
APPENDIX C

Supplemental Notice Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines

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**Office of the Assistant Secretary for Fair
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**24 CFR Ch. I
Fair Housing: Accessibility Guidelines;
Questions and Answers; Supplement to
Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Fair Housing and Equal Opportunity****24 CFR Chapter I**

[Docket No. N-94-2011; FR-2665-N-09]

Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Supplement to notice of fair housing accessibility guidelines.

SUMMARY: On March 6, 1991, the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Since publication of the Guidelines, the Department has received many questions regarding the applicability of the technical specifications set forth in the Guidelines to certain types of new multifamily dwellings and certain types of units within covered multifamily dwellings. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to the design and construction requirements of the Fair Housing Act.

This document reproduces the questions that have been most frequently asked by members of the public, and the Department's answers to these questions. The Department believes that the issues addressed by these questions and answers may be of interest and assistance to other members of the public who must comply with the design and construction requirements of the Fair Housing Act.

EFFECTIVE DATE: June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Judith Keeler, Director, Office of Program Compliance and Disability Rights. For technical questions regarding this notice, contact Office of Fair Housing and Equal Opportunity, room 5112, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410, telephone 202-708-2618 (voice), 202-708-1734 TTY; for copies of this notice contact the Fair Housing Information Clearinghouse at 1-800-795-7915 (this is a toll-free

number), or 1-800-483-2209 (this is a toll-free TTY number).

SUPPLEMENTARY INFORMATION:**Background**

The Fair Housing Amendments Act of 1988 (Pub.L. 100-430, approved September 13, 1988) (the Fair Housing Amendments Act) amended title VIII of the Civil Rights Act of 1968 (Fair Housing Act or Act) to add prohibitions against discrimination in housing on the basis of disability and familial status. The Fair Housing Amendments Act also made it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with disabilities, and established design and construction requirements to make these dwellings readily accessible to and usable by persons with disabilities.¹ Section 100.205 of the Department's regulations at 24 CFR part 100 implements the Fair Housing Act's design and construction requirements (also referred to as accessibility requirements).

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Act. (The Guidelines are codified at 24 CFR Ch.I, Subch.A., App. II. The preamble to the Guidelines is codified at 24 CFR Ch.I, Subch.A., App.III.) The Guidelines are organized to follow the sequence of requirements as they are presented in the Fair Housing Act and in 24 CFR 100.205. The Guidelines provide technical guidance on the following seven requirements:

- Requirement 1. Accessible building entrance on an accessible route.
- Requirement 2. Accessible common and public use areas.
- Requirement 3. Usable doors (usable by a person in a wheelchair).
- Requirement 4. Accessible route into and through the dwelling unit.
- Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Requirement 6. Reinforced walls for grab bars.
- Requirement 7. Usable kitchens and bathrooms.

The design specifications presented in the Guidelines are recommended guidelines only. Builders and

¹ Although this notice uses the terms "disability" and "disabilities," the terms used in the Fair Housing Amendments Act are "handicap" and "handicaps."

developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. The Fair Housing Act and the Department's implementing regulation provides, for example, for use of the appropriate requirements of the ANSI A117.1 standard. However, adherence to the Guidelines does constitute a safe harbor in the Department's administrative enforcement process for compliance with the Fair Housing Act's design and construction requirements.

Since publication of the Guidelines, the Department has received many questions regarding applicability of the design specifications set forth in the Guidelines to certain types of new multifamily dwellings and to certain types of interior housing designs. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to compliance with the design and construction requirements of the Fair Housing Act. Given the wide variety in the types of multifamily dwellings and the types of dwelling units, and the continual introduction into the housing market of new building and interior designs, it was not possible for the Department to prepare accessibility guidelines that would address every housing type or housing design. Although the Guidelines cannot address every housing design, it is the Department's intention to assist the public in complying with the design and construction requirements of the Fair Housing Act through workshops and seminars, telephone assistance, written replies to written inquiries, and through the publication of documents such as this one. The Department has contracted for the preparation of a design manual that will further explain and illustrate the Fair Housing Act Accessibility Guidelines.

