

ACCESSIBILITY REGULATIONS MATRIX & OVERVIEW

What Accessibility Standards Apply To My Project?

	Type of Project	504/UFAS	ADA Title II	Fair Housing Act ¹	Comments
1.	City or Subrecipient HOME, CDBG, HOPWA or other federal funds	X	X	X	Public entity using federal funds for a program
2.	City issued tax exempt multifamily mortgage bonds		X	X	A department, agency, or other instrumentality of local government is providing a service or program.
3.	CSCDA issued tax exempt multifamily mortgage bonds		X	X	CSCDA is an instrumentality of local governments created to provide a service, i.e., issue tax-exempt bonds
4.	Federal LIHTC		X	X	State government provides allocations of tax credits to developers.
5.	State LIHTC		X	X	State government provides allocations of tax credits to developers.
6.	Project-based Section 8	X	X	X	Provides a federal subsidy to the project.
7.	Tenant based rental assistance such as Section 8 Vouchers or TBRA			X ²	Assistance is a subsidy to the tenant/beneficiary so 504/ADA Title II doesn't apply.
8.	FHA Section 221(d)(3) Below Market Interest Rate Program	X		X	Provides a federal benefit to the project in the form of a BMIR loan. Not ADA Title II because no state or local government involvement.
9.	Other FHA Insurance			X	
10.	Market Rate Apartments			X	

¹ For projects with a temporary Certificate of Occupancy (CofO) dated after 3/13/91. The Fair Housing Act is discussed in the Appendix.

²The Fair Housing Act applies to rental housing not because of the Section 8 Voucher but because the housing is governed by Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) and has four or more units.

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1. What is Section 504?

Section 504 of the Rehabilitation Act of 1973 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. (29 U.S.C. 794). This means that Section 504 prohibits discrimination on the basis of disability in any program or activity that receives financial assistance from any federal agency, including the U.S. Department of Housing and Urban Development (HUD) as well as in programs conducted by federal agencies including HUD. It is embodied in 24 CFR 8 which applies to all construction put out for bid after July 11, 1988.

2. Who are Recipients of Federal Financial Assistance?

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. Thus, a HUD funded public housing authority, or a HUD funded non-profit developer of low income housing is a recipient of federal financial assistance and is subject to Section 504's requirements. However, a private landlord who accepts Section 8 tenant-based vouchers in payment for rent from a low income individual is not a recipient of federal financial assistance. Similarly, a family that receives Community Development Block Grant (CDBG) or HOME funds for the rehabilitation of an owner-occupied unit is also not a recipient because it is the ultimate beneficiary of the funds.

3. What is UFAS?

The Uniform Federal Accessibility Standards (UFAS) is one of two standards (the other being the ADA standards for Accessible Design) for the design, construction and alteration of buildings so that physically handicapped persons will have ready access to and use of them in accordance with the Architectural Barriers Act, 42 U.S.C. 4151-4157. HUD adopted the UFAS in 24 CFR part 40, effective October 4, 1984.

4. What is the link between Section 504 and UFAS?

The Section 504 regulations impose specific accessibility requirements for new construction and the alteration of housing and non-housing facilities in HUD assisted programs. Section 8.32 of the regulations states that compliance with the appropriate technical criteria in the Uniform Federal Accessibility Standards (UFAS), or a standard that is equivalent to or stricter than the

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UFAS, is an acceptable means of meeting the technical accessibility requirements in Sections 8.21, 8.22, 8.23 and 8.25 of the Section 504 regulations.

5. What is ADA Title II?

The Americans with Disabilities Act of 1990 Title II applies to "public entities," and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, and activities provided by public entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all services, programs, and activities provided or made available by public entities.

6. What is a "Public Entity?"

A public entity covered by Title II is defined as:

- 1) Any State or local government;
- 2) Any department, agency, special purpose district, or other instrumentality of a State or local government; or
- 3) Certain commuter authorities as well as AMTRAK.

7. How is this information applicable to my Project?

The provision of financial assistance to developers to build affordable housing to benefit lower income households through issuing bonds and making loans, grants, and loan guarantees, etc. is a service or activity of state/local government or an instrumentality of state/local government (such as a redevelopment agency or other issuer of tax-exempt bonds). Therefore, Title II of the ADA applies. The allocation of federal and state Low Income Housing Tax Credits is a program/activity of state government and, likewise, is covered under Title II.

8. When did the 2010 ADA Title II Regulations Become Effective?

The Title II regulations were updated to reflect the 2010 revisions and the technical corrections and published on September 15, 2010, in the Federal Register. These requirements clarified and refined issues that arose over the past 20 years and contained new, and updated, requirements, including the 2010 Standards for Accessible Design ("2010 Standards"). March 15, 2012 was the compliance date for using the 2010 Standards for new construction, alterations, program accessibility, and barrier removal.. Prior to that date, the original 1991 Title II regulations were in effect.

- From September 15, 2010, to March 15, 2012, if a Title II entity undertook new construction or alterations, it could choose either the 1991 Standards or the 2010 Standards. Title II entities could also choose to use the Uniform Federal Accessibility

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Standards (UFAS). Whatever standard was chosen, it must be used for all elements in the entire facility. For example, an entity could not use the 1991 Standards for accessible routes and the 2010 Standards for accessible seating.

