



U.S. Department of Housing and Urban Development  
Community Planning and Development

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Special Attention of:

All Secretary's Representatives  
All State/Area Coordinators  
All CPD Office Directors  
All FHEO Field Offices  
All CDBG Grantees

**Notice:** CPD-05-10

Issued: November 3, 2005  
Expires: November 3, 2006

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**SUBJECT:** Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds -- Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and the Architectural Barriers Act

## **I. Purpose**

The purpose of this Notice is to remind recipients of Federal funds under the Community Development Block Grant (CDBG) Program of their obligation to comply with Section 504 of the Rehabilitation Act of 1973, HUD's implementing regulations (24 CFR Part 8), the Americans with Disabilities Act, (ADA) and its implementing regulations, (28 CFR Parts 35, 36), and the Architectural Barriers Act (ABA) and its implementing regulations (24 CFR Parts 40, 41) in connection with recipients' non-housing programs. This Notice describes key compliance elements for non-housing programs and facilities assisted under the CDBG programs. However, recipients should review the specific provisions of the ADA, Section 504, the ABA, and their implementing regulations in order to assure that their programs are administered in full compliance.

## **Applicability**

This Notice applies to all non-housing programs and facilities assisted with Community Development Block Grant Funds (e.g. public facilities and public improvements, commercial buildings, office buildings, and other non-residential buildings) and facilities in which CDBG activities are undertaken (e.g., public services). A separate Notice is being issued concerning Federal accessibility requirements for housing programs assisted by recipients of CDBG and HOME program funds.

## **II. Section 504 of the Rehabilitation Act of 1973**

Section 504 of the Rehabilitation Act of 1973, as amended, provides "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability,

be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”. HUD’s regulations implementing the Section 504 requirements can be found at 24 CFR Part 8.

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Part 8 requires that recipients ensure that their programs are accessible to and usable by persons with disabilities. Part 8 also prohibits recipients from employment discrimination based upon disability.

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). For the purposes of Part 8, recipients include States and localities that are grantees and subgrantees under the CDBG program, their subrecipients, community-based development organizations, businesses, and any other entity that receives CDBG assistance, but not low and moderate income beneficiaries of the program. CDBG grantees are responsible for establishing policies and practices that they will use to monitor compliance of all covered programs, activities, or work performed by their subrecipients, contractors, subcontractors, management agents, etc.

#### Non-housing Programs

**New Construction** – 24 CFR Part 8 requires that new non-housing facilities constructed by recipients of Federal financial assistance shall be designed and constructed to be readily accessible to and usable by persons with disabilities (24 CFR 8.21(a)).

**Alterations to facilities** -- Part 8 requires to the maximum extent feasible that recipients make alterations to existing non-housing facilities to ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible if doing so would impose undue financial and administrative burdens on the operation of the recipients program or activity (24 CFR 8.21 (b)).

**Existing non-housing facilities** - A recipient is obligated to operate each non-housing program or activity so that, when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities (24 CFR 8.21 (c)).

Recipients are not necessarily required to make each of their existing non-housing facilities accessible to and usable by persons with disabilities if when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities 24 CFR 8.21(c)(1)). Recipients are also not required to take any action that they can demonstrate would result in a fundamental alteration in the nature of its program or activity or cause an undue administrative and financial burden. However, recipients are still required to take other actions that would not result in such alterations, but would nevertheless ensure that persons with disabilities receive the benefits and services of the program (24 CFR 8.21(c)(iii)).

**Historic Preservation** - Recipients are not required to take any actions that would result in a substantial impairment of significant historic features of an historic property. However, in such cases where a physical alteration is not required, the recipient is still obligated to use alternative means to achieve program accessibility, including using audio-visual materials and devices to depict those portions of a historic property that cannot be made accessible, assigning persons to

guide persons with disabilities into or through portions of historic properties that cannot be made accessible, or otherwise adopting other innovative methods so that individuals with disabilities can still benefit from the program (24 CFR 8.21(c)(2)(ii)).

## **Accessibility Standards**

Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with the accessibility requirements for nonhousing facilities. Recipients may depart from particular technical and scoping requirements of UFAS where substantially equivalent or greater accessibility and usability is provided (24 CFR 8.32). For copies of UFAS, contact the HUD Distribution Center at 1-800-767-7468; hearing-impaired, or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

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 and technical requirements of overlapping laws or standards.