The questions and answers set forth in this notice address the issues most frequently raised by the public with respect to types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

The question and answer format is divided into two sections. Section 1, entitled "Dwellings Subject to the New Construction Requirements of the Fair Housing Act" addresses the issues raised in connection with the types of multifamily dwellings (including portions of such dwellings) constructed for first occupancy after March 13, 1991, that must comply with the Act's design and construction requirements. Section

2, entitled "Accessibility Guidelines," addresses the issues raised in connection with the design and construction specifications set forth in the Guidelines.

Dated: March 23, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

Accordingly, the Department adds the "Questions and Answers about the Fair Housing Accessibility Guidelines" as Appendix IV to 24 CFR Chapter I, Subchapter A to read as follows:



Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines

24 CFR Ch.I

Appendix IV to Subchapter A—

Note: This is a reprint of the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines published in the Federal Register on June 28, 1994, Vol. 59, No. 123, pages 33362-33368.

Questions and Answers about the Fair Housing Accessibility Guidelines

Introduction

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines). (The Guidelines are codified at 24 CFR Ch. I, Subch. A, App. II.) The Guidelines provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Since publication of the Guidelines, the Department has received many questions regarding the applicability of the technical specifications set forth in the Guidelines to certain types of new multifamily dwellings and certain types of units within covered multifamily dwellings. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to the design and construction requirements of the Fair Housing Act.

The questions and answers contained in this document address some of the issues most frequently raised by the public with respect to the types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

The issues addressed in this document are addressed only with respect to the application of the Fair Housing Act and the Guidelines to dwellings which are "covered multifamily dwellings" under the Fair Housing Act. Certain of these dwellings, as well as certain public and common use areas of such dwellings, may also be covered by various other laws, such as section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157); and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213).

Section 504 applies to programs and activities receiving federal financial assistance. The Department's regulations for section 504 are found at 24 CFR part 8.

The Architectural Barriers Act applies to certain buildings financed in whole or in part with federal funds. The Department's regulations for the Architectural Barriers Act are found at 24 CFR parts 40 and 41.

The Americans with Disabilities Act (ADA) is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. The Department of Justice is the lead federal agency for implementation of the ADA and should be contacted for copies of relevant ADA regulations.

The Department has received a number of questions regarding applicability of the ADA to residential housing, particularly with respect to title III of the ADA, which addresses accessibility requirements for public accommodations. The Department has been asked, in particular, if public and common use areas of residential housing are covered by title III of the ADA. Strictly residential facilities are not considered places of public accommodation and therefore would not be subject to title III of the ADA, nor would amenities provided for the exclusive use of residents and their guests. However, common areas that function as one of the ADA's twelve categories of places of public accommodation within residential facilities are considered places of public accommodation if they are open to persons other than residents and their guests. Rental offices and sales office for residential housing, for example, are by their nature open to the public, and are places of public accommodation and must comply with the ADA requirements in addition to all applicable requirements of the Fair Housing Act. As stated above, the remainder of this notice addresses issues most frequently raised by the public with respect to the types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

Section 1: Dwellings Subject to the New Construction Requirements of the Fair Housing Act.

The issues addressed in this section concern the types of multifamily dwellings (or portions of such dwellings) designed and constructed for first occupancy after March 13, 1991 that must comply with the design and construction requirements of the Fair Housing Act.

1. Townhouses

- (a) **Q.** Are townhouses in non-elevator buildings which have individual exterior entrances required to be accessible?
A. Yes, if they are single-story townhouses. If they are multistory townhouses, accessibility is not required. (See the discussion of townhouses in the preamble to the Guidelines under "Section 2--Definitions [Covered Multifamily Dwellings]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)
- (b) **Q.** Does the Fair Housing Act cover four one-story dwelling units that share common walls and have individual entrances?
A. Yes. The Fair Housing Act applies to all units in buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. This would include one-story homes, sometimes called "single-story townhouses," "villas," or "patio apartments," regardless of ownership, even though such homes may not be considered multifamily dwellings under various building codes.
- (c) **Q.** What if the single-story dwelling units are separated by firewalls?
A. The Fair Housing Act would still apply. The Guidelines define covered multifamily dwellings to include buildings having four or more units within a single structure separated by firewalls.

