Title II of the Americans with Disabilities Act prohibits discrimination in connection with a person's receipt of or participation in governmental programs, services, and activities, including housing owned and operated by or on behalf of a governmental entity.

Public housing, including housing paid for with HOME funds, HOPE VI funds, Phoenix revitalization funds, and any other housing that is funded by a state, federal or local government, must comply with Title II regulations. Title II also regulates housing provided by public colleges and universities, transient and temporary housing paid for with governmental funding, some group homes and homeless shelters, and any other housing involving public sector financing. For purposes of the rules, all of these housing programs are collectively referred to as public entities.

New rules published in September 2010 by the federal government create new requirements for these programs under Title II and clarify some older interpretations. Notably these changes include the following:

Mobility Devices

The rules provide that a public entity shall permit individuals with mobility devices to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces or other similar devices, in all areas open to pedestrian use.

They also require public entities to make reasonable modifications in their policies, practices or procedures to permit the use of "other power-driven mobility devices" by persons who have mobility impairments, unless the public entity can demonstrate that the class of "other power-driven mobility devices" cannot be operated in accordance with legitimate safety requirements that the public entity has adopted. These "other power-driven mobility devices" are defined as any mobility device powered by batteries, fuel or other engines – whether or not designed primarily for use by persons with mobility impairments – that the person with a mobility impairment uses for the purpose of locomotion. They include but are not limited to golf carts, Segways, electronic assistance mobility devices, and any other mobility device that is not a wheelchair.

To determine whether a particular "other power-driven mobility device" can be allowed in a particular facility, the public entity is required to evaluate the following factors: (a) the type, size, dimensions and speed of the device; (b) the facility's volume of pedestrian traffic; (c) the facility's design and operational characteristics; (d) whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility, and (e) whether the use of the "other power-driven mobility device" creates a substantial risk of serious harm to the immediate environment. Public

entities are not required to allow the use of these devices, however, if the individual poses a direct threat to the health or safety of others.

Public entities are prohibited from asking an individual using wheelchair or other power-driven mobility devices questions about the nature and extent of the person’s disability. They may, however, ask a person using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person’s disability. If the disabled person has a valid state-issued proof of disability, such as a handicap placard or license plate, that proof is considered sufficient to show proof of the need for the other power-driven mobility device. If the person does not have a handicap placard or license plate, then the entity is required to accept as a credible assurance a verbal representation, not contradicted by observable fact, that the power-driven mobility device is being used for mobility impairment.

Service Animals

The new rules purport to significantly limit what animals must be permitted in the facility; however, the comments to the rules make it clear that these limitations do not apply to housing covered by the fair housing laws. Notwithstanding any other provision of these rules, housing providers are still required to permit residents to keep any assistive or comfort animals that are recommended by their physicians or other providers unless (a) the animal poses a direct threat to others, (b) engages in aggressive behavior; or (c) otherwise violates the property’s reasonable requirements for animals on the premises.

For public entities other than those covered by the fair housing act, the new rules define a service animal as a dog or miniature horse that is individually trained to do wok or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual or other mental disabilities. Other species of animals, whether wild or domestic, trained or untrained, are not service animals. The rules also note that crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

A public entity that operates a program, service or facility that is not covered by the fair housing act is permitted to ask only two questions to determine whether an animal qualifies as a service animal under the new rules. It may ask (a) is the animal required because of a disability; and (b) what work or task has the animal been trained to perform. The public entity may not require documentation such as proof that the animal has been certified, trained or licensed as a service animal, and may not make any inquiries if it is clear what services the animal is trained to perform.

With respect to miniature horses the public entity may assess whether it is reasonable to permit the miniature horse on the premises by considering (a) the

type, size and weight of the animal and whether the facility can accommodate these procedures; (b) whether the handler has sufficient control of the miniature horse; (c) whether the miniature horse is housebroken; and (d) whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

Additional portions of the rule appear equally applicable to both public entities that are housing providers covered by the fair housing act and those that are not. These provide that service animals must be under the control of the handler at all times; that the public entity is not responsible for the care or supervision of a service animal; that individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or their invitees are allowed to go; and that the public entity shall not ask or require an individual with a disability to pay a surcharge or other fee even if the entity charges these fees and/or surcharges to non-disabled persons who have animals accompanying them.

Communications

All public entities are required to take appropriate steps to ensure that communications with applicants, participants, member of the public and companions with disabilities are as effective as communications with others. As required by previous rules they require the public entity to provide appropriate auxiliary aids and services an equal opportunity to participate in and enjoy the benefits of a program, service or activity that the public entity provides.

The new rules clarify what the public entity may and may not do when a person requires an interpreter because of a hearing impairment. These include the following:

- A pubic entity may not require an individual to bring another person to interpret for him or her.
- A pubic entity may not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except (a) in an emergency involving an imminent threat to the safety or welfare of an individual or the pubic where there is no interpreter present; or (b) where the person with the disabilities specifically requests that the accompanying adult interprets or facilitates communication and the accompanying adult agrees to do so.
- A public entity may not rely on a minor child to interpret or facilitate communications except in an emergency involving an imminent threat to the health or welfare of the individual or the public and there is no interpreter available.

Telecommunications

The rules stress that when a public entity communicates by telephone with applicants and beneficiaries, text telephones or equally effective telecommunications systems must be used to communicate with individuals who are deaf or hard of hearing or have speech impediments.

Scoping Requirements

Scoping refers to the design and construction of individual elements within a facility, such as the width and slope of a walkway, the width of a doorway, or the size and placement of a sink. The new rules anticipate new scoping requirements for public entities that may be different than the design standards under the 1991 or 2004 design standards. These new scoping standards will become effective six months after they are published in the federal register and public entities must use those new standards eighteen months after publication for new buildings and for buildings that are undergoing alterations.

For the eighteen months after publication of the new standards, covered entities may choose between the 1991 standards and the 2010 standards; however, public entities that should have complied wit the 1991 standards during new construction or alterations but did not do so, will be required to rely on the 2010 standards.

Residential Housing Offered for Sale to Individual Owners

For the first time Title II specifically covers residential housing programs provided by governmental entities. The new rules establish scoping (design) requirements for residential dwelling units built by or on behalf of public entities with the intent that the finished units will be sold to individual owners. These design standards are included with the new scoping requirements.