

Comments on HUD's ANPRM for Section 504



Purpose:

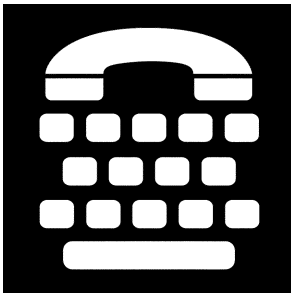
These comments are in response to the Department of Housing and Urban Development's Advance Notice of Proposed Rulemaking (88 FR 24938) request for comments related to the revision of HUD Regulations for Section 504 of the Rehabilitation Act.



Professional Qualifications of Respondent:

I am an architect who is certified by the National Council of Architectural Registration Boards for reciprocity in the various states, and I am licensed to practice architecture in Alabama, Colorado, Louisiana, Florida, and Georgia. I have a Bachelor of Architecture degree from Louisiana State University. I have more than thirty years of experience working in the area of accessible design and have learned from the first generation of accessibility specialists who broke new ground with the implementation of early federal accessibility laws (i.e., The Architectural Barriers Act of 1968 and the Rehabilitation Act of 1973).

I am not an attorney and do not offer any legal opinions, but instead, as an experienced accessibility consultant, I offer extensive technical assistance related to rules and regulations associated with the accessibility provisions of federal, state and local laws and codes.



I have been judicially recognized as having "extensive experience in the field of [Americans with Disabilities Act] compliance sufficient to qualify . . . as an expert in this field." United States v. AMC Entm't, Inc., 245 F. Supp. 2d 1094, 1096 (C.D. Cal. 2003) (order granting government's motion for partial summary judgment). Additionally, in November 2014, District Court Judge Sandra Armstrong stated the following in the case, Ivana Kirola, et al. v. City & County of San Francisco, et al., Case No. C 07-3685 SBA (N. D. Cal. Nov. 26, 2014 Findings of Fact and Conclusions of Law):

"The Court finds Hecker, who serves as a consultant to the DOJ in ADA enforcement actions, to be a credible witness and credits his testimony accordingly." Id. at 26:15-16.

"Hecker, a licensed architect, was received by the Court as an expert in architecture and disability access." Id. at 41:12-13.

"The Court finds Hecker, the City's access expert, to be credible, and finds the City's priorities for curb ramp installation, as set forth in the Curb Ramp and Sidewalk Transition Plan, to be consistent with the priorities and recommendations established by the DOJ." Id. at 46:1-4.

"The Court is likewise persuaded by Hecker, who provided testimony regarding program access to the City's library program and RecPark programs." Id. at 55:1-2.



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Got Access?

I served as a member of the Public Rights of Way Accessibility Advisory Committee to the United States Access Board and helped to draft specific recommendations that have been used as the basis for proposed Americans with Disabilities Act Accessibility Guidelines for public rights-of-ways. I have served as the “Task Group” leader on ADA issues for the American Institute of Architects’ building codes and standards committee. I also have had ongoing dialogues with organizations, such as the American Institute of Architects and the National Council on Independent Living, during comment periods for the proposed new ADA and Architectural Barriers Act accessibility guidelines.

I devote my entire professional practice to questions of architectural accessibility. This interest began in 1981, when a teenager with Spina Bifida saw a public demonstration of my martial arts troupe and asked if we might teach him self-defense. During the ensuing five years that I helped to adapt the kung fu forms for him and other wheelchair users, I came to understand for the first time the unique challenges those who use wheelchairs face in everyday activities. This experience influenced my architectural studies to the extent that I participated in a design competition for the 1983 International Summer Special Olympics and was one of a few architectural students on the winning team selected by the Special Olympics officials, because of our creative mixture of accessibility and functionality.

