

DISCRIMINATION



AGAINST PERSONS WITH DISABILITIES: Testing Guidance for Practitioners



U.S. Department of Housing
and Urban Development
Office of Policy Development
and Research

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AGAINST PERSONS WITH DISABILITIES TESTING GUIDANCE FOR PRACTITIONERS

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1. BACKGROUND AND INTRODUCTION

Housing discrimination against persons with disabilities has become an increasingly important issue in fair housing enforcement. Since 1988, when disability was added to the Fair Housing Act as an illegal basis for housing discrimination, the percentage of complaints filed with the United States Department of Housing and Urban Development (HUD) alleging disability discrimination has steadily risen.¹ Since 1993, complaints alleging disability discrimination have been the most or second most common type of fair housing complaint received by HUD.

Although the percentage of fair housing complaints based on disability is increasing, only slightly more than half of Americans know that it is illegal for landlords to refuse to make reasonable accommodation for persons with disabilities or to permit reasonable modification to a housing unit.² A number of fair housing and disability rights organizations have addressed disability discrimination by conducting investigations, filing complaints, and testing for violations of the Fair Housing Act's design and construction requirements on behalf of persons with disabilities. However, few organizations have conducted significant numbers of tests for other types of housing discrimination based on disability, and even fewer have used persons with disabilities as testers.

1.1 Disability Discrimination Study Overview

The U.S. Department of Housing and Urban Development (HUD) contracted with the Urban Institute (UI) to advance the state-of-the-art in testing to measure discrimination against persons with disabilities for both research and enforcement purposes. Because the population of persons with disabilities is diverse, and the challenges for effectively measuring discrimination significant, this project was conducted in two phases. The first, "exploratory" phase, was conducted during the spring and summer of 2003 in two metropolitan areas: Chicago, Illinois and Albuquerque, New Mexico. For this phase, the Urban Institute developed and implemented a wide variety of testing approaches, targeted to different groups of persons with disabilities and different forms of housing market discrimination.³ The size of the exploratory phase did not produce statistically representative measures of discrimination for any group, but did yield important lessons about how conventional testing methods can be adapted to effectively capture the kinds of discrimination that persons with disabilities experience when they search for rental housing.

¹ M. Schill, *The Fair Housing Amendments Act of 1988: the First Fifteen Years*, Presentation at the Fair Housing Policy and Research Forum, Washington, D.C, March 2004.

² M. Abravanel and M. Cunningham (2002). *How Much Do We Know: Public Awareness of the Nation's Fair Housing Laws*. Washington, D.C.: U.S. Department of Housing and Urban Development.

³ The scope of this study did not include discrimination through a failure to design and construct accessible housing.

Because of the scarcity of existing testing projects related to persons with disabilities for both research and enforcement purposes and the variety of ways in which housing discrimination based on disability may occur, a panel of experts (listed in Annex A), representing government and private fair housing experts and disability rights advocates and organizations, was convened to assist project staff in developing the DDS exploratory phase. With advice from the panel, UI developed 14 distinct testing scenarios targeting different categories of persons with disabilities and focusing on different aspects of housing discrimination. All 14 were implemented during the exploratory phase of DDS and are presented in table form in Annex B; discussion of the processes and outcomes of these scenarios are presented later in this report.

Based upon the lessons from the exploratory phase, a second, “pilot,” phase was designed to produce rigorous, statistically representative estimates of the incidence of discrimination against selected groups of persons with disabilities in a single metropolitan area: Chicago, Illinois. Specifically, this pilot phase focused on the treatment of persons who are deaf and use a TTY system to inquire about housing units for rent,⁴ and on the treatment of physically disabled persons using wheelchairs who visit rental properties in person to inquire about available units.⁵ These pilot tests were conducted from January to August 2004. The complete results of both phases of the DDS study are described in the HUD report, *Discrimination Against Persons with Disabilities: Barriers at Every Step*.⁶

DDS tests were conducted as part of a research project and were, therefore, not intended to be used as evidence in any type of enforcement proceeding. However, DDS incorporated design features that offered direct benefits to fair housing enforcement efforts. First, the Urban Institute provided all test files to HUD so that this information could be used to target housing providers for possible follow-up testing and investigation. Second, the exploratory phase of the project allowed experimentation with different testing approaches, scenarios, and types of rental housing to determine the most feasible ways to conduct disability discrimination testing. Finally, one of the key products from the project is this report, designed to provide guidance for practitioners.

⁴ Note that other people with hearing and communication disabilities may also rely on a TTY system so that findings from the analysis would apply to them, as well.

⁵ The pilot phase was designed to measure the extent to which persons with disabilities experience adverse treatment when they search for rental housing in the Chicago area. The question of when differential treatment warrants prosecution and the related question of whether sufficient evidence is available to prevail in court can only be resolved on a case-by-case basis, which might also consider other indicators of treatment than those reported here.

⁶ Combined, the research report and this report are the last in a series of reports that measure the level of discrimination in the United States. Previous reports showed the level of discrimination experienced by African Americans, Hispanics, Asians, and Native Americans when they inquired about a unit advertised for sale or rent. The series of studies is commonly referred to as the Housing Discrimination Study (HDS).

1.2 Purpose and Organization of the Report

This report draws upon both the exploratory and pilot phase experience of DDS and offers practical information to advocates, enforcement and regulatory agencies, and other interested parties about the possible uses of disability discrimination testing as an investigative tool to aid in the enforcement of the fair housing laws. This guide is not intended to be a definitive “how to” manual that describes a singular approach to conducting tests for discrimination against persons with disabilities. When testing is performed as part of an investigation, it is necessary to tailor the approach to the facts that are presented in a complaint or to focus on specific prohibited practices that are being investigated. As with all testing, a variety of testing strategies, test structures, and testing approaches can be appropriate depending upon the circumstances that prompt a test to be conducted. The purpose of this guide is to offer general guidance, insights, and resources for organizations interested in conducting disability discrimination testing.

It is important for fair housing practitioners to understand the protections that the Fair Housing Act offers persons with disabilities in order to develop testing strategies that will capture evidence about whether the law has been violated. Chapter 2 offers an examination of the law itself and the provisions that prohibit different types of discrimination against persons with disabilities. Chapter 3 provides a brief overview of the basic testing processes, with special focus on using persons with disabilities as testers. Chapter 4 provides a more detailed examination of lessons learned from both the exploratory and pilot phases of the project with regard to types of discrimination, site identification, and testing protocols, and results. Chapter 5 concludes by addressing test documentation and analysis and summarizing some of the enforcement options that are available when testing results indicate that discrimination may have occurred.

2. LEGAL OVERVIEW

When the Fair Housing Amendments Act was passed in 1988, adding disability discrimination to the kinds of discrimination in housing that the Act prohibited, Congress expressed its intent that people with disabilities should have the same rights to use and enjoy housing as do other persons, and that decision making about people with disabilities must be made on objective criteria and not unfounded assumptions:

The Fair Housing Amendments Act . . . is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.⁷

The 1988 amendments were designed to address the ways in which Congress found that discrimination against persons with disabilities manifests itself. This chapter provides background information on legal issues, including the statutory definitions of disability, the types of conduct that are illegal under federal law, including direct discrimination against persons with disabilities, unequal treatment, and refusal to allow reasonable modification or make reasonable accommodation for persons with disabilities.

2.1 Statutory Definitions of Disability

The Fair Housing Amendments Act prohibits discrimination based on handicap,⁸ defined as: 1) a physical or mental impairment which substantially limits one or more of such person's major life activities; 2) a record of having such an impairment; or 3) being regarded as having such an impairment; but such term does not include current, illegal use of or addiction to a

⁷ H.R. REP. NO. 100-711, at 18 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2179.

⁸ Although the Act uses the term "handicap", this report uses the terms "disability" and "people with disabilities" to reflect legislative changes made to other laws, and because "disability" is the preferred term.

controlled substance or addiction resulting from current illegal use of a controlled substance.⁹

2.2 Illegal Conduct Toward People with Disabilities

The Act prohibits a broad range of discriminatory practices directed at people who are disabled and people who are associated with people who are disabled. It covers disabled people who are themselves buyers or renters as well as people who live in or who are going to live in a unit with a disabled person, such as a live-in-aide. It also covers any person because of his or her association with someone who has a disability.¹⁰

The Act prohibits making or publishing statements that express a limitation directed at an individual because of disability.¹¹ HUD's Fair Housing Act regulations prohibit inquiries into the nature or severity of a person's disability and (with limited exceptions) whether a person has a disability.¹² The Fair Housing Act contains an exemption that states that a dwelling unit does not have to be made available to a person who is disabled but "whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 U.S.C. 3604(f)(9).

⁹ 42 U.S.C. 3602(h). HUD's regulations provide more interpretative guidance to describe the kinds of disabilities that may be covered by the law. As used in this definition:

(a) Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic 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

(2) 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, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) Has a record of such an 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.

(d) Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

¹⁰ 24 C.F.R. 100.202 (a) and (b).

¹¹ 42 U.S.C. 3604(c).

¹² 24 C.F.R. 100.202(c).

The Act broadly prohibits discrimination in housing because of disability, including failure or refusal to rent or a failure to negotiate for the sale or rental of housing,¹³ discrimination in the terms or conditions of housing or in facilities or services that are associated with housing,¹⁴ and false representations about whether a unit is available.¹⁵ In addition, the Act covers three additional types of discrimination that are unique to people with disabilities. Congress recognized that people with disabilities may require additional protection in order to enable them to live in, use, and enjoy housing in the same way that people without disabilities are able to use and enjoy housing. Congress provided that discrimination against disabled people includes not only more usual forms of discrimination, but also the failure by a landlord to take affirmative steps to ensure that disabled people enjoy the use of, or have access to, the facility to the same extent as non-disabled individuals.”¹⁶

- (1) The Act defines “discrimination,” with respect to people with disabilities, as including a failure or refusal to permit the structural modification of a property that is occupied or which will be occupied by a disabled person at that person’s expense.¹⁷
- (2) The Act also includes the failure or refusal to make reasonable accommodation in rules, policies, practices, and services if such an accommodation is necessary for the disabled person to benefit from housing.¹⁸ Under this portion of the law, the accommodation is provided and paid for by the entity that is making the accommodation, rather than by the tenant or the applicant.
- (3) The Act requires that new multifamily dwelling units, as defined in the law, must be designed and constructed to be accessible to and usable by people with disabilities.¹⁹

2.3 Direct Evidence of Discrimination

Violations of the Act toward people with disabilities may be manifested in a number of ways in a rental situation. There may be direct evidence of discrimination through a statement or advertisement. Direct limitations on availability, applying different terms or conditions to a disabled person, charging them more for rent or deposit, if done explicitly because of disability, violate the Act. For example, a landlord may not tell a blind applicant that she cannot rent a

¹³ 42 U.S.C. 3604(a).

¹⁴ 42 U.S.C. 3604(b).

¹⁵ 42 U.S.C. 3604(d).

¹⁶ H. R. Rep. No. 711, 100th Cong. 2nd Sess. 25, reprinted in 1988 U. S. Code Cong. Admin. News 2186.

¹⁷ 42 U.S.C. 3604(f)(3)(A).

¹⁸ 42 U.S.C. 3604(f)(3)(B).

¹⁹ 42 U.S.C. 3604(f)(3)(C).

second story unit because he is afraid she will fall down the steps. A landlord may not tell a person in a wheelchair that he must wait longer for an accessible unit instead of renting a non-accessible unit, if that is the applicant's choice. A landlord may not state in a notice to human services offices that he will not accept people with mental disabilities at a particular site. A landlord may not impose a lease requirement on a tenant just because she uses a wheelchair.²⁰ If a housing provider expresses an adverse decision, and ties the reason directly to disability, the Act's provisions regarding discriminatory statements will have been violated and often these discriminatory statements will be direct evidence of a Fair Housing Act violation. Finally, a housing provider may not ask a person with a disability questions about the nature of the disability or how severe it is.²¹

2.4 Unequal Treatment

People with disabilities, like other groups protected under the Fair Housing Act, should not be treated differently when seeking housing. Even if there is no explicit reference to disability, providing different treatment to people who have disabilities than to non-disabled people constitutes discrimination. Different treatment can occur at many points during an effort to seek housing. Examples include:

- A landlord may give applicants with disabilities different information about the availability of advertised housing units than the landlord may give to persons without disabilities.
- A housing provider may not offer persons with disabilities the same opportunities as persons without disabilities to inspect advertised or available units
- A rental agent may steer applicants with disabilities to different units, floors, or buildings than applicants without disabilities.
- A housing provider may charge or require different rental rates, deposits, application fees, types of insurance, and credit check charges to persons with disabilities than the housing provider charges to persons without disabilities.
- An agent discourages applicants with disabilities, by not returning telephone calls, making follow up contacts, inviting the applicants to complete an application, or offering waiting list opportunities while encouraging applicants without disabilities by these methods.

