

Department of Housing and Urban Development

24 CFR Part 8
[Docket No. FR-5784-N-01]

Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: HUD is issuing this Notice to permit recipients of Federal financial assistance from HUD (HUD recipients) to use an alternative accessibility standard for purposes of complying with Section 504 of the Rehabilitation Act of 1973 (Section 504) and HUD's implementing regulation at 24 CFR part 8 (Section 504 regulation) until HUD formally revises its Section 504 regulation to adopt an updated accessibility standard. In March 2011, the Department of Justice (DOJ), pursuant to its coordination authority under Section 504, advised Federal agencies that they may permit covered entities to use the 2010 ADA Standards for Accessible Design (2010 Standards) as an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS) until such time as they update their agency's regulation implementing the Federally assisted provisions of Section 504. Consistent with DOJ's advice, this Notice provides HUD recipients the option of using the 2010 Standards under title II of the ADA, except for certain specific provisions identified in this Notice, as an alternative accessibility standard to UFAS for purposes of complying with Section 504 and HUD's Section 504 regulation for new construction and alterations commenced on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This Notice is in effect until HUD formally revises its Section 504 regulation to adopt an updated accessibility standard.

DATE: *Effective Date:* **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Special Advisor for Disability Policy, Office of Program Compliance and Disability Rights, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone 202-402-7058 (this is not a toll-free number). Individuals who are deaf, are hard of hearing, or have speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Overview

HUD's Section 504 regulation requires that programs or activities receiving Federal financial assistance be readily accessible to and usable by persons with disabilities. HUD's Section 504 regulation provides that the design, construction, or alteration of buildings and facilities in conformance with UFAS is deemed to be in compliance with the accessibility requirements of Section 504 (24 CFR § 8.32). Many of the programs or activities that are subject to HUD's Section 504 regulation, however, are also subject to title II of the ADA, which applies to public entities, or title III of the ADA, which covers certain private entities, including public accommodations, and are therefore required to comply with the 2010 Standards. When more than one law and accessibility standard applies, it is currently necessary for the recipient to determine on a section-by-section basis which standard affords greater accessibility.

In March 2011, DOJ advised Federal agencies that they may provide covered entities the option of using the 2010 Standards as an acceptable alternative to UFAS (www.ada.gov/504_memo_standards.htm) until such time as they update their agency's

regulation implementing the Federally assisted provisions of Section 504. Because many recipients of Federal financial assistance are also subject to the Americans with Disabilities Act (ADA), Federal agencies requested this authority to minimize the number of accessibility standards with which recipients of Federal financial assistance must comply.

HUD has identified certain provisions in the 2010 Standards that provide less accessibility than is currently required by UFAS and/or HUD's Section 504 regulation. As a result, HUD is not deeming use of those specific provisions of the 2010 Standards as a means of providing accessibility under Section 504 because HUD cannot decrease the level of accessibility currently required by its Section 504 regulation without engaging in notice and comment rulemaking. Those provisions are summarized in the Appendix of this Notice.

The option to utilize the 2010 Standards under title II of the ADA, except for certain provisions identified in this Notice, is available to all HUD recipients for purposes of complying with HUD's Section 504 regulation whether they are private or public entities, including HUD recipients covered by Section 504 but not title II or III of the ADA. For purposes of complying with Section 504, a HUD recipient must designate the accessibility standard it is using: the 2010 Standards with identified exceptions outlined in this Notice or UFAS. Recipients that prefer to use UFAS as the accessibility standard under Section 504 may continue to do so. If a recipient subject to both Section 504 and the ADA decides to continue to use UFAS to comply with HUD's Section 504 requirements, it must determine, section-by-section, which standard (2010 Standards or UFAS) affords greater accessibility and comply with that provision. If choosing the 2010 Standards for purposes of compliance with Section 504, the recipient need only comply with the 2010 Standards except that it must not apply those provisions not deemed as compliant in this Notice and must continue to apply those provisions of UFAS or the HUD regulation that

are specifically identified in this Notice. HUD also reminds recipients that the design and construction requirements of the Fair Housing Act (FHAct) continue to apply to new construction of covered multifamily dwellings. These requirements are not affected by this Notice. However, some of these requirements impose greater accessibility requirements than the 2010 Standards.

