

U.S. Department of Housing and Urban Development

Housing

Special Attention of

Secretary's Representatives
State and Area Coordinators
Multifamily Hub Directors
Multifamily Program Center Directors
Supervisory Project Managers
Multifamily Project Owners and
Management Agents

Notice H 02-03

Issued: May 3, 2002

Expired: May 31, 2003

Cross References:

Subject

Reinstatement and Extension of Notice H 01-02, Compliance with Section 504 of the Rehabilitation Act of 1973 and the Disability / Accessibility Provisions of the Fair Housing Act of 1988.

Notice H 01-02, which was issued February 4, 2001 and expired on February 28, 2002, is being reinstated and extended to May 31, 2003.

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachment

Distribution: W-3-1,

Office of Housing

Special Attention of:

Notice H 01-02 (HUD)

Secretary's Representatives, State
and Area Coordinators, Multifamily
Hub Directors, Multifamily Program
Center Directors; Supervisory
Project Managers, Multifamily Project
Owners and Management Agents,
Community Builders

Issued: 02/06/01

Expires: 02/28/02

Cross References:

**Subject: Compliance with Section 504 of the Rehabilitation Act of 1973 and the
Disability/Accessibility Provisions of the Fair Housing Act of 1988**

I. Introduction

- A. Purpose:** This Notice provides information to participants in most programs and activities under the jurisdiction of the Office of Multifamily Housing Programs concerning applicable requirements for nondiscrimination on the basis of disability in such housing programs. The Notice reminds recipients of federal financial assistance of their obligation to comply with Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8 which provide for non-discrimination on the basis of disability in federally-funded housing and non-housing programs. The Notice also describes the obligations of all housing providers, whether or not they receive federal financial assistance, to comply with pertinent sections of the Fair Housing Act's provisions concerning persons with disabilities. The Notice also provides information on additional accessibility requirements imposed by specific program regulations, and discusses the concept of visitability. Finally, it indicates where participants in the programs below may receive technical assistance concerning these requirements.
- B. Applicability:** This Notice applies, in whole or in part, to the programs and activities under the jurisdiction of the Office of Multifamily Housing Programs, including the following:
1. Section 202 Supportive Housing for the Elderly
 2. Section 202 Direct Loan Program for Housing for the Elderly or Persons with Disabilities
 3. Section 202 Assisted Living Conversion Program
 4. Section 811 Supportive Housing for Persons with Disabilities
 5. Section 8 Project-Based Rental Certificates/Vouchers

Distribution: W-3-1

6. Mortgage Insurance Programs:
 - o Section 207 Rental Housing Insurance
 - o Section 213 Cooperative Housing Insurance
 - o Section 220 Rehabilitation and Neighborhood Conservation Housing Insurance
 - o Section 221 (d)(3) and Section 221 (d)(4) Mortgage Insurance for Rental and Cooperative Housing
 - o Section 231 Housing for Elderly Persons
 - o Section 232 Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, and Board and Care Homes
 - o Section 234 Mortgage Insurance for Condominiums
 - o Section 236 Rental Housing
7. Other programs and activities funded now or in the future by the Office of Multifamily Housing Programs, including:
 - o New Approach Anti-Drug
 - o Drug Elimination Grants
 - o Service Coordinators
 - o Neighborhood Networks
 - o Congregate Housing Services Program
 - o Miscellaneous Training/Technical Assistance

This notice also applies to contractors or other agents of recipients performing covered work or conducting covered activities on behalf of recipients including, architects, consultants, management agents, service coordinators, etc.

- C. **Background:** While many participants in the HUD programs listed above are doing an excellent job of meeting their obligation to ensure nondiscrimination on the basis of disability in their programs and services, other HUD program participants may not be in compliance with the subject laws and implementing regulations. To achieve maximum compliance, this Notice will serve to emphasize the importance of compliance.
- D. **Notification:** Local HUD Offices are responsible for providing this Notice to all participants in covered programs/activities or performing work covered under the above subject legislation and implementing regulations. Participants such as project owners are responsible for providing this Notice to all **current** and **future** contractors, management agents, architects, consultants, etc.

II. Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in all programs receiving federal financial assistance, including housing. The Fair Housing Act prohibits discrimination based upon disability, race, color, religion, sex, national origin and familial status in almost all housing sold and rented in the United States. State and local laws may have additional requirements. This Notice discusses how the Section 504 and the disability/accessibility provisions of the Fair Housing Act apply to housing and addresses situations where both laws apply. In this respect, where a property is subject to more than one law or accessibility standard, it is necessary to

comply with all applicable requirements. In some cases, it may be possible to do this by complying with the stricter requirement, however, it is also important to ensure that meeting the stricter requirement also meets both the scoping requirements of each law and the technical requirements of overlapping laws or standards.

A. Section 504 - Major Provisions (24 CFR 8)

1. Coverage

Section 504 applies to recipients of federal financial assistance. 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). Thus, HUD funded Section 811 or Section 202 developments, any developments which have project-based rental certificates or vouchers, or any properties insured by HUD mortgage insurance programs that also receive federal subsidies along with the mortgage insurance (i.e., rent supplement, rental assistance program, Section 8 project-based development) are recipients of federal financial assistance and are subject to the requirements of Section 504. In addition, a HUD mortgagee receiving a subsidy through the Section 221(d)(3) Below Market Interest Rate Program or the 236 Rental Housing Program is also a recipient of federal financial assistance and is subject to the requirements of Section 504.

2. Definition of Person With a Disability (24 CFR 8.3)

Section 504 defines person with a disability to include individuals with a physical or mental impairment that substantially limits one or more major life activities. The term "physical or mental impairment" may include, but is not limited to, conditions such as visual or hearing impairment, mobility impairment, HIV infection, mental retardation, drug addiction (except current illegal use of or addiction to drugs), or mental illness. The term "major life activity" means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Section 504 also protects persons who have a record of such impairment, or are regarded as having such an impairment.

Note: Although the regulations refer to individual with handicaps, the statute was amended in 1990 to change the reference to individual with disabilities. This Notice the latter term.

3. Physical Accessibility

- a. **New Construction [24 CFR 8.22 (a) and (b)]**. A minimum of 5% of the total dwelling units or at least one unit (whichever is greater) must be accessible for persons with mobility impairments. A minimum of 2% of the total dwelling units or at least one unit (whichever is greater) must be suitable

for occupancy by people with hearing or vision impairments. Also, see visitability recommendations in Section VI of this Notice.

- b. **Substantial Alterations [24 CFR 8.23(a)]**. If alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22(a) and (b) for new construction apply. For a definition of "facility", see 24 CFR 8.3. Also, see visitability recommendations in Section VI of this Notice.
- c. **Other Alterations [24 CFR 8.23(b)]**. When any other alterations are undertaken to any multifamily project that do not qualify as "substantial alterations", such alterations are required to be accessible, to the maximum extent feasible, up until a point where at least 5% of the units in a project are accessible unless HUD prescribes a higher number or percentage pursuant to 24 CFR 8.23(b)(2). If alterations of single elements of a dwelling unit, when considered together, amount to an alteration of the dwelling unit, the entire dwelling unit shall be made accessible. When the entire unit is not being altered, 100% of single elements being altered must be made accessible until 5% of the units in the development are accessible. However, HUD strongly encourages recipients, when undertaking alterations, to make 5% of the units in a project accessible up front, as that will avoid the necessity of making every element altered accessible, which may result in having partially accessible units of little or no value for persons with mobility impairments, and is likely to be more costly overall. It is recommended that recipients include up to 2% of the units for persons with hearing and vision impairments. Also, see visitability recommendations in Section VI of this Notice. See 24 CFR 8.23(b)(1) for exceptions due to undue financial and administrative burden and 24 CFR 8.32(c) for exception regarding alterations that require removing or altering load-bearing structural members.

Note: These exceptions do not relieve the recipient from compliance utilizing other units/buildings or other methods.

- d. **Applicability**. The accessibility requirements apply to the entire project as opposed to each individual building in the project.

