



January 4, 2022

TO: All RHS MFH National Office Directors

ATTN: Regional Directors
Field Operations Division Program Staff
Multi-Family Housing

Civil Rights Director
Rural Development

FROM: Joaquin Altoro /s/ *Joaquin Altoro*
Administrator
Rural Housing Service

SUBJECT: Section 504 of the Rehabilitation Act of 1973 Compliance in Rural
Development Multi-Family Housing Properties

PURPOSE

This Unnumbered Letter (UL) provides 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, Section 521, and Section 538/515 housing programs, as required by 7 CFR 3560.2.

BACKGROUND

Regardless of when a project was ready for occupancy, all borrowers receiving federal financial assistance are required to have policies and practices that do not discriminate against persons with disabilities.

The United States Department of Agriculture implemented Section 504 of the Rehabilitation Act of 1973, on June 11, 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

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Housing Programs

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."

Properties that were ready for occupancy on or before June 10, 1982, may have different compliance criteria than those 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.

Borrowers of the above referenced MFH programs whose properties are newly constructed or were ready for occupancy after June 10, 1982, must be designed and constructed in such manner that the facility, to the maximum extent possible, is readily accessible to and usable by persons with disabilities. These and all other borrowers shall conduct a Self-Evaluation (SE); and if needed, develop a Transition Plan (TP). 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

The SE should be viewed as a living document. In accordance with Appendix 5 in HB-2-3560, Borrowers should analyze and re-evaluate their properties and practices on a regular basis. 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 SE and TP must be developed by a skilled and knowledgeable source or a third-party provider, and in accordance with 7 CFR 1 5b.18 (g), with the assistance of interested persons, including persons with a disability or organizations representing persons with a disability. This contract is an eligible project expense. SE and TP reports that are prepared by a qualified source will be accepted. In accordance with 7 CFR 15b.8(c) and 15b.18(g), the borrower's SE and TP programs must be prepared in accordance with all Federal, state/local requirements and satisfy the following minimum requirements in order to be considered a credible and compliant evaluation and plan:

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 Operations Division staff may accept a revised TP that has no changes other than to revise the projected implementation dates of the TP schedule if an acceptable reason can be documented why the original dates could not be met. See the below section on Non-Compliance with the Transition Plan Schedule. A TP is required when the SE determines that a facility modification to buildings and grounds is necessary to meet the applicable accessibility standards. Realistically, all accessibility work in the TP should be completed within 3 years and as expeditiously as possible, as outlined in 7 CFR 15b.18(f) and based on the annual approved budget.

Non-Compliance with the Transition Plan Schedule

A borrower must be on schedule with the TP to be in compliance. If a date for completion of an accessibility item is missed, the property is no longer in compliance with Civil Rights requirements. When a borrower is not in compliance, Field Operations Division staff will follow the guidance on page 8 of Appendix 5, HB-2-3560 "The Agency's Response to Findings of Non-Compliance."

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, the borrower must develop 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

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 within the 3 years 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 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 Services, Architects Services Branch and the Rural Development Civil Rights Office.

When a borrower is not able to complete all TP work expeditiously within three years and is not actively seeking rehabilitation funding, the borrower is not excused from completing all required work. Borrowers should show reasonable progress towards the completion of work according to the schedule in the TP evidenced by pictures of completed work. 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 substantial or major rehabilitation is involved, a borrower may present a five-year TP with justification and financial support for the completion of a five-year plan. The Agency's Field Operations Division shall contact the Civil Rights Office and get concurrence prior to approving a five-year plan.

Rehabilitation and Substantial Alterations

In accordance with UFAS 4.1.6(1) (d), an alteration to any building or facility is to be considered substantial if the total cost for this 12-month period amounts to 50% or more of the full and fair cash value of the building calculated for the estimated date on which work will commence. Full and fair cash value, as defined by UFAS 3.5 includes the assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation, replacement cost, or fair market value. When alterations meet this threshold new construction requirements will apply. Properties undergoing a substantial rehabilitation under the Housing Preservation and Revitalization Loan Program's Notice of Funding Availability guidance may be subject to additional thresholds or exceptions for the scope of work combining repair and replacement costs. Borrowers should consult with their assigned Production and Preservation Division underwriter on the rehabilitation of any building or facility. Borrowers whose properties have undergone substantial rehabilitation shall remain in Section 504 compliance by analyzing and re-evaluating their properties and practices on a regular basis.

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."

Properties where the Agency has concurred that it is either financially or structurally impractical to meet the five percent UFAS unit requirement, regardless of the date placed in service, 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 of 40 miles, depending on the

specifics of the market area. Borrowers 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. 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 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, and/or 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, with concurrence from the RD's Civil Rights Office, 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 Field Operations Division staff will document the case file and MFIS to fully explain the borrower's attempts to resolve the accessibility problem. The Field Operations Division staff will follow-up with the borrower at each Compliance Review and find out whether a referral agreement is possible at any new properties in the community that may have become available since the last Compliance Review.