II. Definitions of Standards and Guidelines Referenced in this Notice

1991 Standards means the requirements in the ADA Standards for Accessible Design published as Appendix A to 28 CFR part 36 on July 26, 1991, and republished as Appendix D to 28 CFR part 36 on September 15, 2010. For purposes of compliance with title II of the ADA, covered entities were not permitted to use the elevator exemption contained at §4.1.3(5) and §4.1.6(1)(j) of the 1991 Standards.

2004 ADA and ABA Accessibility Guidelines means the minimum accessibility guidelines published by the United States Access Board in 2004 for both the ADA and the Architectural Barriers Act (ABA).¹

2004 ADAAG means the requirements set forth in Appendices B and D to 36 CFR 1191 which are the ADA scoping chapters and the common technical requirements in the ADA and ABA Accessibility Guidelines.

2004 ABAAG means the requirements set forth in Appendices C and D to 36 CFR 1191 which are the ABA scoping chapters and the common technical requirements in the ADA and ABA Accessibility Guidelines.

UFAS means the Uniform Federal Accessibility Standards. HUD's Section 504

¹ 36 CFR 1191. The full text of the 2004 ADA and ABA Accessibility Guidelines is available at the U.S. Access Board's website, <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/background/ada-aba-accessibility-guidelines-2004>.

regulation references sections 3 through 8 of UFAS for purposes of compliance with Section 504.²

2010 Standards means the 2010 ADA Standards for Accessible Design as defined in the regulation implementing title II of the ADA and consists of the 2004 ADAAG as applied to entities covered by title II of the ADA (*i.e.*, public entities) and the requirements contained in 28 CFR § 35.151.

III. Background

A. Section 504

Section 504 and HUD's Section 504 regulation prohibit discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department.³ HUD's Section 504 regulation specifically prohibits the denial of benefits of, exclusion from participation in, or other discrimination against qualified individuals with disabilities in Federally assisted programs or activities because a recipient's facilities are inaccessible to or unusable by individuals with disabilities.⁴ Among other things, the regulation requires that the design, construction, and alteration of projects meet physical accessibility requirements.⁵

Currently, pursuant to HUD's Section 504 regulation, the design, construction, or alteration of buildings in conformance with UFAS is deemed to be in compliance with the accessibility requirements of Section 504.⁶ UFAS is based on the minimum accessibility guidelines developed by the United States Access Board (Access Board) that were adopted as enforceable standards by the General Services Administration, the Department of Defense, the

² 24 CFR § 8.32.

³ 29 U.S.C. § 794.

⁴ 24 CFR § 8.20.

⁵ 24 CFR §§ 8.21; 8.22; 8.23; 8.24; 8.25.

⁶ 24 CFR § 8.32.

Department of Housing and Urban Development, and the United States Postal Service for purposes of compliance with the ABA. Subsequently, UFAS was also adopted as the referenced accessibility standard in HUD's Section 504 regulation. HUD's Section 504 regulation provides that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided (24 CFR § 8.32).

B. 2004 ADA and ABA Accessibility Guidelines

On July 23, 2004, the Access Board published updated minimum accessibility guidelines for both the ADA and the ABA known as the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (2004 ADA and ABA Accessibility Guidelines). The 2004 ADA and ABA Accessibility Guidelines updated the accessibility provisions contained in UFAS and the 1991 ADA Accessibility Guidelines. The 2004 ADA and ABA Accessibility Guidelines contain three parts: application and scoping requirements for facilities covered by the ADA (ADA Chapters 1 and 2); application and scoping requirements for facilities covered by the ABA (ABA Chapters 1 and 2); and a common set of technical provisions (Chapters 3 through 10). The 2004 ABAAG refers to ABA scoping Chapters 1 and 2 and technical provisions in Chapters 3 through 10, and the 2004 ADAAG refers to ADA scoping Chapters 1 and 2 and technical provisions in Chapters 3 through 10.