²⁰ HUD v. Country Manor Apartments, et al., 2001 WL 1132715 (HUDALJ), imposition of requirement that resident using motorized wheelchair obtain and pay for personal liability insurance violates the Fair Housing Act. The decision is also available at <http://www.hud.gov/offices/oalj/cases/fha/pdf/countrymanor.dec.pdf>.

²¹ 24 C.F.R. 100.202 (c).

2.5 Reasonable Modification

Discrimination that occurs in the area of structural modification is prohibited in different ways depending on whether there are federal funds involved in the housing. In private housing that does not receive any federal funding, the Fair Housing Act as well as state and local fair housing laws apply. Structural modification needed by a person with a disability must be made at the expense of the resident (or applicant) and the landlord's obligation is to permit any reasonable modification. This "reasonable modification" requirement obligates a landlord to grant permission for a structural modification, like the addition of a ramp or widening a door, and it requires that the tenant or prospective tenant pay for the modification.

HUD's regulations permit a housing provider to condition approval of a modification on assurances that the modification is done in a workmanlike manner and that any required permits for the work be obtained.²² In a rental property, a landlord may condition permission for the modification on an agreement by the resident to restore the interior of the unit, wear and tear excepted, but there is no obligation to restore a modification that is made to a public or common use area.²³ In most instances, a landlord may request a deposit as a condition of approval to cover the cost of the restoration of the inside of a unit to its condition before the modification was made, but must follow specified rules for maintaining the deposit in an escrow account and paying any accrued interest to the tenant.

Denials of reasonable modification occur in a variety of ways in private housing. Some of the most common denials include the complete refusal to permit the modification at all—whether it is for an exterior ramp to enter a unit, removal of a bathroom door to accommodate a wheelchair, or lowering kitchen cabinets. Violations also occur when landlords condition their approval of a modification in a way that is inconsistent with the Fair Housing Act's statutory and regulatory scheme. In some cases, a landlord might attempt to require an additional security deposit, require restoration of modifications that are in public areas—which the Act does not require—or impose insurance or other non-statutory requirements on the modification-seeker. Several litigated cases have been brought by applicants with disabilities who have sought permission for a modification that was denied and by residents where landlords sought to place conditions that went beyond the Act's requirements for approval of the modification.

In properties that are federally assisted or subsidized, the requirements are somewhat different. An additional law, Section 504 of the 1973 Rehabilitation Act, applies to recipients of federal financial assistance, and requires a housing provider that receives federal financial assistance to make and pay for requested structural changes to facilities as an accommodation to a person with a disability.²⁴

²² 24 C.F.R. 100.203(b).

²³ 42 U.S.C. 3604(f)(3)(A).

²⁴ 29 U.S.C. 793. HUD's regulations implementing Section 504 are found at 24 C.F.R. Part 8. In properties receiving federal financial assistance, a failure to provide and pay for requested structural changes needed as a

2.6 Reasonable Accommodation

Both the Fair Housing Act and Section 504 of the 1973 Rehabilitation Act require a housing provider to make reasonable accommodation to enable a person with a disability to use and enjoy housing.²⁵ The types of accommodation needed by people with disabilities are almost unlimited because each individual may need a different type of accommodation, or several types of accommodation, depending on his or her disability-related needs. Under the Act, reasonable accommodation must be made to rules, policies, practices, or services, when needed for an individual to fully utilize the housing.

One reasonable accommodation need that occurs frequently both in private and assisted housing is for an accessible parking space,²⁶ located in close proximity to a unit that is under consideration for rental. The need for accommodation might involve a request for a designated parking spot, a handicapped parking space, a space designed for van parking, or a space near a particular unit. Another common request for reasonable accommodation involves a request to permit an “assistance animal,” as an exception to usual “no pet” policies.²⁷ Assistance animals include guide dogs for persons with visual disabilities, as well as other types of assistance animals that provide services for people with other disabilities, including emotional support for persons with mental disabilities or whose disabilities result in chronic pain.²⁸

Other examples of exceptions to usual policies may include waiver of guest fees for a home health aide,²⁹ waiver of late payment charges and lease cancellation remedies for a

reasonable accommodation for a person’s disability would be a violation of Section 504 of the Rehabilitation Act of 1973, unless the requested structural changes constitute an undue financial and administrative burden or a fundamental alteration of the recipient’s program.

²⁵ See generally Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, May 17, 2004, found on line at <http://www.fairhousing.com/index.cfm?method=page.display&pageid=3607>, HTML and at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>, PDF.

²⁶ Shapiro v. Cadman Towers, 844 F. Supp. 116 (E.D.N.Y. 1994), aff’d 51 F. 3rd 328 (3rd Cir. 1995), waiver of first come, first served policy for parking space assignment required as a reasonable accommodation, Jankowski – Lee v. Cisneros, 91 F. 3rd 891 (7th Cir. 1996), assigned handicapped parking required as a reasonable accommodation.

²⁷ Animals used by persons with disabilities may also be referred to as “service animals,” “companion animals,” or “support animals,” depending on the function they serve.

²⁸ Majors v. Housing Authority of the County of DeKalb Georgia, 652 F.2d 454 (5th Cir, 1981) Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253 (D.OR 1998) waiver of no pet policy to accommodate hearing assistance animal, HUD v. Dutra, et al., 1996 WL 657690 (HUDALJ) available on line at <http://www.hud.gov/offices/oalj/cases/fha/pdf/dutra1.pdf> (cat provided pain therapy for symptoms of fibromyalgia and relieved emotional distress associated with pain from the disability), HUD v. Riverbay, (HUDALJ) available on line at <http://www.hud.gov/offices/oalj/cases/fha/pdf/riverbay.pdf>.

²⁹ United States v. California Mobile Home Park Management, 29 F.3d 1413 (9th Cir.1994).

person with a mental disability,³⁰ making an exception to a “no cosigner” rule,³¹ providing or using alternative forms of communications, such as communicating with deaf people through use of telecommunications devices or telephone relay systems, and waiver of an age policy to accommodate a young disabled resident in a senior housing project.³²

A reasonable accommodation need not be made if it would present an undue financial and administrative burden to the housing provider, or constitute a fundamental alteration to a program.³³ If the housing provider refuses to grant an accommodation the housing provider must discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations or without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. This interactive process where there is a discussion of the requested accommodation and possible alternatives is helpful to all involved, because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.³⁴

³⁰ Samuelson v. Mid-Atlantic Realty Company, 947 F. Supp. 756 (D.DE 1996).

³¹ Giebler v. M&B Associates, 343 F.3d 1143 (9th Cir. 2003).

³² Canady v. Prescott Canyon Estate Homeowners Association, 60 P.3d 231 (AZ App. 2002).

³³ HUD v. Ocean Sands, Inc., (HUDALJ) available on line at <http://www.hud.gov/offices/oalj/cases/fha/pdf/oceansn1.pdf>. See also Green and Dutra, *supra*, fn 27.

³⁴ Joint Statement, *supra*.

3. BASIC TESTING PROCEDURES FOR DISABILITY DISCRIMINATION

The Disability Discrimination Study began by assuming that the basic paired testing protocols that have been developed and applied in previous research testing studies could be adapted for discrimination against persons with disabilities. And indeed, the experience from this project indicates that paired testing protocols can be designed to effectively detect and measure differential treatment discrimination as well as refusals to allow reasonable modification or make reasonable accommodation.

The basic paired testing protocols used disabled and non-disabled tester partners who were matched on gender, age, and other personal characteristics and assigned comparable housing needs, income, family composition, and employment circumstances that qualified them both for a particular advertised housing unit.³⁵ Testers visited housing providers in turn to inquire about the availability of the advertised housing, and each systematically recorded the information and assistance he or she received. Test partners did not compare their experiences with one another or record any conclusions about differences in treatment; each simply reported the details of the treatment he or she experienced. Urban Institute analysts constructed a series of treatment indicators that were then used to rigorously compare the experiences of the testers.

Although this basic process was used for all DDS tests, there were a number of issues specific to disability discrimination testing that warranted a rethinking of the traditional protocols and a retooling of the existing forms, instructions, and other materials. It is important to note that not all testing for disability discrimination needs to include all of the elements that were implemented in the Urban Institute's research testing. For example, if a fair housing or disability rights organization receives a complaint about a housing provider who refused to permit a reasonable modification, a test may not be useful and a simple telephone call from the organization to the housing provider, explaining the right of the person with a disability to the reasonable modification may remedy the situation or provide further evidence of the failure to provide the requested reasonable modification. Alternatively, if a local organization wants to investigate whether a particular housing complex refused to rent to a wheelchair user, it may conduct a paired test. In other words, each testing situation is likely to call for a different set of design decisions, ranging from relatively simple to more complex.

In this chapter, we summarize the basic DDS testing protocols, with examples of some of the issues that prompted changes to them. We outline the three stages of the testing process: preparing to test, conducting the test, and following the test and conclude with a discussion on using persons with disabilities as testers. Chapter 4 provides a more detailed examination of the challenges, impacts, and lessons learned from the decisions that were made in the project, from the practitioner's perspective.

³⁵ One of the 14 exploratory scenarios was a non-paired test.

3.1 Preparing to Test

Although the actual conduct of a test causes people the most concern, the initial set up is equally important. As in all previous testing efforts, each and every test requires comprehensive preparation.

Analysis to consider (1) whether testing will provide useful evidence to confirm or refute that discrimination is occurring; (2) the type of testing that should be done; (3) careful matching of the tester and the person complaining about discrimination. For example, a person believes that she was denied an apartment because she uses a wheelchair and an assistance dog. She telephoned about an advertised vacancy and was invited to view the unit. However, when accompanied by her assistance dog, she arrived to view the unit, the landlord told her that the unit had just been rented. A non-disabled tester could telephone to determine whether the unit was still available. If the unit is still available, the testing organization should analyze whether the original applicant should seek housing again or if a paired tester should be used. A factor in this analysis would be the size of the housing provider. If the housing provider is a relatively small operation, a tester, who uses a wheelchair and a guide dog, may be too obvious and the test results unusable. It may be more appropriate, if housing is still available, for the original home seeker to attempt to reapply and view the unit. Alternatively, a tester, accompanied by an assistance dog, could be used if the housing provider runs a relatively large operation and it would not be unusual for two applicants with wheelchairs and assistance dogs to express an interest in a vacancy within a relatively short period of time. Careful consideration should be given to matching the tester's profile closely to the original complaining person. If the tester with a wheelchair does not have a guide dog and is offered a unit, it may be irrelevant to the original complaint of discrimination, if the motivation behind the denial of the unit was the housing provider's objection to a guide dog.

Availability of testers. Serious consideration should be given to whether a testing organization has a matching tester with the same or similar disability to the person who believes that she was discriminated against because of her disability. Testing organizations, that have not recruited and trained testers with disabilities, should exercise extreme caution when considering whether to ask non-disabled tester to pose as a person with a disability. While it may be possible for a non-disabled person to pose as disabled in a telephone test, it is hard to imagine that it would ever be possible during an in-person test. Just as testing organizations would not use white testers disguised as African-Americans to test for race discrimination, testing organizations should not use non-disabled testers disguised as disabled testers to test for disability discrimination.

Advance calls to the test site were made prior to each test being conducted. Usually made by the local test coordinator, these calls (a) determine whether an advertised unit is eligible and available to be tested and (b) ensure that persons conducting the test are assigned credible financial and personal characteristics. They typically gather information on unit

availability, rent price, location, and office hours. A couple of issues raised for DDS testing included:

- how much information should be gathered regarding building accessibility?
- how should advance callers ask about unit availability for subsidized rental units, many of whom have waiting lists?

Test assignments were developed for each tester and provided complete information on how a test should be conducted. This information usually includes the specifics of how the tests will proceed logistically (e.g., who will go first, what time will each tester call or visit the housing provider, who needs to make an appointment prior to a test visit), in addition to the personal and financial characteristics of the tester to match the characteristics of the person with a disability who believes that she has been denied housing because of her disability. These characteristics may, in limited instances, reflect the actual characteristics of the testers (such as their age), but are most often assigned by the test coordinator to match the characteristics of the person who believes that she was discriminated against. These assigned characteristics include the tester's occupation, household composition, current housing situation, and future housing needs. Housing related characteristics, such as household composition and housing needs are developed based on the actual advertised unit being tested.

Regarding DDS research testing specifically, we had to consider the following, among other things:

- what role will the tester be assigned (representing him or herself, as proxy for a disabled or non-disabled person, as a companion to a tester)?
- how should the disabled tester approach the test site (with or without a guide dog, with or without a companion, with or without a Sign Language interpreter)?
- how could a disabled tester be assigned a credible story to convey a non-obvious disability (e.g., mental illness)?
- should unit modifications be assigned or should testers make this determination once on site?
- should the random order of test visits be changed so that building/unit accessibility can first be determined?

