Appendix B

Fair Housing Accessibility Guidelines

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Chapter I

Final Fair Housing Accessibility Guidelines

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Ch. I

[Docket No. N-91-2011; FR 2665-N-06]

Final Fair Housing Accessibility Guidelines

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

ACTION: Notice of Final Fair Housing Accessibility Guidelines.

SUMMARY: This document presents guidelines adopted by the Department of Housing and Urban Development to provide builders and developers with technical guidance on how to comply with the specific accessibility requirements of the Fair Housing Amendments Act of 1988. Issuance of this document follows consideration of public comment received on proposed accessibility guidelines published in the **Federal Register** on June 15, 1990. The guidelines presented in this document are intended to provide technical guidance only, and are not mandatory. The guidelines will be codified in the 1991 edition of the Code of Federal Regulations as Appendix II to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. II). The preamble to the guidelines will be codified in the 1991 edition of the Code of Federal Regulations as Appendix III to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. III).

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Merle Morrow, Office of HUD Program Compliance, room 5204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410-0500, telephone (202) 708-2618 (voice) or (202) 708-0015 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Adoption of Final Guidelines

The Department of Housing and Urban Development (Department) is adopting as its Fair Housing Accessibility Guidelines, the design and construction guidelines set forth in this notice (Guidelines). Issuance of this document follows consideration of public comments received in response to an advance notice of intention to develop and publish Fair Housing Accessibility Guidelines, published in the **Federal Register** on August 2, 1989 (54 FR 31856), and in response to proposed accessibility guidelines published in the **Federal Register** on June 15, 1990 (55 FR 24730).

The Department is adopting as final Guidelines, the guidelines designated as Option One in the proposed guidelines published on June 15, 1990, with modifications to certain of the Option One design specifications. In developing the final Guidelines, the Department was cognizant of the need to provide technical guidance that appropriately implements the specific accessibility requirements of the Fair Housing Amendments Act of 1988, while avoiding design specifications that would impose an unreasonable burden on builders, and significantly increase the cost of new multifamily construction. The Department believes that the final Guidelines adopted by this notice (1) are consistent with the level of accessibility envisioned by Congress; (2) simplify compliance with the Fair Housing Amendments Act by providing guidance concerning what constitutes acceptable compliance with the Act; and (3) maintain the affordability of new multifamily construction by specifying reasonable design and construction methods.

The Option One design specifications substantially revised in the final Guidelines include the following:

(1) Site impracticality. The final Guidelines provide that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route regardless of terrain or unusual characteristics of the site. Every dwelling unit on a floor served by an elevator must be on an accessible route, and must be made accessible in accordance with the Act's requirements for covered dwelling units.

For covered multifamily dwellings without elevators, the final Guidelines provide two alternative tests for determining site impracticality due to terrain. The first test is an individual building test which involves a two-step process: measurement of the slope of the undisturbed site between the planned entrance and all vehicular or pedestrian arrival points; and measurement of the slope of the planned finished grade between the entrance and all vehicular or pedestrian arrival points. The second test is a site analysis test which involves an analysis of the existing natural terrain (before grading) by topographic survey with 2 foot contour intervals, with slope determination made between each successive contour interval.

A site with a single building (without an elevator), having a common entrance for all units, may be analyzed only under the first test—the individual building test. All other sites, including a site with a single building having multiple entrances serving either individual dwelling units or clusters of dwelling units, may be analyzed either under the first test or the second test. For sites for which either test is applicable (that is, all sites other than a site with a single nonelevator building having a common entrance for all units), the final Guidelines provide that regardless of which test is utilized by a builder or developer, at least 20% of the total ground floor units in nonelevator buildings, on any site, must comply with the Act's accessibility requirements.

(2) An accessible route into and through covered dwelling units. The final Guidelines distinguish between (i) single-story dwelling units, and (ii) multistory dwelling units in elevator buildings, and provide guidance on designing an accessible entrance into and through each of these two types of dwelling units.

