

PASSING THE TEST



BY THERESA L. KITAY

HUD's study of housing discrimination based on disability offers valuable lessons for industry professionals, encouraging a renewed commitment to legal compliance with the Fair Housing Act.

A report on the first-ever comprehensive testing-based study of housing discrimination on the basis of disability was released by the U.S. Department of Housing and Urban Development (HUD) in May. The methodology and results from the study, which found that people with disabilities experience discrimination in housing at a higher rate than either African-Americans or Hispanics, have much to teach apartment industry professionals about providing housing in an open and equal manner.

HUD's study consisted of approximately 200 tests conducted in the Chicago metropolitan area during the first half of 2004. The testing featured both in-person and telephone tests, depending on the group being tested. In a departure from past tests on disability issues, this study used "paired testing," meaning a tester with a disability would be partnered with a non-disabled person, and both would contact the same property in the same manner within a short time of the other.

After some exploratory testing featuring people with visual disabilities (some of whom used service dogs and others who did not) and people with mental disabilities (either mental illnesses or cognitive or developmental disabilities), HUD determined that the testing program research would concentrate in one group on people who are deaf or hearing impaired and use TTY telephone devices, and in the other group on people with mobility impairments who use wheelchairs.

HUD limited the tests for the study to those communities that had publicly advertised in widely available sources, such as apartment magazines and newspapers. By this limitation, HUD believed it

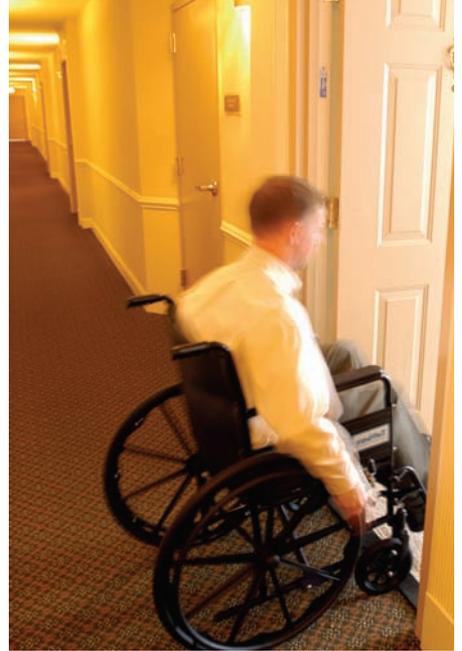
addressed "one of the major ethical concerns about paired testing—that it imposes an unreasonable cost burden on housing agents, who have to spend time responding to testers' inquiries, and potentially violates their expectations of privacy regarding these inquiries." Significantly, HUD's report notes that "by advertising in a widely available outlet, a housing agent is explicitly inviting inquiries from the general public," including testers.

TTY TESTING

A TTY is a keyboard device that allows a person who is unable to hear over the telephone the ability to place calls to anyone with the assistance of a relay operator. (Phone service providers are required by the Americans with Disabilities Act to have relay operators available.) When using a TTY, the hearing impaired or deaf caller can type conversation that is then read by the relay operator to the person receiving the call. When the receiver responds orally, the relay operator types the response, which appears in printed form to the caller. No special equipment or training is required to receive a call placed by a person using a TTY.

In more than 100 paired tests, HUD had both deaf and hearing testers contact advertised rental housing by telephone. HUD's study concluded that approximately 25 percent of the time the housing provider refused to make contact with the TTY user, "by hanging up, refusing requests for information or questioning the veracity of the call or caller." By contrast, the hearing caller not using the TTY system made contact with the housing provider in almost every instance.

The anecdotal reports in the study reveal a distressing lack of understanding or sen-



sitivity on the part of housing providers toward people who use a relay system to telephone because of a hearing or speech disability. As reported by HUD, specific responses to the relay operator's explanation of the call included: "No, I don't want to speak with them;" "No, we don't need that;" "I can't do this right now. This is a business;" and "I don't want to talk to anyone I don't know."

In some instances where the housing provider communicated with the relay operator, the provider still refused to give as much information as was given during the hearing tester's call. For example, some deaf testers were told they must come to the office in person to get information or were provided e-mail addresses or fax numbers to contact the office for information.

TESTING BY WHEELCHAIR USERS

HUD's study specifically did not test for violations of the Fair Housing Act's design and construction requirements for accessibility of newly constructed multifamily housing. (See page 62 for more on Fair Housing Act construction requirements.) However, HUD concluded from the Phase II testing that people who use wheelchairs are automatically eliminated from approximately one-third of the available stock of rental housing in Chicago because of a lack of accessibility.

HUD noted that this lack of accessibility might stem from the fact that many of Chicago's rental apartments are located in older, multi-story walk-up buildings. The study also reported, however, having to disqualify a number of sampled advertised properties from testing because not even the rental office was accessible to allow initial in-person contact.

