed February 10, 2024, <https://www.huduser.gov/portal/periodicals/em/spring14/highlight2.html>.

¹⁰⁸ Turner et al., *Discrimination against Persons with Disabilities*, 2; Diane K. Levy et al., *Discrimination in the Rental Housing Market Against People Who Are Deaf and People Who Use Wheelchairs: National Study Findings* (Washington, D.C.: U.S. Department of Housing and Urban Development, 2014).

units. Testers who use wheelchairs are also presented information about fewer dwelling units, and they are less likely to be given the opportunity to tour available dwelling units. Hammel and Smith’s study of housing discrimination against people with intellectual and developmental disabilities and people with mental illness showed that these groups were less likely to receive a response from a housing provider or have the opportunity to tour available dwelling units.¹⁰⁹

On top of fair housing concerns, people with disabilities who need to live in accessible dwelling units also have limited opportunities to access those units. Section 504 of the Rehabilitation Act requires housing providers who receive federal funding to attempt to fill dwelling units with accessibility features with tenants who most need them.¹¹⁰ This may mean advertising the units within the disability community and potentially relocating nondisabled tenants to allow tenants with disabilities to occupy accessible units.¹¹¹ This again raises the issue of noncompliance in building dwelling units with the required accessibility features and whether the accessible units exist in the first place. There is also a significant gap in housing providers’ knowledge of where accessible units exist within their portfolios, leading to oversights and missed opportunities to match people with disabilities to appropriate units.

With the passage of House Bill 2889 in the 2023 legislative session, Oregon has begun to work on a housing production dashboard to track, among other data points, the number of accessible dwelling units created using public funding. This is likely to provide some level of accountability. Yet, short of a complete survey of the housing stock, the state will likely have few answers about where existing accessible units are located and whether people with disabilities occupy them. Accounting for existing accessible housing may take creative solutions such as a landlord registration system that gathers information on the number, type, and location of accessible units.

Housing providers, advocates, and the general public need a better understanding of fair housing and equal opportunity requirements related to disability. We believe that education and enforcement can stop the harm caused by unfair treatment of prospective tenants and unjustified denials of accommodation and modification requests. And to advance housing equity for people with disabilities, housing providers must put effort into ensuring that accessible dwelling units are occupied by tenants who need them.

- **Improve housing provider knowledge of fair housing requirements.** At present, the most prominent fair housing issues involve reasonable accommodations

¹⁰⁹ Joy Hammel and Janet Smith, *Rental Housing Discrimination on the Basis of Mental Disabilities: Results of Pilot Testing* (Washington, D.C.: U.S. Department of Housing and Urban Development, 2017), vii.

¹¹⁰ “Section 504,” U.S. Department of Housing and Urban Development, accessed on January 20, 2024, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq.

¹¹¹ Ibid.

and modifications and service and companion animals. Providers must be well versed in these issues, in addition to treating tenants fairly when they apply for housing and during tenancy. As with other professions, housing providers must know the rules and face consequences for violating them. This work to educate housing providers should go hand in hand with passing state and local tenant protections for people with disabilities.

- **Account for existing accessible housing.** People with disabilities are facing grave inequities in the housing market. States and local governments should determine the best method for locating housing that was intended for use by the disability community and correct the problems caused by lack of enforcement. Government agencies and housing providers should collaborate on a process to identify accessibility features in all dwelling units, as well as opportunities to create more UFAS-compliant dwelling units and match people with disabilities to those units.

Conclusion

Today, the exclusion of people with disabilities is less blatant than the period when they were routinely placed in institutions, yet the disability community continues to struggle for meaningful inclusion in many ways. Even one of the most fundamental forms of inclusion—having a place to call home—is far from guaranteed for many people with disabilities.

The housing crisis for people with disabilities is rooted in myriad decisions facilitated by the disempowerment and isolation that are inherent in the logic of institutionalization. Housing providers have routinely failed to create accessible housing required by law. Researchers have failed to coalesce around an accounting of the size of the disability community, obfuscating many critical policy questions, including the number of people who need accessible housing. And government bodies have failed to ensure the rights of people with disabilities to have adequate places to live and protection from housing discrimination.

The housing crisis results from three primary issues people with disabilities face in unique ways:

- **Affordability:** People with disabilities have limited financial resources available to them. Just 35% of working-age people with disabilities were employed in 2022, one-third of whom worked part time. Employed people with disabilities are more likely to work in low-wage professions. The average Social Security Disability payment is \$1,350, which is 20% of area median income for Portland, Oregon. The average rent in Portland is considered affordable to households with monthly income of \$5,380. Still, nationally, 18 million people with disabilities who qualify for federal rent assistance do not receive it because of budgetary restrictions.
- **Accessibility:** Between 13% and 27% of people in the United States experience disabilities, though federal standards for accessible housing require that just 5% of dwelling units in multifamily buildings meet UFAS specifications for physical disabilities and another 2% meet specifications for sensory disabilities. HUD has issued multiple notices since 2005 about widespread noncompliance with this requirement, but enforcement has been lacking. As a consequence, there is no way to know how many accessible dwelling units have been built or where they exist.
- **Fair Housing and Equal Opportunity:** Fair housing issues pose additional barriers for people with disabilities to tour and apply to housing, as well as obtain accommodations that help them maintain housing. Three in five fair housing complaints filed with HUD or state fair housing agencies were based on disability in 2022. Despite the persistently high number of disability-related complaints, researchers have been slow to develop methodologies to test for housing discrimination based on disability. Turner et al., in 2005, was the first team to develop such a methodology. Similar methods had been

used to test for other protected classes for decades prior. In addition to fair housing issues, many housing providers do not abide by equal opportunity requirements to attempt to match people with disabilities to accessible dwelling units, instead filling such units with nondisabled tenants.

The consequences of the lack of affordable and accessible housing are dire, creating more insecurity, less capacity to live independently and age in place, and overall worse outcomes for people with disabilities. Future research on this topic should include the impacts of the housing crisis on people of color with disabilities and gender minorities with disabilities. While the compounded effects of the intersections of oppression are understood among researchers and research has reported worse housing outcomes for many communities of color and gender minorities, the intersections of disability and other oppressed identities have not been sufficiently explored.

Swift action is needed at all levels of government and among social service agencies. Throughout this analysis, we have offered solutions that could ease different aspects of the housing crisis for people with disabilities. This work is intended to spur action and collaboration. Community Vision was established in 1989 to support people moving out of Oregon's state institutions, and we remain committed to empowering people with disabilities to live and engage in their communities.

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