## **Employment**

Section 504 also prohibits discrimination based upon disability in employment (see 24 CFR Part 8, Subpart B).

### **III. The Americans With Disabilities Act of 1990**

The Americans With Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given.

The U.S. Department of Justice enforces Titles I, II, and III of the ADA. HUD shares enforcement responsibility with the Department of Justice for Title II, and is designated the lead Federal agency for all programs, service and regulatory activities relating to state and local public housing and housing assistance and referral. The Equal Employment Opportunity Commission investigates administrative complaints involving Title I. For further information regarding The U.S. Department of Justice enforcement of Title II of the ADA, please visit <http://www.ADA.gov>.

**Title I** prohibits discrimination in employment based upon disability. The regulations implementing Title I are found at 29 CFR Part 1630. The Equal Employment Opportunity Commission (EEOC) offers technical assistance on the ADA provisions applying to employment. These can be obtained at the EEOC web site [www.eeoc.gov](http://www.eeoc.gov), or by calling 800-669-3362 (voice) and 800-800-3302 (TTY).

**Title II** prohibits discrimination based on disability by State and local governments. Title II essentially extended the Section 504 requirements to services, programs, and activities provided by States, local governments and other entities that do not receive Federal financial assistance from HUD or another Federal agency. CDBG grantees are covered by both Title II and Section 504. The Department of Justice Title II regulations are found at 28 CFR Part 35.

Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. (28 CFR 35.151 (a) & (b)) Facilities constructed or altered in conformance with either UFAS or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply. (28CFR 35.151(c))

Title II specifically requires that all newly constructed or altered streets, roads, and highways and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. (28CFR 35.151(e))

The Title II regulations required that by January 26, 1993, public entities (State or local governments) conduct a self-evaluation to review their current policies and practices to identify and correct any requirements that were not consistent with the regulation. Public entities that employed more than 50 persons were required to maintain their self-evaluations on file and make it available for three years. If a public entity had already completed a self-evaluation under Section 504 of the Rehabilitation Act, then the ADA only required it to do a self-evaluation of those policies and practices that were not included in the previous self-evaluation. (28 CFR 35.105)

The Department of Justice offers technical assistance on Title II through its web page at [www.usdoj.gov/crt/ada/taprogram.htm](http://www.usdoj.gov/crt/ada/taprogram.htm), and through its ADA Information Line, at **202 514-0301 (voice and 202-514-0383 (TTY))**. The Department of Justice's technical assistance materials include among others, the Title II Technical Assistance Manual with Yearly Supplements, the ADA guide for Small Towns, and an ADA Guide entitled The ADA and City Governments: Common Problems.

**Title III** prohibits discrimination based upon disability in places of public accommodation (businesses and non-profit agencies that serve the public) and “commercial” facilities (other businesses). It applies regardless of whether the public accommodation or commercial facility is operated by a private or public entity, or by a for profit or not for profit business. The Department of Justice Title III regulations are found at 28 CFR Part 36. The Department of Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

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#### **IV. The Architectural Barriers Act of 1968**

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS) (24 CFR 570.614). In practice, buildings built to meet the requirements of Section 504 and the ADA will conform to the requirements of the ABA.

#### **Self Evaluations**

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. Title II of the ADA imposed this requirement on all covered public entities. The ADA regulations required that ADA self evaluations be completed by January 26, 1993, although those public entities that had already performed a Section 504 self evaluation were only required to perform a self-evaluation on those policies and practices that had not been included in the Section 504 review.

The regulatory deadlines are long past. Nonetheless, recipients who have not completed a self-evaluation are encouraged to conduct a self-evaluation to be in compliance with this requirement under these regulatory provisions.

Involving persons with disabilities in the self-evaluation process is very beneficial. This will assure the most meaningful result for both the recipient and for persons with disabilities who participate in the 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:

- Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities and services. Be mindful of the fact that a policy or practice may appear neutral on its face, but may have a discriminatory effect on individuals with disabilities.
- Modify any policies and practices that are not or may not be in compliance with the regulations at Section 504 or Title II and Title III of the ADA.
- Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or

practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.

- Document the self-evaluation process and activities. The Department recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps, as an aid to meeting the requirement at 24 CFR Part 8.55.

