

**District of Columbia
Department of Housing and
Community Development
Office of Program Monitoring
Fair Housing Division**



Section 504/ADA-Title II (Housing & Facility Construction Projects)

Section 504 of the Rehabilitation Act of 1973, as well as Title II of the American with Disabilities Act- Subtitle A (ADA), as amended, prohibits discrimination against persons with disabilities in the operation of programs receiving Federal financial assistance. It states, "No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service".

The U.S. Department of Housing and Urban Development (HUD) regulations, at **24 CFR Part 8**, sets a mandate for the DC Department of Housing and Community Development (DHCD) to monitor projects funded with federal funds for compliance with various federal regulations.

DHCD requires that the accessibility requirements of Section 504 be incorporated into the design and construction of all new construction and/or rehabilitation projects funded under the 2003 Notice of Funding Availability (NOFA) and Request for Proposals (RFPs). *The Uniform Federal Accessibility Standards (UFAS) are the appropriate standards required under Section 504.*

Title II of the ADA-Subtitle A protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities provided or operated by of State and local governments *regardless of its funding source*. Most of the requirements under Title II are based on Section 504 and it extends the prohibition of discrimination to all State and Local programs and services whether or not it receives federal monies. It also incorporates specific prohibitions of discrimination from ADA.

ADA uses the UFAS and ADAAG guidelines for compliance with accessibility. However if the private entity is receiving public funding from DHCD (federal or local) it will be subject to the UFAS standards, not the ADAAG standards required of the private sector.

Title III of the ADA covers private entities. If a private entity enters into a contract with the local or State government, then by contract it is obliged to allow the publicly run program to meet its Title II ADA requirements and it must additionally meet its Title III ADA requirements.

NEW CONSTRUCTION (Residential)

DHCD requires *all newly constructed* developments (*built after July 1988*) to have a minimum of 5% of the total dwelling units or at least one unit, whichever is greater, accessible for persons with mobility impairments. An **additional 2%** of the units must be accessible for persons who have hearing or vision impairments [24 CFR 8.22]. Accessible units to the maximum extent feasible must be distributed throughout the project. HUD may prescribe a higher percentage of units be accessible based upon the need for accessible units in the geographic area

SUBSTANTIAL ALTERATIONS/ REHABILITATION (Residential)

Developments that undergo substantial alterations are required to have a minimum of 5% of the dwelling units wheelchair accessible. The definition of Substantial Alterations (or rehabilitation) covers properties with 15 or more units when the cost of the alteration is 75% or more of the replacement cost of the completed property [See 24 CFR 8.23(a)]. Replacement cost is the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the (1) cost of land, (2) demolition, (3) site only improvements, (4) non-dwelling facilities, and (5) administrative costs for project development activities. NOTE: The requirements for New Construction apply if substantial alterations are undertaken.

OTHER ALTERATIONS/ REHABILITATION/ MODIFICATIONS (Residential)

Section 504 requires that if a development (regardless of the number of units) is making modifications which go beyond normal maintenance, but which do not fall into the category of substantial alterations (either because of cost or the development has less than 15 units) then the requirements of **24 CFR 8.23(b) - Other Alterations** apply. Under this section, alterations to dwelling units shall, to the maximum extent feasible, be made readily accessible to and usable by individuals with disabilities. *Alterations are required to be accessible, to the maximum extent feasible, up until a point where at least 5% of the units in a project are accessible.* If alterations to single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire unit shall be made accessible. Alteration of an entire unit is considered to be when at least all of the following individual elements are replaced:

- -renovation of whole kitchens, or at least replacement of kitchen cabinets; and
- - renovation of the bathroom, if at least bathtub or shower is replaced or added, or a toilet and flooring is replaced; and
- - replacement of entrance door jambs.

When the entire unit is not being altered, 100% of the single elements being altered must be made accessible until 5% of the units in the development are accessible. However, HUD and DHCD strongly encourage a recipient to make 5% of the units in a development readily accessible to and usable by individuals with mobility impairments, since that will avoid the necessity of making every element altered accessible, which often may result in having partially accessible units which may be of little or no value for persons with mobility impairments. It is also more likely that the cost of making 5% of the units accessible up front will be less than making each and every element altered accessible. Alterations must meet the applicable sections of the UFAS which govern alterations.