2. Commercial Space

- Q.** If a building includes three residential dwelling units and one or more commercial spaces, is the building a "covered multifamily dwelling" under the Fair Housing Act?
A. No. Covered multifamily dwellings are buildings consisting of four or more dwelling units, if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. Commercial space does not meet the definition of "dwelling unit." Note, however, that title III of the ADA applies to public accommodations and commercial facilities, therefore an independent determination should be made regarding applicability of the ADA to the commercial space in such a building (see the introduction to these questions and answers, which provides some background on the ADA).

3. Condominiums

- (a) **Q.** Are condominiums covered by the Fair Housing Act?
A. Yes. Condominiums in covered multifamily dwellings are covered by the Fair Housing Act. The Fair Housing Act makes no distinctions based on ownership.
- (b) **Q.** If a condominium is pre-sold as a shell and the interior is designed and constructed by the buyer, are the Guidelines applicable?
A. Yes. The Fair Housing Act applies to design and construction of covered multifamily dwellings, regardless of whether the person doing the design and construction is an architect, builder, or private individual. (See discussion of condominiums in the preamble to Guidelines under "Section 2--Definitions [Dwelling Units]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

4. Additions

- (a) **Q.** If an owner adds four or more dwelling units to an existing building, are those units covered by the Fair Housing Act?
A. Yes, provided that the units constitute a new addition to the building and not substantial rehabilitation of existing units.
- (b) **Q.** What if new public and common use spaces are also being added?
A. If new public and common use areas or buildings are also added, they are required to be accessible.
- (c) **Q.** If the only new construction is an addition consisting of four or more dwelling units, would the existing public and common use spaces have to be made accessible?
A. No, existing public and common use areas would not have to be made accessible. The Fair Housing Act applies to new construction of covered multifamily dwellings. (See section 804(f)(3)(C)(i) of the Act.) Existing public and common use facilities are not newly constructed portions of covered multifamily dwellings. However, reasonable modifications to the existing public and common use areas to provide access would have to be allowed, and the Americans with Disabilities Act (ADA) may apply to certain public and common use areas. An independent determination should be made regarding applicability of the ADA. (See the introduction to these questions and answers, which provides some background on the ADA.)

5. Units Over Parking

- (a) **Q.** Plans for a three-story building consist of a common parking area with assigned stalls on grade as the first story, and two stories of single-story dwelling units stacked over the parking. All of the stories above the parking level are to be accessed by stairways. There are no elevators planned to be in the building. Would the first story of single-story dwelling units over the parking level be

required to be accessible?

A. Yes. The Guidelines adopt and amplify the definition of "ground floor" found in HUD's regulation implementing the Fair Housing Act (see 24 CFR 100.201) to indicate that ". . .where the first floor containing dwelling units is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor." (See definition of "ground floor" in the Guidelines at 24 CFR Ch. I, Subch. A, App. II, Section 2.) Where no dwelling units in a covered multifamily dwelling are located on grade, the first floor with dwelling units will be considered to be a ground floor, and must be served by a building entrance on an accessible route. However, the definition of "ground floor" does not require that there be more than one ground floor.

- (b) **Q.** If a building design contains a mix of single-story flats on grade and single-story flats located above grade over a public parking area, do the flats over the parking area have to be accessible?
A. No. In the example in the above question, because some single-story flats are situated on grade, these flats would be the ground floor dwelling units and would be required to be accessible. The definition of ground floor in the Guidelines states, in part, that "ground floor means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. . ." Thus, the definition includes situations where the design plan is such that more than one floor of a building may be accessed by means of an accessible route (for an example, see Question 6, which follows). There is no requirement in the Department's regulations implementing the Fair Housing Act that there be more than one ground floor.