Briefing testers is an extremely important and, often, overlooked part of the testing process. Testers meet individually and in-person with the test coordinator to receive the test assignment form and to be given a chance to discuss the particulars of each test. Often testers are unclear about where or when a test is to be conducted and may need assistance with memorizing their assigned characteristics. For this reason, during the DDS research testing,

testers were given only one test assignment at a time during briefings. The DDS researchers expressed a few concerns, including:

- could testers be given more than one test assignment at a time for phone tests?
- how can test coordinators better accommodate disabled testers (by conducting briefings at the tester's home, work, or a location convenient to public transportation or by telephone)?

3.2 Conducting the Test

Once testers have been briefed, they are ready to conduct the test. Testers are always encouraged to review their test instructions before approaching the housing provider, whether by telephone or in-person. This review is especially important if testers are conducting different types of tests during the same time period and can be beneficial to even the most seasoned tester.

In-Person testing in DDS was made difficult because of the varying scenarios for each of the 14 types of test conducted in the project. So for each type of test, we developed a specific set of instructions based on the particular requirements of each (A complete set of test instructions for the exploratory phase can be found in Annex B; pilot phase instructions can be found in Annex C). However, we followed the basic testing process used in previous studies.

Testers inquire about the advertised rental housing and any other available housing that met their needs. They ask about rent price, date availability, lease length, deposit and other fees, and application process. They are also required to be attentive to any discussion regarding waiting lists, incentives, and follow-up arrangements, among other things, and to take notes during the test. In addition, for in-person tests, testers were required to ask to inspect any available units. As expected, many issues specific to disability testing arose, including:

- how can site accessibility best be assessed for testing purposes?
- how should disabled testers proceed if the rental unit or other parts of the test site are inaccessible?
- how should disabled testers frame their requests for accommodation and modification?
- if disabled testers are not able to inspect units, what requests for accommodation and modification should be made?
- how should disabled testers disclose their disability (such as a mental illness), if not obvious?
- what should be the role of a disabled tester's companion (if one is assigned)?
- do any protocols need to be adapted to accommodate certain disabled testers?

Appointment calls need to be made for certain in-person tests and are required when (a) the location of the advertised housing is not known; (b) the advertisement indicates that an appointment is required, and an advance call has disclosed that an appointment is required. One important issue we had to consider was how appointment calls would be handled for testers with communication disabilities.

Phone tests have never been conducted for any of the previous Housing Discrimination Study (HDS) phases. So we began with the in-person protocols (as outlined above) and found that they worked fairly well. However, we did find a number of issues that had to be worked out, including:

- should different types of information be requested from housing providers (e.g., no inspection requests)?
- how should testers handle requests from housing providers regarding follow-up?
- how should testers handle the use of answering machines, voicemail, or other screening devices?

Inserting Disability into Tests. When a tester does not have a visible disability or when telephone testing is conducted, a testing strategy must include some way of communicating the fact that there is a disability, since the law applies to people who have disabilities that are known to a housing provider. To ensure that testers were identifiable as disabled during in-person tests, DDS testers were recruited in specific categories—such as wheelchair users, blind or substantially vision impaired, deaf or substantially hearing impaired, or having a mental disability that fit into the identified categories. The expert panel recommended that the test assignment form provide testers with a response to offer a housing provider should they be asked the reason for their disability and a range of generic answers was provided, such as sports injury or illness.³⁶

With non-obvious disabilities, or when telephone testing was conducted so that a disability was not apparent, the project identified specific ways to convey disability status. Physical disabilities posed less of a challenge. In phone testing, testers simply would identify themselves as the disability type in question. A tester might say, “I use a wheelchair” or “I have difficulty in walking long distances,” for handicapped parking inquiries. “What does the building look like, I’m blind,” or, if the tester is a proxy caller, “I’m calling on behalf of my sister, who’s deaf” or “I’m calling for one of my clients, a man with a mental disability.” In in-person testing with a tester who has an invisible physical disability, a tester might say, “can we drive to the unit? I have a disability and I can’t walk long distances.” Such comments adequately convey that the individual has a disability.

³⁶ This was seen as especially important for young, male testers in wheelchairs whose disability might be incorrectly assumed by some housing providers to have been the result of gang or drug related activity.

Conveying a mental disability poses a different challenge. Because many people with mental disabilities choose not to disclose their disability, it could appear awkward for a tester to offer such a disclosure when first meeting with a housing agent. The project identified several ways to convey a mental disability—by describing a recent release from a treatment facility or a psychiatric hospital readily recognizable as such, by describing manifestations of a mental disability in the context of requesting an accommodation (“I have short term memory loss and may ask for a reminder to pay the rent”). Persons with mental disabilities and their advocates were a good source of suggestions about how they would prefer to introduce their disabilities in a conversation.

3.3 Following the Test

What occurs following a test is certainly as important as conducting it. Tests can be rendered unusable simply because testers fail to accurately and/or completely report what happened during the test or because test coordinators fail to require testers to do so. Problems can also arise when testers fail to inform test coordinators about deviations from test protocols or other problems that occurred during a test.

Test report forms were required to be completed immediately following a test so that testers would be able to recall as much detail as possible. In addition to completing a set of standard reporting forms (that were different for telephone and in-person tests), testers were also required to complete a narrative report that documented, in detail, everything that happened on the test. And although they were developed for research testing, the test report forms used in DDS can be adapted for enforcement purposes. However, they are only examples of the types of reporting forms that might be used when conducting disability discrimination tests. They should be modified by the user, as needed (a complete set of report forms for the pilot phase can be found in Annex D). A number of issues surrounding test report forms surfaced during development, including:

- how can forms be adapted so that they can be used for more than one type of test?
- in what formats would the report forms need to be developed (e.g., Braille, large print, scannable for specialized reading equipment)?
- what assistance may need to be provided for some disabled testers to complete test report forms?
- how could reporting requirements be adapted for some disabled persons who may not be able to write (e.g., allowing tape recorded narratives)?

Debriefing a tester after the test is completed is also a key part of the testing process. In DDS, testers met with their test coordinator within 24 hours of their test, so that their experiences would be fresh. Test coordinators collected and reviewed the tester’s report forms in the tester’s presence, so that any issues of clarity or completeness could be addressed

immediately. Test Coordinators also reviewed the tester's narrative at this time and compared it to the tester's other report forms, noting any incongruities between them. In the DDS pilot phase, test coordinators were able to review the tester's report and narrative forms on-line immediately following the test and often before the debriefing session; this saved a considerable amount of the tester's time. The debriefing is also the time to allow testers to discuss any problems that occurred on the test or to report any deviations from test protocols. As with tester briefing, the primary concern for tester debriefing was how to best accommodate disabled testers during this process.

Follow-up contact from a housing provider is an important test indicator. As in previous testing studies, DDS testers were required to report if they received any phone calls or postal mail following a test. This follow-up was usually received and recorded by the test coordinator because voice mailboxes were used in place of testers' real phone numbers. Occasionally, however, a housing provider did send follow-up postal mail to thank the tester or provide further information. On extremely rare occasions, the housing provider may have called a tester directly if they were able to track down their home telephone number. Although we did adhere to the basic follow-up contact procedures used in previous testing, we found that we had additional issues to consider for disability testing. These included:

- if a disabled tester does not get a clear answer to the request for reasonable accommodation or unit modification, what additional follow-up should be conducted?
- how much time should be allowed for housing providers to follow-up, before tester-initiated follow-up commences?
- how many tester-initiated calls must be attempted in an effort to get a conclusive answer to the request for reasonable accommodation or unit modification?

The basic testing protocols discussed above were used in DDS and conducted by the Urban Institute for research purposes. The forms and other materials provided in this report are not intended to limit or restrict the performance of other disability discrimination testing or establish a legal standard for such testing that may be conducted. Other test forms and protocols used for housing discrimination testing may be just as effective as those provided in this guide. For further information, a list of fair housing testing resources is provided in Annex H.

3.4 Persons with Disabilities as Testers

All but one of the DDS testing protocols relied upon persons with disabilities to serve as testers, rather than having non-disabled people pose as proxies or pretend to have disabilities.³⁷ Some members of the expert advisory panel argued strongly against using nondisabled persons

³⁷ One scenario used proxy testers to make telephone inquiries on behalf of a person with a cognitive disability.

as proxies for persons with disabilities in any testing, on the principle that persons with disabilities are capable of participating effectively in research about the circumstances they face. Other members raised concerns, however, about the feasibility of recruiting sufficient numbers of testers with disabilities who could nonetheless pose effectively as homeseekers, and about the potentially damaging emotional impact that testing might have on persons with mental disabilities. We found, however, that persons with disabilities (including persons who are mentally ill or developmentally disabled) can serve effectively as testers on their own behalf. With proper planning for accommodation, persons with disabilities fare as well as any other testers who participate in discrimination testing studies.

Recruitment, Selection, and Retention. The Urban Institute generally contracts with local organizations to recruit and manage testers for discrimination studies. Urban Institute staff train the testers to ensure that testing protocols are consistently implemented. Although the groups participating in this project already had a pool of testers with disabilities available, many organizations that conduct testing activities do not have testers with a range of disabilities readily available to conduct tests.

Testers with disabilities can be recruited from many of the same sources that are typically used to locate other testers—social and religious organizations, associates, advertisements, and other similar places. One useful place to recruit testers who have disabilities is a local Center for Independent Living, which typically has clients and employees with a variety of disabilities. Others are service organizations that have adult members or participants who represent particular types of disabilities—groups like Easter Seals, United Cerebral Palsy, or the Muscular Dystrophy Association. A third are local groups that provide support, advocacy, or social services to persons with disabilities, such as state Protection and Public Advocacy or legal services groups whose clients may have disabilities, or Developmental Disabilities Councils, nutrition centers, or adult day care centers.

For this project, prospective testers were asked to provide information about their actual personal and financial characteristics, including employment (both past and present), income, household members, testing experience, and availability. Testers also provided information about what type of disability they have (e.g., low vision, physical disability and use a wheelchair, deaf) and any need for reasonable accommodation during the training or testing process. This information is useful in planning and conducting training and testing efficiently.

In addition, the actual characteristics of the testers may require care in selection of testers for a particular test. Specifically, some critics of testing research have argued that observed differences in treatment may be attributable to differences in partners' income or education, rather than differences in race or other protected characteristics (although HDS2000 analysis found no such correlation). It may be necessary to recruit and train a large pool of disabled and non-disabled testers to avoid the insertion of non-disability variables like race, national origin, or age into the test. It may also be necessary to recruit testers with a variety of

disabilities, so that use of particular testers will not insert disability related variables, like communication issues, or the relative severity of a disability, into a particular test.

Tester retention is always a problem in any discrimination testing project, and disability testing needs consideration of additional issues. Testers with disabilities may encounter more impediments in conducting a long term, or repeated, testing project. Transportation issues, health problems, and the unique challenges of living with a disability may cause a high level of tester attrition. Additional recruitment and training may be needed on an ongoing basis.

Reasonable Accommodation for Testers. For DDS, the local testing organization identified any reasonable accommodation that prospective testers would need to participate in the project and documented these needs on each individual's tester application form. Transportation issues were a significant concern during the project. Testers with disabilities who did not have access to private transportation had to use various forms of public and paid transportation to conduct in-person tests. In some instances, the project provided drivers to take testers to sites that were not served by public transportation. Use of taxicabs or private transportation added additional costs to the project. Use of paratransit services and public transportation resulted in occasional delays in arrival times, which sometimes required adjustments to the arrival time for another tester. When transportation is used that might result in delays, testing should be scheduled well in advance of office closing hours. Use of testers who have their own transportation, or who can successfully use public transportation to conduct tests, will avoid some of the scheduling and timing issues.

Some testers with vision or other disabilities may need special accommodation in order to use training materials or to complete test report forms. Such an accommodation could include computer-based systems that "read" written material, providing testers with all written materials in Braille, or providing a reader or writer for the person with a disability. A number of testers in this project used assistance from project staff, aides, or others to complete test report forms. Testers with hearing impairments might need sign language interpretation for training or testing activities.

Some testers may need arrangements for other types of accommodation. Testers who need personal care attendants during travel or testing periods may need assistance in locating or paying for attendants that are used during the course of training or testing. The exploratory phase of this project conducted a small number of tests with cognitively disabled testers who were accompanied by a companion who, while not a tester, was available to provide support and assistance during the test. An assessment of this process indicated that some cognitively disabled testers needed assistance in remembering and recording the test experiences. For the purposes of DDS, it was concluded that companions should be used in such circumstances, but should not engage the housing provider directly in discussions or speak for the person with a disability.