After the Americans with Disabilities Act passed, and while I was working at Evan Terry Associates, Inc., I authored the Americans with Disabilities Act Facilities Compliance Workbook, a seminal publication which is the most comprehensive book on ADA facility compliance available. This book was later reorganized and condensed for use by non-design professionals and sold through John Wiley & Sons publishing as Americans with Disabilities Act Facilities Compliance: A Practical Guide. I have also authored articles for national publications, including How Will the Americans with Disabilities Act Affect You? for the American School & University Journal and Architect Offers Advice on Conducting ADA Site Evaluations for the Thompson Publishing Group ADA Compliance Guide Monthly Bulletin. During the process of researching for these books and articles, I interviewed many people with disabilities and government officials tasked with the development of the ADA Accessibility Guidelines and other federal accessibility guidelines. I worked closely with Mr. Ron Mace, FAIA, a nationally recognized accessibility specialist and a pioneer in the field of architectural accessibility.

For more than a decade, I was an Instructor in the Office of Executive Education teaching a summer program on accessibility at the Harvard University Graduate School of Design in Cambridge, MA and have developed and conducted more than 100 training seminars in 26 states, the Caribbean, Guam, and Australia. I have trained architects, builders, and building owners on the accessibility requirements of the ADA, Fair Housing Amendments Act, Architectural Barriers Act, and the Rehabilitation Act of 1973, including accessibility seminars specifically tailored for architects and engineers at the following locations: the American Institute of Architects national convention in Chicago; the Construction Specifications Institute in Birmingham, AL; Einhorn, Yafee, Prescott Architects ADA Seminar in Albany, NY; Hawaii Architectural Access Board Seminar in Honolulu, HI; Kurt/Voit/Geuest Architects in Dallas, TX; Woolpert Consultants in Dayton, OH and Hilton Head, SC; RTKL Architects in Baltimore, MD and Washington, DC; AEC Systems National Conference in Anaheim, CA; Gulf States AIA Regional Convention in Bay Point, FL; the Institute of Transportation Engineers Convention in Melbourne, Australia; and, the Western Region American Institute of Architects Convention in Reno, NV.

I have also provided in-house training on accessibility issues to law firms, including the following: Powell, Tally, Frederic Law Firm of Birmingham, AL; Serote Permut Law Firm of Birmingham, AL; and the JacksonLewis law offices

of New York, NY. I have had both governmental and private clients. I have been hired to advise the Architect of the Capitol on accessibility issues related to the proposed underground addition to the Capitol Building in Washington, DC, as well as exterior accessibility circulation around Capitol Square. I have advised major US companies on accessible design issues, including IBM, Rockwell International, Wal-Mart, Winn Dixie Grocery Stores, and Ruby Tuesday Restaurants. My opinion has been sought by governmental and university clients, including the United States Department of Justice, the Department of Housing and Urban Development, the Illinois Attorney General's Disability Rights Bureau, the City and County of Honolulu, George Washington University, University of Florida, MARTA-Metro Atlanta Regional Transit Authority, Duke University, and the University of California system. Architects and engineers from around the country seek my opinions on accessibility issues and ask me to advise them on specific project design concerns.

I have reviewed plans for and done accessibility evaluations of many apartment complexes and other types of facilities, including condominiums, hotels, retail stores, transportation stations, homes, hospitals, office buildings, restaurants, nursing homes, and senior citizen centers, to name a few. I have analyzed many complex site and building accessibility problems and designed solutions for those problems which properly balance the sometimes-conflicting needs of various disability groups. I have been on panels where experts debated and discussed the finer points of accessible design and answered impromptu audience questions.

For more than thirty years, I have had the chance to teach and work with many persons with disabilities who have shared with me direct life experiences and challenges. I have moved beyond an academic understanding of accessibility to a real life, hands-on appreciation for the practical difficulties encountered by people with disabilities, such as: the difficulties facing manual wheelchair users when encountering steep slopes and cross slopes; how someone who has braces on his legs that lock his ankle in an "L-shape" can easily trip on open stair risers or squared-off nosings; the difficulties of draining a urine bag in a public restroom urinal without having the urine back-flow into the catheter tube; the problems encountered in keeping a wheelchair from rolling away before sliding out of a car's front seat into it; and the difficulties associated with making tight 180 degree turns, wheelies, and going through doors in a wheelchair without scraping the skin off your knuckles.