HUD will engage in the rulemaking process in order to replace UFAS with a new accessibility standard based on the updated guidelines for purposes of both Section 504 and ABA compliance. Until HUD adopts a new accessibility standard, HUD recipients who undertake alterations or new construction of a project may continue to utilize UFAS and HUD's Section 504 or ABA regulations.

C. Title II of the ADA

Title II of the ADA prohibits discrimination on the basis of disability by state and local government entities, including by requiring facilities designed, constructed, or altered by or on behalf of a public entity, or as part of a public entity's program, to be readily accessible to and usable by individuals with disabilities.⁷ Except for transportation facilities, DOJ is the Federal agency responsible for adopting accessibility standards under title II of the ADA.⁸ The Department of Transportation establishes accessibility standards for transportation facilities subject to title II of the ADA. In 1991, DOJ issued a regulation establishing the 1991 Standards or UFAS as legally enforceable accessibility standards under title II.

On September 15, 2010, DOJ published a final rule revising its title II regulation at 28 CFR part 35. Among other requirements, the revised regulation adopted a new accessibility standard referred to as the 2010 ADA Standards for Accessible Design (2010 Standards).⁹ For new construction and alterations that commence on or after March 15, 2012, entities covered by title II must comply with the 2010 Standards.¹⁰ The 2010 Standards can be found at http://www.ada.gov/2010ADASTandards_index.htm.

For title II entities, the 2010 Standards consist of the 2004 ADAAG and requirements contained in 28 CFR § 35.151. Section 35.151 sets forth requirements that have the effect of modifying provisions in 2004 ADAAG and include scoping and technical requirements for social service center establishments, housing at places of education, assembly areas, medical care facilities, residential dwelling units for sale to individuals, and detention and correctional

⁷ 42 U.S.C. § 12131 *et. seq.*

⁸ The Department of Justice (DOJ) is also the Federal agency responsible for adopting accessibility standards under title III of the ADA, which prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with established accessibility standards. The DOJ implementing regulation is at 28 CFR part 36.

⁹ DOJ's September 15, 2010 final rule also revised its title III regulation. For title III entities, the 2010 Standards consist of the 2004 ADAAG and requirements under 28 CFR Part 36 – Subpart D.

¹⁰ See 28 CFR § 35.151(c) for accessibility standards and compliance dates prior to March 15, 2012.

facilities. For example, social service center establishments, which include group homes, halfway houses, shelters, and similar facilities providing temporary sleeping accommodations, must comply with the 2010 Standards applicable to residential facilities including certain requirements specified at 28 CFR § 35.151(e). Most housing at a place of education (defined in the title II and title III regulations) must comply with the 2010 Standards applicable to transient lodging including certain requirements specified at 28 CFR § 35.151(f).

IV. Deeming 2010 Standards as an Alternative Accessibility Standard for Section 504

Compliance

In March 2011, pursuant to its coordination authority under Section 504, DOJ advised Federal agencies that until such time as they update their agency's regulation implementing the Federally assisted provisions of Section 504, they may notify covered entities that they may use the 2010 Standards as an acceptable alternative to UFAS. Consistent with this guidance, HUD will permit, but not require HUD recipients to use the 2010 Standards under title II of the ADA, except for those provisions identified in this Notice, as an alternative accessibility standard to UFAS until HUD revises its Section 504 regulation to formally adopt an updated accessibility standard.¹¹ HUD is not permitting use of certain identified provisions in the 2010 Standards because those provisions provide a lower level of accessibility than is currently required under UFAS and/or HUD's Section 504 regulation and HUD cannot reduce the level of accessibility provided under its Section 504 regulation without engaging in notice and comment rulemaking.

