

Section 504 Handicapped Accessibility Update

What is Section 504?

Section 504 of the Rehabilitation Act of 1973 required all Federal Agencies to develop administrative procedures and regulations to help their recipients implement this law.

On June 2, 1988, HUD published its final Rule for Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities. Also found at 24 CFR Part 8 of the federal code, the Rule details the administrative responsibilities and compliance actions required of federally funded entities, along with deadlines for those actions. Except for information collection requirements named in the Rule, it became effective July 11, 1988.

HUD's Final Rule

What Is Its Purpose?

The purpose of the final Rule is not only to implement and "effectuate" Section 504 with respect to HUD-funded programs, but also to implement Section 109 of the Housing and Community Development Act of 1974, as amended. Section 109 provides that no person in the United States shall be subjected to discrimination under any program or activity funded under Title I of the Act, on the basis of handicap. It goes on to incorporate Section 504 by reference. This Rule does not, however, attempt to effectuate every federal law pertaining to handicap discrimination. Those not addressed by this final Rule are the Architectural Barriers Act of 1968 (codified at 24 CFR Part 40); Title VIII of the Civil Rights Act of 1968, which has been extended to cover individuals with handicaps; and the recently enacted Americans with Disabilities Act.

Who Benefits?

While it is obvious that "individuals with handicaps" are the primary beneficiaries of these provisions, just who is considered a handicapped individual for the purpose of this Rule is somewhat less obvious. Probably most people think of mobility handicapped persons first - those who use canes and wheelchairs. But many more handicapped persons are protected by the Rehabilitation Act, and therefore by this final Rule. According to HUD's final Rule, an individual with handicaps is one who has a physical or mental impairment which substantially limits one or more life activities such as caring for one's self, hearing, seeing, walking, breathing, performing manual tasks, speaking, working, or learning. Also protected are those who have a record of such handicaps, and those who are "regarded as having" such handicaps.

“Physical or mental impairment” under this Rule, is defined as follows:

- 1) A physical impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of twelve body systems. They are the neurological, musculoskeletal, respiratory (including the speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic (blood), lymphatic and endocrine systems; special sense organs; and skin. Some examples of physical impairments that meet this definition are cerebral palsy, autism, blindness, epilepsy, muscular dystrophy, heart disease, diabetes, and cancer.
- 2) A mental impairment is any mental or psychological disorder. Such disorders would include mental retardation, organic brain syndrome, emotional or mental illness, specific learning disabilities, drug addiction, and alcoholism.

A person who “has a record of” being handicapped may be one who has a history of being handicapped or one who was misclassified as having a mental or physical impairment that limits one or more life activities. An example of this would be one who, as a child, was misdiagnosed as being mentally retarded when the problem was dyslexia or perhaps a person with a mild, correctable hearing loss who was misclassified as learning disabled and who, therefore, did not receive proper medical treatment.

The final Rule goes on to limit its application of the “individuals with handicaps”. For example, with respect to employment, the term does not include the following persons:

- 1) An alcoholic or drug abuser whose current use of alcohol or drugs prevent the person from performing the duties of the job in question;
- 2) A substance abuser whose impairment would pose a direct threat to property or to the safety of others;
- 3) A person who has a currently contagious disease or infection which would constitute a direct threat to the health of others, or
- 4) A person, who has a currently contagious disease, is unable to perform his or her duties.

With respect to other programs, alcoholics and drug abusers are not included in the definition of individuals with handicaps when their substance abuse prevents them from participating in those programs or activities or when their participation poses a threat to property or the safety of others, due to their alcohol or drug use.

Who Must Comply With This Final Rule?

This regulation applies to every entity receiving CDBG funds. HUD’s final Rule implementing Section 504 applies to “all applicants for, and recipients of, HUD assistance (example: CDBG) in the operation of programs or activities receiving such assistance”. (In this case, “recipient” does not refer to the ultimate beneficiaries of the funds or programs in question.)