4. Program Accessibility

- a. **Reasonable Accommodations [24 CFR 8.4, 8.24 and 8.33]**. A "reasonable accommodation" is a change, adaptation or modification to a policy, program, service, building, dwelling unit or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, live in a dwelling, or perform a job. Reasonable accommodations may include, for example, those which are necessary for a person with a disability to use and enjoy a dwelling. When a family member requires an accessible feature(s), policy modification or other reasonable accommodation to accommodate a disability, recipients must provide the requested accommodation unless doing so would result in a fundamental alteration in the nature of its program or an undue

financial and administrative burden. If providing such feature(s) would result in a financial and administrative burden, the recipient is required to take any other action that would not result in an undue burden.

Recipients are required to make reasonable adjustments to their rules, policies, practices, and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit, the common areas of a dwelling or participate in or access other activities conducted/sponsored by the recipient. For example, a recipient that does not allow residents to have pets, must modify its policies and allow a tenant with a disability to have an assistive animal if the animal is needed as a reasonable accommodation. If the recipient provides transportation to functions or activities or if transportation is necessary for a person with a disability to participate in such functions or activities, a recipient must ensure that accessible transportation is provided to accommodate persons with disabilities and their aides including the reasonable accompaniment of relative(s) or acquaintance(s) or assistive animals. See discussion of assistive animals under the Fair Housing Act section below.

Recipients are required to make and pay for structural modifications to dwelling units and common areas when needed as a reasonable accommodation for tenants or applicants with disabilities. For example, a recipient may be required to install a ramp to allow a tenant in a wheelchair access to a dwelling unit or, rather than modifying an existing unit, transfer a family to an available accessible unit or one that can be modified without causing an undue financial and administrative burden or alteration in the nature of a program, as long as such transfer meets the needs of the applicant/resident and is consistent with options provided to other families, such as choices among available projects. If providing a requested accommodation would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden, then the recipient need not provide that accommodation. However, the recipient is required to provide any other requested accommodation that would not result in an undue financial and administrative burden or fundamental alteration of the program. See 24 CFR 8.24 and 8.33 for a variety of compliance methods.

- b. **Distribution of Accessible Dwelling Units (24 CFR 8.26).** Required accessible dwelling units shall, to the maximum extent feasible, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that people with disabilities have choices of living arrangements comparable to that of other families eligible for assistance under the same program.
- c. **Occupancy of Accessible Dwelling Units (24 CFR 8.27).** Recipients shall adopt suitable means to ensure that information regarding the availability of accessible units reaches people with disabilities. Recipients shall also take reasonable nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility

accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, before offering such a unit to an applicant without a disability, the recipient shall:

- (1) First, offer the unit to an individual with disabilities currently residing in a non-accessible unit in the same project or comparable projects, under common control who requires the features of the unit,
- (2) Second, offer the accessible unit to the next qualified individual with disabilities on its waiting list who needs the features of the unit.

Note: A recipient may not prohibit an eligible family with a member who has a disability from accepting a non-accessible unit that the family is eligible for which may become available before an accessible unit. The recipient is required to modify such a non-accessible unit as needed, unless the modification would result in an undue financial and administrative burden. When offering an accessible unit to applicants without disabilities, the recipient may require such applicants to agree to move to a non-accessible unit when available or when the accessible unit is needed by a family with a member who has a disability. Such an agreement may be incorporated into the lease.

If an appropriate size accessible unit is not available, a recipient may want to house an applicant needing an accessible unit in a larger accessible unit in order to maximize the use of the accessible features. Also, dwelling units designed to be adaptable in accordance with the Uniform Federal Accessibility Standards (UFAS) can be easily converted into UFAS compliant units, and would, therefore, count as accessible units (see 24 CFR 8.3). Such adaptable units are helpful when there is no demand for accessible units since adaptable units are more marketable to families without disabilities.

Recipients should maintain up to date information about individuals in the community who need accessible units so that when such a unit becomes available persons in need of these units may have the opportunity to live in them. This can best be accomplished by targeting outreach efforts towards people with disabilities, including publicity/advertising, contacts with advocacy groups representing people with disabilities and other entities that come in contact with people with disabilities such as social service agencies, vocational rehabilitation agencies, medical providers, etc. **Reminder:** 24 CFR 8.27 requires that accessible units be offered first to current occupants in need of the accessible features of the available accessible unit and secondly, to a qualified applicant needing the accessible unit on the waiting list.