It is important to emphasize that HUD recipients electing to use the 2010 Standards must use the 2010 Standards applicable to public entities under title II of the ADA, with the

¹¹ Memorandum dated March 29, 2011, from Thomas E. Perez, Assistant Attorney General, Division of Civil Rights, U.S. Department of Justice, to Federal Agency Civil Rights Directors and General Counsels, "Permitting Entities Covered by the Federally Assisted Provisions of Section 504 of the Rehabilitation Act to Use the 2010 ADA Standards for Accessible Design as an Alternative Accessibility Standard for New Construction and Alterations," http://www.ada.gov/504_memo_standards.htm.

exceptions noted below, to the entire project; they may not rely on some requirements contained in the 2010 Standards and some requirements contained in UFAS. For purposes of Section 504 compliance, this does not mean that existing buildings that are part of a project and which are not being altered must be brought up to the 2010 Standards. Rather, it means that when a HUD recipient undertakes new construction or alterations and chooses to use the 2010 Standards with the exceptions outlined in this Notice, the recipient must apply the 2010 Standards to all of the new construction or alterations. It should be noted that the 2010 Standards include a safe harbor for portions of a path of travel complying with UFAS or the 1991 Standards (28 CFR § 35.151(b)(4)(ii)(C)). This safe harbor does not apply to existing elements that are altered. The 2010 Standards are available at http://www.ada.gov/2010ADASTandards_index.htm.

This option applies to all HUD recipients for purposes of compliance with HUD's Section 504 regulation, including private and public entities, and entities covered by Section 504 but not title II or III of the ADA. Most recipients covered by Section 504 based on the receipt of Federal financial assistance from HUD are state or local government entities or private entities covered by the ADA, and are therefore required to comply with ADA accessibility requirements.¹² By issuing this Notice, HUD is offering covered entities the option of reducing the burden of complying with different accessibility standards under Section 504 and the ADA until HUD issues a rule adopting a new accessibility standard under Section 504. HUD recipients may utilize the 2010 Standards, with the exceptions outlined in this Notice, for compliance with both statutes.

This Notice makes no changes for entities that choose to use UFAS for purposes of Section 504 compliance along with HUD's Section 504 regulation when undertaking alterations

¹² State or local governments are "public entities" covered by title II of the ADA, 42 U.S.C. §§ 12131 – 12134. "Public accommodations" include private for-profit or not-for-profit entities that are subject to the requirements of title III of the ADA, 42 U.S.C. §§ 12181 – 12189.

or new construction. HUD recipients may continue to use HUD's Section 504 regulation and UFAS for Section 504 compliance until HUD formally adopts an updated accessibility standard through rulemaking. However, because UFAS is no longer an option for ensuring compliance with title II of the ADA, HUD recipients subject to both Section 504 and title II of the ADA must take an additional step in order to ensure compliance with the ADA if they use UFAS for purposes of Section 504. Specifically, in addition to complying with each scoping and technical provision of UFAS, they must also comply with each scoping and technical provision of the 2010 Standards that affords greater accessibility than UFAS.¹³

V. Utilizing the 2010 Standards

As stated above, the 2010 Standards under title II consist of the 2004 ADAAG and requirements in 28 CFR § 35.151. HUD is permitting use of the 2010 Standards as an alternative accessibility standard with the following exceptions. These exceptions are necessary to ensure that HUD recipients construct or alter buildings and facilities with at least the same degree of accessibility as is currently required under HUD's Section 504 regulation and UFAS. The Department lacks the authority to allow the use of an alternative standard that would reduce accessibility or usability for individuals with disabilities in housing settings below the level required by its Section 504 regulation without engaging in notice and comment rulemaking. As discussed below, these exceptions will also maintain consistency with certain requirements of the FHAct.

Definitions

The 2010 Standards define some terms that are also defined in HUD's Section 504 regulation. In such cases, the definition in HUD's Section 504 regulation shall control.

Scoping for Residential Dwelling Units

¹³ HUD's scoping continues to apply regarding the required number of accessible residential dwelling units.