Companions for several of the cognitively disabled and mentally disabled testers used in this project received training on the testing process and, while not participating directly in the

discussion between the person with a disability and the housing provider, were available to “cue” the tester on points that the tester asks about during the test. For example, if the tester forgot the date by which he needed to move, he turned to his companion who would remind him of his assigned move date, saying something such as, “you told me you needed to move by the end of June.” The tester then turned back to the housing provider and said, “Oh, yes, that’s right; I need the apartment by the end of June.” In addition to accompanying the disabled tester on the test, these companions participated in the documentation of the test and discussions about the test with project staff.

Lengthy training sessions may need to be shortened, simplified, or repeated for testers with mental illnesses or cognitive disabilities. In addition, organizations should consider conducting smaller, less lengthy training sessions if testing will include multiple types of disabilities. Smaller group trainings could focus on specific methodologies or be conducted for different groups of persons with disabilities who may have specific accommodation needs, such as Sign Language interpretation.

Proxy Testers. Many testing organizations use proxy testers in one of two ways—people who are not disabled pose as having a disability, or pose as a relative or an associate of a person with a disability. Proxy testers present some advantages and some disadvantages. Proxy testers who pose as people with disabilities sometimes are asked questions or have to present themselves in ways that are unfamiliar to them. In brief telephone tests this need not be a significant problem. However, DDS did not consider using non-disabled persons to pose as persons with disabilities for purposes of testing, because the risk of detection was high and because the testing organizations were able to recruit and train adequate numbers of people with disabilities as testers.

Proxy testers may also be persons who pose as someone associated with a person with a disability and may include family members, friends, case managers, discharge planners, social workers, or employees of halfway houses or transitional housing. Proxy testers have a significant advantage in some testing contexts. For example, a non-disabled person can easily see an entire site that is inaccessible and which cannot be visited by a person with a mobility impairment. These sorts of proxy testers are also relatively free from the risk of detection in occasional testing, since it is not uncommon for friends or associates to look for housing for another person, especially if they indicate that the disabled person is moving in from out of town, or being released from a treatment facility. They may be able to raise the disability issue relatively easily in a short conversation and be credible in doing so. There may be disadvantages to using proxy testers in this way, however. Conducting a number of tests with proxy testers may also increase the risk of detection, especially in smaller markets or with repeated tests.

4. DESIGNING AND CONDUCTING TESTS OF DISABILITY DISCRIMINATION

Testing for discrimination against persons with disabilities can be challenging because different types of disabilities call for different testing strategies and because of the potential for capturing not only differential treatment but also denial of reasonable accommodation and/or reasonable modification. In the Disability Discrimination Study, the Urban Institute explored the feasibility and effectiveness of multiple testing strategies, targeted to different categories of persons with disabilities, and focused on different aspects of housing discrimination. This chapter discusses lessons learned about important challenges involved in testing for housing discrimination based on disability.³⁸

4.1 Designing Tests to Detect Discrimination Based on Different Types of Disabilities

Different types of disabilities present different challenges for designing and conducting tests. In DDS, the Urban Institute developed and implemented tests for discrimination against persons with mental illness, persons with cognitive or developmental disabilities, persons who are deaf or hard of hearing, persons who are blind, and persons with mobility impairments. This experience can provide a starting point for local organizations as they tailor testing strategies to particular types of disabilities and to particular discrimination issues arising from complaints or other information about local market practices.

Testing for Discrimination against Persons with Mental Disabilities. DDS experimented with three testing scenarios for measuring discrimination against persons with mental disabilities. Two of these scenarios involved persons with mental illness and/or cognitive disabilities acting as testers, while one relied upon non-disabled testers who posed as proxies for disabled homeseekers.

One of the central challenges for this testing was how the disabled tester would disclose the fact of his or her mental illness relatively early, but in a credible way. The expert advisors generally agreed that most persons with mental illness would only disclose this fact for a specific reason. Testers needing a credible reason to reveal such a disability might find one in a scenario involving an impending release from a group home for persons with mental illness (and subsequent lack of rental history). Therefore, in each of these tests, the disabled tester visited a rental office in person, indicating that he or she had a mental illness, would soon be released from a group home and therefore had no rental history or current landlord references. The non-disabled partner also indicated a lack of rental history for some credible reason, such as having just graduated from college or having been living abroad. As discussed in Chapter 3, this is just one example of a credible strategy for ensuring that housing providers are aware of a tester's mental disability.

³⁸ A complete set of protocols and tester instructions for the exploratory phase can be found in Annex B.

The project also experimented with the use of non-disabled proxies posing as case-workers inquiring on behalf of disabled homeseekers. Specifically, a non-disabled person posing as the case-worker for a developmentally or cognitively disabled person would telephone a rental housing provider to inquire about housing availability for his or her client. In these tests, the non-disabled homeseeker was also represented by a telephone proxy. For example, the caller might say “my brother will be moving here in a month, and I’m checking out possible apartments for him.” This approach represents a feasible strategy for avoiding some of the challenges of working with testers who have mental disabilities. However, it loses some of the narrative power of conventional paired testing, and because it does not rely upon persons with disabilities to act as testers on their own behalf, may be objectionable to some advocacy organizations.

Testing for Discrimination Against Persons Who Are Deaf or Hard of Hearing. DDS implemented two testing scenarios that focused on discrimination against homeseekers who were deaf or hard of hearing. The first scenario focused on differential treatment against persons with hearing or communications disabilities who rely on TTY telephone services. Specifically, the disabled tester used a TTY telephone and relay operator to call a rental agent to inquire about available units. The non-disabled tester made a comparable inquiry by telephone.

A TTY system connects a deaf or hard of hearing person, or person with a severe speech impediment, through a TTY (teletypewriter), to an operator who also has a TTY. In these tests, the tester types a message to a housing provider that is received by the operator as printed words on the TTY. The relay operator calls the housing provider by phone, explains the TTY process, and reads the tester’s typed message to the housing provider. As the housing provider responds verbally, the operator types the response into the TTY, which is received by the tester, who then types a response. A print record is made of all TTY conversations, which is incorporated into the test report form as a complete narrative of the call. The non-disabled tester also placed a phone call to the housing provider, asking about the same advertised unit, and conducting a full telephone test, without, of course, an intermediary. The experiences of the two testers were compared on all of the indicators for differential treatment.

TTY communications are used routinely by people with disabilities to place business and personal phone calls and are becoming even easier to access through personal computers and hand-held devices. A refusal to deal with a person who uses an alternative form of communication is a direct form of discrimination; providing information that is different in content, quality, or quantity to a caller who uses a TTY in comparison to a caller who communicates verbally may also be considered unequal treatment.

TTY testing confronted one challenge: in some cases rental sites used answering machines or other screening devices to determine whether to accept a call. The project instructed the deaf tester to have the operator say that the call was about the apartment ad, or

similar statements. When answering machines were used, TTY operators were instructed by the tester to leave a message requesting a return call through the operator.

The project found the TTY testing scenario to be an inexpensive and effective testing strategy. The results were reliably captured through an independently produced record of the conversation for half of each tester pair, which avoids controversy over what was said by whom for at least that half of the test. This type of testing can be completed quite quickly and cost-effectively, and can span a very wide geographic area, because it does not require testers to travel around the metropolitan area to meet with housing providers in person. Moreover, relay operators provide customers with a verbatim report on each telephone call, providing an independent narrative of what occurred in the disabled portion of each test.

An alternative strategy involved in-person visits by testers who were deaf or hard of hearing. A deaf tester who also had difficulty speaking understandably would visit a rental office in person to inquire about available housing. He or she used notes to communicate with the landlord or rental agent. The non-disabled tester also visited in person, simply making the standard rental housing inquiries. This approach proved to be both feasible and credible. However, deaf testers were not able to access rental housing that contained an intercom/buzzer entry system. In addition, the note-writing process was often time consuming and awkward, both for housing providers and testers. An alternative approach, that was not implemented, would be to send testers who are deaf or hard of hearing to meet with housing providers accompanied by a sign language interpreter. Although this would raise the cost of testing, it would ensure that differences in treatment between disabled and non-disabled testers could be clearly attributed to disability, rather than to the time-consuming nature of the note-writing process.

When a deaf tester called the housing provider using the TTY service, the call was answered by an answering machine. The relay operator left a message saying that he was interested in a two-bedroom apartment and asking the housing provider to call the tester back. The tester then asked the relay operator to call a second number that was listed in the advertisement. This time, the call was answered by a man. The tester typed “good morning, my name is _____ and I am interested in the two-bedroom apartment. Is it available?” As he was typing this message, the relay operator was explaining to the housing provider that the call was being placed by a deaf person using a relay service. The housing provider then hung up. Because the relay operator wasn’t sure if the housing provider had hung up or if the service had been disconnected, the tester asked her to call again and to explain that he was deaf and that he was calling about the apartment for rent. As the relay operator was speaking to the housing provider, the housing provider said, “Hey, stop calling me, son of a bitch, will you?” and hung up again.

Testing for Discrimination Against Persons Who Are Blind or Visually Impaired. The project implemented two in-person testing scenarios to capture discrimination against homeseekers who are blind or visually impaired. The first focused on discrimination against persons using assistance animals. A tester who was blind and accompanied by a guide dog

visited a rental office in person to inquire about available housing. Testers visited apartments that both had and did not have a “no pets policy” and the blind tester asked specifically about any restrictions on the guide dog regardless of policy. The non-disabled tester also visited in person, making the standard rental housing inquiries, without any mention of a pet. This experience indicated that the approach is clearly feasible, and that it can effectively capture both differential treatment on the basis of disability and refusal to make a reasonable accommodation. However, this approach may need follow-up inquiries to obtain a definitive answer about limitations or fees associated with the assistance animal. In addition, testers sometimes had difficulty finding the front door or gaining access to rental properties or management offices, and sometimes had to seek assistance from bystanders. Therefore, it might make sense to send testers to their assignments with someone who would provide transportation and will help them gain entrance, but who would not accompany them during the test.

The second scenario in this category also focused on both differential treatment and refusal to make reasonable accommodation, but eliminated the companion animal as a factor. Specifically, a tester who was blind or visually impaired visited a rental office in person to inquire about the availability of housing. At the end of the visit, he or she asked the agent to read the application form aloud so that he or she would know what information and documentation would be needed in order to complete an application.³⁹ The non-disabled tester also visited in person, making the standard rental housing inquiries and asking to review the application form at the end of the visit (if it had not already been offered).

Testing for Discrimination Against Persons with Mobility Impairments. Testing for discrimination against persons with mobility impairments is more complex and challenging than one might at first think, because the accessibility of rental properties varies (depending in part upon structure type and when they were built), and because the kinds of modification a disabled homeseeker might reasonably request depends upon the characteristics of the property and the unit. DDS experimented with two testing scenarios designed to capture different forms of discrimination against persons with mobility impairments who are seeking housing in the rental market. The first scenario involved in-person testing by individuals using wheelchairs, in order to capture both differential treatment and refusal to permit reasonable unit modification. Both the wheelchair user and the nondisabled tester visited rental properties to inquire about available units. Once this basic inquiry was complete, the tester with a disability also inquired about modification and/or accommodation. Issues associated with the accessibility of rental properties, reasonable modification requests, and reasonable accommodation requests are all discussed further below.

³⁹ If written application forms were not used by a sampled housing provider, testers asked for a list of what information and documentation they would need to provide, and no data on reasonable accommodations was recorded.

differential treatment, reasonable accommodation, or reasonable modification, it may be necessary to use proxy testers for properties that are not accessible.

DDS sought to test the broadest range of rental housing options, but in order to include older housing—which was more likely to be inaccessible—a strategy was needed to identify inaccessible properties prior to conducting tests. Therefore, project staff used a drive-by survey to determine whether a property was accessible, before using it as a test site. A short accessibility checklist was developed to document site accessibility, which staff determined, to the extent possible, after driving or walking by a test site (a copy of the accessibility checklist is attached as Annex E). If a building was found to be inaccessible, the site was not included in the study sample.

For enforcement testing, information collected through use of such a checklist could potentially be used for follow-up design and construction testing or for other enforcement activities. Information about external barriers where a modification may be appropriately requested may also be available from potential complainants who are familiar with the property. Limited reasonable modification testing using physically disabled testers to recently constructed multifamily housing may also be considered, but even some of that housing may not necessarily be accessible, either because the property does not comply with the requirements or because it contains multistory townhouses, which are not covered by the Fair Housing Act's design and construction requirements. Some of these issues can be avoided if testing is designed to identify design and construction violations in addition to testing for other forms of disability discrimination. If a property is covered by design and construction requirements, test report forms could be constructed that would include accessibility features. If design and construction testing is merged into tests checking for other forms of disability discrimination, however, it still may be necessary for non-disabled testers to evaluate the property for compliance, since non-compliant features may block access for disabled testers.

Subsidized Housing Sites. Although the project focused primarily on unsubsidized, private market housing, it also explored the feasibility of testing for discrimination by federally subsidized housing providers. In some cases, federal laws place more obligations on federally funded housing than on conventional private housing. However, targeting subsidized sites may require some adaptations to testing strategies, in order to meet eligibility requirements, adhere to special application procedures, or handle the likelihood of waiting lists for available units.