- d. **Non-housing Facilities (24 CFR 8.21).** All of the requirements of Section 504 with respect to nondiscrimination, program accessibility, and reasonable accommodation that apply to housing facilities and programs apply equally to non-housing facilities and programs. For example, newly constructed nonhousing facilities built by recipients shall be designed to be readily accessible to and usable by people with disabilities. Alterations to existing

facilities shall be accessible to the maximum extent feasible -- defined as not imposing an undue financial and administrative burden on the operations of the recipient's program or activity. For existing non-housing facilities such as Neighborhood Network Centers, participants shall operate each program or activity receiving federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. There are a number of methods included in the regulation at 24 CFR 8.21(c)(2) which may be used to accomplish accessibility in existing non-housing programs and activities.

- e. **Accessibility Standards (24 CFR 8.32).** The design, construction or alteration of buildings in conformance with Sections 3-8 of the UFAS are deemed to comply with the accessibility requirements of 24 CFR 8.21, 8.22, 8.23 and 8.25 with respect to those buildings. See 24 CFR 8.32. While this does not require recipients to make building alterations that cannot be accomplished without removing or altering a load-bearing structural member, it does not relieve the project owner of the responsibility for making its programs and units accessible to people with disabilities. Note that the UFAS may not be used alone, it is to be used in conjunction with the Section 504 regulations. Copies of UFAS may be obtained by calling 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.

B. Section 504 Admission/Occupancy Requirements

1. **Application Process (24 CFR 8.4, 8.24).** Recipients must make sure that all employees who are involved in the application process understand how to conduct tenant selection and screening without discriminating on the basis of any protected class, in particular, applicants with disabilities. All application offices must be accessible. The recipient should provide accessible materials for persons with hearing or visual disabilities. A recipient may have to make special arrangements to take the applications of persons who are unable to come to the management office as an accommodation to a disability. At the initial point of contact with each applicant, the recipient should inform all applicants of alternative forms of communication that can be used. Some examples of alternative forms of communication are sign language interpretation; having material explained orally by staff, providing large type materials; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.
2. **Live-in-Aides (24 CFR 5.403).** In some cases, individuals with disabilities may require a live-in-aide. A recipient should consider a person a live-in-aide if the person (a) is essential to the care and well being of a family member who has a disability; (b) is not obligated to support the family member; and (c) would not be living in the unit except to provide the supportive services. A live-in-aide may not be required to share a bedroom with another member of the household.

3. **Verification.** The recipient may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the housing for which they are applying; that applicants are qualified for deductions used in determining adjusted income; that applicants are entitled to any preference they may claim; and that applicants who have requested a reasonable accommodation have a need for the requested accommodation. A recipient may not require applicants to provide access to confidential medical records in order to verify a disability nor may a recipient inquire into the nature or severity of a person's disability. Because some housing programs may lawfully be designed for persons within one or more of the three categories of disability (i.e., physical disability, developmental disability, chronic mental illness), such as the Section 811 program or Section 202 direct loan program, a recipient may make an inquiry to determine if an applicant qualifies for the housing which is available only to persons who are a member of the category of disability served by the project.
4. **Eligibility/Reasonable Accommodations.** Many applicants meet the eligibility requirements and the requirements of the lease, do not need a reasonable accommodation, and do not need special unit features, and, therefore, can be admitted in exactly the same manner as other applicants.

Applicants who do not meet the requirements of the lease are sent a rejection letter. This letter must provide all applicants information concerning the recipient's informal review process and their right to request a hearing. The letter must also state that applicants with disabilities have the right to request reasonable accommodations to participate in the informal hearing process. The recipient is obligated to provide such reasonable accommodation if it does not cause undue financial and administrative burdens or require the recipient to make a fundamental alteration to the nature of its program.

A recipient may consider rejecting an applicant with disabilities if there is information indicating (a) the person is unable to comply with the terms of tenancy, or (b) that the individual tenancy would pose a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others. In such cases, however, if a reasonable accommodation will allow an applicant with a disability to meet the requirements, or will eliminate the threat, a recipient must make the accommodation.