6. More Than One Ground Floor

Q. If a two or three story building is to be constructed on a slope, such that the lowest story can be accessed on grade on

one side of the building and the second story can be accessed on grade on the other side of the building, do the dwelling units on both the first and second stories have to be made accessible?

A. Yes. By defining "ground floor" to be any floor of a building with an accessible entrance on an accessible route, the Fair Housing Act regulations recognize that certain buildings, based on the site and the design plan, have more than one story which can be accessed at or near grade. In such cases, if more than one story can be designed to have an accessible entrance on an accessible route, then all such stories should be so designed. Each story becomes a ground floor and the dwelling units on that story must meet the accessibility requirements of the Act. (See the discussion on this issue in Question 12 of this document.)

7. Continuing Care Facilities

Q. Do the new construction requirements of the Fair Housing Act apply to continuing care facilities which incorporate housing, health care and other types of services?

A. The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a "dwelling" under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings. Factors that the Department will consider in making such an examination include, but are not limited to: (1) the length of time persons stay in the project; (2) whether policies are in effect at the project that are designed and intended to encourage or discourage occupants from forming an expectation and intent to continue to occupy space at the project; and (3) the nature of the services provided by or at the project.

8. Evidence of First Occupancy

Q. The Fair Housing Act applies to covered multifamily dwellings built for first occupancy after March 13, 1991. What is acceptable evidence of "first occupancy"?

A. The determination of first occupancy is made on a building by building basis. The Fair Housing Act regulations provide that "covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and therefore exempt from the Act's accessibility requirements) if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, county or local government on or before June 15, 1990."

For buildings that did not obtain the final building permit on or before June 15, 1990, proof of the date of first occupancy consists of (1) a certificate of occupancy, and (2) a showing that at least one dwelling unit in the building actually was occupied by March 13, 1991. For example, a tenant has signed a lease and has taken possession of a unit. The tenant need not have moved into the unit, but the tenant must have taken possession so that, if desired, he or she could have moved into the building by March 13, 1991. For dwelling units that were for sale, this means that the new owner had completed settlement and taken possession of the dwelling unit by March 13, 1991. Once again, the new owner need not have moved in, but the owner must have been in possession of the unit and able to move in, if desired, on or before March 13, 1991. A certificate of occupancy alone would not be an acceptable means of establishing first occupancy, and units offered for sale, but not sold, would not meet the test for first occupancy.

9. Converted Buildings

Q. If a building was used previously for a nonresidential purpose, such as a ware-

house, office building, or school, and is being converted to a multifamily dwelling, must the building meet the requirements of the Fair Housing Act?

A. No, the Fair Housing Act applies to "covered multifamily dwellings for first occupancy after" March 13, 1991, and the Fair Housing Act regulation defines "first occupancy" as "a building that has never before been used for any purpose." (See 24 CFR 100.201, for the definition of "first occupancy," and also 24 CFR Ch. I, Subch. A, App. I.)

Section 2: Accessibility Guidelines.

The issues addressed in this section concern the technical specifications set forth in the Fair Housing Accessibility Guidelines.

Requirement 1 -- Accessible Entrance on an Accessible Route

10. Accessible Routes to Garages

(a) Q. Is it necessary to have an accessible path of travel from a subterranean garage to single-story covered multifamily dwellings built on top of the garage?

A. Yes. The Fair Housing Act requires that there be an accessible building entrance on an accessible route. To satisfy Requirement 1 of the Guidelines, there would have to be an accessible route leading to grade level entrances serving the single-story dwelling units from a public street or sidewalk or other pedestrian arrival point. The below grade parking garage is a public and common use facility. Therefore, there must also be an accessible route from this parking area to the covered dwelling units. This may be provided either by a properly sloped ramp leading from the below grade parking to grade level, or by means of an elevator from the parking garage to the dwelling units.

(b) Q. Does the route leading from inside a private attached garage to the dwelling unit have to be accessible?