Because a substantial proportion of persons with disabilities have low- to moderate-incomes, rental testing for discrimination based on disability may focus on housing developed under the federal Low-Income Housing Tax Credit Program or other federal subsidy programs that require successful applicants to have incomes under specified limits. These developments are often advertised in local sources, sometimes with an indication of income eligibility limits. However, income targets vary by site and funding source, and the number of vacancies per income group might be difficult to ascertain. Should tester profiles not meet the qualifications for units that are vacant at the time of the test, income factors could result in differential

treatment without consideration of disability. In such a situation, issues of income eligibility could cloud the tests, making the data on some tests unusable for consideration of disability discrimination.

In some communities, most of the subsidized rental inventory is public housing and/or privately owned HUD- or USDA-subsidized developments. The Fair Housing Act imposes the same obligations on these developments as on private market housing, but in addition, HUD-subsidized housing providers have affirmative obligations to make their programs accessible and available to persons with disabilities. Many such properties have some fully accessible units. Because of the application of Section 504 of the 1973 Rehabilitation Act, subsidized housing providers are obligated to make and pay for structural modification, unlike the obligation of private housing providers to permit reasonable modification made and paid for by an occupant or potential occupant. Testing may be designed to explicitly target subsidized housing, focusing exclusively on the experiences persons with disabilities face when they apply to live in these developments. Whether a tester is given a priority for a fully accessible unit or permitted to move into a unit that is not accessible, with modification paid for and provided by the housing provider might require a different testing methodology than that used in the private housing market.

Because the process of applying for subsidized housing is so different from the process of inquiring about the availability of housing in the private market, special considerations apply. The first is the identification of the type of subsidized housing to include in the study: public housing, elderly and disabled public housing, Section 8 developments, rural rental housing funded by USDA, etc. While each of these segments of the subsidized housing market present certain challenges in common, they also present unique challenges that might not allow for one approach to work across HUD-subsidized properties, such as differences in eligibility criteria or differences in the way in which a prospective tenant applies for housing.

Applicants for some subsidized housing need to be certified as eligible for the housing through a process that may not occur on site. Developing tester profiles that would meet eligibility criteria is not difficult once such criteria are known; however, receiving certification of eligibility necessitates working with the certifying agency. One way to establish income limits and other constraints is through advance phone calls to a targeted property. Federal agencies, such as HUD's Office of Housing, may be able to provide information about whether a particular property is subsidized. A recent addition to HUD's website is an updated list of low income tax credit properties listed by geographic location and street address.⁴¹

⁴¹ A searchable database permitting identification of projects funded through the low income tax credit program and placed into service through 2001 is available at <http://lihtc.huduser.org>. It permits searches by city or county, by whether the property is newly constructed, a rehab project, or an existing property, by street address, and by the number of low income units provided at a site. The site also includes general information about income eligibility standards.

Many subsidized housing developments have long waiting lists for units and that fact can be determined through advance calls. Testing strategies can be adapted to measure access to the waiting list rather than immediate availability of housing. Requests for accommodation and modification can still be made and the responses examined, even if a unit is not currently available. Unequal treatment that disadvantages people with disabilities may be captured on issues such as waiting list access, accessibility to offices and application assistance, treatment of people with disabilities, and the type and location of units identified during the process.

Housing with restricted eligibility. Typical housing choices for people with disabilities include housing with limited occupancy requirements. Such housing may range from rental housing that require residents to have a particular disability, such as chronic mental illness or a physical disability, in order to live in the property, to age-restricted housing where successful applicants must be 55 years of age or older, 62 or older, or meet other age requirements. These factors must be identified before a test is conducted, so tester profiles match the characteristics that are required for admission.

An issue that is receiving increased attention in fair housing cases occurs when retirement housing, nursing homes, senior housing, or other similar types of housing apply policies or practices which discriminate against otherwise eligible residents or applicants because they have or may have a disability.⁴² Manifestations of this issue are the imposition of a requirement that people with disabilities be capable of living independently, a requirement that residents or applicants not use a wheelchair, or requirements that residents or applicants not have a disability.

In the exploratory phase of the project, some tests were conducted of elderly-only housing. The project encountered some difficulty with locating sufficient numbers of properties that served the elderly, including low-income tax credit properties, that advertised in local media outlets and that did not have waiting lists or certification procedures, which would make testing difficult. In some communities this may not be a problem. In addition, many of the rental properties that housed seniors were subsidized housing, or, in one market, mobile homes. Mobile homes were not included in the housing tested for this project. Private market apartment rental housing for seniors was available only in limited numbers and was often tied to the provision of services, and for a variety of reasons, that type of housing was also not tested for this project. Advance calls were used to identify age, income, and other restrictions in advance of the tests to determine appropriateness for use as a test site.

⁴² For a comprehensive overview of the rights of seniors with disabilities, see R. Schwemm and M. Allen, *For the Rest of Their Lives: Seniors and the Fair Housing Act*, 90 Iowa L. Rev. 121 (2004). See "Florida Man Staves Off Eviction," <http://www.bazelon.org/newsroom/11-10-03ffairhousing.htm> and see M. Allen, "Preserving Elders' Housing Rights", Trial Magazine, <http://www.bazelon.org/issues/housing/articles/10-03trial.htm>. See also, Fact Sheet, "The Illegality of Independent Living Requirements in Rental Housing, Assisted Living Centers and Continuing Care Retirement Communities," Bazelon Mental Health Law Center, <http://www.bazelon.org/issues/housing/infosheets/independentliving.htm>.

challenge. For individual tests, this will not be a significant burden, but for audits or multiple tests using testers who do not have personal transportation resources, special arrangements, for example, a contract with transportation services like private paratransit or taxicabs, may be necessary. Payment for transportation expenses, such as taxis or paratransit transport or driver reimbursement, could be a significant additional cost in a testing project.

As discussed earlier, if testing is conducted across the rental market, a significant number of test sites may be inaccessible to testers with physical disabilities. Other challenges to conducting in-person tests faced persons who had disabilities other than mobility impairments. Blind testers, who went on test visits unaccompanied (except for their guide dog), sometimes had difficulty finding the test site. Use of a companion or driver who could locate the site and assist with access into a property may be necessary for some tests. Deaf testers also faced difficulties accessing apartment buildings with intercom and buzzer entry systems. In addition, when calls for appointments had to be made prior to a site visit, the local test coordinator or other staff member had to act on behalf of the tester, posing as a friend or family member (but without disclosing the tester's disability) in order to set those appointments up.

Telephone Testing. In disability testing, telephone testing can be used if the fact of disability is inserted into the phone inquiry or if it is apparent from the content of the call. Telephone testing was successfully used in two paired scenarios in DDS. In one, testers posed as case workers for persons with cognitive disabilities and were matched with a non-disabled person calling on behalf of a friend. We found this scenario to be realistic in that it is common for preliminary information about rental units to come through an initial telephone call, and a case worker might realistically make such a call for information. The second telephone test scenario was a matched pair in which deaf testers called the housing providers using a TTY/relay operator system while their tester partner made the same call using a conventional telephone.

Telephone testing has some significant advantages over in-person testing. A wider geographic area can be covered and multiple tests can be conducted during a short time period, making it relatively inexpensive. However, because telephone calls are generally brief, they do not offer the opportunity to capture as much information about differential treatment as in person tests. For example, tests conducted over the telephone do not include inspection of units, often a significant treatment indicator.

Matched Pair Testing. The most typical testing methodology uses matched pair testers and, by their very nature, differential treatment tests must use matched pair testers. In DDS, only one testing scenario was non-paired (telephone tests for reasonable accommodation). In classic matched pair testing, two individuals are matched in all characteristics other than the characteristic that may be the subject of the testing. So a typical matched pair test for disability will have testers of the same race or ethnicity, gender, and perceived age, who seek similar sized and priced rental units, have similar needs for availability, seek similar amenities, have similar incomes and backgrounds, and similar family compositions. The one difference will be

the presence or lack of presence of the disability that is the focus of the test. It is not unusual for testers to pose as someone with entirely different characteristics than they actually possess. Testers thus pose as home seekers with certain characteristics, and matched pair testers pose as people with matched characteristics in every relevant area *except* for the protected-class status that is the focus of the tests. Testers' incomes and other personal characteristics are also developed to be consistent with likely applicants for a particular property. Testers pose as persons with high incomes for expensive rental housing and moderate incomes for moderately priced housing.

DDS Matched pair testing in this project posed some challenges. A typical matched pair test might match a male disabled tester using a wheelchair with a non-disabled male tester. In matched pair testing using a proxy for a disabled tester, the second tester was matched to the circumstances described

When a tester with a mental illness told the housing provider that he did not have a rental history, he was told that he would be required to get a letter from the group home where he currently resides stating that they would be responsible for paying the rent if the tester failed to do so.

by the proxy. For example, in a test that had a non-disabled person posing as a case manager who inquired about the availability of an apartment for a person who was cognitively disabled, the matched tester posed as a local person inquiring about an apartment for a family member who lived elsewhere or who was not able to call himself. In testing based on mental disability, the disabled tester, who lacked a rental history due to institutionalization, was matched with a tester who also lacked a rental history, perhaps because of being a recent college graduate or having lived abroad.

Tests for Reasonable Accommodation and Modification. Although all but one of our testing scenarios for DDS were conducted using matched pairs, paired tests are not required if the focus is exclusively on reasonable accommodation and/or modification issues. Many of the strategies used in our paired testing could be applied in non-paired testing as well. For example, hearing impaired testers could use the TTY systems to inquire about a landlord's willingness to install flashing lights for doorbells and/or fire alarms, and wheelchair users could visit properties in-person to request reasonable unit modification. A single tester can also be used to determine whether a property complies with the design and construction requirements of the Fair Housing Act.

Reasonable Modification Tests. The requests for structural modification made by testers need to vary significantly based on the physical structure of each property tested. While testers could be assigned to ask for only one type of modification, for example, the installation of grab bars in a bathroom, such a request might not be the most credible if there were several other obvious modifications that would need to be made before a tester could enter the bathroom.

Relying on non-disabled testers who visited the property first to suggest a possible modification did not always work well, because those testers did not always observe all of the possible barriers to a person with a disability, and they did not always inspect the same unit or units that were shown later to a disabled tester. The project also found that letting a tester with a disability select the requested modification could result in requests that were haphazard and sometimes resulted in multiple modification requests made during the same test.

In response to this problem, researchers developed a hierarchy of modification requests. The hierarchy included possible structural modifications based on the order in which they were likely to be encountered during an on-site inspection. All involved an individual unit and not any common areas. Testers were allowed to ask for only one *category* of modification (e.g., modify the entryway), but could request more than one modification within certain categories, if appropriate. For example, a tester could request that grab bars be installed around the toilet and that cabinets under the bathroom sink be removed.

- 1) Modify the unit entryway - widen the doorway, remove the threshold, install a ramp, or reverse swing of door.
- 2) Modify the bathroom - widen doorway, remove cabinets under sink, install grab bars around toilet.
- 3) Modify switches - lower thermostat controls, lower light switches.
- 4) Modify door handles - change doorknobs to levers.

Example 1:

When a physically disabled tester asked to modify the bathroom door, she was told “no, because you would leave and I would be stuck with the door.” Later, the housing provider stated, “you would be better off buying my house. It would be more accessible for you.” He then proceeded to tell the tester the price and location of his house.

Example 2:

A disabled tester wrote in her narrative “I could not get into the doorway because the entry was too small and there was a noticeable drop. I asked him if I could make modifications. He looked at me and said, ‘this apartment is not for you.’ He stopped talking to me and walked me to the door.”

Example 3:

When a disabled tester asked if he could install a ramp into the unit, he was told by the housing provider that if he were a current tenant and he had an accident that subsequently required a ramp, then they would be required to put one in. The tester was then told that he would have to be put on a waiting list for a more accessible unit.

Other modification requests not included in the hierarchy could include lowering kitchen countertops, widening bedroom doors, or installing grab bars at tub or shower.

The modification request list generally worked well, although it appeared that some testers did not follow the precise order of the modification requests, perhaps because they identified a need for a modification that was lower on the list before they identified a need for a

modification that was higher on the list. Some of the alterations discussed with the expert advisors were not included in the hierarchy of modification requests because it was not clear whether they would be considered to be accommodation or modification. Among those not included were curb cuts associated with handicapped parking spaces and lowered peepholes on unit entry doors.

Although DDS used the modification hierarchy for research testing, the value of this hierarchy for enforcement testing would be limited. If a person with a disability has been refused a reasonable modification and complains to a fair housing organization or fair housing enforcement agency, there may be no evidentiary need for a follow-up test to confirm the refusal. The housing provider may willingly admit that it refused the modification or the refusal may be in writing. Practitioners should carefully assess whether a follow-up test is needed. If a follow-up test is needed, the requested modification should be tailored to the original request and the modification hierarchy is irrelevant.