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require reducing or waiving essential requirements. Examples of reasonable accommodations include, but are not limited to, physical alteration of units, making services and programs accessible, and revising policies and procedures. The focus should be on finding a reasonable accommodation that will permit the applicant to comply with the essential obligations of tenancy. A recipient is not required to excuse the applicant from meeting those requirements. All applicants should be provided information about how to request a reasonable accommodation at the

time they apply for admission and at every recertification. Each recipient must have a reasonable accommodation policy. The requirement to provide a reasonable accommodation is present at all times, including during lease enforcement.

5. **Unit Size.** A family may need a unit that is larger than the occupancy standards allow as a reasonable accommodation because of a family member with a disability. In such cases, a recipient must grant the reasonable accommodation, but may request documentation of the need for the larger unit.
6. **Unit Location.** A family applying for a unit or requesting a transfer may need a first floor unit as an accommodation due to a disability. However, persons with disabilities may not be restricted to only first floor units.
7. **Assistive Animals.** Assistive animals for persons with disabilities are not pets, therefore, regular pet policies do not apply to animals that are used to assist persons with disabilities and are necessary as a reasonable accommodation. See discussion of assistive animals under the Fair Housing Act section below. However, all provisions of the lease apply, such as maintaining the premises in a clean and sanitary condition and ensuring that neighbors enjoy their premises in a safe and peaceful manner.

C. **Self Evaluation (24 CFR 8.51)**

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.

It is important to involve persons with disabilities in the self-evaluation process. This will assure the most meaningful result for both the recipient and for persons with disabilities who participate in the recipient's 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:

- o Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in the recipient's 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.

- o Modify any policies and practices that are not or may not be in compliance with Section 504.
- o 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.
- o Document the self-evaluation process and activities. The Department recommends that all recipients keep the self-evaluation on file, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps.
- o 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.

III. The Fair Housing Act of 1988 (24 CFR 100)

A. Background

The Fair Housing Act (the Act), prohibits discrimination in housing practices on the basis of race, color, religion, sex, national origin, and applies to almost all housing sold or rented in the United States. The Act was amended in 1988 to provide protections for families with children and persons with disabilities. This Notice focuses only on the provisions of the Act protecting persons with disabilities. The Act also establishes requirements for the design and construction of covered multifamily dwellings built for first occupancy after March 13, 1991, to ensure a minimum level of accessibility for persons with disabilities. (See 24 CFR 100.200 *et seq*).

B. Applicability

The Fair Housing Act applies to all **housing providers** operating programs funded by the Office of Multifamily Housing Programs, and all housing providers applying for HUD mortgage insurance; not just those providers that qualify as recipients of federal financial assistance.

C. Definition of Person with a Disability (24 CFR 100.201).

The Fair Housing Act defines "person with disability" in the same manner as Section 504 as an individual with a physical or mental impairment that substantially limits one or more major life activities. The term "physical or mental impairment" may include, but is not limited to, conditions such as visual or hearing impairment, mobility impairment, HIV infection, mental retardation, drug addiction (except current, illegal use of, or addiction to, drugs)

or mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Act also protects persons who have a record of such impairment, or are regarded as having such an impairment.

D. New Construction

1. **Requirements.** Section 804(f)(3)(C) of the Fair Housing Act (45 U.S.C. 3604(f)(3)(c)) 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 dwelling units are readily accessible to and usable by disabled persons;
 - (ii) all the doors designed to allow passage into and within the premises within such dwelling units are sufficiently wide to allow passage by disabled persons in wheelchairs; and
 - (iii) all premises within such dwelling units contain the following features of adaptive design:
 - (I) an accessible route into and through the dwelling unit;
 - (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 dwellings are:

- o buildings consisting of 4 or more dwelling units, if such buildings have one or more elevators, and
 - o ground floor units in other buildings consisting of 4 or more dwelling units.
2. **Applicability.** The Act's design and construction requirements apply on a building-by-building basis and only to a building designed and constructed for first occupancy after March 13, 1991. The Fair Housing Act regulations define "first occupancy" as a building that has never before been used for any purpose.