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 as soon as is feasible, considering the health and safety measures associated with COVID-19. Borrowers may temporarily defer SE/TP inspections due to COVID-19 limitations, based upon local conditions and health advisories within the State. Properties placed in service after 6/10/82 are required to meet the 5% requirement whereas properties placed in service on or before 6/10/82 are strongly encouraged but are not required to meet the 5% requirement. The 5% accessible units may not show up on the TP of a property first ready for occupancy on or before June 10, 1982, but it may be required as part of a substantial rehabilitation or a reasonable accommodation.

Role of the Architect Services Branch and the Rural Development Civil Rights Office

- 7 CFR 1924 Subpart A Related Services

The Architect Services Branch will continue to perform the customary architectural services related to new construction and rehabilitation in accordance with 7 CFR 1924 Subpart A.

- SE and TP Quality Assurance Review

The RD Civil Rights Office staff will perform a quality assurance review of a sample of the SE and TP reports at random to verify that the SE and TP reports have been prepared according to 7 CFR Part 15b requirements.

Role of the Field Operations Division Staff

- Receiving SE and TP Reports

When a new or a revised SE or TP report is received from the borrower, the Field Operations Division staff shall accept it, update MFIS with the appropriate action date, and upload it to the Electronic Customer File (ECF) so that it may be accessed by Architecture Services Branch and the RD Civil Rights staffs.

The Field Operations Division staff will notify the Architecture Services Branch of the architectural services needed under 7 CFR 1924 Subpart A by submitting a request using the Architecture Service Request Portal, which can be accessed here: [Architecture Service Request Portal](#)

The Architecture Services Branch or Civil Rights will contact the assigned Field Operations Division staff person when documents needed for review are not in ECF.

- Proposed and Year End Budget Reviews

The Field Operations Division staff will verify that the accessibility items from the TP are included in the proposed annual operating budget during the budget review and approval process. The narrative portion of the proposed annual operating budget must include statements from the borrower on the property's Section 504 accessibility compliance and which accessibility items are being funded and scheduled for completion within the upcoming fiscal year. The year-end narrative portion of the actual operating budget must include statements on Section 504 accessibility compliance and which items from the TP were funded and completed in the previous fiscal year.

- Compliance Reviews

The Field Operations Division staff will monitor progress made by the borrower during the MFH Compliance Review portion of the Supervisory Visit using the general format of Form RD 400-8 "Compliance Review." As outlined in MFH, HB-2-3560, Chapter 9.10(f) and HB-2-3560, Appendix 5, to assure compliance with the SE and TP requirements of Civil Rights laws, during the compliance review certified RD 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.

Self-Evaluation and Transition Report MFIS Tracking Data Integrity

The Field Operations Division staff will ensure the integrity of MFIS data for SE/TP by taking the needed steps to review the tracking data. An initial review of properties that have SE/TP servicing efforts should be completed and corrections made accordingly within 60 days of issuance of this UL by following the steps outlined below:

Go to MFIS – Reports – under Reports go to Tracking - to TRK2000 – From Date: 01-01-2000 – To Date: 01-01-2021 – Complete the Assigned to (which is the specialists name) – to Effort Name - Transition Plan – Current Status: select All and Override Date Range – Report Options click Excel. This will provide a history of all plans. The same steps should be completed for the Self Evaluation Plans.

1. Review projects appearing on the TRK2000 report and verify that the most current or active TP report dates for “received”, “reviewed”, “updated” and “completed” appear in MFIS, as applicable.
2. Close out old or excess SE/TPs in MFIS by marking as “updated” or “completed” as applicable. Each project should only have one active plan. If cleaning up old plans by marking complete, use current date and add to comments “closing out to clean up MFIS”. DO NOT delete the older ones that have been marked “updated” or “completed” to preserve the history in MFIS.
3. If the TP is active but not completed, enter a follow-up date in MFIS based on the next budget review date.
4. When the TP is marked “completed” verify that the associated findings are resolved. If completion date of existing SE/TP is over 5 years old, consider whether a new SE is needed to identify potential non-compliant accessibility issues that may have surfaced since review.
5. If the open findings are still valid, have further servicing efforts been initiated and/or followed up? All findings listed as Type COMPLI-CR need to be associated to a TP, IF the TP is current and the borrower is complying. If there is no Transition Plan and COMPLI-CR findings exist, servicing should begin as outlined above under Non-Compliance with the Transition Plan Schedule.

IMPLEMENTATION

This UL is effective immediately upon publication. All other provisions and procedures contained in 7 CFR Part 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 Barbara Chism, Policy and Budget Branch, at (202) 690-1436 or <mailto:barbara.chism@usda.gov>.