TENANT REQUESTS FOR MODIFICATIONS

With tenant requested modifications, when an applicant or tenant requires an accessible feature to accommodate a disability, the owner must provide such feature *at his/her own expense* unless doing so would result in a fundamental alteration in programs and/or an undue financial or administrative burden imposed on the operation of the program or facility.

NON-HOUSING FACILITIES

All of Section 504's nondiscrimination, program accessibility, and reasonable accommodation requirements that apply to housing facilities, also apply to the operation of non-housing facilities and programs. New non-housing facilities must be designed and constructed to be readily accessible to and usable by persons with disabilities.

NOTE: Each applicant must sign and submit with the application the "Section 504 Certification Form" indicating the agreement to comply with the regulations, to be subject to DHCD monitoring for compliance, and to accept any applicable penalties for noncompliance. After reviewing the information in this document please review the Section 504 attachment and fill out the Certification Form

REASONABLE ACCOMMODATIONS

To determine if a funding recipient needs to make the necessary accommodations to an individual with a disability, courts use what is referred to as the balancing test where the reasonable accommodation must be made unless doing so would impose an unreasonable administrative and financial burden on the operation of the program. However, even if the decision by the court is made where there is too much of a burden then the funding recipient would have to take other steps to guarantee that individuals with handicaps receive the benefits of their service.

The accommodations required may vary depending on what aid is requested by those with the handicap, requests that could lead to changes in a program could include:

- Housing accommodation request
- Course substitution
- Modification requests in other programs, including transportation services and medical programs

Types of disabilities may vary as well which can include:

- Hearing impairments
- Learning disabilities and attention deficit/hyperactivity disorder
- Mobility and manual impairments
- Psychological disabilities and substance abuse problems
- Visual impairments

The funding recipient also has to accommodate those who would need assistance animals such as:

- Guide dog, which are used by people with visual impairments
- Hearing dogs
- Signal dogs
- Seizure-response dogs
- Service dogs, which help people with physical disabilities with such tasks as opening doors and picking up dropped items

Fundamental alterations to the funding recipient's program are not required in order to accommodate the disabled but the recipient is required to modify the program for people with disabilities to have an equal opportunity to participate.

Section 504 requires program accessibility in existing facilities, as opposed to mandating that all buildings be accessible, which is required only for new or altered facilities. Alterations include:

- Redesigning equipment
- Reassigning classes or other services to accessible buildings
- Assigning aides to beneficiaries
- Delivering services at alternative accessible sites
- Providing auxiliary aides

All elements of a program or activity need not be accessible to meet Section 504's requirements and offer persons with disabilities opportunities for full participation.

GENERAL ARCHITECTURAL REQUIREMENTS:

The level accessibility of the program receiving federal funds for a facility differs under the type of work being done.

Non-housing facilities under new construction have to be designed with the intent of making them accessible to and usable by the handicap.

Non-housing facilities receiving alterations have to be made accessible to and usable by the disabled to the maximum extent feasible; however, recipients have a little room to maneuver for compliance depending on the financial and administrative burden imposed by making the facility accessible and usable to the maximum extent feasible. Yet the recipient(s) must come up with some means to make the project accessible.

Existing non-housing facilities -When the recipient receiving federal funds has an existing non-housing facilities they have to make sure that their program is readily accessible and usable by the handicap; but they do not have to make each of their non-housing facilities accessible and usable, where there is a concern for historic preservation the recipient is not required to make the facility accessible if it disrupts important historic features of the property, and recipients do not have to take any action that significantly change the program being undertaken or results in unnecessary financial and administrative burdens yet they must find other means to make their program accessible and usable by the handicap.

Housing facility-when a housing facility is undergoing new construction, new multi-family housing has to be made readily accessible and usable by the handicap. Either five percent (5%) or at least one (1) unit in the multifamily housing project whichever number is greater must be made handicap accessible. Additionally two (2%) percent or at least one (1) unit in the dwelling has to be accessible for people with vision or hearing impairments. HUD is authorized to increase the percentage under the request of an affected recipient or any state or local government agency after it is demonstrated that there is a need for an increased percentage of units that should be made accessible to the handicap based on census data, any other current data including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan, or due to a need for evidence for a higher percentage or number from any other manner. In these types of instances HUD takes into account the needs of those with and without handicaps.