A. No. Under Requirement 1 of the Guidelines, there must be an accessible entrance to the dwelling unit on an accessible route. However, this route and entrance need not originate inside the garage. Most units with attached garages have a separate main entry, and this would be the entrance required to be accessible. Thus, if there were one or two steps inside the garage leading into the unit, there would be no requirement to put a ramp in place of the steps. However, the door connecting the garage and dwelling unit would have to meet the requirements for usable doors.

11. Site Impracticality Tests

(a) Q. Under the individual building test, how is the second step of the test performed, which involves measuring the slope of the finished grade between the entrance and applicable arrival points?

A. The slope is measured at ground level from the entrance to the top of the pavement of all vehicular and pedestrian arrival points within 50 feet of the planned entrance, or, if there are none within 50 feet, the vehicular or pedestrian arrival point closest to the planned entrance.

(b) Q. Under the individual building test, at what point of the planned entrance is the measurement taken?

A. On a horizontal plane, the center of each individual doorway should be the point of measurement when measuring to an arrival point, whether the doorway is an entrance door to the building or an entrance door to a unit.

(c) Q. The site analysis test calls for a calculation of the percentage of the buildable areas having slopes of less than 10 percent. What is the definition of "buildable areas"?

A. The "buildable area" is any area of the lot or site where a building can be located in compliance with applicable codes and zoning regulations.

12. Second Ground Floors

- (a) **Q.** The Department's regulation for the Fair Housing Act provides that there can be more than one ground floor in a covered multifamily dwelling (such as a three-story building built on a slope with three stories at and above grade in front and two stories at grade in back). How is the individual building test performed for additional stories, to determine if those stories must also be treated as "ground floors"?

A. For purposes of determining whether a non-elevator building has more than one ground floor, the point of measurement for additional ground floors, after the first ground floor has been established, is at the center of the entrance (building entrance for buildings with one or more common entrance and each dwelling unit entrance for buildings with separate ground floor unit entrances) at floor level for that story.

- (b) **Q.** What happens if a builder deliberately manipulates the grade so that a second story, which also might have been treated as a ground floor, requires steps?

A. Deliberate manipulation of the height of the finished floor level to avoid the requirements of the Fair Housing Act would serve as a basis for the Department to determine that there is reasonable cause to believe that a discriminatory housing practice has occurred.

Requirement 2 -- Public and Common Use Areas

13. No Covered Dwellings

Q. Are the public and common use areas of a newly constructed development that consists entirely of buildings having four or more multistory townhouses, with no elevators, required to be accessible?

A. No. The Fair Housing Act applies only to new construction of covered multifamily dwellings. Multistory townhouses, provided that they meet the definition of "multistory" in the Guide-

lines, are not covered multifamily dwellings if the building does not have an elevator. (See discussion of townhouses in the preamble to the Guidelines under "Section 2--Definitions [Covered Multifamily Dwellings]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.) If there are no covered multifamily dwellings on a site, then the public and common use areas of the site are not required to be accessible. However, the Americans with Disabilities Act (ADA) may apply to certain public and common use areas. Again, an independent determination should be made regarding applicability of the ADA. (See the introduction to these questions and answers, which provides some background on the ADA.)

14. Parking Spaces and Garages

- (a) **Q.** How many resident parking spaces must be made accessible at the time of construction?

A. The Guidelines provide that a minimum of two percent of the parking spaces serving covered dwelling units be made accessible and located on an accessible route to wheelchair users. Also, if a resident requests an accessible space, additional accessible parking spaces would be necessary if the two percent are already reserved.

- (b) **Q.** If both open and covered parking spaces are provided, how many of each type must be accessible?

A. The Guidelines require that accessible parking be provided for residents with disabilities on the same terms and with the full range of choices, e.g., surface parking or garage, that are provided for other residents of the project. Thus, if a project provides different types of parking such as surface parking, garage, or covered spaces, some of each must be made accessible. While the total parking spaces required to be accessible is only two percent, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

(c) **Q.** If a project having covered multifamily dwellings provides parking garages where there are several individual garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, are there any requirements for the inside dimensions of these individual parking garages?