E. Accessibility Standards

The Fair Housing Act regulations provide that meeting the appropriate requirements of the American National Standards Institute (commonly cited as ANSI A117.1) accessibility standards suffices to meet the accessibility requirements in the Act and the Department's regulations. In

addition, the Department's **Fair Housing Accessibility Guidelines** (the Guidelines) provide a safe harbor for compliance. The Guidelines were published in the Federal Register on March 6, 1991 (56 F.R. 9472) and technical corrections to the Guidelines were published in the Federal Register on June 24, 1991. In addition, on June 28, 1994, the Department published a Supplemental Notice to the Guidelines: Questions and Answers About the Guidelines (59 F.R. 33362). The Department also published a **Fair Housing Act Design Manual** which also serves as a safe harbor. For copies of either the Guidelines or the Design Manual, contact HUD's 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.

F. Other Fair Housing Act Disability-Related Nondiscrimination Requirements

The Fair Housing Act's nondiscrimination requirements apply to all housing providers, funded or insured through programs of the Office of Multifamily Housing Programs, not just those engaged in the design and construction of new housing.

1. **Reasonable Modifications to Existing Premises (24 CFR 100.203).** The Fair Housing Act provides that it is unlawful for a housing provider to refuse to permit a person with a disability to make reasonable modifications, at his or her own expense, of existing premises occupied or about to be occupied by a person with a disability, if such modification may be necessary to afford the person with a disability full enjoyment of the premises. If it is reasonable to do so, the housing provider may condition permission for a modification of a dwelling unit, (not the common areas) on the renter agreeing to restore the unit to the condition that existed before the modification, reasonable wear and tear excepted. In such case, the housing provider may require the tenant to pay into an interest bearing escrow account, over a reasonable period, the funds necessary to restore the premises to its original condition (see regulation for further requirements and guidance). However, participants in programs receiving federal financial assistance that are also subject to section 504, such as owners of Section 202 and Section 811 projects, owners receiving project based Section 8 certificates, participants in the Section 236 Rental Insurance Program or the 221(d)(3) Below Market Rate Insurance Programs must follow the more stringent requirements of 24 CFR 8.4, 8.24, 8.23(b)(1) and 8.33, which require them to pay the cost of modifications unless such modifications are determined to be an undue financial and administrative burden (in such cases, other alternatives for providing the accommodation must be implemented by project owners).
2. **Reasonable Accommodations (24 CFR 100.204).** This obligation applies to all housing providers regardless of whether they receive federal financial assistance. This requirement is the same under Section 504 and the Fair Housing Act.

An "**accommodation**" is a change, exception, or adjustment to a rule, policy, practice or service, which may be necessary in order for a person with a disability to use and enjoy a dwelling, including public and common use spaces. Since persons with disabilities may have special needs, in some cases, simply treating them exactly the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling. The Fair Housing Act makes it unlawful to refuse to make "**reasonable accommodations**" to rules, policies, practices, or services, when such accommodations **may be necessary** to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

In order to show that a requested accommodation **may be necessary**, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. A provider may refuse to provide a requested accommodation if providing the accommodation would constitute an undue financial and administrative burden or fundamental alteration of the provider's housing program.

Examples of reasonable accommodations are: providing an assigned parking space in front of an entrance to a tenant's unit, where the housing provider has a policy of no assigned spaces; allowing a tenant with a disability to have an assistive animal, (see below) where the housing provider has a "no pets" policy; allowing a tenant whose disability makes it difficult for her to leave her unit to mail her rent, where the landlord has a policy of requiring rent to be paid in person at the rental office.

3. **Assistive Animals.** Assistive animals are animals that serve as a reasonable accommodation for persons with disabilities by assisting those individuals in some identifiable way by making it possible for them to make more effective use of their housing. Such animals are often referred to as "service animals, assistive animals, support animals, or therapeutic animals" and may include any animal that actually performs tasks or a service for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with hearing impairments to intruders or sounds, pulling a wheelchair, fetching items or providing emotional support to persons with mental disabilities. Regular pet policies do not apply to assistive animals. If a tenant or applicant can establish that he or she needs an assistive animal as a reasonable accommodation to his or her disability, the housing provider must allow the animal to live in the unit.
4. **Unlawful Inquiries (24 CFR 100.202).** The Fair Housing Act provides that it is unlawful for a housing provider (a) to inquire whether an applicant for a dwelling, a person intending to reside in a dwelling after it becomes available, or anyone associated with an applicant or resident, has a disability or (b) to inquire as to the nature or severity of a disability of such persons. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities:

