



January 10, 2020

Rural Development

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TO: State Directors
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ATTN: Multi-Family Housing
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FROM: Bruce W. Lammers /s/ **Bruce W. Lammers**
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SUBJECT: Section 504 of the Rehabilitation Act of 1973 Compliance in
Rural Development Multi-Family Housing Properties

PURPOSE

This Unnumbered Letter (UL) provides clarified guidance for complying with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504). The Uniform Federal Accessibility Standards (UFAS), and Departmental Regulation 7 CFR 15b as it pertains to Rural Development Multi-Family Housing (MFH) Section 514, Section 515, Section 516, and Section 521 housing programs which is required by 7 CFR 3560.2.

BACKGROUND

The United States Department of Agriculture implemented Section 504 of the Rehabilitation Act of 1973, on June 12, 1982, by issuing 7 CFR 15b. Section 504 provides that no otherwise qualified person with a disability is excluded from participation in, denied benefits of, or subjected to discrimination under any Federally assisted program or activity because of his or her disability. Specifically related to Accessibility, 7 CFR 15b Subpart C states that no qualified person because of their disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, "be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving assistance from this Department."

Regardless of when a project was ready for occupancy, all borrowers are required to have policies and practices that do not discriminate against persons with disabilities. Properties that were ready for occupancy on or before June 12, 1982, are subject to different rules versus properties placed in service after the implementation of Section 504. Refer to Appendix 5 in HB-2-3560, page 1, "Highlights of Section 504 Requirements" which outlines the borrower's requirements based on the property's occupancy readiness date.

EXPIRATION DATE:
January 31, 2021

FILING INSTRUCTIONS:
Housing Programs

Borrowers of the above referenced MFH programs whose properties are newly constructed or were ready for occupancy after June 12, 1982, must be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. These borrowers shall conduct a Self-Evaluation (SE); and if needed, develop a Transition Plan (TP). Borrowers whose properties were ready for occupancy on or before June 11, 1982, are required to conduct a SE and develop TPs. The SE and TP process gives borrowers a reasonable period to complete the accessibility work required under the law.

Borrower Self-Evaluation and Transaction Plans Program Compliance

In accordance with Appendix 5 in HB-2-3560, Borrowers should analyze and re-evaluate the SE and TP in connection with annual budget planning and preparation. The annual proposed budget for the property must include the portion of costs of the accessibility repairs from the TP schedule for the respective year. Agency personnel must verify that accessibility items from the TP are included in the annual operating budget, as part of the budget review and approval process. The narrative portion of the budget must include a discussion on which accessibility items are being funded and scheduled for completion within the upcoming fiscal year.

In accordance with 7 CFR 15b.8(c) and 15b.18(g), the borrower's SE and TP programs must satisfy the following minimum requirements in order to be considered in compliance:

Self-Evaluations

- Evaluate, with the assistance of interested persons, including persons with disabilities or organizations representing persons with disabilities, its current policies and practices and the effects thereof;
- Modify, after consultation with interested persons, including persons with a disability or organizations representing persons with a disability, any policies and practices that do not meet the requirements of this part;
- Take, after consultation with interested persons, including persons with a disability or organizations representing persons with a disability, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices; and
- To **maintain a record** of the SE for at least three years following completion of the SE. The record must be made available for public inspection and be provided to the Agency upon request. The SE record must contain:

(a) a list of the interested persons consulted;

(b) a description of areas examined, and any problems identified; and

(c) a description of any modifications made and of any remedial steps taken.

Transition Plans

- Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to a person with a disability;
- Describe in detail the methods that would be used to make the facilities accessible;

- Specify the schedule for taking the steps necessary to achieve full program accessibility and if the time period of the TP is longer than one year, identify steps that will be taken during each year of the transition period; and
- Identify the person responsible for implementation of the plan.

MFH field office staff shall not accept a previous or existing SE/TP that has been re-dated and presented by borrowers as “revised.” An updated or a revised SE/TP must be obtained because there may be changes that have occurred to a property over time which may have resulted in “new” accessibility issues. These changes may include but are not limited to:

- A change in the trash pick-up contractor could mean a change in dumpster design, which impacts accessibility. (No sliding side door, a taller dumpster, etc.)
- A maintenance person replaces the faucet in the community room kitchen. The new faucet does not have lever handles. That sink is no longer accessible.
- A harsh winter may cause sidewalks to frost heave, so that there are level changes at joints, or slopes have changed.
- Tree roots grow and cause a sidewalk to break and rise, creating tripping hazards and changing slopes. Tree limbs grow down over the sidewalks into headroom, becoming a protruding object. Shrubbery grows out over sidewalks, reducing widths below that required for an accessible route.