Although DDS used the modification hierarchy only for private market rentals, it could work equally well for federally subsidized properties. Note, however, if a property were funded with federal financial assistance and therefore covered by Section 504, a requested modification would be treated as a request for a reasonable accommodation and the provider would be obligated to make and pay for the request unless an undue financial and administrative burden, or a fundamental alteration of the provider's program.

One DDS scenario tested the availability of flashing lights added to doorbells so that they were usable by deaf or hearing-impaired people. Testers were instructed to request the lights, and indicate if asked, that they would pay for them. For purposes of this testing, DDS considered denial of the request for the lights to be a violation. This testing strategy, therefore, could be used in both private market and federally subsidized housing, with the application of the two laws determining whether the response violated neither, both, or only one.

DDS did not assign testers to request modification to building entryways. However, a testing effort to examine responses to reasonable modification requests targeting the exterior of a building could structure requests around the placement of a ramp, the widening of doorways, or the replacement of gates at various sites in the common areas, like swimming pools, laundry rooms or clubhouses. If modification is requested for the exterior of units, there are different requirements in the law for those areas. Such modification is not required to be removed when a resident vacates the property, and a deposit to pay for the cost of removal or restoration cannot be required. In contrast, approval of modification to the interior of a dwelling unit may be conditioned on an agreement to restore the property to its original condition when the resident vacates, and a charge may be imposed to cover the cost of the restoration. Test results should be reviewed accordingly.

Reasonable Accommodation Tests. In planning reasonable accommodation tests, the project considered and experimented with a number of alternatives. Because the project used testers of different disability types, the type of accommodation that could be reasonably

requested varied, since the requested accommodation should be one that was needed by a person with that disability. Types of accommodation were suggested by the project's expert advisory group and drawn from Fair Housing Act regulations and cases. Accommodation requests were generally not expensive or time consuming to provide in order to avoid dispute over whether a particular accommodation was reasonable or not.

Two types of accommodation for vision-impaired testers were sought: that a housing provider read an application and that a housing provider would make an accommodation for a guide dog. Reading the application was considered to be a no-cost accommodation that would require a minimal amount of time to provide. A refusal was considered to be a clear denial of the accommodation. It was less clear that the accommodation was refused when the application was read only in part or summarized.

This project elected to conduct testing with blind and vision impaired testers who used a guide dog because it seemed to raise the fewest legal and practical issues and the least controversy. Test results showed a variety of reactions to the requested assistance animal accommodation, including outright rejection, requirements of additional deposits, training, or other restrictions. Imposition of such requirements on an animal that is used by a person with a disability violates the Act. However, the range of possible responses made tester training and instruction difficult. If approval was denied or conditioned, the analysis was easier, although there were many ways in which approval could be conditioned. If the response was ambiguous, or required consultation with others, testers were instructed to make follow up calls to the housing provider to seek final approval. Again, delays and some responses were ambiguous, which made them difficult to quantify. A failure to respond, a continued ambiguous response, or a delay of more than 24 hours after a follow up call to approve the request was considered to be a denial. The project learned that it was important to train testers to ask a series of questions that would pursue a complete answer to the requested accommodation.

Enforcement testing for reasonable accommodation requests is of limited value. If a person with a disability has been refused a reasonable accommodation and complains to a fair housing organization or fair housing enforcement agency, there may be no evidentiary need for a follow-up test to confirm the refusal. The housing provider may willingly admit that it refused the accommodation or the refusal may be in writing. Practitioners should carefully assess whether a follow-up test is needed. If a follow-up test is needed, the requested accommodation should be tailored to the original request. Further, the interactive dialogue that should take place between a housing provider and a person with a disability requesting a reasonable accommodation will be difficult to replicate in an enforcement context. Reasonable accommodations are specific to the person with a disability and the discussion about how to meet the person's need for an accommodation is by nature individualized.

Physical Disability Accommodation. In this project, the reasonable accommodation sought for physically disabled testers was whether or not a physically disabled person would

have available to them a handicapped parking space. This kind of request is one of the most frequently requested types of accommodation by actual renters.

A challenge to structuring a testing strategy for a handicapped parking space request is to define the accommodation clearly. A person with a disability could need any of the following types of accommodation: a regular parking space that is designated for that person, a regular parking space that is designated for that person located near the available unit, a handicapped parking space, a handicapped parking space in close proximity to the unit, a handicapped parking space designated for that person's exclusive use, a handicapped parking space that is wide enough to accommodate a van, or other options related to parking in garages or carports.

The project learned that it was important for testers to make a specific request for one of these types of parking accommodation, rather than generally asking for a handicapped parking space, because of the range of responses that a general request received. In the exploratory testing, the project tried several ways of making the request for a handicapped parking space. Initial consideration was given to requesting a designated parking space for the exclusive use of the disabled tester. This example, while based on an example given in the Fair Housing Act regulations, was not considered likely to be the first accommodation that normally would be requested. Instead, during the pilot phase, testers were instructed to first request a handicapped-accessible parking space. If the request was denied, the inquiry halted. If there was a favorable or ambiguous response, the tester was instructed to ask for a handicapped-accessible parking space near the unit or near the entrance closest to the available unit. If that request was denied, the inquiry halted. If the response was favorable or ambiguous, the tester was instructed to request that the space be designated for his or her exclusive use.

The inquiries by testers resulted in a range of responses. The request was outright accepted or denied or offered only with conditions, such as a fee. Testers often received a vague response such as "we might be able to work something out." The request might be countered with some other offer, such as offering the tester a parking space at another location. Although this counter offer would likely violate the Act, since it is the requested accommodation that must be provided unless there is an undue hardship relating to making the requested accommodation, it was difficult to train testers to respond consistently using the established protocol.

The test report form contained a range of selections for testers with disabilities to record the response of a housing provider to the parking accommodation request. Testers sometimes found it hard to remember which specific request they were to make, and the variety of answers that were given in different tests made quantification of results difficult. This is less likely to be a problem in individual enforcement tests tied to particular situations.

Deaf or Hard of Hearing Accommodation. Tests requesting accommodation for people who are deaf or hard of hearing involved two types of accommodation. In an on-site test, deaf testers communicated with rental agents through use of notes, implicitly requesting that form of communication as an accommodation. In addition, deaf testers requested flashing lights for

doorbells or fire alarms.⁴⁴ Use of notes to communicate raised several concerns. It was difficult to quantify the way in which rental agents responded to this request, if they did not outright refuse to communicate by notes. If less information was provided, it was not clear whether the agents who provided less information to a deaf tester were doing so because of the mode of communication or because they were discouraging the deaf tester. If information was summarized, and not conveyed accurately or completely, the result appeared as differential treatment when a non-disabled tester was given more information. Differential treatment analysis in these tests was difficult as a result. Use of deaf testers with lip reading skills, or who were accompanied by a sign language interpreter, could avoid this problem, but increases the difficulty in recruiting suitable testers and the cost of the test.

Mental Disability Accommodation. None of the project's testing scenarios for persons with a mental disability involved a request for an accommodation. The test scenario using testers with mental illness was a matched pair test focusing on differential treatment in which both testers lacked a rental history, though for different reasons.⁴⁵ The project considered accepting the absence of a rental history for a person with mental illness as a reasonable accommodation, but did not select that approach in the exploratory phase testing scenarios. That scenario could be used effectively in a non-paired reasonable accommodation research test, since needing an exception from the usual rule that applicants must provide landlord references is a reasonable accommodation, and one that was recommended by our expert advisory group. Other types of accommodation that could be used in reasonable accommodation research scenarios with testers with mental disabilities could include a request for a reminder of rent payment due dates, waiver of a rule against co-signers, approval of emotional support or companion animals, or making a request that a past negative incident be overlooked because it occurred for disability-related reasons which are no longer a factor in applicant conduct.

⁴⁴ As discussed in the text at fn. 48, *supra*, it is not clear under the law whether a request for the addition of flashing lights should be treated as a request for an accommodation or a request for a modification.

⁴⁵ See Annex B, Test Instructions, for a complete description of the testing scenarios for persons with mental disabilities.

property that complies with Fair Housing Act design and construction requirements might be a request to add grab bars in a bathroom. Grab bar installation is not required by the Act's design and construction requirements. In older properties, or properties which do not comply with design and construction standards, addition of a ramp at a unit, a rental office or a laundry room might be requested. The differences in the type of modification requested should not make a significant difference in an audit, as it is whether or not permission would be available to make a structural change at the expense of an applicant that is being examined. In addition, testers with a variety of physical disabilities can be used to conduct audit based tests of the modification issues, since it is not the individual disability that is a concern but the modification approval. Organizations planning audit based testing can also adapt and use the methodologies and resources used in this project for the research based components of telephone relay use or unequal treatment combined with reasonable modification requests tests.

It requires some thought to structure an *audit of reasonable accommodation issues* because of the variety of ways an accommodation may be needed. The availability of handicapped parking spaces, designated spaces, and spaces near units as an accommodation could certainly be the subject of a series of tests, as they were in this project. As already noted, this project had some difficulties in structuring tests and training testers to ask for the same kind of parking accommodation in every test. Variables in this area included whether there are already handicapped parking spaces at the property being tested, whether those spaces are or are not near a particular unit that is available or likely to be available shortly, and whether or not there are physical changes, such as installation of a ramp, that might be necessary to provide access from handicapped parking spaces. Similarly, if a pool of testers who use service animals is available, testing for the accommodation of waiver of a "no pets" policy could be used for audits. The most significant impediment to that strategy is the possible need to confirm in advance of a test whether or not there actually is a "no pets" policy. This information could be gathered during advance calls.

Another audit strategy, where statistical reliability or aggregation of a large number of test results is not important, is to use testers with a variety of disabilities and test for a variety of types of treatment. An audit of 40 tests might have twenty reasonable accommodation tests and twenty reasonable modification tests, for example. Within an audit category of reasonable accommodation and reasonable modification tests, testers might ask for the same kinds of accommodation tests, testers might ask for one type of accommodation in every test, or they might ask for several different types of accommodation. Within an audit category of reasonable modification tests, testers might ask for one type of modification in every test, or testers could request several different types of modification. The audit report would examine the ways in which discrimination manifested itself under the categories of reasonable accommodation and modification.

A final audit approach is to structure tests that permit the opportunity to test multiple forms of discrimination in one test. Like the reasonable modification testing done for the research-based component of this project, which provided the opportunity for landlords to

experience. The checklists provided below enable a reviewer to consider each aspect from a test individually, and then list all the areas where differences have occurred. Such a list of objective treatment issues can then be considered to determine if adverse treatment has been directed at the tester who is disabled, and evaluate the significance of the adverse treatment. Not every difference in treatment, and not every incident where treatment has been imperfect will support a successful case of housing discrimination. A careful analysis of each aspect of a disability-based test is important to determine at what points, if any, there is differential treatment. Those differences are then assessed qualitatively and quantitatively to determine whether they indicate discrimination.

The checklists presented below are based on the kinds of issues seen in disability testing examples and they track the kind of information typically gathered during tests and recorded on test report forms. They may be adjusted based on the type of testing being conducted, the type of disability involved, or the type of reasonable accommodation or reasonable modification that is used in a particular test. The checklists contain possible indicators of discrimination in each of the three major types of discrimination based on disability, one for differential treatment, one for reasonable accommodation, and one for reasonable modification. In general, the unequal treatment checklist should be used first whenever there is matched pair testing. If the matched pair testing also includes a request for an accommodation or modification, the appropriate additional checklist should be reviewed as well. The checklists for reasonable accommodation and reasonable modification can be used for single, unpaired tests and should be modified to match the requests of the person with a disability who was denied an accommodation or modification. If there are multiple tests of one property or of several properties owned or operated by a single entity, all tests may be reviewed in reaching a final conclusion about further action.

In some cases, especially where enforcement is considered, one or more additional tests may be appropriate, although one test may be enough to show discrimination for enforcement purposes, especially in the realm of differential treatment. Using tests to initiate enforcement actions under the Fair Housing Act's reasonable accommodation or modification provisions is uncharted territory in the courts, and may be hampered by too many variables to clearly detect discrimination for enforcement purposes. Typically, it is common to consider the issue of whether, even if there is some evidence of discrimination, enforcement action should be taken, or some less stringent step should occur, such as consultation, training or retesting.

The stronger the evidence of a violation, even from one test, the more likely it is that enforcement will be initiated. This is especially true where an enforcement test supports a bona fide complainant's allegation of discrimination. In disability cases involving a bona fide complainant, especially in reasonable accommodation and modification cases, imposition of additional requirements or rejection of a single request have often been the subject of litigation and administrative enforcement. While one test showing rejection of a requested

CHECKLIST OF INDICATORS FOR UNEQUAL TREATMENT IN DISABILITY TESTS

By comparing the treatment of testers was the tester who is disabled treated differently and adversely:

Was there difficulty in contacting property or getting information in comparison to other testers?

