

Special Attention of:

Mayors, County Executives and Governors of States receiving Community Development Block Grant assistance; Secretary's Representatives; Senior Community Builders; State, County and Local Community Development Directors; HOME Participating Jurisdictions

Cross References: 24 CFR §570.601
24 CFR §§91.225 (a) (1), 91.325 (a) (1) & 91.425 (a) (1)
24 CFR §92.305(a)

SUBJECT: Affirmatively furthering fair housing and the accessibility requirements of the Fair Housing Act.

PURPOSE: The purpose of this notice is to reemphasize the responsibility of Community Planning and Development formula grant program recipients: (1) to affirmatively further fair housing which includes analyzing compliance with the multifamily design and construction requirements of the Fair Housing Act and (2) to include individuals with disabilities in the citizen participation process for the development of Consolidated Plans and Annual Action Plans.

BACKGROUND: Every three to five years, each State and local government that is a recipient of HUD formula grant funds through the Community Development Block Grant, HOME Investment Partnerships, Housing Opportunities for Persons With AIDS and the Emergency Shelter Grant Programs must submit a complete Consolidated Plan that assesses its priority housing and homeless needs, including the needs of persons with disabilities, and sets forth a strategic plan for addressing them. Annually, recipients submit the Action Plan component of the Consolidated Plan which describes how these funds will be used. When preparing its Consolidated Plan and its Action Plans, the jurisdiction must undertake citizen participation in accordance with its citizen participation plan. The citizen participation plan must provide for and encourage citizens to participate in the development of the Consolidated Plan, any substantial amendments to the Consolidated Plan, and preparation of the Annual Performance Report. Jurisdictions are also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

In its annual submission to HUD, each recipient must submit a certification required by 24 CFR 570.601 (a) (2) and 91.225 (a) (1), 91.325(a)(1) [States] and 91.425(a)(1) [Consortia] of the Community Development Block Grant and Consolidated Plan regulations that it will affirmatively further fair housing which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions taken. If the jurisdiction is not undertaking these actions, the Department may reject the certification and disapprove the Consolidated Plan.

The analysis of impediments to fair housing choice includes an assessment of conditions, both public and private, affecting fair housing choice. The Fair Housing Act amendments made it unlawful to discriminate against persons because of disability, including the failure to make multifamily residential structures built for first occupancy after March 13, 1991 accessible to persons with disabilities.

The Act requires that all units in an elevator building with four or more units be accessible to persons with disabilities. In a non-elevator building with four or more units, all ground floor units must be accessible to such persons. These requirements apply whether the building is privately or publicly constructed and owned.

DISCUSSION: The Department encourages recipients of funds covered by the Consolidated Plan to make outreach efforts to ensure that persons with disabilities are consulted and have an equal opportunity to participate in developing the jurisdiction's analysis of needs and plans for the use of Federal and other resources. HUD staff in the State and Area Community Planning and Development and Fair Housing and Equal Opportunity Offices can be consulted in helping your community develop its outreach efforts and a significant amount of information is found on HUD's homepage on the internet at www.hud.gov.

During the new five year Consolidated Plan cycle beginning this fiscal year, Consolidated Plan jurisdictions are strongly encouraged to periodically review and update their AIs, as appropriate, to give the same attention to impediments to fair housing choice for persons with disabilities as you do to other bases of discrimination such as race that have been prohibited by the Act since its inception in 1968. Thus HUD in its review of Annual Action Plan submissions and during on-site reviews, will consider whether jurisdictions are giving appropriate attention in their Action Plans to compliance with the accessibility requirements of the Act by both private and public housing providers.

Jurisdictions are also encouraged to take other actions to advance fair housing choice for persons with disabilities in support of their certification to affirmatively further fair housing. Recent HUD House Appropriations report language would direct HUD, when reviewing Consolidated Plans, to take into consideration a community's adoption of a building code that satisfies the Fair Housing Act Accessibility requirements along with the community's other efforts to remove "impediments" to fair housing.

With respect to building codes, we encourage elected officials and those engaged in housing and community development programs to determine whether the jurisdiction's building code is inconsistent in any respect with the Act's accessibility requirements. HUD's recently completed review of the four model building codes for consistency with the Fair Housing Act can assist you with this because most local building codes are derived from one or more national model codes. HUD's final report was published in the Federal Register on March 23, 2000.

In that report, HUD identified those areas of the codes that were not consistent with the accessibility requirements of the Act, and included recommended language for addressing these variations. Since that time, the Department has been working with the model code organizations and other interested persons in developing proposed code language to address the findings in the Department's final report with respect to the International Building Code 2000.

We also urge jurisdictions to find some way to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Act.

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for Fair Housing and Equal Opportunity

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