

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations

Disclaimer

Attached is a draft of proposed 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, that was approved by the TDHCA Governing Board on November 8, 2018. This action will entail the repeal of the current rule at 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is expected to be published in the November 23, 2018, edition of the Texas Register and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on November 23, 2018
End: 5:00 p.m. Austin local time on December 27, 2018

Comments received after 5:00 p.m. Austin local time on December 27, 2018, will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@tdhca.state.tx.us

Written comments may be submitted in hard copy or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

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Preamble, including required analysis, for proposed new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations. The purpose of the proposed new section is to make changes that revise citations and references, add the Ending Homelessness Fund to covered programs, provide the statutory authority and purpose of the rule, add a section clarifying applicability of the rule, add a new section providing initial general direction in the handling of reasonable accommodations to assist property management staff, remove specific examples and create a new section that provides a list of possible non-exhaustive examples, delete §1.209(a) because there are no longer any Developments in the construction or Development process that require the exceptions that had been provided by this clause, moves §1.209(b) to §1.207(c) and bring that into compliance with the Uniform Multifamily Rule, and delete 10 TAC §1.210, Renovation of Elements for Multifamily Housing Developments, to provide consistency with changes in the Uniform Multifamily Rules which now require that all developments awarded by the Department – even if for rehabilitation – will be considered Substantial Alterations, and by association removes the definition for Replacement Cost.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under items (4) and (9) of that section. The rule ensures Department compliance with the Fair Housing Act and other federal civil rights laws. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Timothy K. Irvine, Executive Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern accessibility and reasonable accommodations.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and
8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for properties and subrecipients that have been funded by the Department. Other than in the case of a small or micro-business that participate in such programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for the handling of reasonable accommodations and accessibility.
3. The Department has determined that because this rule relates only to a revision to a rule subrecipients/owners and tenants of an existing program, and the rule changes primarily make minor edits and remove examples, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the processes used in existing multifamily properties and other portfolio subrecipients; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Irvine has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for Recipients and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 23, 2018, through December 27, 2018. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, December 27, 2018.

STATUTORY AUTHORITY. The rule review is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations – Blackline Version Showing Proposed Changes to Current Rule

§1.201 Purpose

(a) The purpose of this subchapter is to establish a framework for informing compliance with the requirements of Tex. Gov't Code §§2306.6722, 2306.6725, and 2306.6730, and provide guidance regarding the requirements of the Americans with Disabilities Act, §Section 504 of the 1973 Rehabilitation Act ("Section 504") and the Fair Housing Act for by all recipients of awards from the Texas Department of Housing and Community Affairs ("the "Department"") including but not limited to:

(1) Community Services Block Grant (~~CSBG~~);

(2) Low Income Home Energy Assistance Program (LIHEAP) (including the two (2) programs utilizing this funding source: the LIHEAP Weatherization Assistance Program (~~LIHEAP WAP~~) and the Comprehensive Energy Assistance Program (~~CEAP~~);

(3) Emergency Solutions Grant ("ESG");

(4) State Housing Trust Fund (~~SHTF~~);

(5) Low Income Housing Tax Credit (~~LIHTC~~);

(6) Multifamily Bond Programs ("Bond");

(7) National Housing Trust Fund (~~NHTF~~);

(8) Neighborhood Stabilization Program ("NSP");

(9) HOME;

(10) TCAP;

(11) TCAP- Returned Funds (~~TCAP RF~~);

(12) Section 8;

(13) Department of Energy Weatherization Assistance Program (~~DOE WAP~~); and

(14) Homeless Housing and Services Program ("HHSP"); and

(15) Ending Homelessness Fund ("EH").

(b) Unless otherwise indicated in the applicable notice of funding availability announcement or required by contract, this subchapter does not apply to contracts for the procurement of goods or services by the Department.

§1.202 Definitions

Capitalized words in this Subchapter have the meaning assigned in the specific Chapter and Rules of the Title that govern the program associated with matter or assigned by federal or state law. In addition, the following terms are used for the purposes of this Subchapter:

(1) 2010 ADA Standards--The term 2010 ADA Standards refers to the 2010 ADA Standards for Accessible Design implementing Title II of the Americans with Disabilities Act of 1990, including the ADA Amendments of 2008, found at 28 CFR Part 35. This term includes both the Title II (28 CFR §35.151) and 2004 ADAAG (36 CFR Part 1991). If there is a conflict between 2004 ADAAG and Title II the requirements of Title II prevail.