The 2010 Standards generally defer to HUD on scoping of *residential dwelling units* provided by entities subject to HUD's Section 504 regulation.¹⁴ Specifically, entities receiving Federal financial assistance from the Department must provide residential dwelling units containing mobility features and residential dwelling units containing communication features complying with the 2010 Standards *in a quantity* identified in HUD's Section 504 regulation. For purposes of this Notice, HUD is not changing its scoping requirements for residential dwelling units under its part 8 regulation.¹⁵ HUD recipients designing, constructing, altering, or operating residential facilities must utilize HUD's scoping to determine the number of required accessible units and utilize the 2010 Standards, with the identified exceptions noted below, for other scoping requirements as well as for the technical standards. If HUD's Section 504 rule does not provide scoping, a HUD recipient using the 2010 Standards for Section 504 compliance must use the scoping provided in the 2010 Standards. This does not preclude HUD from considering scoping or other changes when it undertakes rulemaking to adopt a new accessibility standard.

Structural Impracticability – 28 CFR § 35.151

Under § 35.151(a)(2) full compliance with the requirements of the 2010 Standards is not required in new construction where a public entity can demonstrate that it is structurally impracticable to do so. Full compliance is considered structurally impracticable “only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.”¹⁶ HUD's Section 504 regulation does not contain a comparable exception from compliance with the applicable accessibility requirements when HUD recipients undertake *new construction* of facilities. HUD's regulation also precludes a HUD recipient from selecting

¹⁴ Section 233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504 Regulations.

¹⁵ 24 CFR part 8, subpart C.

¹⁶ 28 CFR § 35.151(a)(2)(i).

a site or location of a facility which would have the purpose or effect of excluding qualified individuals with disabilities from, denying benefits of, or otherwise subjecting them to discrimination under, any program or activity that receives Federal financial assistance.¹⁷ Under HUD's Section 504 regulation, if a site cannot be made accessible to individuals with disabilities, it must not be selected. As emphasized above, HUD cannot allow the use of an alternative standard which conflicts with HUD's regulatory requirements and may reduce accessibility in housing settings without the opportunity for public input through notice and comment rulemaking. Accordingly, recipients may not apply the structural impracticability exception contained in § 35.151(a)(2) of the 2010 Standards through this Notice.

Alterations – 28 CFR § 35.151

The 2010 Standards at 28 CFR § 35.151(b) and section 202 contain criteria detailing when alterations of facilities must be made accessible. In certain situations, application of the 2010 Standards may result in fewer units containing accessibility features. Because HUD cannot use a Notice to permit the use of a lesser requirement than that required by its Section 504 regulation, HUD is not permitting use of Section 35.151(b). Therefore, multifamily housing projects must continue to utilize the terms “substantial alterations” and “other alterations” as defined in HUD's Section 504 regulation to determine accessibility requirements.¹⁸ This does not preclude HUD from considering changes to its alterations criteria for residential dwelling units when it revises its regulation to adopt a new accessibility standard.

Additions – Section 202.2 of the 2010 Standards

Section 202.2 of the 2010 Standards contains scoping requirements which may, in certain situations, afford less accessibility for individuals with disabilities than is currently provided by

¹⁷ 24 CFR § 8.4(b)(5).

¹⁸ 24 CFR part 8, subpart C.

HUD's rules at 24 CFR part 8 and UFAS. Because the Department is precluded from permitting the use of an alternative standard that might reduce accessibility for individuals with disabilities in housing settings without notice and comment rulemaking, HUD is not permitting use of the scoping requirements for additions at section 202.2 of the 2010 Standards.

Alterations Affecting Primary Function Areas – Exception to Section 202.4 of the 2010 Standards

Section 202.4 of the 2010 Standards includes a path of travel obligation when areas containing a primary function are altered. Under the Exception to Section 202.4, residential dwelling units are exempted from this requirement. Under HUD's Section 504 regulation, when accessible dwelling units are newly constructed or where alterations include the provision of accessible dwelling units, the dwelling units must be on an accessible route. HUD is not permitting use of the Exception to Section 202.4 because this may conflict with HUD's Section 504 regulation.

