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Accessibility Requirements Sect. 504 & Fair Housing

U.S. Department of Housing and
Urban Development

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Civil Rights Laws - Overview

Several civil rights laws provide protection to individuals with disabilities and have accessibility requirements:

- **Section 504 of the Rehabilitation Act of 1973 (Section 504)**
- **The Fair Housing Act of 1988 (Title VIII)**
- **The Americans with Disabilities Act of 1990 (ADA)**



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Civil Rights Laws - Overview

- **Fair Housing Amendments Act (Title VIII)**
 - **Applies to Federally-funded and privately owned dwellings.**



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Civil Rights Laws – Overview

- **Section 504 of the Rehabilitation Act of 1973 (Section 504)**
 - **Applies ONLY to recipients of Federal financial assistance.**



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Civil Rights Laws - Overview

- **Americans with Disabilities Act of 1990 (ADA)**
 - Applies to Federally and Non-Federally funded entities.
 - Protects Qualified Individuals with Disabilities from discrimination in:
 - Title I (employment)
 - Title II (state and local government services)
 - Title III (public accommodations)
 - Title IV (communications)

See U.S. Department of Justice/Disability Rights Section website for additional information regarding the ADA: www.ADA.gov



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Scope of Coverage for Development Activities

The Section 504 regulations impose program accessibility requirements for three types of activity that are often undertaken by HOME Program participants:

- new construction of rental multifamily projects;
- rehabilitation (also referred to as “alterations”) of existing multifamily rental projects; and
- homeownership development.



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Newly Constructed Rental Housing – Section 504

- Federally-Funded
- Five percent for mobility
- Two percent for sensory disabilities
- Uniform Federal Accessibility Standards (UFAS)



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Rental Housing with Other Alterations

- The regulations at 24 CFR 8.23(b) apply when alterations are not substantial.
- Alterations to multifamily dwelling units shall, to the maximum extent feasible, be made readily accessible to and usable by individuals with disabilities.
- If alterations to single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, then the entire unit must be made accessible.



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Rental Housing with Other Alterations

At a minimum, HUD considers alteration of an entire unit to take place when at least all of the following individual elements are replaced:

- Renovation of whole kitchens, or at least replacement of kitchen cabinets;
- Renovation of the bathroom, if at least a bathtub or shower is replaced or added, or a toilet and flooring is replaced; and
- Entrance door jams are replaced.



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Rental Housing with Other Alterations

- When the entire unit is not being altered, **100** percent of the single elements being altered must be made accessible.
- HUD strongly encourages a recipient to make the entire unit(s) accessible to and usable by individuals with mobility impairments.
- Once five percent (5%) of the housing units are accessible to and usable by individuals with disabilities, no additional units or elements of units need to be made accessible, except for reasonable accommodation requests.



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Rental Housing with Other Alterations

Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities must also be made to be accessible to and usable by individuals with disabilities, to the maximum extent feasible.



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Accessibility Standard

The Uniform Federal Accessibility Standards (UFAS) are a set of design standards that apply to facilities designed, built, or altered with Federal funds, regardless of which Federal agency provides funding. HUD has adopted UFAS as the accessibility standard under Section 504.



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Fair Housing Act Design and Construction Standard

- Fair Housing Act also establishes accessibility requirements for residential housing to ensure a minimum degree of accessibility for persons with disabilities. These requirements apply to all **newly** constructed housing built for first occupancy after **March 13, 1991**.
- For housing that is developed with HOME funds, these requirements apply together with, not in lieu of, the Section 504 accessibility requirements.



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Scope of Coverage for Development Activities

The Fair Housing Act requirements apply to privately-owned housing as well as housing that receives state or Federal funds, and applies to both rental and homeownership units, as long as there are four or more units in the building.



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Scope of Coverage for Development Activities

- Examples of covered units that may be funded by the HOME Program include apartments, condominiums, single-story townhouses, assisted living facilities, and single-room occupancy units.
 - Transitional housing units are considered residences covered by the Fair Housing Act.
 - Non-elevator townhouses which are multi-story, that have finished living space on more than one floor, are not typically covered. Such units are not considered covered multifamily dwellings unless they have elevators.