(2) Accessible Route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of the applicable accessibility standard.

(3) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems. (Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Alteration)

(4) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this definition requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Included in this

meaning is the term handicap as defined in the Fair Housing Act, and the term disability as defined in the Americans with Disabilities Act. ~~(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Individual with Handicaps. 24 CFR §100.201 and §100.202(d), 28 CFR §35.108)~~

(5) Multifamily Housing Development--A project that includes five or more dwelling units. A project may consist of five single family homes, a single building with five or more units, or five or more units in multiple buildings each with one or more units. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application, or which are treated as a whole for processing purposes, whether or not located on a common site. ~~(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of multifamily housing project and definition of project)~~

(6) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, policy, service, building, or dwelling unit, that will allow a qualified person with a Disability to:

- (A) Participate fully in a program;
- (B) Take advantage of a service;
- (C) Live in a dwelling; or
- (D) Use and enjoy a dwelling.

(7) Recipient--Includes a Subrecipient or Administrator and means 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 whom assistance or an award 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. Recipients include private entities in partnership with Recipients to own or operate a program or service. This term includes Development Owner.

~~(8) Replacement Cost—The total development cost for construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities or administrative costs for project development activities. (Source: 24 CFR Subtitle A Subpart A §8.4 Definitions. Definition of replacement cost)~~

§1.203 General ~~Certifications Requirements~~ and Effect of Non Compliance

(a) No individual with a Disability shall, by reason of their Disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any Department awarded program or activity.

(b) There are additional requirements for compliance with §Section 504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by Recipients of Department program or activities. This subchapter addresses only the requirements relating to physical accessibility ~~in new construction, alterations~~, and reasonable accommodations under §Section 504, the American with Disabilities Act, and the Fair Housing Act. Other disability-related requirements include but are not limited to:

(1) Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) Providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) Operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(c) Compliance with accessibility requirements, as applicable, including compliance with the Fair Housing Act, the Americans with Disabilities Act, and §Section 504 of the Rehabilitation Act of 1973, other civil rights laws, regulations and Executive Orders; and Chapters 2105 and 2306 of the Texas Government Code is the sole responsibility of the Recipient. By providing guidance and monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Recipient.

(d) Failure to comply with the provisions of this subchapter may result in the assessment of administrative penalties and/or debarment, as further outlined in this Title.

§1.204 Reasonable Accommodations

(a) Applicability. This policy relates to a request for Reasonable Accommodations made by an applicant or participant of a Department program to a Recipient, or made by an applicant or occupant to a property funded by the Department to

the property. The policy regarding a request for Reasonable Accommodation by the Department is found at 10 TAC §1.1 of this Chapter.

(b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed.

(1) When the Department monitors a property or activity for how reasonable accommodation requests have been handled, it will consider such things as whether the person working on behalf of the program or property which the Department is monitoring:

(A) Timely received the request and recorded it:

(B) Took into consideration how action on the request would impact the person making the request and worked to avoid responding in a manner that was prejudicial to the requestor in a way that could have been avoided; and

(C) Engaged in communication with the requestor to understand the nature of their request and whether there was a reasonable way to make an accommodation.

(2) If the person responsible for responding to a request for an accommodation needs assistance or clarification as to how the requirement may apply to their program or property they should contact the Compliance Division immediately to discuss the matter. The Compliance Division cannot provide legal advice or direct the person to respond in any specific manner, but they can, in some instances, point to appropriate federal guidance or other resources such as the Texas Workforce Commission Civil Rights Division. A person who contacts the Compliance Division or anyone else for such reasons should document such contact in their files because the process of obtaining guidance may impact the timeliness of their response.

(3) Unless there is a clear documented need for a lengthier process or there is a controlling federal statute or regulation specifying a different deadline, when a person requests an accommodation they should be given a response as soon as possible but not later than three (3) business days.

(c) To show that a requested Reasonable Accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's Disability.