The Rule's language leaves no doubt as to who must follow this code. The term "recipient" is defined in the Rule such that it includes states and their political subdivisions and public or private agencies, institutions, and organizations to which federal financial aid is extended. This applies whether funds are received directly from HUD or through another recipient.

Not only are states and their local government grantees responsible for implementing handicap accessibility requirements, but so are subgrantees. Other CDBG recipients responsible for accessibility may include colleges and universities, for-profit businesses, non-profit organizations, and regional councils. States and local governments face the task of ensuring compliance by those who receive CDBG from them. If a local government is found in non-compliance, the state is constrained to invoke non-compliance remedies or risk a finding from HUD. Likewise, the local government must monitor compliance by its subgrantees or face the possibility of a finding from the state.

It was stated above that the recipient's program and activities are to be accessible to the Handicapped. "Program or activity" is defined to include all the operations of: 1) a state or local government receiving or distributing federal funds; 2) educational institutions receiving federal aid; 3) entire corporation or other organizations that receive assistance or that primarily provide education, health care, housing and other related services; and 4) the entire facility, though geographically separate, belonging to an organization receiving federal funds.

So, for example, if the borough of Handy, PA uses CDBG funds to rehabilitate a community center in a low/moderate neighborhood, not only will the center and all the services offered there need to be made accessible to handicapped citizens, but the Borough Hall, the public library, the personnel office, and the Borough's other services, programs, and activities must be reviewed for accessibility.

Consider another possible scenario:

Shade, Incorporated receives a CDBG loan to expand its manufacturing operation which produces oversized widgets – a popular novelty item. Based on point number 4 above, the Shade, Inc. headquarters across town should also be reviewed for handicapped accessibility. It is geographically separate from the site where CDBG funds are used, but is part of the same organization that received federal assistance.

The initial effort to educate CDBG recipients about accessibility requirements and motivate them toward compliance will require careful planning and effective outreach efforts, but the goals sought here are certainly worthy of that effort. And nobody, it seems, would complain that handicapped accessibility is unnecessary. After all, handicapped persons have long endured the frustration of being excluded from community programs and services due to inaccessibility. And even in communities that have been unable to identify handicapped citizens living there, noncompliance is an unwise choice, even without the risk of losing federal revenue. Both the rise in the number of older citizens and the very real possibility of disabling injury or illness affecting non-elderly citizens should provide incentive to state and local officials to begin making programs and activities accessible. This motivation notwithstanding, CDBG administrators and state and local officials realize that in some cases, extensive modifications will be required, and they will demand significant expenditures of money and staff time, both of which tend to be in short supply. Fortunately, however, a number of officials should be pleasantly surprised to learn that most of their programs and practices can be modified without exorbitant expense.

What Must Recipients Do To Comply?

Self-Evaluation

The first step is a self-evaluation.

The recipient and any subrecipient must first attempt to consult with interested citizens about plans to study the accessibility of the recipient's programs and activities. Generally, interest will be highest among those who have handicaps, relatives of handicapped persons, and advocacy groups representing the handicapped. This involvement helps to ensure that the self-evaluation is conducted from the viewpoint of handicapped persons, and therefore, more accurately reflects their needs.

Finding Help from Interested Persons

In the case of some small jurisdictions, officials may be hard pressed to locate handicapped citizens or non-handicapped citizens interested in helping with the self-evaluation. If local help with the project is not available, recipients should consider seeking guidance from state or national organizations representing the interests of handicapped people.

Some Specific Organizations

Organizations offering technical assistance and/or information relative to the needs of the handicapped include the National Organization on Disability in Washington D.C.; the National Easter Seal Society, which has numerous state and local affiliates; and the National Mental Health Association in Alexandria, Virginia. This is a very small example of the organizations that exist primarily to serve the interests of handicapped and disabled persons. There may be other organizations locally which deal with the interests of handicapped and disabled persons that recipients can identify.