Common Use Areas in Residential Facilities – Section 203.8 of the 2010 Standards

Section 203.8 of the 2010 Standards provides that, in residential facilities, common use areas that do not serve residential dwelling units required to provide mobility features are not required to be accessible or on an accessible route. By contrast, common use areas in residential facilities subject to the new construction requirements of the FHAct must comply with FHAct accessibility requirements, including the requirement to be on an accessible route, regardless of whether or not the common use areas serve units required to have mobility features pursuant to the ADA or Section 504. The only exception would be common use areas provided on upper stories of a non-elevator building provided the same common use areas are provided on the ground floor. In addition, this general exception for common use areas may result in less

accessibility than is currently required under HUD's Section 504 regulation and UFAS.

Accordingly, HUD is not permitting use of Section 203.8 under this Notice.

Employee Work Areas – Section 203.9 of the 2010 Standards, and Similar Sections

The 2010 Standards require a more limited level of access within employee work areas in ADA-covered facilities than UFAS, which requires employee work areas to be fully accessible. As stated above, the Department has no authority to allow the use of an alternative standard that may reduce accessibility for individuals with disabilities without notice and comment rulemaking. Section 203.9, as well as Section 206.2.8, the Exception to Section 403.5, and the Exception to Section 405.8, all require less accessibility in employee work areas than UFAS. For this reason, HUD is not permitting use of the aforementioned sections of the 2010 Standards for employee work areas.

Vehicular Route Exceptions – Sections 206.2.1 and 206.2.2 of the 2010 Standards

The 2010 Standards contain an exception for accessibility at site arrival points which provides that an “*accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing pedestrian access*” (Section 206.2.1 Site Arrival Points, Exception 2). The 2010 Standards also contain an exception for accessibility within a site which provides that an “*accessible route shall not be required between accessible buildings, accessible facilities, accessible elements, and accessible spaces if the only means of access between them is a vehicular way not providing pedestrian access*” (Section 206.2.2 Within a Site, Exception). Neither exception is in UFAS,¹⁹ which requires pedestrian access routes, and both conflict with

¹⁹ See, e.g., UFAS, Section 4.1.1(1): At least one accessible route complying with 4.3 shall be provided *within the boundary of the site* from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks to an accessible building entrance. UFAS, Section 4.1.1(2): At least one

HUD's Section 504 regulation, which requires that all programs and activities receiving Federal funds be readily accessible to and usable by persons with disabilities, as well as the requirements of the FHAct and HUD's Fair Housing Accessibility Guidelines. Accordingly, HUD is not permitting the use of Exception 2 to Section 206.2.1 Site Arrival Points, and the Exception to Section 206.2.2 Within a Site.

Elevator Exception 1 – Section 206.2.3 of the 2010 Standards

The 2010 Standards contain specific exceptions to the general provision requiring at least one accessible route to connect each story and mezzanine in multi-story buildings or facilities (Section 206.2.3). Exception 1 to Section 206.2.3 of the 2010 Standards contains an elevator exception for private buildings or facilities that are less than three stories or that have less than 3,000 square feet per story (unless the type of building is omitted in the standard from the exception, *e.g.*, a shopping center, a shopping mall, the professional office of a health care provider, *etc.*). HUD's Section 504 regulation does not impose different requirements on recipients that are public entities as compared to recipients that are private entities. In order to ensure that all HUD recipients are subject to the same accessibility requirements, regardless of whether they are public or private entities, HUD is not permitting use of Exception 1 to Section 206.2.3 by private entities subject to its Section 504 regulation.

Washing Machines; Clothes Dryers –Sections 214.2 and 214.3 of the 2010 Standards

UFAS requires front loading washing machines and clothes dryers in common use laundry rooms in facilities serving accessible residential dwelling units.²⁰ UFAS' requirements for front-loading machines reflect the fact that not all persons with disabilities will be able to use

accessible route complying with 4.3 shall connect accessible buildings, facilities, elements, and spaces that are on the same site. *See also*, UFAS, Section 4.3 Accessible Route.