(a) Single-story dwelling units. For single-story dwelling units, the final Guidelines specify the same design specification as presented in the proposed Option One guidelines, except that design features within the single-story dwelling units, such as a loft or a sunken living room, are exempt from the access specifications, subject to certain requirements. Lofts are exempt provided that all other space within the units is on an accessible route. Sunken or raised functional areas, such as a sunken living room, are also exempt from access specifications, provided that such areas do not interrupt the accessible route through the remainder of the unit. However, split-level entries or areas will need ramps or other means of providing an accessible route.

(b) Multistory dwelling units in buildings with elevators. For multistory dwelling units in buildings with elevators, the final Guidelines specify that only the story served by the building elevator must comply with the accessible features for dwelling units required by the Fair Housing Act. The other stories of the multistory dwelling units are exempt from access specifications, provided that the story of the unit that is served by the building elevator (1) is the primary entry to the unit; (2) complies with Requirements 2 through 7 with respect to the rooms located on the entry/accessible level; and (3) contains a bathroom or powder room which complies with Requirement 7.

(c) Thresholds at patio, deck or balcony doors. The final Guidelines provide that exterior deck, patio, or balcony surfaces should be not more

than ½ inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious materials such as concrete, brick or flagstone, in which case the surface should be no more than 4 inches below the floor level of the interior dwelling units, unless the local building code requires a lower drop. This provision and the following provision were included in order to minimize the possibility of interior water damage when exterior surfaces are constructed of impervious materials.

(d) Outside surface at entry door. The final Guidelines also provide that at the primary entry door to dwelling units with direct exterior access, outside landing surfaces constructed of impervious materials such as concrete, brick, or flagstone should be no more than ½ inch below the interior of the dwelling unit. The Guidelines further provide that the finished surface of this area, located immediately outside the entry door, may be sloped for drainage, but the sloping may be no more than ⅛ inch per foot.

(3) Usable bathrooms. The final Guidelines provide two alternative sets of specifications for making bathrooms accessible in accordance with the Act's requirements. The Act requires that an accessible or "usable" bathroom is one which provides sufficient space for an individual in a wheelchair to maneuver about. The two sets of specifications provide different approaches as to how compliance with this maneuvering space requirement may be achieved. The final Guidelines for usable bathrooms also provide that the usable bathroom specifications (either set of specifications) are applicable to powder rooms (i.e., a room with only a toilet and a sink) when the powder room is the only toilet facility on the accessible level of a covered multistory dwelling unit.

The details about, and the reasons for these modifications, and additional minor technical modifications made to certain design specifications of the Option One guidelines, are discussed more fully in the section-by-section analysis which appear later in this preamble.

Principal features of the Option One guidelines that were not changed in the final Guidelines include the following:

(1) Accessible entrance and an accessible route. The Option One guidelines for these two requirements remain unchanged in the final Guidelines.

(2) Accessible and usable public and common use areas. The Option One guidelines for public and common use areas remain unchanged in the final Guidelines.

(3) Door within individual dwelling units. The final Guidelines recommend that doors intended for user passage within individual dwelling units have a clear opening of at least 32 inches nominal width when the door is open 90 degrees.

(4) Doors to public and common use areas. The final Guidelines continued to provide that on accessible routes in public and common use areas, and for primary entry doors to covered units doors that comply with ANSI 4.13 meet the Act's requirement for "usable" doors.

(4) Thresholds at exterior doors. Subject to the exceptions for thresholds and changes in level at exterior areas constructed of impervious materials, the final Guidelines continue to specify that thresholds at exterior doors, including sliding door tracks, be no higher than ¾ inch.

(5) Reinforced walls for grab bars. The final Guidelines for bathroom wall reinforcement remains essentially unchanged from the Option One guidelines. The only change made to these guidelines has been to subject powder rooms to the reinforced wall requirement when the powder room is the only toilet facility on the accessible floor of a covered multistory dwelling unit.

The text of the final Guidelines follows the Preamble, which includes a discussion of the public comments received on the proposed guidelines, and the section-by-section analysis referenced above.