"In Whole or in Part"

With the help of interested parties, the recipient should evaluate its policies and practices to determine whether in whole or in part, they meet the requirements of this final Rule. For example, the personnel office in Bitbank, PA was built so that mobility-impaired persons have easy access. The city's personnel department has invited telephone calls from persons interested in a word processor position. Bob Dial is a word processing whiz who finished at the top of his class. But Bob is hearing-impaired. Bitbank has no telecommunication devices for the deaf (TDD), and Bob is unable to respond to the job ad before the published deadline. So while the personnel office is physically accessible to mobility-impaired persons, the city's personnel recruitment activities must be modified if Bitbank is to extend equal access to job opportunities to all handicapped individuals. A thorough evaluation of all the city's policies and practices would have revealed that employment practices were accessible "in part" but needed improvement.

Modify Policies and Practices

When it is found that policies and practices impact negatively upon the handicapped, the recipient must modify the appropriate policy or practice so that the problem is eliminated. In the case of the city of Bitbank, the personnel recruitment procedure could take the following (or similar) steps to improve accessibility: 1) install a TDD device and advertise the telephone number; 2) use the radio advertisement to reach persons who are vision impaired; 3) allow sufficient time for in-person applications; 4) distribute job advertisements to local handicapped advocacy groups who will notify their clients. In addition to these steps, the personnel offices may want to consider that some persons who are mentally impaired may be capable of performing certain duties well, yet are unable to properly complete an employment application form. This obstacle can be overcome with a minor change in practice, but the outcome could be very important to a person who is working toward greater self-sufficiency. In-person applications could be substituted for the more traditional written applications: questions would be limited to those directly related to the applicant's ability to perform the job in question.

Transition Plan

In the event that the recipient's programs and activities cannot be made accessible by making administrative changes, structural changes will be necessary. A transition plan outlining those changes must be developed. The plan should identify the steps required to complete the structural modifications. Interested citizens, especially handicapped citizens, should be recruited to help develop the plan.

At a minimum, the plan should 1) identify the physical obstacles that limit the program's accessibility to handicapped persons; 2) describe in detail the method to be used in making the facilities in question accessible; 3) set forth the schedule of tasks, identifying actions to be taken within the first year; 4) identify the official responsible for implementing the plan (the compliance officer mentioned below); and 5) identify those who assisted the recipient in preparing the transition plan.

Remedial and Affirmative Action

Should DCED determine that handicapped individuals have been discriminated against by a recipient, appropriate remedial and affirmative action will be required to the extent that DCED deems necessary. DCED will also determine what action should be taken in order to remedy prior discrimination. Going back to the city of Bitbank, DCED might require the personnel officer to extend the closing date for all current vacancies until such time that good faith efforts have been made to reach persons with vision and hearing impairments.

Designation of "Responsible Employee"

Any recipient with at least fifteen employees must designate a person to oversee the recipient's compliance efforts. This "compliance officer" should have a thorough working knowledge of federal accessibility requirements since she or he will be responsible for ensuring the recipient's compliance and for initiating continued compliance efforts.

This compliance officer takes the lead in evaluating the recipient's facilities, programs and practices, and in drafting the transition plan if one is needed. All the accompanying administrative details (securing assistance from interested handicapped citizens, publishing notices of nondiscrimination, etc.) should be monitored or carried out by this compliance officer. Keeping the recipient on target with the transition plan schedule is also part of her or his responsibility.

Grievance Procedure

A grievance procedure must be adopted and implemented by any recipient having at least fifteen employees. The procedure should provide for timely resolution of discrimination complaints which are lodged against the recipient and which pertain to the accessibility of the recipient's policies and practices. This procedure need not cover applicants for employment or cover applicants for housing assistance. Appropriate due process standards, such as an appeals process and specific methods for filing complaints, should be incorporated into the procedure. The length of time allotted for the recipient to review and respond to the complaint, as well as, the identification and location of any required complaint forms should be made clear in the grievance procedure.