²⁰ UFAS, Section 4.34.7.2.

top loading machines. The 2010 Standards, however, permit either top loading or front loading machines in such facilities (Section 214.2 Washing Machines; Section 214.3 Clothes Dryers). Consequently, HUD is not permitting application of the scoping requirements for washing and drying machines found at sections 214.2 and 214.3 of the 2010 Standards. Recipients must continue to comply with section 4.34.7 of UFAS. These requirements apply to each laundry room except that HUD's Section 504 regulation and UFAS would not require a laundry room on an upper story of a non-elevator building to be accessible provided that there is an accessible laundry room serving that same building on the ground floor. HUD recipients should also be aware that, when washing machines and clothes dryers are provided in individual dwelling units, front loading accessible washing machines and clothes dryers may be required in accessible dwelling units as a reasonable accommodation for individuals with disabilities.

Visible Alarms – Exception to Section 215.1 of the 2010 Standards

Section 215.1 includes a new exception for visible alarms in the alteration of existing facilities, providing that visible alarms must be installed only when an existing fire alarm system is upgraded or replaced, or a new fire alarm system is installed. Under this exception, visible alarms would not be required as part of alterations unless the alarm system is upgraded, replaced, or newly installed. HUD is not permitting use of this exception because its application may result in less accessibility than is currently required under HUD's Section 504 regulation. Instead, recipients engaged in alterations must refer to HUD's regulation at 24 CFR §§ 8.22, 8.23, 8.24, and 8.25 to determine whether visible alarms must be installed. For recipients engaged in substantial alterations, the new construction requirements apply (with the exception that building alterations are not required that have little likelihood of being accomplished without removing or altering a load-bearing structural member) and visible alarms would be included in

the alterations. For recipients engaged in other alterations not rising to the level of substantial alterations, any alterations (including alterations to dwelling units, common areas, or parts of facilities that affect accessibility of existing housing facilities) must, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. “To the maximum extent feasible” means recipients are not required to make alterations if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project, but must provide for accessibility up to the point of undue financial and administrative burdens. This is a high threshold to meet. Therefore, HUD recipients must continue to comply with the provisions in HUD’s Section 504 regulation, and not utilize the exception in the 2010 Standards. If visible alarms are not provided, there must be an effective means of alerting individuals who are deaf or hard of hearing to fires and other emergencies in order to afford them an equal opportunity to evacuate to safety.

For the convenience of the reader, the Appendix to this Notice provides a table that lists in column one the exceptions contained in the Notice and in the second column, the UFAS and/or HUD Section 504 regulation provisions that would need to be complied with because the entity could not use that section of the ADA 2010 Standards. The table is provided so that it can be used by HUD recipients as a stand-alone chart that lists, in a single table, not only what the exceptions are, but what actions recipients must undertake in lieu of using the exceptions.

VI. Relationship to Other Laws

Recipients of HUD funding must be aware of and comply with the accessibility requirements of all applicable laws, including Section 504, the ABA, the ADA, and the FHAct. Compliance with one of these statutes does not ensure compliance with other Federal disability nondiscrimination laws. For example, compliance with Section 504, the ABA, or the ADA does

not ensure compliance with the FHAct; similarly, compliance with FHAct accessibility requirements does not ensure compliance with the accessibility requirements of Section 504, the ABA, or the ADA. The FHAct prohibits discrimination in housing because of race, color, religion, sex, national origin, familial status, and disability.²¹ One type of disability discrimination prohibited by the FHAct is the failure to design and construct covered multifamily dwellings with certain features of accessible design.²²

The FHAct design and construction requirements apply to “covered multifamily dwellings” designed and constructed for first occupancy after March 13, 1991. “Covered multifamily dwellings” means all buildings consisting of four or more dwelling units: in buildings without an elevator, all of the ground floor dwelling units are covered; in buildings with one or more elevators, all of the dwelling units are covered. HUD encourages entities to refer to HUD’s FHAct regulation and technical guidance issued by HUD to ensure compliance with FHAct accessibility requirements.²³

Date: May 16, 2014

David R. Ziaya, Deputy Assistant Secretary for
Operations and Programs

[FR-5784-N-01]

²¹ The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning.