- o Inquiry into an applicant's ability to meet the requirements of tenancy;
- o Inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance; and
- o Inquiry to determine if an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

There may be instances where the housing has been developed under programs designed to provide housing for persons with a disability. In such instances, a housing provider may make the following inquiries of all applicants:

- o Inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability, and
- o Inquiry to determine if an applicant qualifies for a priority available to persons with disabilities or to persons with a particular disability. For example:
 - A housing provider offers accessible units to persons needing the features of these units on a priority basis. The provider may ask applicants whether they have a disability which will benefit from the features of the units, but may not in such circumstances ask applicants whether they have other types of impairments.

Housing providers may not assess an applicant's ability to live independently, may not apply different types of screening criteria to persons with disabilities; and may not request copies of a tenant or applicant's medical records.

IV. Examples of How Developments May Be Subject to Both Section 504 and the Fair Housing Act Design and Construction Requirements

In many cases properties constructed with Federal financial assistance must meet both the Section 504 new construction requirements at 24 CFR 8.22 as well as the Fair Housing Act design and construction requirements. Multifamily projects consisting of four (4) or more units in a building that are constructed with federal financial assistance for first occupancy after March 13, 1991 must meet both the Section 504 new construction requirements at 24 CFR 8.22 as well as the Fair Housing Act design and construction requirements. For example:

- o A newly constructed elevator building must have 5% of its units meet the Section 504 accessibility requirements at 24 CFR 8.22. The remaining 95% of the units must comply with the Fair Housing Act design and construction requirements at 24 CFR 100.205 (see Section III.D. Above).

Note: As required by Section 504, an additional 2% of the units must be accessible for people with vision and hearing impairments.

- o A newly constructed two-story 100-unit garden apartment development with no elevator with 50 units on the ground floor and 50 on the second floor must have 5 (5% of total number of units) ground floor units built to comply with the Section 504 accessibility requirements at 24 CFR 8.22., All of the remaining 45 ground floor units must comply with the Fair Housing Act design and construction requirements at 24 CFR 100.205.

Note: As required by Section 504, an additional 2% of the units must be accessible for people with vision and hearing impairments.

- o A development consisting entirely of multistory townhouses is **not** a covered multifamily dwelling for purposes of the design and construction requirements of the Fair Housing Act at 24 CFR 100.205, but must meet the Section 504 5% + 2% accessibility requirements at 24 CFR 8.22. (However, a townhouse development of 4 or more single-story units **must** comply with the Fair Housing Act design and construction requirements).

V. Program Specific Compliance/Activities

Programs that have accessibility requirements that go beyond the scope of Section 504 and the Fair Housing Act

A. Section 202 Direct Loan Program for Housing for the Elderly or Persons with Disabilities

Although the Section 202 Direct Loan Program is no longer in existence to fund new projects (the National Affordable Housing Act of 1990 replaced it with the Section 202 program of Supportive Housing for the Elderly and the Section 811 program of Supportive Housing for Persons with Disabilities), projects developed under the program were required to meet certain accessibility requirements and must remain in compliance with these requirements, as follows:

In a Section 202 direct loan project for the elderly, 10 percent of the units were required to be designed to be accessible (according to UFAS) to persons with mobility impairments and can be occupied by either elderly people or nonelderly people with mobility impairments who require the accessible features of the unit.