(bd) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed ~~three (3) business~~^{14 calendar} days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Should additional information be required and an interactive process ~~is~~^{be} necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a ~~R~~^{Reasonable} ~~A~~^{accommodation} request may be ~~deemed by the Department to be~~ a failure to provide a ~~R~~^{Reasonable} ~~A~~^{accommodation}.

~~-(1) EXAMPLE: A resident requests to move their rent due date to coincide with their social security disability check. It would not be considered reasonable to wait 14 calendar days to respond to this request.~~

~~-(2) EXAMPLE: A resident requests a designated accessible parking space. An individual's Disability status and the connection to the Reasonable Accommodation request are not clear. Documentation must be requested within 14 calendar days to clarify the resident's request, engaging in an interactive process to determine the nature of the request and the needs of the resident.~~

~~-(3) EXAMPLE: An applicant with a Disability requires a service animal to alert of impending seizures. The shelter has a no pets policy. It would not be reasonable to wait 14 calendar days to respond to this request.~~

~~-(4) EXAMPLE: A person with a Disability requests modifying door knobs to levers. The property must respond to the request within 14 calendar days, although it is reasonable that it may take additional time to install the modified door knobs.~~

~~-(5) EXAMPLE: A housing provider requires that tenants sign 12 month leases. A household signs the lease, but after a few months has to move out in order to live in a nursing home. The household requests a reasonable accommodation to be let out of his lease early without a fee. The property may request additional information if the Disability and relationship between the request is not clear, but must ask for this information within 14 calendar days.~~

~~-(6) EXAMPLE: An applicant requests a reasonable accommodation to have assistance in filling out a program application for the Housing Trust Fund Program. It would not be reasonable to wait 14 calendar days to respond to this request.~~

(e) When a ~~participant, resident or~~ applicant, or occupant requires an accessible unit, feature, space or element, or a policy modification, or other Reasonable Accommodation to accommodate a Disability, the Recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is an accommodation that is so significant that it alters the essential nature of the Recipient's operations. A Recipient that owns a tax credit LIHTC or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001, must allow but may not need to pay for the Reasonable Accommodation, except if the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice or the U.S. Department of Housing and Urban Development with a de minimis cost (e.g., assigned existing parking spot, and no deposit for service/assistance animals, etc).

(f) A Recipient may not charge a fee or place conditions on a ~~participant, resident, occupant,~~ or applicant in exchange for making the accommodation. ~~For example, while housing providers may require applicants or residents to pay a pet deposit they may not require applicants and residents to pay a deposit for a service/assistance animal.~~

(g) A Reasonable Accommodation request of an individual with a Disability that amounts to an Alteration should be made to meet the needs of the individual with a Disability, rather than being limited by any particular accessible code specification.

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making programs or activities readily accessible to and usable by persons with Disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the Recipient ~~must~~ shall give priority to those methods that offer programs and activities to qualified individuals with Disabilities in the most integrated setting appropriate.

(3) Undue burden.

(A) The determination of undue financial and administrative burden will be made by the Department on a case-by-case basis, involving various factors, such as the cost of the Rreasonable Aaccommodation, the financial resources of the Development, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's Disability-related needs.

(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

(i) Payment for Alteration from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) The approved amount must normally be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) A projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing alterations under this subchapter is some evidence that the Alteration would be an undue financial and administrative burden. ~~(Source: HUD Handbook 4350.3, §2-43(C), and §2-43(D, Example A))~~

(C) If providing accessibility would result in an undue financial and administrative burden, the Recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant/requestor still wants that particular change to be made, the tenant/requestor must be allowed to make and pay for the accommodation.

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible as a Rreasonable Aaccommodation. ~~(Source: HUD Handbook 4350.3, §2-37(E))~~

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities. ~~(Source: HUD Handbook 4350.3, §2-37(D))~~

(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member, as a Rreasonable Aaccommodation. ~~(Source: 24 CFR §8.32(c), HUD Handbook 4350.3, §2-37(B))~~

(h) If a Recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the Recipient must make a reasonable attempt to engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's Disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the Recipient must provide it.