When dealing with alteration on existing housing there are two categories to consider:

1. Substantial alteration- where alterations occur on a project that has fifteen or more units and the cost of the alteration is 75 percent or more of the replacement cost of the completed facility then they must following the guidelines of construction as if it was a new housing facility and take the necessary measures to make it the facility handicap accessible.
2. Other alterations- where there is a multifamily dwelling (including public housing), it has to be made to the maximum extent feasible handicap accessible. If a single dwelling is altered the entire dwelling has to be made handicap accessible. When five percent of the dwellings in a

multifamily project are made accessible and usable to the handicap then no more units have to be made, but areas that are of common use the facility have to be made usable and accessible by the handicapped as well. HUD has the same authority as it has with new construction to make changes in the percentage of the number of units that are to be made accessible and usable by the handicap.

Existing housing

Facilities that receive federal financial assistance has to be accessible and usable by the handicap but there are limitations. Those recipients do not have to make each of its existing facilities accessible and usable by the handicap. The recipient is also not required to make substantial alterations that would result in unnecessary administrative and financial burdens yet the recipient would still have to guarantee that handicap individuals are able to receive the benefits of the program or activity.

If there is other means to make a program accessible except through structural changes than the recipient must do so.

Barrier Removal

Recipients must remove architectural and communications barriers in existing facilities if possible. This includes communication barriers that are an integral part of the physical structure of a facility such as:

- Barriers posed by permanent signs or alarm systems
- The failure to provide adequate sound buffers
- The presence of physical objects that impede the passage of sound waves

To determine if the removal of the barriers is possible one must look at all the factors involved like:

- The nature and cost of the action needed; and the overall financial resources of the site(s) involved in the action,
- The number of persons employed at the site, the effect on expenses and resources, legitimate safety requirements necessary for safe operation, including crime prevention measures, or the impact of such action on the operation of the site
- If applicable, the geographic separateness and the administrative or fiscal relationship of the site(s) in question to any parent corporation or entity
- If applicable, the overall financial resources of any parent corporation or entity, the number of employees of the parent corporation or entity, and the number, type, and location of its facilities
- If applicable, the type of operation(s) of the parent corporation or entity, including the composition, structure and functions of the workforce of the parent corporation or entity.

Standards for barrier removal in existing facilities differ from those in new construction, given the cost of making facilities accessible to those with disabilities. Due to the cost of renovating existing facilities less accessibility is required; however, newly constructed or altered facilities have more stringent requirements because the accessibility that is federally necessary can be implemented during the design and construction stages of development which would not be as costly.

The primary issue with accessibility is physical access to facilities (e.g. getting through the door from public sidewalks). After physical accessibility is attained then people must be able to have access to where the goods and services are made available to the public. The third priority is to make the restrooms accessible. The final priority is to removal of any other barriers.

ALTERING EXISTING STRUCTURES (PRIMARY FUNCTION AREAS)

Section 504 requires an accessible path of travel to areas undergoing substantial alterations, which cost 50 percent or more of the building's value. An accessible entrance and restrooms also are required by Section 504 when there are alterations. This specifically pertains to the areas in the facility that are of common use such as telephones, restrooms, and drinking fountains.

HINTS ON TO ACHIEVING 504 COMPLIANCE (CONSTRUCTION)

- New facilities whether housing or non-housing have to be designed and constructed in order for them to be readily accessible to those with a handicap
- Alterations are different for housing and non-housing facilities. Alterations to housing with fifteen or more units and where the cost of alterations is 75 percent or more of the replacement cost then the compliance to 504 is to occur under the guise of it being new construction. Non-housing facilities with alterations have to be made readily accessible to the maximum extent feasible
- Existing facilities that are not being altered only have to meet the standards for programmatic accessibility
- Alteration to sites that are labeled historic must occur without disrupting the integrity of the site where the sentimental value is diminished; however, if this cannot occur then they must move the program to another site that is accessible

Ways to assist those with a handicap include removing communication and architectural barriers like the following:

- With those with mobility impairments: install ramps; make curb cuts in sidewalks and entrances; reposition shelves; rearrange table, chairs, vending machines, display racks, and other furniture; reposition telephones; widen doors; install offset hinges to widen doorways; eliminate a turnstile or provide an alternative accessible path; install grab bars in toilet seats; rearrange toilet partitions to increase maneuvering space; insulate lavatory pipes under sinks to prevent burns; install raised toilet seats; install a full-length bathroom mirror; reposition the paper towel dispenser; create designated accessible parking spaces; install a paper cup dispenser at a water fountain; remove high pile, low density carpeting; and install vehicle hand controls
- With those with visual impairments add raised marking on elevator control buttons
- With those with hearing impairments install flashing light alarms