Note: Projects constructed under the Section 202 Program of Supportive Housing for the Elderly which was authorized by the National Affordable Housing Act of 1990 are not required to have 10 percent of their units accessible to persons with mobility impairments. However, they must comply with the UFAS, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8 and, for new construction projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

B. Section 811 Program of Supportive Housing for Persons with Disabilities

Projects must comply with the following:

1. The Uniform Federal Accessibility Standards (UFAS);
2. Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8;
3. For new construction of residential buildings having 4 or more units (other than a single-family group home intended for occupancy as a single household), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100; and
4. Additional accessibility requirements at 24 CFR 891.310(b) which include the following:
 - (a) All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.
 - (b) In projects for persons with chronic mental illness, a minimum of 10 percent of all dwelling units in an independent living project (or 10 percent of all bedrooms and bathrooms in a group home, but at least one of each such space) must be designed to be accessible or adaptable for persons with physical disabilities.
 - (c) In projects for persons with physical or developmental disabilities, all dwelling units in an independent living project (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities. A project involving acquisition and/or rehabilitation may provide a lesser number if:
 - (i) The cost of providing full accessibility makes the project financially infeasible;
 - (ii) Fewer than one-half of the intended occupants have mobility impairments; and
 - (iii) The project complies with the requirements of 24 CFR 8.23.

VI. Visitability

A. 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, for very little or no additional cost, that enhances the ability of people with disabilities to interact with their neighbors, friends and associates in the community.

B. 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:

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

C. 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.

VII. HUD Technical Assistance on Section 504 and the Fair Housing Act

Further information concerning compliance with any of these requirements may be obtained through the HUD web page (<http://www.hud.gov/fhe/fheo.html>). Additional assistance and information may be obtained by contacting the local Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity (FHEO) and Multifamily Program Center (MF Prog Ctr). Below is a list of the phone numbers for these offices which can also be accessed through the Federal Information Relay Service at 1-800-877-8339.

	<u>FHEO</u>	<u>MF Prog Ctr</u>
Boston	617-565-5310	617-565-5152
Hartford	860-240-4800	860-240-4800 x3002
Manchester		603-666-7685
Providence		401-528-5354
New York	212-264-1290	212-264-0777 x3712
Buffalo	716-551-5755	716-551-5755 x5500
Charleston		304-347-7000 x110
Newark	973-622-7900	973-622-7900 x3419
Philadelphia	215-656-0661	215-656-0609 x3305
Pittsburgh	412-355-3167	412-644-6394
Baltimore	410-962-2520	410-962-2520 x3052
Richmond	804-278-4504	804-278-4505 x3148
Washington, DC	202-275-0848	202-275-4677 x3091
Atlanta	404-331-1798	404-331-5001 x2309
Birmingham	205-290-7630	205-290-7630 x1062
South Florida	305-536-4479	
Jacksonville	904-232-1777	904-232-1777 x2018
Jackson		601-965-4700 x2801

FHEO**MF Prog Ctr**

San Juan	787-766-5400	787-766-5400 x2058
Louisville	502-582-6163 x230	502-582-6163 x262
Knoxville	865-545-4379	865-545-4411 x157
Nashville		615-736-5365 x3120
Greensboro	336-547-4050	336-547-4020 x8335
Columbia	803-765-5936	803-253-3240
Chicago	312-353-7776	312-353-6236 x2152
Indianapolis	317-226-7654	317-226-7183
Minneapolis	612-370-3185	612-370-3051 x2265
Milwaukee	414-297-3214	414-297-3214 x8600
Detroit	313-226-6280	313-226-7107 x8145
Grand Rapids		616-456-2138
Columbus	614-469-5737 x8170	614-469-5737 x8201
Cleveland		216-522-4058 x7169
Cincinnati		513-684-2881
Fort Worth	817-978-5870	817-978-5767
Albuquerque	505-346-7327	817-978-5787
Houston	713-313-2274	713-313-2210 x7063
Little Rock	501-324-6296	501-324-5937
New Orleans	504-589-7219	504-589-7236 x3106
San Antonio	210-475-6885	210-475-6831
Kansas City	913-551-5834	913-551-6812
Des Moines		515-284-4015
Oklahoma City	405-553-7426	405-553-7510
Omaha	402-492-3109	402-492-3114
St. Louis	314-539-6327	314-539-6260
Denver	303-672-5437	303-672-5343 x1170
San Francisco	415-436-6569	415-436-6580
Honolulu	808-522-8180	808-522-8185
Phoenix		602-379-4667 x6236
Sacramento		916-498-5200 x343
Los Angeles	213-894-8000 x3400	213-894-8000 x3802
Seattle	206-220-5170	206-220-5200 x3270
Portland	503-326-3349	503-326-2514

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Federal Housing Commissioner