(i) Examples of reasonable accommodations, while not exhaustive, include moving the due date for rent to coincide with the date the requestor receives their social security disability check; providing a designated accessible parking space from existing parking spaces; creating an accessible parking space to accommodate a wheelchair-equipped van; allowing a service animal in spite of a no pets policy; modifying door knobs to levers; providing assistance in filling out a program application for the activity or unit; in the case of a service provider providing computer lab classes with laptops, providing a loan of the laptop computer with the training software; in the case of a weatherization provider serving a family with a child with asthma, seeing if an alternative sealant could be used when the sealant typically used may trigger an asthma attack; installing grab bars; providing an accessible entrance to a resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so; and providing a ramp in excess of usual specifications for such alternations to accommodate a scooter type wheelchair, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

~~-(1) EXAMPLE: A resident requires an accessible parking space that will accommodate her wheelchair-equipped van. A Reasonable Accommodation includes relocating and enlarging an existing parking space that will serve the van.~~

~~-(2) EXAMPLE: A Colonia Self Help Center provides computer lab classes with laptops at the Center for eligible Colonia residents to learn computer skills. A participant with a Disability is unable to leave their home to participate in the class due to their Disability. The participant requests a reasonable accommodation to borrow a laptop computer to participate in the class from home. Providing a loan of the laptop computer with the training software is a reasonable accommodation because it allows the prospective participant with a disability to fully participate in the Colonia Self Help Center program. However, it would be fundamental alteration to renovate the participant's home for broadband (unless the home is being rehabilitated for other reasons).~~

~~-(3) EXAMPLE: A family has a young child with asthma. A certain sealant used by a weatherization provider has been known to trigger asthma attacks. The weatherization provider should see if a comparable sealant could be used that would not trigger asthma.~~

~~-(4) EXAMPLE: A Development has five parking spaces located outside the main entrance to the building and another parking lot with 20 spaces a half block away. All five of the parking spaces near the entrance to the building have been assigned to residents with Disabilities who need a parking space near their door because of their Disabilities. A sixth tenant with difficulty in walking long distances moves into the Development and requests a parking space near his door. The Recipient has explored the options and concluded that the only way to provide more parking spaces near the door would be to widen the parking area by purchasing valuable real estate next door. It would be an undue financial and administrative burden for the Recipient to provide the sixth tenant with a parking space near the entrance. An alternative accommodation could be to provide the sixth tenant with an assigned parking space in the lot half block away until such time as one of the five spaces near the door becomes available.~~

~~-(5) EXAMPLE: A resident needs grab bars at the toilet in her bathroom. She does not require other accessible features. The Recipient must install grab bars consistent with the resident's needs in the bathroom.~~

~~-(6) EXAMPLE: A resident needs a ramped entrance to her ground floor unit to accommodate her wheelchair. She does not wish to move to an accessible unit. The Recipient must provide an accessible entrance at the resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.~~

~~-(7) EXAMPLE: A resident uses a scooter type wheelchair which is 38 inches in width. She requests a ramp to enter her ground floor unit. The ramp which she requests must be at least 40 inches wide, it must have a slope of no more than 3%, and the landing at the front door, which opens outward, must be enlarged to provide adequate maneuvering space to enter the doorway. The changes must be provided, even though they may exceed the usual specifications for such alterations, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.~~

~~-(8) EXAMPLE: A resident with quadriplegia requests replacement of a bathtub in his unit with a roll-in shower. Due to the location of existing plumbing in the building and the size of the existing bathroom, a plumber confirms that~~

~~installation of a roll-in shower in that unit is impossible. The on-site manager should meet with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.~~

~~(g) Recipients must follow federal and state regulations regarding service/assistance animals. A housing provider may not require an applicant, participant, or occupant to pay a pet deposit if the animal is a service/assistance animal.~~

§1.205 Compliance with the Fair Housing Act

(a) Generally, housing designed and constructed for first occupancy after March 13, 1991, must comply with the Fair Housing Act. This includes Units, common areas, and amenities added to existing buildings, or on land under common ownership and contiguous with housing otherwise exempt from the Fair Housing Act.

(b) Compliance with the Fair Housing Act makes it unlawful to discriminate based on a person's disability, race, color, religion, sex, familial status, or national origin unless there is an exception in federal law.

~~(c) Although HUD recognizes seven safe harbors for compliance with the design and construction requirements, the Department requires compliance with HUD's Fair Housing Act Design Manual, including the ability to claim exemptions or exceptions provided for therein.~~

§1.206 Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001, and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" ~~Federal Register~~-79 ~~FR~~-Federal Register 29671 and not otherwise modified in this subchapter:

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012; and

(2) All Multifamily Housing Developments that submit a full application for funding after January 1, 2014.

