

March 5, 2001

TO: Office of Housing and Community Partnerships Award Recipients and Their Affiliates

FROM: Lisa Patt-McDaniel, Manager, Office of Housing and Community Partnerships

SUBJECT: Accessibility Notice: Section 504 of the Rehabilitation Act of 1973 and The Fair Housing Act, and Their Applicability to Housing Programs Funded by the HOME Investment Partnerships Program and the Community Development Block Grant Program

I. PURPOSE

The purpose of this Notice is to remind recipients of Federal funds in the HOME Investment Partnerships Program (HOME) or the Community Development Block Grant (CDBG) Program of their obligation to comply with Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and HUD's implementing Regulations (24 CFR Parts 8 and 100, respectively), which prohibit discrimination based on disability and establish requirements for program accessibility and physical accessibility in connection with housing programs. This Notice describes key compliance elements for housing assisted under the HOME and CDBG programs. However, recipients should review the specific provisions of the Fair Housing Act, Section 504, and their respective regulations in order to assure that their programs are administered in full compliance. Note with respect to Section 504, this Notice does not address the applicability of Section 504's physical accessibility requirements to homeownership programs financed with HOME/CDBG assistance.

The Notice also recommends that recipients conduct updated self evaluations as a useful tool for enhancing efforts to comply with accessibility requirements in HOME/CDBG programs, as well as to document those efforts.

Applicability

This Notice applies to new construction and rehabilitation of housing under the HOME and CDBG programs. Each primary recipient of Federal funds from the HOME or CDBG program is responsible for providing this notice to each organization or other entity participating in the construction or rehabilitation of projects receiving such funding and for establishing policies and practices that it will use to monitor compliance of all covered programs, activities, or work performed by subrecipients, contractors, subcontractors, management agents, etc.

II. SECTION 504 OF THE REHABILITATION ACT OF 1973

Background

The HOME and CDBG programs, through State and local governments, provide assistance that may be used for the construction or rehabilitation of affordable housing. HOME and CDBG funds may be used to construct or rehabilitate rental housing, to rehabilitate owner-occupied housing, and to finance homeownership programs.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in the operation of programs receiving Federal financial assistance. HUD regulations implementing Section 504 contain accessibility requirements for new construction and rehabilitation of housing as well as requirements for ensuring that the programs themselves are operated in a manner that is accessible to and usable by persons with disabilities. (See 24 CFR Part 8)

For the purposes of this Notice, the references to multifamily housing projects covered by Section 504 only apply to multifamily rental housing projects.

The Section 504 regulations define "recipient" as any State or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. (24 CFR §8.3) A family that will receive CDBG or HOME funds for the rehabilitation of an owner-occupied unit is not subject to the requirements of Part 8 since it is the ultimate beneficiary of the funds, and not a recipient of Federal financial assistance.

New Construction

HUD regulations implementing Section 504 at 24 CFR §8.22(a) require that new construction of multifamily projects be designed and constructed to be readily accessible to and usable by persons with disabilities. Multifamily housing projects are defined at 24 CFR §8.3 as "projects containing five or more dwelling units". Both the individual units and the common areas in the building must be accessible.

For new construction of multifamily rental projects, a minimum of five (5) percent of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments. An additional two (2) percent of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory impairments (i.e., hearing or vision impairments), unless HUD prescribes a higher number pursuant to 24 CFR 8.22(c).

Rehabilitation

Substantial alterations - Section 504 requires that if alterations are undertaken to a housing project that has 15 or more units, and the rehabilitation costs will be 75 percent or more of the replacement cost of the completed facility, then such developments are considered to have undergone "substantial alterations" (24 CFR 8.23(a)). For substantial alterations of multifamily rental housing, the accessibility requirements contained in 24 CFR §8.22 must be followed - a minimum of five (5) percent of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional two (2) percent, at a minimum (but not less than one unit), must be accessible to individuals with sensory impairments.

Other alterations -- When other alterations that do not meet the regulatory definition of substantial alterations are undertaken in multifamily rental housing projects of any size, these alterations must, to the maximum extent feasible, make the dwelling units accessible to and usable by individuals with disabilities, until a minimum of five (5) percent of the dwelling units (but not less than one unit) are accessible to people with mobility impairments, unless HUD prescribes a higher number pursuant to 24 CFR 8.23(b)(2). If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, then the entire dwelling unit shall be made accessible. For this category of rehabilitation the additional two (2) percent of the dwelling units requirement for individuals with sensory impairments does not apply. Alterations to common spaces must, to the maximum extent feasible, make those areas accessible. A recipient is not required to make a dwelling unit, common area, facility or element accessible, if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project. (24 CFR § 8.23(b)) Therefore, recipients are required to provide access in covered alterations up to the point of being infeasible or an undue financial and administrative burden.