The design specification presented in the Fair Housing Accessibility Guidelines provide technical guidance to builders and developers in complying with the specific accessibility requirements of the Fair Housing Amendments Act of 1988. The Guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Amendments Act, as implemented by 24 CFR 100.205 of the Department's Fair Housing regulations. The Guidelines are not mandatory. Additionally, the Guidelines do not prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Amendments Act. Builders and developers may choose to depart from the Guidelines, and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act.

II. Statutory and Regulatory Background

Title VIII of the Civil Rights Act of 1968 makes it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings, or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex or national origin. The Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) (Fair Housing Act or the Act) expanded coverage of title VIII (42 U.S.C. 3601-3620) to prohibit discriminatory housing practices based on handicap and familial status. As amended, section 804(f)(3)(C) of the Act provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991 (30 months after the date of enactment in accordance with certain accessibility requirements. The Act defines "covered multifamily dwellings" as "(a) buildings consisting of 4 or more units if such buildings have one or more elevators; and (b) ground floor units in other buildings consisting of 4 or more units" (42 U.S.C. 3604).

The Act makes it unlawful to fail to design and construct covered multifamily dwellings so that:

(1) Public use and common use portions of the dwellings are readily accessible to and usable by persons with handicaps;

(2) All doors within such dwellings which are designed to allow passage into and within the premises are sufficiently wide to allow passage by persons in wheelchairs; and

(3) All premises within such dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling;

(b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(c) Reinforcements in bathroom walls to allow later installation of grab bars; and

(d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

The Act provides that compliance with (1) the appropriate requirements of the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1"), or (2) with the laws of a State or unit of general local government, that has incorporated into such laws the accessibility requirements of the Act, shall be deemed to satisfy the accessibility requirements of the Act. (See section 804(f)(4) and (5)(A).) The Act also provides that the Secretary of the Department of Housing and Urban

Development shall provide technical assistance to States and units of local government and other persons to implement the accessibility requirements of the Act. (See section 804(f)(5)(C).)

Congress believed that the accessibility provisions of the Act would (1) facilitate the ability of persons with handicaps to enjoy full use of their homes without imposing unreasonable requirements on homebuilders, landlords and non-handicapped tenants; (2) be essential for equal access and to avoid future *de facto* exclusion of persons with handicaps; and (3) be easy to incorporate in housing design and construction. Congress predicted that compliance with these minimal accessibility design and construction standards would eliminate many of the barriers which discriminate against persons with disabilities in their attempts to obtain equal housing opportunities. (See H.R. Rep. No. 711, 100th Cong. 2d Sess. 27–28 (1988) ("House Report").)

The Fair Housing Act became effective on March 12, 1989. The Department implemented the Act by a final rule published January 23, 1989 (54 FR 3232), and which became effective on March 12, 1989. Section 100.205 of that rule incorporates the Act's design and construction requirements, including the requirement that multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. The final rule clarified which multifamily dwellings are subject to the Act's requirements. Section 100.205 provides, in paragraph (a), that covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, 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 January 13, 1990. The Department selected the date of January 13, 1990 because it is fourteen months before March 13, 1991. Based on data contained in the Marshall Valuation Service, the Department found that fourteen months represented a reasonable median construction time for multifamily housing projects of all sizes. The Department chose the issuance of a building permit as the appropriate point in the building process because such permits are issued in writing by governmental authorities. The issuance of a building permit has the advantage of being a clear and objective standard. In addition, any project that actually achieves first occupancy before March 13, 1991 will be judged to have met this standard even if the last building permit or renewal thereof was issued after January 13, 1990 (55 FR 3251).

Section 110.205 of the final rule also incorporates the Act's provisions that compliance with the appropriate requirements of ANSI A117.1, or with State or local laws that have incorporated the Act's accessibility requirements, suffices to satisfy the accessibility requirements of the Act as codified in § 100.205. In the preamble to the final rule, the Department stated that it would provide more specific guidance on the Act's accessibility requirements in a notice of proposed guidelines that would provide a reasonable period for public comment on the guidelines.