The property is in compliance with accessibility laws and Agency regulations as long as the schedule of work within the TP is being followed and completed within the agreed upon time frames. If a date for completion of an accessibility item is missed, the property is no longer in compliance with Civil Rights requirements, since it deviated from the agreed upon TP schedule. At which time the owner should, within a 90-day period, prove to the Agency that either the property will be brought fully into compliance or that because of reasons beyond its control, the timeline was missed and that a new mutually agreed upon timeline will be presented.

Properties Without a Self-Evaluation and Transition Plan

If an existing MFH property does not have a SE and TP in place, regardless of the date it was placed into service and the property is not compliant with the Civil Rights laws and regulations, the borrower must develop or obtain a SE and TP. In accordance with 7 CFR 3560.2(d), borrowers or grantees that fail to comply with the requirements of Section 504 are subject to sanctions authorized by law and may be subject to fines and penalties imposed by enforcement agencies, loss of tax credits, or legal actions if found in non-compliance with Civil Rights laws. The cost of the SE and TP report preparation is an eligible project expense and may be paid from the housing project’s Reserve Account or excess Operating and Maintenance (O&M) account funds with prior Agency approval.

Funding Needed for Physical Accessibility Issues

A TP is required where structural changes to facilities are necessary to meet the applicable accessibility standards. All accessibility work in the TP should be completed expeditiously as possible, as outlined in 7 CFR 15b.18(f). Some borrowers may not be able to complete all

required accessibility items within three years due to lack of needed funding. The borrower must prove to the Agency that completing all work in the TP expeditiously is not financially possible. The Agency and borrower should hold discussions regarding the needed funding and must consider all sources and methods of funding including budgeted capital funds for maintenance, the Reserve Account, Agency or other loan sources, State or local grants, and the infusion of the borrower's funds.

Accessibility work in the TP may be approved upon rehabilitation, only when a property is actively seeking to undergo a substantial or major rehabilitation, ideally within the next five years of the Agency's approval of the TP. In those cases, the decision to approve subject to substantial or major rehabilitation should be made by a consensus of Agency personnel. For example, the local office should consult with the Program Support Staff and the Rural Development Civil Rights Office.

When a borrower is not able to complete all TP work expeditiously and is not actively seeking rehabilitation funding, the borrower is not excused from completing all required work. All work must show reasonable progress and be completed as expeditiously as possible. Any incomplete accessibility work from the first SE/TP will carry over to the next SE/TP, which will occur at the end of the three-year period, giving the borrower two three-year cycles to complete all work.

If a borrower presents a five-year TP and has justification and financial support for the completion of a five-year plan, then the Agency field staff should be able to contact the Civil Rights Office and get "concurrence" for approving a five-year plan.

Non-Compliance with the Transition Plan Schedule

When a borrower is found not in compliance with the TP schedule, and therefore not in compliance with Civil Rights requirements, a series of Handbook Letters should be issued in accordance with HB-3-3560, Exhibit 10-2, Sequence of Servicing Letters. If negotiations to reach voluntary compliance exceeds 60-days, the Civil Rights Office must be included in the discussion and negotiation. If the borrower comes back into compliance following the issuance of a Servicing Letter, the TP process continues. If the borrower still does not complete the accessibility work as scheduled and agreed, standard servicing actions must be followed, including coordinating the next actions with the Rural Development Civil Rights Office and seeking Civil Monetary penalties. In the event the borrower is unable or unwilling to voluntarily comply with the requirements and a non-compliance finding is issued, copies of the finding must be sent to other Federal agencies providing funding to the borrower.

AGENCY ACTION

We strongly emphasize the importance of making sure that all borrowers of Rural Development properties are in compliance with their civil rights obligations. We are requesting that all properties within your State are brought into compliance within 12 months of the date of this issuance. On a case-by-case basis, properties with less than 15 dwelling units, where the Agency has concurred that it is either financially or structurally impractical to meet the five percent UFAS requirement, regardless of the date of occupancy, may be able to meet the Section 504 accessibility

requirement by setting up a referral agreement with another property that has fully accessible units within reasonable driving distance. Borrowers with properties having 15 dwelling units or less with a referral agreement will be considered in compliance with the five percent UFAS requirement for as long as the referral agreement is in place.

Role of the Technical Support Staff

The Agency's technical support staff, architects, and engineers will perform quality assurance reviews of SE and TP reports at random, from a chosen Nationwide sample to ensure that the SE and TP report has been prepared according to prescribed standards as outlined in 7 CFR 15b. and restated on page 2 of this UL. The SE and TP must be developed by a skilled and knowledgeable source or a third-party provider, and in accordance with 7 CFR 15b.18(g), with the assistance of interested persons, including persons with a disability or organizations representing persons with a disability. It is the Borrower's responsibility to comply with 7 CFR 15b.