Accessibility Standards

Dwelling units designed and constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) will be deemed to comply with the Section 504 regulation. For copies of UFAS, contact the HUD Distribution Center at 1-800-767-7468; hearing or speech-impaired persons may access this number by via TTY by calling the Federal Information Relay Service at 1-800-877-8339. Accessible units must be, to the maximum extent feasible, distributed throughout the projects and sites, and must be available in a sufficient range of sizes and amenities so as not to limit choice.

III. FAIR HOUSING ACT

Background

The Fair Housing Act applies to almost all housing sold or rented in the United States. The Fair Housing Act prohibits discrimination in housing practices on the basis of race, color, religion, sex, and national origin. The Fair Housing Act was amended in 1988 to provide protections from discrimination in any aspect of the sale or rental of housing for families with children and persons with disabilities. The Fair Housing Act also establishes requirements for the design and construction of new rental or for sale multifamily housing to ensure a minimum level of accessibility for persons with disabilities. (See 24 CFR 100.200 et. seq.)

Section 804(f)(3)(C) of the Fair Housing Act requires that covered multifamily dwelling units designed and constructed for first occupancy after March 13, 1991, be designed and constructed in a manner that:

- (i) the public and common use portions of such dwellings are readily accessible to and usable by disabled persons;
- (ii) all the doors designed to allow passage into and within the premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
- (iii) all premises within such dwellings contain the following features of adaptive design:
 - (I) an accessible route into and through the dwelling;
 - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (III) reinforcements in bathroom walls to allow later installation of grab bars; and
 - (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Covered multifamily dwelling units are:

- ground floor dwelling units in other buildings with four (4) or more units.
- dwelling units in buildings consisting of four (4) or more units served by one or more elevators, or

Information about housing designs that provide accessible features in compliance with the Fair Housing Act can be found in the HUD's Fair Housing Accessibility Guidelines which were published in the Federal Register on March 6, 1991 (56 F.R. 9472) and in HUD's Fair Housing Act Design Manual. These can be obtained from the HUD Distribution Center at 1-800-767-7468. Deaf, hard of hearing or speech-impaired

individuals also may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

The design and construction requirements in the Fair Housing Act apply only to a building designed and constructed for first occupancy after March 13, 1991. The Fair Housing Act regulations define a building for first occupancy as a building that has never been used for any purpose. Thus, the design and construction requirements in the Fair Housing Act will not apply to rehabilitation projects or activities.

Illustrations

It must be noted that, in many cases, new construction of rental projects funded in the HOME/CDBG Programs must meet both the Fair Housing Act and the Section 504 new construction requirements. Where two or more accessibility standards apply, the housing provider is required to follow and apply both standards, so that maximum accessibility is obtained. The following examples illustrate how these requirements will (or will not) apply:

- A rental building with an elevator constructed with HOME/CDBG funding would be required to have 5% of its dwelling units meet the Section 504 accessibility requirements at 24 CFR 8.22 and the remaining 95% of the dwelling units would be required to comply with the Fair Housing Act design and construction requirements at 24 CFR 100.205. Note: An additional 2% of the dwelling units are required to be accessible for people with vision and hearing impairments.
- A newly constructed 100 unit two-story garden apartment development with no elevator constructed with HOME/CDBG assistance with half (50) of its dwelling units on the ground floor and half (50) on the second floor would be required to have 5 of its ground floor dwelling units built to comply with the Section 504 accessibility requirements at 24 CFR 8.22, and the remaining 45 ground floor dwelling units built to comply with the Fair Housing Act design and construction requirements at 24 CFR 100.205. Note: An additional 2% of the dwelling units are required to be accessible for people with vision and hearing impairments in accordance with Section 504.
- A development consisting entirely of multistory rental townhouses constructed with Federal financial assistance is not a covered multifamily dwelling for purposes of the design and construction requirements of the Fair Housing Act at 24 CFR 100.205 since none of the dwelling units qualify as ground floor units, but would still have to meet the Section 504 5% + 2% accessibility requirements at 24 CFR 8.22. (A townhouse development of 5 or more single story dwelling units would still have to comply with both Section 504 and the Fair

- Housing Act design and construction requirements at 24 CFR 100.200 et. seq.)