III. Proposed Accessibility Guidelines

On August 2, 1989, the Department published in the **Federal Register** an advance notice of intention to develop and publish Fair Housing Accessibility Guidelines (54 FR 31856). The purpose of this document was to solicit early comment from the public concerning the content of the Accessibility Guidelines, and to outline the Department's procedures for their development. To the extent practicable, the Department considered all public comments submitted in response to the August 2, 1989 advance notice in its preparation of the proposed accessibility guidelines.

On June 15, 1990, the Department published proposed Fair Housing Accessibility guidelines (55 FR 24370). The proposed guidelines presented, and requested public comment on, three options for accessible design:

(1) Option one (Option One) provided guidelines developed by the Department with the assistance of the Southern Building Code Congress International (SBCCI), and incorporated suggestions received in response to the August 2, 1989 advance notice;

(2) Option two (Option Two) offered guidelines developed by the National Association of Home Builders (NAHB) and the National Coordinating Council on Spinal Cord Injuries (NCCSCI); and

(3) Option three (Option Three) offered "adaptable accommodations" guidelines, an approach that provides for identification of certain features in dwelling units that could be made accessible to people with handicaps on a case-by-case basis.

In the June 15, 1990 notice of proposed guidelines, the Department recognized that projects then being designed, in advance of publication of the final Guidelines may not become available for occupancy until after March 13, 1991. The Department advised that efforts to comply with the proposed guidelines, Option One, in the design of projects which would be completed before issuance of the final Guidelines, would be considered as evidence of compliance with the Act in connection with the Department's investigation of any complaints. Following publication of the June 15, 1990 notice, the Department received a number of inquiries concerning whether certain design and construction activities in connection with projects likely to be completed before issuance of final Guidelines would be considered by the Department to be in compliance with the Act.

In order to resolve these questions, the Department, on August 1, 1990, published in the **Federal Register** a supplementary notice to the proposed guidelines (55 FR 31191). In the supplementary notice, the Department advised that it only would consider efforts to comply with the proposed guidelines, Option One, as evidence of compliance with the Act. The Department stated that evidence of compliance with the Option One guidelines, under the circumstances described in the supplementary notice, would be a basis for determination that there is no reasonable cause to believe that a discriminatory housing practice under section 804(f)(3) has occurred, or is about to occur in connection with the investigation of complaints filed with the Department relating to covered multifamily dwellings. The circumstances described in the August 1, 1990 supplementary notice that the Department found would be in compliance with the Act, were limited to:

(1) Any covered multifamily dwellings which are designed in accordance with the Option One guidelines, and for which construction is completed before publication of the final Fair Housing Accessibility Guidelines; and

(2) Any covered multifamily dwellings which have been designed in accordance with the Option One guidelines, but for which construction is not completed by the date of publication of the final Guidelines provided:

(a) Construction begins before the final Guidelines are published; or

(b) A building permit is issued less than 60 days after the final Guidelines are published.

On September 7, 1990, the Department published for public comment a Preliminary Regulatory Impact Analysis on the Department's assessment of the economic impact of the Guidelines, as implemented by each of the three design options then under consideration (55 FR 37072–37129).

IV. Public Comments and Commenters

The proposed guidelines provided a 90-day period for the submission of comments by the public, ending September 13, 1990. The Department received 562 timely comments. In addition, a substantial number of comments were received by the Department after the September 13, 1990 deadline. Although those comments were not timely filed, they were reviewed to assure that any major issues raised had been adequately addressed in comments that were received by the deadline. Each of the timely comments was read, and a list of all significant issues raised by those comments was compiled. All these issues were considered in the development of the final Guidelines.

Of the 562 comments received, approximately 200 were from disability advocacy organizations, or units of State or local government concerned with disability issues. Sixty-eight (68) additional commenters identified themselves as members of the disability community; 61 commenters identified themselves as individuals who work with members of the disability community (e.g., vocational or physical therapists or counselors), or who have family members with disabilities; and 96 commenters were members of the building industry, including architects, developers, designers, design consultants, manufacturers of home building products, and rental managers. Approximately 292 commenters supported Option One without any recommendation for change An additional 155 commenters supported Option One, but recommended changes to certain Option One design standards. Twenty-six (26) commenters supported Option Two, and 10 commenters supported Option Three. The remaining commenters submitted questions, comments and recommendations for changes on certain design features of one or more of the three options, but expressed no preference for any particular option, or, alternatively, recommended final guidelines that combine features from two or all three of the options.