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Scope of Coverage for Development Activities

- Since the Fair Housing Act applies to both privately-owned and Federally assisted housing, coverage is determined based on which dwelling units are “covered multifamily dwellings” and not whether the project is HOME-assisted.
- Note, the Fair Housing Act design and construction requirements do not apply to rehabilitated housing.



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Applying Both Section 504 and the Fair Housing Act Requirements

- Section 504 and the Fair Housing Act have different requirements as they relate to both the scope of applicability, and the technical specifications to be met to attain accessibility.
- In general, Section 504 requires that a fewer number of units must be made accessible, but the technical specifications apply a much stricter standard of accessibility.



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Applying Both Section 504 and the Fair Housing Act Requirements

The Fair Housing Act, on the other hand, has a broader scope and applies to a larger number of units; in general, it imposes a less strict technical standard.



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Applying Both Section 504 and the Fair Housing Act Requirements

However, some elements of the Fair Housing Act requirements are stricter than UFAS, and when both Section 504 and Fair Housing Act requirements apply to the same units in a project, one cannot presume that compliance with UFAS also ensures compliance with the Fair Housing Act.



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Examples to Demonstrate How to Apply Both Standards

Scenario 1

A 40-unit rental building with an elevator is newly constructed with HOME Program funding. All units are two-bedroom.

- This building is required to have a minimum of five percent of its total dwelling units (two units) be built to be fully accessible (UFAS standard) to persons with mobility impairments in accordance with Section 504.



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Scenario 1

- The remaining dwelling units (38 units) must comply with the design and construction standards of the Fair Housing Act.
- Two percent of the units (one of the 38) must also be made accessible for persons with vision and hearing Impairments.
- In addition, common use and common facilities must be made accessible in accordance with both UFAS and the Fair Housing Act standard.
- Note: If this building were rehabilitated with HOME funds, the Fair Housing Act design and construction standards would not apply.



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Examples to Demonstrate How to Apply Both Standards

Scenario 2

A 100-unit, two-story garden apartment development with no elevator is newly constructed with HOME Program funds. The building is comprised of one- and two-bedroom units. Half of its dwelling units (50 units) are on the ground floor and half (50 units) are on the second floor.



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Scenario 2

- Under the requirements of Section 504, this building is required to have a minimum of five percent of the total number of units (five units) made to be fully accessible (UFAS standard) to persons with mobility impairments in accordance with Section 504.
- Since the building does not have an elevator, these five units must be located on the ground floor in order to have an accessible route.
- An additional two percent of the total dwelling units (two units) must be made accessible for people with vision and hearing impairments. These units may be located anywhere in the building.



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Scenario 2

- In addition, **All** ground floor units must comply with the Fair Housing Act design and construction standards, including those made accessible for persons with mobility impairments under UFAS.
- And those made accessible to persons with vision or hearing impairments if they are located on the ground floor.
- Common use and common facilities must be made accessible in accordance with both UFAS and the Fair Housing Act standard.



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Examples to Demonstrate How to Apply Both Standards

Scenario 3

A 50 unit two-story rental townhouse development is constructed with TCAP Program funds.

- A minimum of five percent of the units in this building (three units) must be built to be accessible to persons with mobility impairments in accordance with the UFAS standard.
- An additional two percent of the units (one unit) must be made to be accessible to persons with a sensory impairment.



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Scenario 3

- Common use and common facilities must be made accessible in accordance with UFAS.
- However, this development is not a covered multifamily dwelling for purposes of the design and construction requirements of the Fair Housing Act since two-story dwellings are not considered ground floor Units.
- The builder is free to make the required accessible units single story. The builder is not required to use a design that includes an elevator.
- If the townhouses were single-story townhouses (and therefore all ground floor units), the project would have to comply with both Section 504 and the Fair Housing Act design and construction requirements.



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Common Problems in Accessibility

- Inaccessible
Route/Parking spaces
- Door Widths
- Interior Door Pressure
- Kitchen Counter Heights
- Toilets
- Pipes Not Insulated
- Grab Bars



Key Resources

- **Fair Housing First**: <http://www.fairhousingfirst.org>
- **HUD/DOJ Joint Statement on Reasonable Accommodation [Note: A recipient pays for reasonable accommodation(s)]**
http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf
- [www.ADA.gov](http://www.ada.gov) [ADA technical assistance]
- <http://www.hud.gov/offices/fheo/library/UFASAccessibilityChecklistforPHAs-5-7-08.pdf>