- On or after March 15, 2012, all newly constructed or altered facilities must comply with all of the requirements in the 2010 Standards. If elements in existing facilities already comply with corresponding elements in the 1991 Standards and are not being altered, then entities are not required to make changes to those elements to bring them into compliance with the 2010 Standards.
- Effective May 23, 2014, ADA 2010 (with noted exceptions) was deemed acceptable by HUD as an alternate standard to UFAS for Section 504 compliance. (See Federal Register, Vol. 79, No. 100, Friday, May 23, 2014 regarding use of ADA 2010 as an alternate standard for 504 compliance.)

The commencement of physical construction is the triggering event for the application of the 2010 Standards for entities covered by Title II. The date of ceremonial groundbreaking or the date a structure is razed to make it possible for construction of a facility to take place does not qualify as the commencement of physical construction.

9. What happens when more than one set of regulations covers my project?

The Fair Housing Act, ADA Title II, Title III and Section 504/UFAS can be required in the same project. In that case, the most rigorous standard applies. If the standards are different, but one is not more rigorous, then the standard that is most appropriate for the development applies. For example, in a project where both Section 504 and ADA Title II apply, Section 504 defines “accessible” and says that “a unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is accessible within the meaning of this paragraph.” However, the ADA Title II says that facilities “shall be designed, constructed, or altered to be *readily accessible* [emphasis added] to and usable by individuals with disabilities.” (28 CFR 35.151(a)). Readily accessible is a more rigorous standard than adaptable, since creating an accessible unit from an adaptable unit takes time to make the needed modifications; therefore, the ADA Title II requirement, readily accessible, is the one that should be applied.

There are no simple answers. Each project must be evaluated based upon the requirements of the applicable regulations and the date when it was put out to bid, started construction or received a temporary CofO, depending upon which regulation is most rigorous or appropriate. Regulations also have provisions regarding situations where full compliance is structurally infeasible or impracticable to meet the requirements when the unique characteristics of terrain or existing structure prevent the incorporation of accessibility features.

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10. What does Title III of the ADA cover?

I thought my project was covered under Title III of the ADA. Some parts of your project may be covered since Title III covers private entities that operate public accommodations, such as hotels, restaurants, theaters, retail stores, dry cleaners, doctors' offices, amusement parks, as well as management offices and community facilities within residential housing serving the general public, social services establishments (including places providing services to homeless households) and bowling alleys. Title III also applies to supportive services delivered at residential facilities constructed with CDBG, HOME and HOPWA where the services are a significant component of the housing program. It also applies to social services provided to the public.

11. I want to refinance my project what regulations apply?

Prior to approval of the subordination of City liens, ownership transfers, bond refunding or other transactions requiring City approval and/or certifications that the project is in compliance with all requirements and that there is no default under the Loan or Regulatory Agreements, the City will require a report from a Certified Accessibility Specialist (CASp) confirming that the entire development is in compliance with the 504/ADA/Fair Housing Act standards **that were in effect when the project was constructed**. The 2010 revisions to the ADA, Section 35.151(c)(5) sets forth the rules for noncompliant new construction or alterations in facilities that were subject to the requirements of Title II. Under those provisions, noncomplying new construction and alterations constructed or altered after July 26, 1992 and before March 15, 2012 shall, before March 15, 2012, be made accessible in accordance with either the 1991 Standards, UFAS, or the 2010 Standards. Noncomplying new construction and alterations constructed or altered after the effective date of the applicable ADA requirements and before March 15, 2012, shall, on or after March 15, 2012 be made accessible in accordance with the 2010 Standards.

Whether the residential development was new construction, acquisition and substantial or moderate rehabilitation, or the acquisition of an existing building, the property will need a thorough inspection and accessibility report by a CASp. The owner, may be certain that the development meets all requirements; however, the consultant may, upon research and further inspection, find conditions that need to be addressed. If, in the accessibility report, there are items that are not in compliance, those items will need to be repaired before City approval can be given. Most items are relatively easy to address, however, we recognize that remediating some conditions may be technically infeasible or structurally impracticable. While the owner will not be required to address those conditions, those items will be listed in the report as well as the scope of work for remediation.

APPENDIX

What Does the Federal Fair Housing Act of 1968, as Amended, Require (for Projects that Received Temporary Certificates of Occupancy after 3/13/91)?

1. What Housing Is Covered?

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

2. What Is Prohibited?

In the Sale and Rental of Housing: No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In Mortgage Lending: No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap (disability):

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.

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In addition: It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

3. *What Are the Additional Protections, if You Have a Disability?*

If you or someone associated with you:

- Have a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability

your landlord may not:

- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the disabled person to use the housing. (Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.

Example: A building with a no pets policy must allow a visually impaired tenant to keep a guide dog.

Example: An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

4. *What Are the Requirements for New Buildings?*

In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs

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All units must have:

- An accessible route into and through the unit
- Accessible light switches, electrical outlets, thermostats and other environmental controls
- Reinforced bathroom walls to allow later installation of grab bars and
- Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in State or local law.

5. *What Does It Say about Housing Opportunities for Families?*

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission.

Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Exemption: Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

A transition period permits residents on or before September 13, 1988, to continue living in the housing, regardless of their age, without interfering with the exemption.