The Commenters

The commenters included several national, State and local organizations and agencies, private firms, and individuals that have been involved in the development of State and local accessibility codes. These commenters offered valuable information, including copies of State and local accessibility codes, on accesibility design standards. These commenters included: the Southern Building Code Congress International (SBCCI); the U.S. Architectural and Transportation Barriers Compliances Board (ATBCB); the Building Officials & Code Administrators International, Inc. (BOCA); the State of Washington Building Code Council; the Seattle Department of Construction and Land Use; the Barrier-free Subcode Committee of the New Jersey Uniform Construction Code Advisory Board; the Department of Community Planning, Housing and Department of Arlington County, Virginia; the City of Atlanta Department of Community Development, Bureau of Buildings; and members of the Department of Architecture, the State of University of New York at Buffalo. In addition to the foregoing organizations, a number of the commenters from the building industry submitted detailed comments on the proposed guidelines.

The commenters also included a number of disability organizations, several of which prepared detailed comments on the proposed guidelines. The comments of two disability organizations also were submitted as concurring comments by many individuals and other disability advocacy organizations. These two organizations are the Disability Rights Education & Defense Fund, and the Consortium for Citizens with Disabilities (CCD). The CCD represents the following organizations: the Association for Education and Rehabilitation of the Blind and Visually Impaired, Association for Retarded Citizens of the United States, International Association of Psychological Rehabilitation Facilities, National Alliance for the Mentally Ill, National Association of Protection and Advocacy Systems, National Association of Developmental Disabilities Councils, National Association of State Mental Health Program Directors, National Council of Community Mental Health Centers, National Head Injury Foundation, National Mental Health Association, United Cerebral Palsy Associations, Inc. Both the Disability Rights Education and Defense Fund and the CCD were strongly supportive of Option One.

A coalition of 20 organizations (Coalition), representing both the building industry and the disability community, also submitted detailed comments on the proposed guidelines. The members of the Coalition include: American Institute of Architects, American Paralysis Association, American Resort and Residential Development Association, American Society of Landscape Architects, Apartment and Office Building Association, Association of Home Appliance Manufacturers, Bridge Housing Corporation, Marriott Corporation, Mortgage Bankers Association, National Apartment Association, National Assisted Housing Management Association, National Association of Home Builders (NAHB), National Association of Realtors, National Association of Senior Living Industries, National Conference of States on Building Codes and Standards, National Coordinating Council on Spinal Cord Injury (NCCSCI), National Leased Housing Association, National Multi Housing Council, National Organization on Disability, and the Paralyzed Veterans of America.

The commenters also included U.S. Representatives Don Edwards, Barney Frank and Hamilton Fish, Jr., who advised that they were the primary sponsors of the Fair Housing Act, and who expressed their support of Option One.

Comments on the Three Options

In addition to specific issues and questions raised about the design standards recommended by the proposed guidelines, a number of commenters simply submitted comments on their overall opinion of one or more of the options. Following is a summary of the opinions typically expressed on each of the options.

Option One. The Option One guidelines drew a strong reaction from commenters. Supporters stated that the Option One guidelines provided a faithful and clearly stated interpretation of the Act's intent. Opponents of Option One stated that its design standards would increase housing costs significantly—for everyone. Several commenters who supported some features of Option One were concerned that adoption of Option One in its entirety would escalate housing costs. Another frequent criticism was that Option One's design guidelines were to complex and cumbersome.

Option Two. Supporters of Option Two state that this option presented a reasonable compromise between Option One and Option Three. Supporters stated that the Option Two guidelines provided more design flexibility than the Option One guidelines, and that this flexibility would allow builders to deliver the required accessibility features at a lower cost. Opponents of Option Two stated that this option allowed builders to circumvent the Act's intent with respect to several essential accessibility features.