Notice of Nondiscrimination

Each recipient that employs at least fifteen persons must make initial and continuing efforts to notify their participants, beneficiaries, applicants, and employees that the recipient does not discriminate on the basis of handicap in its federally funded programs. (Remember that "program" is defined so that it applies to all services, activities, and practices.) The designated compliance officer should be identified so that questions and comments may be properly directed. Initial and ongoing notification of nondiscrimination should be published using media that can be expected to reach vision and hearing-impaired individuals. Some acceptable methods for publishing the notice of nondiscrimination are posters, radio announcements, fliers produced in Braille, and large-print newspaper notices.

Review of Nonhousing Activities

A handicapped person who is otherwise qualified to participate in a recipient's programs and activities should not be denied the benefits of or excluded from participation in those programs or activities simply because the buildings which house them are inaccessible. During the self-evaluation process, the recipient should recognize any such barriers to participation and should try first to solve the problem administratively. The goal, after all, is to provide access, and if it can be done without major renovation, then both the recipient and its handicapped clients benefit.

For example, the township of Division, located near a physical and occupational rehabilitation facility, uses a relatively new building for its recreation programs. Fortunately, the main entrance and two exits are all easily accessible to mobility-impaired clients. Although, the building has two floors, none of the many handicapped citizens have ever complained about accessibility.

The center's director is careful to schedule on the second floor, activities which are unlikely to be attended by mobility-impaired clients. Karate lessons, advanced ballet classes, fencing, and gymnastics are regularly held there. The first floor - which is completely accessible - houses art classes, Spanish lessons, a Braille reading room, home-repair workshops, gourmet cooking, and weight-training facilities. In addition, the center has a well published policy of nondiscrimination that calls for reasonable modifications to be made whenever handicapped clients wish to participate in nonaccessible activities.

The point here, is that while the building which houses the recreation programs is not fully accessible to handicapped clients, the programs and activities have been arranged so that handicapped clients can generally participate in all the activities which fall within their particular limitations. When viewed as a whole, the recreation center's programs are accessible. Another recipient could use a similar administrative arrangement to avoid costly building renovations, provided that the first floor is accessible.

Some other methods of achieving accessibility of various activities and services without resorting to major architectural changes include assignment of aides to assist clients, home visits, and making available on-call transportation services.

Housing Units

Generally, new multifamily housing projects should be designed and built to be readily accessible to and usable by handicapped individuals, according to Section 8.22 (a) of the final Rule. Further, the Section states that at least 5 percent of the total dwelling units, or at least one unit in a multifamily housing project (whichever is greater) shall be made accessible to individuals who have impaired mobility. Another 2 percent - or at least one unit - must be made accessible or adaptable for those who have hearing and vision impairments. In this case, accessibility means that the unit is on an accessible route and is either already accessible or adaptable.

When substantial alterations are made to an existing housing project with at least fifteen units, and the cost is at least 75 percent of the facility's replacement cost, then at least 5 percent - or at least one - of the units must be located on an accessible or adaptable route and must be made accessible or adaptable. Another 2 percent - or at least one - unit must be made accessible or adaptable to persons who have hearing or vision impairments. When other alterations are made to existing housing units, the recipient should, to the maximum extent feasible, make the units readily accessible. This is also the case when common areas are altered and when a single space in a dwelling unit is altered. The recipient should continue to create accessible units as units are rehabilitated until as least 5 percent of the units in the project have been made accessible or adaptable.

In determining whether facilities meet federal accessibility requirements, recipients should turn to the Uniform Federal Accessibility Standards (UFAS). Nuts and bolts details such as acceptable door widths, lavatory heights, and ramp dimensions are provided.