The Servicing Office staff will no longer perform reviews of initial and updated SE and TP reports. When a new or an updated SE or TP report is received from the borrower, Servicing Office staff shall accept it and upload it to the SharePoint site for Technical Support Service Requests where a Rural Development architect, engineer, or other technical staff may perform a quality assurance review by random selection.

Role of the Servicing Office Staff

In addition to verifying that the accessibility items from the TP are included in the annual operating budget as part of the budget review and approval process, the primary role of Servicing Office staff will be to monitor progress made by the borrower during the MFH Compliance Review portion of the triennial Supervisory Visit using the general format of *Form RD 400-8*. As outlined in MFH HB-2-3560, Chapter 9.10(f), to assure compliance with the SE and TP requirements of Civil Rights laws, during the compliance review MFH staff will:

1. Visually inspect the project to determine if there are physical barriers.
2. Review the management plan to determine project management's method of informing tenants and applicants regarding requests for reasonable accommodations.
 - Visit and interview tenants to determine if the borrower has provided information and made reasonable accommodations upon request by the tenant.
3. Visit and interview tenants in the fully accessible units to determine:
 - If the tenant has need of the accessibility features of the unit and is an eligible occupant.
 - When the tenant is an ineligible occupant of the unit, if the tenant and borrower have executed a lease attachment that requires the tenant to move if an individual needing the accessible features applies for occupancy.
4. Review the lease agreement, application and other documentation used by the borrower to determine if policies and procedures represent barriers to occupancy.

5. Review the SE and TP and compare the physical inspection to determine if there are barriers present that were not addressed or scheduled to be removed.
6. Where TPs are scheduled to remove barriers over more than a one-year period, review the TP and the most recent approved budget to assure that borrower budgeting and the projects financial condition is supportive of the TP as written. TPs should include the potential cost estimate of removing identified barriers.

Properties undergoing a substantial rehabilitation, defined as a substantial alteration to any building or facility where the scope of work combining repair and replacement costs total \$350,000 or \$12,500/unit or more within a 12-month period, must be brought into Section 504 compliance upon rehabilitation.

Structural Impracticability, Technical Infeasibility, and Referral Agreements

Technical infeasibility is when there is little likelihood of accomplishing full accessibility because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements. Some properties have unique characteristics of terrain that make the incorporation of accessibility features “structurally impracticable.” In such a case, the new construction requirements apply except where the responsible entity can demonstrate that it is structurally impracticable to meet those requirements. This exception is very narrow and, for example, should not be used in cases of merely hilly terrain.

Even in those circumstances where the exception applies, portions of a facility that can be made accessible must still be made accessible. In addition, access must be provided for individuals with other types of disabilities, even if it may be structurally impracticable to provide access to individuals who use wheelchairs. This also applies to properties where it is financially infeasible to reach full accessibility standards for example, when a project’s financial condition is such that the change would create an undue financial burden such as when the project is located in a poor rental market and rents are insufficient to address capital needs. While the Agency has no mechanism for waiving the requirements of UFAS standards for financial reasons, the borrower may request a waiver from the Secretary of Agriculture. For such a waiver, the borrower must document the financial condition of the project as well as attempts to seek local, State, private and Federal funding for grants or loans to correct the condition.

Where technical infeasibility or structural impracticability is encountered, compliance is still required to the maximum extent possible. The borrower should then attempt to establish a referral agreement with another project in the local market area having a fully accessible unit. Referral agreements, structural impracticable and technically infeasible determinations by a knowledgeable professional should be options for borrowers within the program to be able to document accessibility compliance efforts and for the Agency to determine compliance.

If the referral agreement is not possible to make the program accessible, the Agency may administratively recognize that the borrower is unable to address their outstanding non-compliance issues. In this case, all avenues have been explored, and the Servicing Office will document the case file to fully explain the situation and the borrower's attempts to resolve the problem, remove the finding(s) from the Multi-Family Housing Integrated System and discontinue reporting the situation through the post supervisory visit and compliance review reporting process.

IMPLEMENTATION

This UL is effective immediately upon publication. All other provisions and procedures contained in 7 CFR 15b. and in the MFH HB-2-3560, Appendix 5 remain unchanged.

Borrowers receiving Federal financial assistance are subject to the requirements of Section 504 for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

If you have any questions, you should contact your National Office Portfolio Management Analyst.