²² 42 U.S.C. § 3604(f).

²³ See HUD regulation implementing the design and construction provisions at 24 CFR § 100.200 *et seq.*; *Final Fair Housing Accessibility Guidelines* (“Guidelines”), 56 Fed. Reg. 9472 (Mar. 6, 1991); *Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines* (“Questions and Answers”), 59 Fed. Reg. 33,362-68 (June 28, 1994); *Fair Housing Act Design Manual* (“Design Manual”) (August 1996, Revised April 1998). For additional technical assistance, see the Fair Housing Act Accessibility FIRST website, www.fairhousingfirst.org.

APPENDIX to [Insert date of Federal Register publication] Notice

Exceptions to the 2010 Standards

This table is provided for HUD recipients that elect to use the 2010 Standards under title II of the Americans with Disabilities Act (ADA) as an alternative accessibility standard to UFAS for purposes of complying with Section 504 until HUD formally revises its Section 504 regulation. Please note that, for purposes of Section 504 compliance, the 2010 Standards may be used with the following exceptions.

<u>Provisions in 2010 Standards Not Deemed as Equivalent Alternatives to UFAS</u>	<u>Provisions HUD Recipients Must Comply with for Purposes of Section 504 Compliance</u>
1. Section 35.151(a)(2) Exception for structural impracticability	2010 Standards at Section 35.151 without Section 35.151(a)(2) and (b) (see below) and HUD's Section 504 regulation at 24 CFR § 8.4(b)(5)
2. Section 35.151(b) Alterations	HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26 and UFAS 4.1.6
3. Section 202.2 Additions	HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26 and UFAS 4.1.5
4. Exception to Section 202.4 Alterations Affecting Primary Function Areas	2010 Standards at Section 202.4 without the Exception and HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26
5. Section 203.8 General Exceptions – Residential Facilities	2010 Standards without Section 203.8 and HUD's Section 504 regulation at 24 CFR § § 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26
6. Employee Work Areas: Sections 203.9 (General exception for employee work areas), 206.2.8 (Circulation paths in employee work areas), and the Exceptions to 403.5 (Clearances within employee work areas) and 405.8 (Handrails within employee work areas)	2010 Standards without these provisions; Note that HUD is permitting use of Section 215.3 (Fire Alarm Systems in Employee Work Areas)
7. Exception 2 to Section 206.2.1 Site Arrival Points	2010 Standards at Section 206.2.1 without Exception 2
8. Exception to Section 206.2.2 Within a	2010 Standards at Section 206.2.2 without

Site	the Exception
9. Exception 1 to Section 206.2.3 Multi-Story Buildings and Facilities	2010 Standards at Section 206.2.3 without Exception 1
10. Section 214 – Scoping of Washing Machines and Clothes Dryers	HUD’s Section 504 regulation and UFAS 4.34.7 Laundry Facilities. HUD recipients should also be aware that, when washing machines and clothes dryers are provided in individual dwelling units, front loading accessible washing machines and clothes dryers may be required in accessible dwelling units as a reasonable accommodation for individuals with disabilities.
11. Exception to Section 215.1 Visible Alarms	2010 Standards at Section 215 without the Exception to Section 215.1 and HUD’s Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26

The option to use the 2010 Standards under title II of the ADA, with identified exceptions, is available to all HUD recipients for purposes of complying with Section 504. HUD recipients must designate the accessibility standard they are using: the 2010 Standards with the identified exceptions outlined in this **[Insert date of Federal Register publication]** Notice, or UFAS. If HUD recipients choose to use the 2010 Standards, they must apply the 2010 Standards, with the identified exceptions, to the entire project. This option applies until HUD revises its Section 504 regulation to adopt an updated accessibility standard. This table provides a summary. Additional explanatory information is provided in other parts of the **[Insert date of Federal Register publication]** Notice.