Is the advertised unit available?

When is advertised unit available?

Are other units of the same size/type requested available?

How many other units are available?

When are other units of the same size/type requested available?

Where are the available units located?

Where are the other units located?

How many units were shown?

What condition and what amenities are provided in available units?

Is there evidence of steering within the property based on disability?

Are there differences in pricing of units?

Are there differences in deposit amount or types of fees?

Are there differences in the application process description of requirements for:

- Credit check?
- Co-signer?
- Criminal record check?
- Request for income or other information?
- Other

Were there inquiries about the nature or severity of a disability or comments about people with disabilities?

Were there comments about handicapped units or accessible features?

Is there evidence of steering to other properties?

Are there differences in offers of application form, waiting list, callbacks, visits?

Are there other differences in the quality or quantity of information provided?

Is there other evidence of adverse treatment based on disability?

Is there other evidence of adverse treatment in comparison to another tester?

CHECKLIST OF INDICATORS FOR DENIAL OF REASONABLE MODIFICATION

Was there difficulty in contacting property or in getting information?

Was the requested modification refused or denied outright?

Was an alternative modification offered instead?

Were questions raised about the need for the modification?

Was some other person's approval needed for approval of the modification?

Was there a delay of more than 24 hours in approving the concept of the modification?

Did follow up about the modification approval have to be initiated by the tester?

Were conditions imposed on approval of the modification, such as:

- Use of licensed contractor?
- Use of landlord-approved contractor?
- Landlord-specified type of construction?
- Special insurance required?
- Removal of exterior modification upon departure?
- Security deposit, not related to the cost of restoration of interior of dwelling, charged?
- Other

Were there inquiries about the nature or severity of a disability or comments about people with disabilities?

Were there comments about handicapped units or accessible features?

Is there evidence of steering to other properties?

Is there other evidence of adverse treatment based on disability?

**CHECKLIST OF INDICATORS FOR DENIAL OF REASONABLE
ACCOMMODATION TESTS**

Was there difficulty in contacting property or in getting information?

Was the requested accommodation refused or denied outright?

Was an alternative accommodation offered instead?

Was some other person's approval needed for approval of the accommodation?

Were questions raised about the need for the accommodation?

Was there a delay of more than 24 hours in approving the concept of the accommodation?

Did follow up about the accommodation approval have to be initiated by the tester?

Were conditions imposed on approval of the accommodation, such as:

- An additional charge?
- A waiting period?
- Specific conditions, such as breed or weight requirements for service animal?
- Action by someone else?
- Action by the tester?
- Special insurance required?
- Other requirements

Were there inquiries about the nature or severity of a disability or comments about people with disabilities?

Were there comments about handicapped units or accessible features?

Is there evidence of steering to other properties?

Is there other evidence of adverse treatment based on disability?

so that an independent judgment may be made as to whether or not there is sufficient evidence that discrimination has occurred.

During an investigation, from the time that the complaint is filed, HUD is required by the Fair Housing Act to engage in efforts to resolve the complaint through reaching a settlement agreement with the parties, referred to as a conciliation agreement. If the parties agree to a settlement, it is put in writing and signed by all of the people involved in the complaint, including a HUD representative.

If the investigation shows evidence of illegal discrimination, and the case is not settled, HUD is authorized by the Fair Housing Act to issue a determination that there is reasonable cause to believe that discrimination has occurred and file a charge of discrimination. Each party to a complaint has the ability to elect to have the case brought in federal district court by the United States Department of Justice (DOJ), where a jury trial may be conducted if appropriate. If no party makes an election to go to court, the case will be heard by an Administrative Law Judge on an expedited schedule.

DOJ, which runs its own testing program, also has the independent authority to bring cases where the evidence shows that there has been a pattern and practice of discrimination.⁵⁰ There is no requirement that a case be filed with an administrative agency before such cases are brought in court. A number of testing cases have been among those litigated by DOJ.⁵¹ The Fair Housing Act also authorizes complaints to be directly filed in federal or state court by private litigants using private counsel.⁵²

The Act includes the authority for powerful remedies. Complainants may be awarded damages to compensate them, not only for their financial losses, but also for the mental distress caused them from incidents of discrimination. The Act also authorizes awards of punitive damages to complainants (in federal court) and civil penalties (awarded to the government by administrative law judges) to deter discriminatory conduct and punish those who willfully ignore the law. Some reasonable modification, reasonable accommodation, and disability discrimination cases have resulted in significant financial awards to people with disabilities.⁵³

⁵⁰ The Department of Justice's authority to bring pattern and practice cases and cases involving an issue of general public importance is found in 42 U.S.C. 3614(a).

⁵¹ A list of cases filed, tried, and settled by the Department of Justice is found on DOJ's website, at <http://www.usdoj.gov/crt/housing/caselist.htm>

⁵² 42 U.S.C. 3613.

⁵³ HUD v. Twinbrook Apartments, supra, at fn.24, \$75,000 awarded to one complainant, \$40,000 to another, and \$20,000 to a third, with \$15,000 awarded in civil penalties; HUD v. Country Manor Apartments, supra at fn 22, \$7500 in compensatory damages, \$3,000 in civil penalties; HUD v. Pheasant Ridge Associates, HUDALJ, 05-94-0845-8 and 05-95-0155-8 (October 25, 1996), \$20,049 to one complainant and \$30,403 to a second.

ANNEX A

DDS Expert Panel

ANNEX B

Exploratory Phase Scenarios and Tester Instructions

DDS Exploratory Testing - Blind / Low Vision

	Disability Category		
	Blind/Guide Dog	Blind/Guide Dog LIHTC	Blind
Test Type	Paired In-Person Differential Treatment Accommodation	Paired In-Person Differential Treatment Accommodation	Paired In-Person Differential Treatment Accommodation
Number of Tests	6	3	7
Scenario	Disabled tester accompanied by guide dog visits housing provider for differential treatment and discusses accommodation to be tested. Non-disabled tester visits the housing provider for differential treatment.	Disabled tester accompanied by guide dog visits housing provider for differential treatment and discusses accommodation to be tested. Non-disabled tester visits the housing provider for differential treatment.	Disabled tester without companion animal visits housing provider for differential treatment and asks for accommodation. Non-disabled tester visits the housing provider for differential treatment.
Testers	Non-minority, any age	Non-minority, any age	Non-minority, any age
Tester Disability Parameters	Blind or low vision with service animal	Blind or low vision with service animal	Blind or low vision with some sort of assistance (cane, glasses) no service animal
Test Team	Disabled and non-disabled testers matched on gender, age range	Disabled and non-disabled testers matched on gender, age range	Disabled and non-disabled testers matched on gender, age range
Assigned Financial Characteristics	Both testers assigned income from employment that is sufficient to afford rent of target unit; Testers 62+ assigned retirement income sufficient to afford rent of target unit.	Both testers assigned income from employment that is sufficient to afford rent of target unit and meets income restrictions; Testers 62+ assigned retirement income sufficient to afford rent of target unit.	Both testers assigned income from employment that is sufficient to afford rent of target unit; Testers 62+ assigned retirement income sufficient to afford rent of target unit.
Other Assigned Characteristics	Single Adult Blind tester has guide dog	Single Adult Blind tester has guide dog	Single adult
Advance Call	Inquire about availability, price, size, location, office hours, pet policy and if appointment necessary.	Inquire about income/age restrictions, availability, price, size, location, office hours, pet policy and if appointment necessary.	Inquire about availability, price, size, location, office hours, and if appointment necessary.
Order of Visits	Random order	Random order	Random order
Initial Contact-Appointment Call or Drop-In Visit	Drop in preferred if Advance Call indicates and if ad has enough information. Appointments only if necessary. Appointment calls will be made by staff, not testers.	Drop in preferred if Advance Call indicates. Appointments only if necessary. Appointment calls will be made by staff, not testers.	Drop in preferred if Advance Call indicates and if ad has enough information. Appointments only if necessary. Appointment calls will be made by staff, not testers.
Initial Housing Request	"I am interested in the unit advertised for rent..."	"I am interested in any units that are available or may be available soon..."	"I am interested in the unit advertised for rent..."
Household Needs	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call	Size of unit, rent amount, date available determined by information gathered from HUD and Advance Call	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call
Other Units	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range
Inspection	"Can you guide me through the available units?"	"Can you guide me through any units?"	"Can you guide me through the available units?"

	Disability Category		
	BlInd/Guide Dog	BlInd/Guide Dog LIHTC	Blind
Accommodation	Waive pet policy, pet fee, pet size and find out terms and conditions on guide dog.	Waive pet policy, pet fee, pet size and find out terms and conditions on guide dog.	"Would you read the application form aloud so I will know what information I will need to provide if I decide to apply?"
Unit Modification	None	None	None
Treatment Indicators			
Unit Availability	Advertised units, other units, number of units, unit numbers, building, and floor.	Available units, number of units, unit numbers, building, and floor, type of units.	Advertised units, other units, number of units, unit numbers, building, and floor.
Inspection	Number of units, unit numbers, building, and floor.	Number of units, unit numbers, building, and floor.	Number of units, unit numbers, building, and floor.
Housing Cost	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.
Agent Assistance and Service	Able to discuss housing, offered assistance, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.	Able to discuss housing, offered assistance, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.	Able to discuss housing, offered assistance, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.
Agent Inquiries	Inquiries about disability, source of income.	Inquiries about disability, source of income.	Inquiries about disability, source of income.
Agent Statements	Statements about disability or persons with disabilities.	Statements about disability or persons with disabilities.	Statements about disability or persons with disabilities.
Accommodation	Waiver on pet policy, pet fee, or size limit of assistance animal.	Waiver on pet policy, pet fee, or size limit of assistance animal.	Willingness to read application form aloud.
Unit Modification	None	None	None
Tester Initiated Follow-up	If response to accommodation is "maybe," Advanced Caller will make follow-up call one week after visit.	If response to accommodation is "maybe," Advanced Caller will make follow-up call one week after visit.	None

DDS Exploratory Testing - Communication Disability / Deaf

	Disability Category			
	Communication Disability	Communication Disability / LIHTC	Deaf	Deaf / LIHTC
Test Type	Paired Phone Differential Treatment	Paired Phone Differential Treatment	Paired In-Person Differential Treatment Unit modification	Paired In-Person Differential Treatment Unit modification
Number of Tests	6	3	6	3
Scenario	Non-disabled tester calls housing provider for differential treatment. Disabled tester calls housing provider by using relay operator or TDD/TTY for differential treatment.	Non-disabled tester calls housing provider for differential treatment. Disabled tester calls housing provider by using relay operator or TDD/TTY for differential treatment.	Non-disabled tester visits housing provider for differential treatment and assesses the unit modification to be tested. Disabled tester visits the housing provider for differential treatment and asks for the assigned unit modification.	Non-disabled tester visits housing provider for differential treatment and assesses the unit modification to be tested. Disabled tester visits the housing provider for differential treatment and asks for the assigned unit modification.
Testers	Non-minority, any age	Non-minority, any age	Non-minority, any age	Non-minority, any age
Tester Disability Parameters	May use non-disabled tester posing as disabled tester, if no restrictions on TTY/TDD	May use non-disabled tester posing as disabled tester, if no restrictions on TTY/TDD	No physical disability but profoundly deaf. Note taking as primary form of communication, limited speaking ability.	No physical disability but profoundly deaf. Note taking as primary form of communication, limited speaking ability.
Test Team	Disabled and non-disabled testers matched on gender, age range	Disabled and non-disabled testers matched on gender, age range	Disabled and non-disabled testers matched on gender, age range	Disabled and non-disabled testers matched on gender, age range
Assigned Financial Characteristics	Both testers assigned income from employment that is sufficient to afford rent of target unit. Testers 62+ assigned retirement income sufficient to afford rent of target unit.	Both testers assigned income from employment that is sufficient to afford rent of target unit, and falls within income restrictions. Testers 62+ assigned retirement income sufficient to afford rent of target unit.	Both testers assigned income from employment that is sufficient to afford rent of target unit. Testers 62+ assigned retirement income sufficient to afford rent of target unit.	Both testers assigned income from employment that is sufficient to afford rent of target unit, and falls within income restrictions. Testers 62+ assigned retirement income sufficient to afford rent of target unit.
Other Assigned Characteristics	Single adult	Single adult	Single adult	Single adult
Advance Call	Inquire about availability, price, size, location.	Inquire about income/age restrictions, availability, price, size, location	Inquire about availability, price, size, location, office hours, and if appointment necessary	Inquire about income/age restrictions, availability, price, size, location, office hours, and if appointment necessary
Order of Calls or Visits	Random order	Random order	Random order	Random order
Initial Contact-Appointment Call or Drop-In Visit	Phone test- NO Appointment Calls; NO Visits	Phone test- NO Appointment Calls; NO Visits	Drop-in only, determined by advance call	Drop-in only, determined by advance call
Initial Housing Request	"I am interested in the unit you have advertised for rent..."	"I am interested in any units that are available or may be available for rent soon..."	"I am interested in the unit you have advertised for rent..."	"I am interested in any units that are available or may be available for rent soon..."