IV. Increasing Program Accessibility

HUD's Section 504 regulations require that a recipient of Federal financial assistance ensure that its program, when viewed in its entirety, is accessible to persons with disabilities. (24 CFR 8.20) In order to meet this obligation, participants in the HOME/CDBG program must:

- To the maximum extent feasible, distribute accessible units throughout the projects and sites, and make them available in a sufficient range of sizes and amenities so as not to limit choice.
- Adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities. They must also take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to an individual without a disability, offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.
- When an applicant or tenant requires an accessible feature or policy modification to accommodate a disability, a federally assisted provider must provide such feature or policy modification unless doing so would result in a fundamental alternation in the nature of its program or an undue financial and administrative burden. See 24 CFR 8.4, 8.24, and 8.33 for further requirements and guidance.
- Providers are required to ensure that information about their programs is disseminated in a manner that is accessible to persons with disabilities. For example, special communication systems can greatly increase the effectiveness of outreach and ongoing communication (e.g., Telecommunications Devices for the Deaf (TTY), materials on tape or in Braille).
- Providers must ensure that activities and meetings are conducted in accessible locations.

Participants in the HOME/CDBG program may:

- Ask applicants for information that can demonstrate that they can meet the obligations of tenancy including financial information, references, prior tenancy history, etc. However, housing providers may not inquire into the nature and severity of an applicant or tenant's disability, nor may they ask persons with disabilities questions not asked of all applicants, apply different types of screening criteria, or assess an applicant's ability to live independently.
- Ask if the applicant qualifies for a housing program or unit designed for persons with a disability, when the housing program or unit is designed for such persons.
- Consider including a lease provision that requires a non-disabled family occupying an accessible unit to move if a family with a disability needing that size unit applies and there is an appropriately sized nonaccessible unit available for the relocating family.

V. Self-Evaluation

The Section 504 regulations required recipients of Federal financial assistance to conduct a self-evaluation of their policies and practices to determine if they were consistent with the law's requirements. This self evaluation was to have been completed no later than July 11, 1989. The regulatory deadlines are long past. However, self-evaluation continues to be an excellent management tool for ensuring that a recipient's current policies and procedures comply with the requirements of Section 504.

Involving persons with disabilities in the self-evaluation process is very beneficial. This will assure the most meaningful result for both the recipient and for persons with disabilities who participate in the recipients programs and activities. It is important to involve persons and/or organizations representing persons with disabilities, and agencies or other experts who work regularly with accessibility standards.

Important steps in conducting a self-evaluation and implementing its results include the following:

- Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities and services. Be mindful of the fact that a policy or practice may appear neutral on its face, but may have a discriminatory effect on individuals with disabilities.

- Modify any policies and practices that are not or may not be in compliance with Section 504 regulations.
- Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
- Document the self-evaluation process and activities. The Department recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps.

The Department also recommends that recipients periodically update the self-evaluation, particularly, for example, if there have been changes in recipient owned housing stock, such as demolition of housing units and construction and/or alteration of housing, or changes in the programs and services of the agency.

VI. Visitability

Visitability Concept

Although not a requirement, it is recommended that all design, construction and alterations incorporate, whenever practical, the concept of visitability in addition to the requirements under Section 504 and the Fair Housing Act.

Visitability is a design concept, which for very little or no additional cost, enables persons with disabilities to visit relatives, friends, and neighbors in their homes within a community.

Design Considerations

Visitability design incorporates the following in all construction or alterations, in addition to the applicable requirements of Section 504 and the Fair Housing Act, whenever practical and possible for as many units as possible within a development:

- Provide a 32" clear opening in all bathroom and interior doorways
- Provide at least one accessible means of egress/ingress for each unit.

Benefits

Visitability also expands the availability of housing options for individuals who may not require full accessibility. It will assist project owners in making reasonable accommodations and reduce, in some cases, the need for structural modifications or transfers when individuals become disabled in place. Visitability will also improve the marketability of units.

HUD Technical Assistance Concerning these Requirements

Further information concerning compliance with any of these requirements may be obtained through the HUD web page (<http://www.hud.gov/fhe/504/sect504.html>). Additional assistance and information may be obtained by contacting the local Department of Housing and Urban Development Offices of Community Planning and Development (CPD) at (614) 469-5737, Extension 8240 and Fair Housing and Equal Opportunity (FHEO) at (614) 469-5737 Extension 8170 or by contacting **Joyce Hill**, OHCP Civil Rights Specialist, at (614) 466-2285.