HUD's study reports that in general, wheelchair users were able to make contact with housing providers at approximately the same rate as non-disabled testers. However, the study notes significant differences in the treatment toward wheelchair users, including less information being offered, less availability, fewer offers to inspect available units and less encouragement to actually apply for the housing in question. Interestingly, some testers using wheelchairs reported housing providers emphasizing that the community did not accept Section 8 vouchers or was not subsidized housing even when the tester assured the provider he or she was employed and did not seek to use any sort of housing subsidy to pay rent.

Wheelchair user testers were also instructed to ask for one modification from a supplied list of five possible modifications, each of

which is virtually always held to be "reasonable." The tester then assured the housing provider that the tester would pay for the modification and restore the modification when moving out. Sixteen percent of the housing providers tested refused the request for a modification. Another 16 percent responded to the modification request that they did not know whether the modification would be allowed and would have to check with someone else.

Similarly, when parking was provided, the wheelchair user tester inquired of the possibility of an accessible parking space designated specifically for his or her use. Nineteen percent of the housing providers asked refused this accommodation, which again, is virtually always considered reasonable.

HUD'S CONCLUSIONS

HUD concluded from this study that the testing program documents "high levels of adverse treatment." Because of this finding, the report recommends "heightened public education and enforcement," including a "public education campaign to inform housing providers ... about the operation of TTY systems" and "to educate housing providers about their obligations under the federal Fair Housing Act."

While the results of the individual tests performed by HUD are undeniably worrisome for apartment industry professionals, a few of HUD's assumptions in the study are worth noting. First, the tests made no distinction between professionally managed properties and those operated by less sophisticated management. A "mom-and-pop" managed property is certainly not presumptively more likely to discriminate. An accounting of the number of professionally managed communities with troubling results in this study would provide the industry with a benchmark for evaluating its own education efforts.

HUD also assumed that testers who received more information, including information about required credit checks or criminal background checks received "favorable" treatment, because "the housing provider has given them more details about what will be required to obtain housing." This is a particularly subjective assumption that may have led to reported higher incidence of unfavorable treatment. A housing provider's explanation of all the relevant screening criteria to selected applicants could just as easily be interpreted as an attempt to discourage those applicants.

Further, the testing results have some good news not particu-

larly emphasized in HUD's report. Approximately 50 percent of the housing providers tested responded appropriately and consistently in the tests using the TTY system. Approximately 70 percent of housing providers tested offered the same overall treatment to testers using wheelchairs as to non-disabled testers. Fifty-four percent indicated there would be no problem with the reasonable modification requested, and 44 percent recognized the obligation to provide a designated accessible parking space when requested by the tester using a wheelchair.

SIMPLE STEPS TOWARD PROGRESS

These results show that housing providers are making progress toward fair and open housing to people with disabilities, as required by law, but still have room for improvement. Certainly, the actions of the uneducated minority of housing providers, such as those reported by HUD from these tests, result in a negative picture of the industry as a whole.

Several simple steps can counteract this negative impression:

Education. Anyone working in the housing profession must be educated, not just on the legalities of the Fair Housing Act, but also on its practical implications. For example, staff must become familiar with such concepts as the relay operator system (TTY), reading aloud documents for people with vision impairments and recognizing requests for modifications and accommodation.

In addition, training and education must include issues of sensitivity and etiquette, such as speaking directly to people with disabilities, not touching wheelchairs or other assistive devices, and proper conduct toward service animals.

Consistency. Tests measure discrimination so starkly because they point out inconsistencies in treatment between two people who are intended to be alike in every way but one protected characteristic. Housing providers who are consistent in the amount, nature and manner of information they deliver to potential residents can be tested without concern.

Follow Up. HUD's study included follow-up contacts with housing agents who indicated they needed to speak to someone else before responding to a request for accommodation or modification. Unfortunately, almost none of the follow-up contacts resulted in a definitive answer to the request. Housing providers must recognize that a delay is comparable to a denial when it comes to requests for accommodations and modifications for people with disabilities. If onsite staff is not trained to have answers immediately available, they must make efforts to follow up in a timely and thorough manner.

HUD's study was limited to the metropolitan Chicago area and was certainly not large enough to draw nationwide conclusions about the rate of housing discrimination because of a disability. There are lessons to be learned from this study, however, that will increase the industry's level of legal compliance and reinforce the commitment to fair and open housing for all. ■

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ACTION ITEMS

According to the U.S. Census, 20.9 percent of American families had one or more members with a disability. For more on accessibility:

- Contact the Design and Construction Center at 888/341-7781, where staff members answer technical questions about what's covered and how to comply.
- Visit www.FairHousingFIRST.org for online information about the requirements.
- Co-host or attend local training sessions. For a list of upcoming locations, visit www.FairHousingFIRST.org/calendar.asp.

— Source: HUD's Fair Housing Accessibility FIRST program

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