Disability Category				
	Communication Disability	Communication Disability / LIHTC	Deaf	Deaf / LIHTC
Household Needs	Size of unit, rent amount, date available determined by information gathered from advertisement and Advance Call.	Size of unit, rent amount, date available determined by information gathered from HUD and Advance Call.	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call.	Size of unit, rent amount, date available determined by information gathered from HUD and Advance Call.
Other Units	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range
Inspection	None	None	"Can I inspect the available units?"	"Can I inspect any units?"
Accommodation	None	None	None	None
Unit Modification	None		"Would you or Could I install flashing lights for the doorbell or fire alarm?"	"Would you/Could I install flashing lights for the doorbell or fire alarm?"
Treatment Indicators				
Unit Availability	Advertised units, other units, building and floor	Advertised units, other units building and floor	Advertised units, other units, number of units, unit numbers, building and floor	Available units, number of units, unit numbers, building and floor
Inspection	NA (phone)	NA (phone)	Number of units, unit numbers, quality of units, building, and floor.	Number of units, unit numbers, quality of units, building, and floor.
Housing Cost	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.
Agent Assistance and Service	Able to discuss housing, offered appointment to inspect units/pick up application, told credit check/criminal background check required, told about amenities, follow-up provided.	Able to discuss housing, offered appointment to inspect units/pick up application, told credit check/criminal background check required, told about amenities, follow-up provided.	Able to discuss housing, offered assistance, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.	Able to discuss housing, offered assistance, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.
Agent Inquiries	Inquiries about disability, source of income	Inquiries about disability, source of income	Inquiries about disability, source of income	Inquiries about disability, source of income
Agent Statements	Statements about disability or persons with disabilities	Statements about disability or persons with disabilities	Statements about disability or persons with disabilities	Statements about disability or persons with disabilities
Accommodation	None	None	None	None
Unit Modification	None	None	Make/allow modification	Make/allow modification
Tester Initiated Follow-up	None	None	If response to unit modification is "maybe," tester will make follow-up call one week after visit.	If response to unit modification is "maybe," tester will make follow-up call one week after visit.

DDS Exploratory Testing - Mental Disability

	Disability Category		
	Mental Illness	Cognitive Disability/Accompanied	Cognitive Disability/Proxy
Test Type	Paired In-Person Differential Treatment	Paired, Accompanied In-Person Differential Treatment	Paired, Proxy Testers Phone Differential Treatment
Number of Tests	5	5	5
Scenario	Non-disabled tester visits the site for differential treatment and indicates lack of rental history due to past situation (living in dorm, recently divorced, etc.). Disabled tester visits the site for differential treatment and indicates a lack of rental history due to past living situation in group home (proxy for mental illness).	Accompanied non-disabled tester visits the site for differential treatment. Accompanied tester with cognitive disability visits the site for differential treatment.	Tester posing as friend of non-disabled prospective tenant phones the site for differential treatment. Tester posing as caseworker of disabled prospective tenant phones the site for differential treatment.
Testers	Non-minority, non-elderly	Non-minority, non-elderly	Non-minority, non-elderly
Tester Disability Parameters	No mobility impairment or physical disability	No mobility impairment or physical disability	NA (proxy)
Test Team	Disabled and non-disabled testers matched on gender, age range	Disabled and non-disabled testers matched on gender, age range; Non-disabled companions matched on gender, age range	Non-disabled proxies matched on gender, age range
Assigned Financial Characteristics	Both testers assigned income from employment that is sufficient to afford rent of target unit	Both testers assigned income from employment that is sufficient to afford rent of target unit	Both prospective tenants assigned income from employment that is sufficient to afford rent of target unit
Other Assigned Characteristics	Single adult, assigned different characteristics as proxy for mental illness	Single adult No rental history	Prospective tenants will be single adults with no rental history
Advance Call	Inquire about availability, price, size, location, office hours, and if appointment necessary	Inquire about availability, price, size, location, office hours, and if appointment necessary	Inquire about availability, price, size, location
Order of Visits	Random order	Random order	Random order
Initial Contact-Appointment Call or Drop-In Visit	Drop in preferred if Advance Call indicates and if ad has enough information. Appointments only if necessary. Appointment calls will be made by staff, not testers.	Drop in preferred if Advance Call indicates and if ad has enough information. Appointments only if necessary. Appointment calls will be made by staff, not testers.	NA (phone)
Initial Housing Request	"I am interested in the unit you have advertised for rent..."	"I am interested in the unit you have advertised for rent..."	"I am interested in the unit you have advertised for rent on behalf of my friend/client..."
Household Needs	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call
Other Units	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range
Inspection	"Can I inspect the available unit(s)?"	"Can I inspect the available unit(s)?"	NA (phone)

	Disability Category		
	Mental Illness	Cognitive Disability/Accompanied	Cognitive Disability/Proxy
Accommodation	None	None	None
Unit Modification	None	None	None
Treatment Indicators			
Unit Availability	Advertised units, other units, number of units, unit numbers, building, and floor	Advertised units, other units, number of units, unit numbers, building, and floor	Advertised units, other units, number of units, building, and floor
Inspection	Number of units, unit numbers, quality of units, building, and floor	Number of units, unit numbers, quality of units, building, and floor	NA (phone)
Housing Cost	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.
Agent Assistance and Service	Able to discuss housing, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.	Able to discuss housing, questions directed at companion, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.	Able to discuss housing, offered appointment to inspect units/pick up application, told credit check/criminal background check required, told about amenities, follow-up provided.
Agent Inquiries	Inquiries about disability, source of income	Inquiries about disability, source of income	Inquiries about disability, source of income
Agent Statements	Statements about disability or persons with disabilities.	Statements about disability or persons with disabilities.	Statements about disability or persons with disabilities.
Accommodation	None	None	None
Unit Modification	None	None	None
Tester Initiated Follow-up	None	None	None

DDS Exploratory Testing - Physical Disability

	Disability Category			
	Wheelchair User	Wheelchair User/LIHTC	Wheelchair User/Elderly	Mobility Impaired
Test Type	Paired In-Person Differential Treatment Unit Modification	Paired In-Person Differential Treatment Unit Modification	Paired In-Person Differential Treatment	Non-paired Phone NA Accommodation
Number of Tests	6	3	7	7 (3 proxy)
Scenario	Test coordinator visits housing provider to assess accessibility of test site. (If test site is not accessible, no test will be conducted, but limited information will be gathered for analysis purposes.) If test site is accessible, a non-disabled tester visits the site for differential treatment and assesses the unit modification to be tested. Then a disabled tester using a wheelchair visits the site for differential treatment and asks for the assigned unit modification.	Non-disabled tester visits housing provider for differential treatment and assesses unit modification to be tested. Then a disabled tester using a wheelchair visits the housing provider for differential treatment and asks for the assigned unit modification.	Elderly non-disabled and elderly disabled testers visit elderly-only development for differential treatment.	Disabled tester (or proxy) calls housing provider and asks for accommodation.
Testers	Non-minority, non-elderly	Non-minority, non-elderly	Non-minority, elderly 55+	Non-minority, any age
Tester Disability Parameters	No cognitive or communicative disability. No service animal. May use a scooter instead of wheelchair.	No cognitive or communicative disability. No service animal. May use a scooter instead of wheelchair.	No cognitive or communicative disability. No service animal. May use a scooter instead of wheelchair.	No cognitive or communicative disability. No service animal.
Test Team	Disabled and non-disabled testers matched on gender, age range	Disabled and non-disabled testers matched on gender, age range	Disabled and non-disabled testers matched on gender, age range (55-61 and 62+)	NA (non-paired)
Assigned Financial Characteristics	Both testers assigned income from employment that is sufficient to afford rent of target unit	Both testers assigned income from employment that is sufficient to afford rent of target unit and meets income restrictions	Testers in age range 55-61 assigned income from employment sufficient to afford rent of target unit; Testers 62+ assigned retirement income sufficient to afford rent of target unit.	Testers assigned income from employment that is sufficient to afford rent of target unit. Testers 62+ assigned retirement income sufficient to afford rent of target unit.
Other Assigned Characteristics	Single adult Reason for wheelchair will be assigned	Single adult Reason for wheelchair will be assigned	Single adult Reason for wheelchair will be assigned	Single adult Disabled tester has physical disability (no wheelchair, no service animal) and requires parking accommodation.
Advance Call	Inquire about availability, price, size, location, office hours, and if appointment necessary.	Inquire about income/age restrictions, availability, price, size, location, office hours, and if appointment necessary.	Inquire about age requirements, availability, price, size, location, office hours, and if appointment necessary.	Inquire about availability, price, size, location, off-street parking.
Order of Visits	Non-disabled tester makes first visit	Non-disabled tester makes first visit	Random order	NA (non-paired)
Initial Contact-Appointment Call or Drop-In Visit	Drop in or Appointment Call as indicated by Advance Call and ad. Appointment calls will be made by staff, not testers.	Drop in or Appointment Call as indicated by Advance Call and ad. Appointment calls will be made by staff, not testers.	Drop in or Appointment Call as indicated by Advance Call and ad. Appointment calls will be made by staff, not testers.	NA (phone)
Initial Housing Request	"I am interested in the unit you have advertised for rent..."	"I am interested in any units that are available or may be available soon..."	"I am interested in the unit you have advertised for rent..."	"I am interested in the unit you have advertised for rent..."
Household Needs	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call	Size of unit, rent amount, date available determined by information gathered from HUD and Advance Call	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call	Size of unit, rent amount, date available determined by information gathered from ad and Advance Call
Other Units	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range	Additional or alternative units of different size, but within rent range
Inspection	"Can I inspect the available unit(s)?"	"Can I inspect any unit(s)?"	"Can I inspect the available unit(s)?"	NA (phone)

	Disability Category			
	Wheelchair user	Wheelchair user/LIHTC	Wheelchair user/Elderly	Non-wheelchair User/Phone
Accommodation	None	None	None	Ask all of the following: "Could I get a handicapped accessible parking space?" "Could I get a parking space within X feet of available unit?" "Could I get a designated parking space?"
Unit Modification	<u>One assigned from following:</u> "Would you/Could I install a ramp into the building?" "Would you/Could I install a ramp into the unit?" "Would you/Could I install grab bars in the bathroom?" "Would you/Could I change doors to swing hinges?" "Would you/Could I lower the light switches?" "Would you/Could I change the doorknobs to levers?"	<u>One assigned from following:</u> "Would you/Could I install a ramp into the building?" "Would you/Could I install a ramp into the unit?" "Would you/Could I install grab bars in the bathroom?" "Would you/Could I change doors to swing hinges?" "Would you/Could I lower the light switches?" "Would you/Could I change the doorknobs to levers?"	None	None
Treatment Indicators				
Unit Availability	Advertised units, other units, number of units, unit numbers, building and floor, type of units (handicapped, non-handicapped)	Available units, number of units, unit numbers, building and floor, type of units (handicapped, non-handicapped)	Advertised units, other units, number of units, unit numbers, building and floor, type of units (handicapped, non-handicapped)	Any available units
Inspection	Number of units, unit numbers, quality of units, building, and floor.	Number of units, unit numbers, quality of units, building, and floor.	Number of units, unit numbers, quality of units, building, and floor.	NA (phone)
Housing Cost	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	Rent, security deposit, application and other fees, incentives, negotiability, and utilities.	If yes, then ask about rent.
Agent Assistance and Service	Able to discuss housing, offered assistance, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.	Able to discuss housing, offered assistance, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.	Able to discuss housing, offered assistance, given or asked to complete application, told credit check/criminal background check required, told about amenities, arrangements for future contact made, follow-up provided.	Able to discuss housing, offered appointment to inspect units/pick up application, follow-up provided.
Agent Inquiries	Inquiries about disability, source of income	Inquiries about disability, source of income	Inquiries about disability, source of income	Inquiries about disability, source of income
Agent Statements	Statements about disability or persons with disabilities.	Statements about disability or persons with disabilities.	Statements about disability or persons with disabilities.	Statements about disability or persons with disabilities.
Accommodation	None	None	None	Make accommodation
Unit Modification	Make/allow unit modification	Make/allow unit modification	None	None
Tester Initiated Follow-up	If response to unit modification is "maybe," tester will make follow-up call one week after visit	If response to unit modification is "maybe," tester will make follow-up call one week after visit	None	If response to accommodation is "maybe," tester will make follow-up call one week after initial call
Other Follow-up	If disabled tester is told that no housing is available, Advance Caller will call housing provider to inquire about availability.	If disabled tester is told that no housing is available, Advance Caller will call housing provider to inquire about availability.	None	None