A. Yes. These garages would be public and common use space, even though the individual garages may be assigned to a particular dwelling unit. Therefore, at least two percent of the garages should be at least 14' 2" wide and the vehicular door should be at least 10'-0" wide.

(d) **Q.** If a covered multifamily dwelling has a below grade common use parking garage, is there a requirement for a vertical clearance to allow vans to park?

A. This issue was addressed in the preamble to the Guidelines, but continues to be a frequently asked question. (See the preamble to the Guidelines under the discussion of "Section 5--Guidelines for Requirement 2" at 56 FR 9486, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.) In response to comments from the public that the Guidelines for parking specify minimum vertical clearance for garage parking, the Department responded: No national accessibility standards, including UFAS, require particular vertical clearances in parking garages. The Department did not consider it appropriate to exceed commonly accepted standards by including a minimum vertical clearance in the Fair Housing Accessibility Guidelines, in view of the minimal accessibility requirements of the Fair Housing Act.

Since the Guidelines refer to ANSI A117.1 1986 for the standards to follow for public and common use areas, and since the ANSI does not include a vertical clearance for garage parking, the Guidelines likewise do not. (Note: UFAS is the Uniform Federal Accessibility Standard.)

15. Public Telephones

Q. If a covered multifamily dwelling has public telephones in the lobby, what are the requirements for accessibility for these telephones?

A. The requirements governing public telephones are found in Item #14, "Common use spaces and facilities," in the chart under Requirement 2 of the Guidelines. While the chart does not address the quantity of accessible public telephones, at a minimum, at least one accessible telephone per bank of telephones would be required. The specifications at ANSI 4.29 would apply.

Requirement 3 -- Usable Doors

16. Required Width

Q. Will a standard hung 32-inch door provide sufficient clear width to meet the requirements of the Fair Housing Act?

A. No, a 32-inch door would not provide a sufficient clear opening to meet the requirement for usable doors. A notation in the Guidelines for Requirement 3 indicates that a 34-inch door, hung in the standard manner, provides an acceptable nominal 32-inch clear opening.

17. Maneuvering Clearances and Hardware

Q. Is it correct that only the exterior side of the main entry door of covered multifamily dwellings must meet the ANSI requirements?

A. Yes. The exterior side of the main entry door is part of the public and common use areas and therefore must meet ANSI A117.1 1986 specifications for doors. These specifications include necessary maneuvering clearances and accessible door hardware. The interior of the main entry door is part of the dwelling unit and only needs to meet the requirements for usable doors within the dwelling intended for user passage, i.e., at least 32 inches

nominal clear width, with no requirements for maneuvering clearances and hardware. (See 56 FR 9487-9488, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

18. Doors to Inaccessible Areas

Q. Is it necessary to provide usable doors when the door leads to an area of the dwelling that is not accessible, such as the door leading down to an unfinished basement, or the door connecting a single-story dwelling with an attached garage? (In the latter case, there is a separate entrance door to the unit which is accessible.)

A. Yes. Within the dwelling unit, doors intended for user passage through the unit must meet the requirements for usable doors. Such doors would have to provide at least 32 inches nominal clear width when the door is open 90 degrees, measured between the face of the door and the stop. This will ensure that, if a wheelchair user occupying the dwelling unit chooses to modify the unit to provide accessibility to these areas, such as installing a ramp from the dwelling unit into the garage, the door will be sufficiently wide to allow passage. It also will allow passage for people using walkers or crutches.

Requirement 4 -- Accessible Route Into and Through the Unit

19. Sliding Door

Q. If a sliding door track has a threshold of 3/4", does this trigger requirements for ramps?

A. No. The Guidelines at Requirement 4 provide that thresholds at doors, including sliding door tracks, may be no higher than 3/4" and must be beveled with a slope no greater than 1:2.

20. Private Attached Garages

(a) **Q.** If a covered multifamily dwelling has an individual, private garage which is attached to and serves only that dwelling,

does the garage have to be accessible in terms of width and length?