The Department also recommends that recipients periodically update the self-evaluation, particularly, for example, if there have been changes in the programs and services of the agency. In addition, public entities covered by Title II of the ADA should review any policies and practices that were not included in their Section 504 self-evaluation and should modify discriminatory policies and practices accordingly.

#### **V. HUD Resources Available Concerning Section 504**

Further information concerning compliance with Section 504 may be obtained through the HUD web page (<http://www.hud.gov/offices/fheo/disabilities/sect504.cfm>). Additional assistance and information may be obtained by contacting the local HUD Office of Community Planning and Development and the Office of Fair Housing and Equal Opportunity. Below is a list of the phone numbers for these offices.

	<b>CPD</b>	<b>FHEO</b>
<b>Boston, MA</b>	617 994-8357	617 994-8300
<b>Hartford, CT</b>	806 240-4800 x3059	860 240-4800
<b>New York, NY</b>	212 542-7401	212 264-1290
<b>Buffalo, NY</b>	716 551-5755 x5800	716 551-5755
<b>Newark, NJ</b>	973 622-7900 x3300	973 622-7900
<b>Philadelphia, PA</b>	215 656-0624 x3201	215 656-0663
<b>Pittsburgh, PA</b>	412 644-2999	412 644-6970
<b>Baltimore, MD</b>	410 962-2520 x3071	410 962-2520
<b>Richmond, VA</b>	804 771-2100 x3766	804 771-2100
<b>Washington, DC</b>	202 275-9200 x3163	202 275-9200
<b>Atlanta, GA</b>	404 331-5001 x2449	404 331-5140
<b>Birmingham, AL</b>	205 731-2630 x1027	205 731-2630
<b>South Florida</b>	305 536-5678 x2257	305 536-5678 x2218
<b>Jacksonville, FL</b>	904 232-1777 x2077	904 232-1241
<b>San Juan, PR</b>	787 766-5201	787 766-5400
<b>Louisville, KY</b>	502 582-6163 x200	502 582-6163 x230
<b>Jackson, MS</b>	601 965-4700 x3140	601 965-4700 x2435
<b>Knoxville, TN</b>	865 545-4391 x125	865 545-4400
<b>Greensboro, NC</b>	336 547-4000	336 547-4050
<b>Columbia, SC</b>	803 765-5564	803 765-5938
<b>Chicago, IL</b>	312 353-1696 x2713	312 353-7776
<b>Minneapolis, MN</b>	612 370-3019 x2107	612 370-3185
<b>Detroit, MI</b>	313 226-7900 x8059	313 226-7900
<b>Milwaukee, WI</b>	414 297-3214 x8100	414 297-3214
<b>Columbus, OH</b>	614 469-5737 x8240	614 469-5737 x8170
<b>Indianapolis, IN</b>	317 226-6303 x6790	317 226-6303
<b>Little Rock, AK</b>	501 324-6375 x3300	501 324-6296
<b>Oklahoma City, OK</b>	405 609-8569	405 609-8435
<b>Kansas City, KS</b>	913 551-5485	913 551-6958
<b>Omaha, NE</b>	402 492-3147	402 492-3109
<b>St. Louis, MO</b>	314 539-6524	314 539-6583
<b>New Orleans, LA</b>	504 589-7214 x1047	504 589-7219
<b>Fort Worth, TX</b>	817 978-5934	817 978-5900
<b>San Antonio, TX</b>	210 475-6821	210 475-6885
<b>Albuquerque, NM</b>	505 346-7361	505 346-6463
<b>Denver, CO</b>	303 672-5414 x1326	303 672-5437
<b>San Francisco, CA</b>	415 489-6597	415 489-6602
<b>Los Angeles, CA</b>	213 894-8000 x3300	213 894-8000 x2600
<b>Honolulu, HI</b>	808 522-8180 x264	808 522-8175
<b>Phoenix, AZ</b>	602 379-7175	602 379-6699 x5261
<b>Seattle, WA</b>	206 220-5268	206 220-5170
<b>Portland, OR</b>	503 326-7018	503 326-2561
<b>Manchester, NH</b>	603 666-7510 x3017	617 994-8300
<b>Anchorage, AK</b>	907 677-9890	907 677-9837
<b>Houston, TX</b>	817 978-5934	713 718-3199