~~(ed) After March 12, 2012, Recipients of ESG, E.H, and HHSP funds must comply with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register-79 Federal Register 29671 and not otherwise modified in this subchapter.~~

(d) Effect on LURAs. These rules do not serve to amend contractual undertakings memorialized in a recorded LURA but may, by operation of law, place requirements on a property owner beyond those contained in the LURA.

§1.207 General Requirements for Multifamily Housing Developments

(a) All Units that are accessible to persons with mobility impairments must be on an Accessible Route. ~~(Source: HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, §2-22(C)(4))~~

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with Disabilities and persons without Disabilities to interact to the fullest extent possible). This means the distribution will provide individuals requiring accessible units with a choice of location, layout, and price that is substantially equivalent to the choice available to others. Distribution of accessible units may be further described in federal law, regulation, or governing Rules in this Title. To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) Distributed throughout the Development and site; and

(2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. (Source: 24 CFR §8.26)

(c) All Multifamily Housing Developments that submit full applications after January 1, 2014, must have a minimum of 5% of Units that are accessible to persons with mobility impairments, and a minimum of 2% of the Units must be accessible to persons with visual and hearing impairments. In addition, common areas and amenities must also be accessible as identified in the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671.

EXAMPLE 207(1): A Development has 80 units with a total of 4 mobility accessible units, meeting the 5% requirement ($80 \times 5\% = 4$, always rounded up if not a whole number). The bedroom mix includes 15 one-bedroom/one-bath units ($15 \times 5\% = .75$ accessible units), 25 two-bedroom/one-bath units ($5\% = 1.25$ accessible units), 25 two-bedroom/two-bath units ($5\% = 1.25$ accessible units) and 15 four-bedroom units/two-bath ($5\% = .75$ accessible unit). The mobility accessible unit requirement is met with 4 accessible units, and the distribution requirement is met with each of the bedroom/bath types having one accessible unit. EXAMPLE 207(2): A Development has 60 units with a total of 3 mobility accessible units, meeting the 5% requirement. The bedroom mix includes 10 one-bedroom/one-bath units ($5\% = .5$ units), 20 two-bedroom/two-bath units ($5\% = 1$ accessible unit), 20 three-bedroom/two-bath units ($5\% = 1$ accessible unit), and 10 four-bedroom/two-bath units ($5\% = .5$ accessible unit). Because this development is not required to provide more than 3 mobility units, only 3 of the 4 bedroom types are required to provide 1 accessible unit. In this case, the Development provides an accessible two-bedroom and three-bedroom unit, and has the option of providing either an accessible one-bedroom or an accessible four-bedroom unit to meet the 3-unit minimum requirement. EXAMPLE 207(3): A Development with several buildings must not have all of its accessible units in one building, but, to the maximum extent feasible, the accessible units must be distributed throughout the Development.

(c) Multifamily Housing Developments covered by this subchapter and built after July 11, 1988 must have a minimum of 5% of the units that are fully accessible and an additional 2% that are accessible to persons with visual and hearing impairments. This obligation is an absolute requirement. For buildings that fall within this category, a Development Owner may not justify a failure to have met these requirements because of an undue financial and administrative burden. This requirement also applies to units that are newly constructed to replace demolished or uninhabitable units.

§1.209 Substantial Alteration of Multifamily Housing Developments

(a) When a Recipient undertakes Alterations to one or more structural elements in a Development that contains fifteen or more units, which was built before July 11, 1988 and which lacks the required minimum of 5% of units that are accessible to persons with mobility impairments, it must meet accessibility requirements. If the total cost of the alterations is 75% or more of the Replacement Cost of the completed property, then the Recipient must make a minimum of 5% of the units in the property accessible for persons with mobility impairments, and a minimum of 2% of the units accessible for persons with visual and hearing impairments. (Source: 24 CFR §8.23 (a).) EXAMPLE: The total development cost for a planned alteration of a 40-unit apartment building with no accessible unit amounts to \$80,000 per unit and the Replacement Cost per unit is \$100,000. Because the cost of the alterations is more than 75% of the Replacement Cost of the unit, the Recipient must make a minimum of 5% of the 40 units, or at least two, of the units accessible to persons with mobility impairments and at least 2%, or one unit, accessible to people with visual and hearing impairments.