A. Garages attached to and which serve only one covered multifamily dwelling are part of that dwelling unit, and are not covered by Requirement 2 of the Guidelines, which addresses accessible and usable public and common use space. Because such individual garages attached to and serving only one covered multifamily dwelling typically are not finished living space, the garage is not required to be accessible in terms of width or length. The answer to this question should be distinguished from the answer to Question 14(c). Question 14(c) addresses parking garages where there are several garages or stalls located together, either in a separate, detached building, or in a central area of the building, such as at one end. These types of garages are not attached to, and do not serve, only one unit and are therefore considered public and common use garages.

21. Split-Level Entry

Q. Is a dwelling unit that has a split entry foyer, with the foyer and living room on an accessible route and the remainder of the unit down two steps, required to be accessible if it is a ground floor unit in a covered multifamily dwelling?

A. Yes. Under Requirement 4, there must be an accessible route into and through the dwelling unit. This would preclude a split level foyer, unless a properly sloped ramp can be provided.

Requirement 5 -- Environmental Controls

22. Range Hood Fans

Q. Must the switches on range hood kitchen ventilation fans be in accessible locations?

A. No. Kitchen ventilation fans located on a range hood are considered to be part of the appliance. The Fair Housing Act has no requirements for appliances in the interiors of dwelling units, or the switches

that operate them. (See "Guidelines for Requirement 5" and "Controls for Ranges and Cooktops" at 56 FR 9490 and 9492, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

Requirement 6 -- Reinforced Walls for Grab Bars

23. Type of Reinforcement

Q. What type of reinforcement should be used to reinforce bathroom walls for the later installation of grab bars?

A. The Guidelines do not prescribe the type of material to use or method of providing reinforcement for bathroom walls. The Guidelines recognize that grab bar reinforcing may be accomplished in a variety of ways, such as by providing plywood panels in the areas illustrated in the Guidelines under Requirement 6, or by installing vertical reinforcement in the form of double studs at the points noted on the figures in the Guidelines. The builder/owners should maintain records that reflect the placement of the reinforcing material, for later reference by a resident who wishes to install a grab bar.

24. Type of Grab Bar

Q. What types of grab bars should the reinforcement be designed to accommodate and what types may be used if the builder elects to install grab bars in some units at the time of construction?

A. The Guidelines do not prescribe the type of product for grab bars, or the structural strength for grab bars. The Guidelines only state that the necessary reinforcement must be placed "so as to permit later installation of appropriate grab bars." (Emphasis added.) In determining what is an appropriate grab bar, builders are encouraged to look to the 1986 ANSI A117.1 standard, the standard cited in the Fair Housing Act. Builders also may follow State or local standards in planning for or selecting appropriate grab bars.

Requirement 7 -- Usable Kitchens and Bathrooms

25. Counters and Vanities

Q. It appears from Figure 2(c) of the Guidelines (under Requirement 5) that there is a 34 inch height requirement for kitchen counters and vanities. Is this true?

A. No. Requirement 7 addresses the requirement for usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space. The legislative history of the Fair Housing Act makes it clear that the Congress intended that the Act affect ability to maneuver within the space of the kitchen and bathroom, but not to require fixtures, cabinetry or plumbing of adjustable design. Figure 2(c) of the Guidelines is illustrating the maximum side reach range over an obstruction. Because the picture was taken directly from the ANSI A117.1 1986 standard, the diagram also shows the height of the obstruction, which, in this picture, is a countertop. This 34 inch height, however, should not be regarded as a requirement.

26. Showers

Q. Is a parallel approach required at the shower, as shown in Figure 7(d) of the Guidelines?

A. Yes. For a 36" x 36" shower, as shown in Figure 7(d), a person in a wheelchair would typically add a wall hung seat. Thus the parallel approach as shown in Figure 7(d) is essential in order to be able to transfer from the wheelchair to the shower seat.