In the event that the recipient is able to make programmatic changes that enhance the accessibility of its housing program to handicapped applicants or residents, those changes should be identified and implemented. For example, if there are ample units which are available for prospective mobility-impaired residents, but the application procedure is not readily accessible to vision-impaired applicants, administrative changes will suffice. For example, the recipient could assign home visitors or in-office staff the task of completing application forms on behalf of handicapped applicants who request this accommodation. However, when the only remedy is to make structural changes, the recipient must prepare a transition plan itemizing the changes. Input from interested citizens, especially handicapped residents, should be included, and the other transition plan requirements listed above apply in this case.

Other Housing Related Programs

Rental Rehabilitation Program

Each recipient in the Rental Rehabilitation Program must give priority to the selection of projects that will result in dwelling units being made readily accessible to persons with handicaps. Specific regulations governing this general requirement can be found in 24 CFR Part 511.

Housing Certificates and Vouchers

A recipient who administers a Section 8 Existing Housing Certificate program or a housing voucher program must take several steps to comply with HUD's accessibility requirements. The recipient should 1) include in its marketing efforts a method for reaching eligible individuals with handicaps; 2) encourage participation by owners of accessible units; 3) when appropriate, provide a current listing of available accessible units to those who receive vouchers or certificates; 4) consider the problem of locating accessible housing when faced with a request for extension from a handicapped voucher or certificate holder; and 5) when necessary (and subject to 24 CFR Part 882), request an exception to the fair market rents to allow Section 8 certificate holders to rent accessible units.

Homeownership, Turnkey III and Indian Housing Mutual Self-Help Programs

Any housing units newly constructed or rehabilitated using federal assistance must be made accessible upon the request of a prospective buyer. Any required alterations must adhere to the UFAS standards, and the cost of the changes becomes the buyer's responsibility. The cost may be added to the mortgage amount, except that the added cost must not raise either the sales price or the mortgage amount beyond established limits.

Historic Properties

Generally, historic properties must be made accessible when they are altered with federal dollars, unless accessibility would substantially impair the "significant historic features" of the property or result in undue financial and administrative burdens.

Enforcement

DCED has required all of its entitlement recipients to have completed the self-evaluation by September 1, 1990. Fiscal year 1989 competitive recipients are to have the self-evaluation completed by December 31, 1990. A deadline will be given to any new recipients of CDBG funding after fiscal year 1990. Recipients must insure that their procedures, practices, and self-evaluation meet all of the requirements outlined in this document and the regulations at 24 CFR Part 8.

DCED monitors will perform periodic reviews to determine whether the recipient is in compliance. Or, if a complaint is received against the recipient, DCED may make an on-site visit to investigate the complaint.

Discrimination Complaints

Any person who believes that he or she has been discriminated against or any representative of such a person may file a confidential complaint with HUD's Office of Fair Housing and Equal Opportunity in Washington D.C. The written complaint must be filed within 180 days of the alleged discriminatory act unless good cause can be shown for the delay. The complaint must show the name and address of the offending party, along with the details of the events leading to the charge of discrimination.

Complaint Resolution

HUD's civil rights official reviews the case for acceptance, rejection, or referral to another federal agency. The recipient is notified of the complaint and is given a chance to respond in writing. HUD officials then attempt to resolve each complaint informally. When this is not workable, an investigation is conducted, with either a result of dismissal of the complaint or a letter of findings against the recipient. Within ten days of notification of noncompliance, the recipient may volunteer to comply with the regulation. Otherwise, compliance may be effected by the suspension or termination of, or refusal to grant or continue federal financial assistance.

These drastic measures must go through a number of channels: 1) The recipient is notified of its failure to comply; 2) a finding of noncompliance is formally recorded after the recipient has been given the opportunity for a hearing; 3) the Secretary of the Department approves the action; and 4) 30 days expires after the Secretary has filed a report with the committees of the House and Senate having legislative jurisdiction over the program or activity involved.

Any Pennsylvania CDBG grantee that has questions or requires clarification concerning its Section 504 handicapped accessibility requirements should contact Mary J. Smith at (717) 214-9754.