(b) All Rehabilitation of Multifamily Housing Developments that submit full applications after January 1, 2014, will be treated as substantial alteration.

§1.210 Renovation of Elements for Multifamily Housing Developments

(a) This section is not applicable for Developments that submitted full applications after January 1, 2014.

(b) When a Recipient has a Development which was built before July 11, 1988 and that contains five or more units but lacks the required 5% of units that are accessible to people with mobility impairments, when the recipient undertakes Alterations to a structural element that are not substantial as defined in §1.209 of this subchapter (relating to Substantial Alteration of Multifamily Housing Developments).

—(1) Those Alterations must be accessible, to the maximum extent feasible, until at least 5% of the units are fully accessible for persons with mobility impairments. If the 5% requirement is met, no other structural Alterations are required to units except to provide reasonable accommodations to individuals with disabilities.

~~—(2) If Alterations of single elements (such as replacement of a bathtub or a door) or spaces (such as kitchens or bathrooms) occur in a single unit and when the alterations are considered as a group amount to an alteration of the entire unit, the Recipient must make the entire dwelling unit accessible until 5% of the units are accessible to persons with mobility impairments.~~

~~—(3) When the Recipient is not altering the entire unit, all of the single elements or spaces that are being altered must be made accessible unless at least 5% of the units in the project already comply fully with the UFAS requirements for persons with mobility impairments. If at least 5% of the units comply with UFAS, no additional single elements need be made accessible except to provide Reasonable Accommodation for an individual with a Disability.~~

~~—(4) Recipients are encouraged to examine existing units for compliance with UFAS and ensure that at least 5% of the units in a property are accessible. When at least 5% of the units comply with UFAS requirements for accessibility, individual elements need not comply with accessibility requirements when they are altered.~~

~~—(5) Recipients are encouraged, but not required, to make at least an additional 2% of the units being altered comply with UFAS requirements for persons with hearing and vision impairments, if such units do not already exist.~~

~~—(6) Completion of minor maintenance required to maintain a property in a decent, safe and sanitary condition is generally considered to be normal. (24 CFR §8.3, Definition of Alteration)~~

~~—(A) EXAMPLE: A Development is remodeling all of the bathrooms throughout the property by replacing plumbing, fixtures, and cabinets. Remodeling the bathroom is an alteration to a space. Unless the property already has a minimum of 5% of its units that comply with UFAS to serve people with mobility impairments, 100% of the bathrooms remodeled must be made accessible until the property has a minimum of 5% of its units compliant with UFAS.~~

~~—(B) EXAMPLE: A Development is remodeling all of the kitchens throughout a property by replacing stoves and refrigerators. Because this is not an alteration to a structural element, no structural elements must be made accessible.~~

~~—(C) EXAMPLE: A Development is renovating its heating system by replacing furnaces, ductwork and vents. This is not an alteration that triggers compliance with this section because it is the replacement of a mechanical system.~~

~~—(D) EXAMPLE: A Development has 100 units and 6 of the units are for persons with mobility impairments. They comply with UFAS and are on an Accessible Route. The property is remodeling all of the bathrooms throughout the property by replacing plumbing, fixtures, and cabinets. None of the remodeled bathrooms need be made accessible because the property already has at least 5% of its units that comply with UFAS.~~

~~—(E) EXAMPLE: A Development that was built before 1988 has 100 units and none of them comply with the UFAS requirements. The Development is replacing all of the roofs as part of regularly scheduled maintenance and repair. No units are required to be made accessible because the work being performed is regular maintenance and repair. Reroofing is specifically not considered an alteration.~~

~~—(F) EXAMPLE: A Development has 100 units and only three of those units (or 3%) comply with UFAS for persons with mobility impairments. The property is renovating 10 units, but the cost of renovation is only 50% of the cost of replacing the completed property, so this is not a substantial alteration. Because the entire unit is being renovated, two of the renovated units must comply with UFAS in order to provide a minimum of 5% of the total number of units that are accessible to people with mobility impairments.~~

§1.212 Resources

Materials on the Department's website are available as resources for the underlying topic of this subchapter.