27. Tub Controls

Q. Do the Guidelines set any requirements for the type or location of bathtub controls?

A. No, except where the specifications in Requirement 7(2)(b) are used. In that case, while the type of control is not

specified, the control must be located as shown in Figure 8 of the Guidelines.

28. Paragraph (b) Bathrooms

Q. If an architect or builder chooses to follow the bathroom specifications in Requirement 7, Guideline 2, paragraph (b), where at least one bathroom is designed to comply with the provisions of paragraph (b), are the other bathrooms in the dwelling unit required to have reinforced walls for grab bars?

A. Yes. Requirement 6 of the Guidelines requires reinforced walls in bathrooms for later installation of grab bars. Even though Requirement 6 was not repeated under Requirement 7--Guideline 2, it is a separate requirement which must be met in all bathrooms. The same would be true for other Requirements in the Guidelines, such as Requirement 5, which applies to usable light switches, electrical outlets, thermostats and other environmental controls; Requirement 4 for accessible route; and Requirement 3 for usable doors.

29. Bathroom Clear Floor Space

Q. Is it acceptable to design a bathroom with an in-swinging 2'10" door which can be retrofitted to swing out in order to provide the necessary clear floor space in the bathroom?

A. No. The requirements in the Guidelines must be included at the time of construction. Thus, for a bathroom, there must be sufficient maneuvering space and clear floor space so that a person using a wheelchair or other mobility aid can enter and close the door, use the fixtures and exit.

30. Lavatories

Q. Would it be acceptable to use removable base cabinets beneath a wall-hung

lavatory where a parallel approach is not possible?

A. Yes. The space under and around the cabinet should be finished prior to installation. For example, the tile or other floor finish must extend under the removable base cabinet.

31. Wing Walls

Q. Can a water closet (toilet) be located in an alcove with a wing wall?

A. Yes, as long as the necessary clear floor space shown in Figure 7(a) is provided. This would mean that the wing wall could not extend beyond the front edge of a lavatory located on the other side of the wall from the water closet.

32. Penalties

Q. What types of penalties or monetary damages will be assessed if covered multifamily dwellings are found not to be in compliance with the Fair Housing Act?

A. Under the Fair Housing Act, if an administrative law judge finds that a respondent has engaged in or is about to engage in a discriminatory housing practice, the administrative law judge will order appropriate relief. Such relief may include actual and compensatory damages, injunctive or other equitable relief, attorney's fees and costs, and may also include civil penalties ranging from \$10,000 for the first offense to \$50,000 for repeated offenses. In addition, in the case of buildings which have been completed, structural changes could be ordered, and an escrow fund might be required to finance future changes.

Further, a Federal district court judge can order similar relief plus punitive damages as well as civil penalties for up to \$100,000 in an action brought by a private individual or by the U.S. Department of Justice.



U. S. Department of Housing and Urban Development
Washington, D. C. 20410-0500

December 16, 1991

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: Gordon Mansfield, Assistant Secretary for Fair
Housing and Equal Opportunity, E

FROM: Frank Keating, General Counsel, G

SUBJECT: Carriage House Units

You have inquired about the application of the accessibility requirements under the Fair Housing Amendments Act ("Act") to carriage house unit designs.

In the examples which you provided, stacked housing units are designed to incorporate parking for each unit into the dwelling unit design in non-elevator buildings. Specifically, you have indicated that the garage footprint is used as the footprint for the remaining floor or floors of the units.

Since these carriage houses are located in buildings without elevators, the remaining question is whether they are ground floor units. See Section 804(f)(7) of the Act.

The Preamble to the regulations implementing the Act discusses the applicability of the Act to townhouses. Because the accessibility provisions of the Act "extend only to ground floor units in buildings without elevators," and a townhouse of more than one story is not a ground floor unit, multistory townhouses were not required to be made accessible in buildings where there was no elevator. 24 CFR Ch. 1, Subch. A., App. 1, P. 702 (1991).

Because this carriage house design does not include the entire dwelling unit on the ground floor, it is not a covered multifamily dwelling within the meaning of the Act.

Revised April 1998
HUD.