The combination of my professional education, the lessons learned from my mentors, the 30+ years of one-on-one relationships with individuals who have disabilities, the extensive professional research conducted during the process of writing two seminal accessibility books, the experience gained in surveying more than 500 buildings and thousands of pages of architectural plans for accessibility form the basis for my opinions on how buildings and facilities can be made accessible for people with disabilities and how HUD can appropriately revise its Section 504 Regulations for the Rehabilitation Act.

Comments on HUD ANPRM for Section 504 Regulations – Question 6

Question for Comment 6: *Most entities are subject to more than one Federal accessibility law and architectural standard in the operation of their housing services, programs, and activities. For example, a public housing agency receiving HUD funding and operating public housing and voucher programs may be subject to the design and construction requirements of the Fair Housing Act, [8] Section 504 as a recipient of Federal financial assistance, and Title II of the ADA as a public entity. This may require applying multiple accessibility laws and architectural standards, e.g., the Fair Housing Act's Accessibility Guidelines, the 2010 ADA Standards under Title II of the ADA, and HUD's Section 504 accessibility standard. In addition, State and local laws and building codes will also apply. Most States*

and localities now use the International Building Code (IBC) and the accessibility standard it references, the ICC A117.1 Standard for Accessible and Usable Buildings and Facilities.

The Department seeks input on ways to harmonize, to the extent possible, the requirements among the various standards and achieve greater consistency in the design and construction of buildings and facilities that are covered by multiple Federal accessibility laws. The Department also seeks to ensure, however, that accessibility for persons with disabilities is not reduced and opportunities for modernization of accessibility requirements are considered. The Department notes that recipients of HUD funding must be aware of and comply with the accessibility requirements of all applicable laws, including Section 504, the ADA, and the Fair Housing Act. Compliance with one of these statutes does not ensure compliance with other Federal disability nondiscrimination laws. HUD's adoption of an updated Section 504 Federal accessibility standard for purposes of compliance with its own Section 504 regulations does not change an entity's obligation to comply with all applicable laws.

What standards should the Department consider for purposes of an updated accessibility standard for its recipients? HUD requests information to assist the Department in determining whether other specific guidelines provide sufficient or insufficient accessibility in the context of housing or other residential facilities funded by HUD. In addition, please provide information on scoping and other technical provisions the Department should consider to further accessibility for individuals with disabilities in the context of housing.

Response to HUD Question 6 – Accessibility Standards Issues

As mentioned in the HUD question above, architects must rely on and digest numerous federal regulations, building codes, accessibility standards and safe harbors when designing housing developments covered by Section 504, ADA, Fair Housing Act (FHA) and state/local building codes. It is important to recognize that these accessibility standards and safe-harbors range in age from the 1984 (republished 1988) UFAS cited in HUD's current Section 504 regulations (24 CFR 236) to **ANSI A117.1-1986** cited by HUD's **1991 FHA Guidelines** to the **1991 ADA Standards** to **ANSI A117.1-1992** to **ANSI A117.1-1998** to **ANSI A117.1-2003** to **ICC A117.1-2009** to the **2010 ADA Standards** to the latest code based accessibility standards **ICC A117.1-2017**.

HUD has an opportunity to not only harmonize the various accessibility standards to “*achieve greater consistency in design and construction*” as it updates the Section 504 regulations for the Rehabilitation Act, but to update accessibility compliance from 1980's standards for federally funded housing to match that of the most current (2017) **International Building Code (IBC)** cited accessibility standards. In reality, this is only a continuation of the efforts started in 2014 when HUD published its Deeming Notice (79 FR 29671) allowing use of the **2010 ADA Standards** for Section 504 compliance with 11 specific exceptions where **UFAS** offered a greater level of accessibility.

These 11 specific exceptions in HUD's Deeming Notice which articulate how **UFAS** offered a greater level of accessibility than the comparable provisions of the **2010 ADA Standards** can act as a springboard for HUD as it considers the next evolution of the Section 504 accessibility regulations requirements. It is clear that even some of the most recent accessibility standards fail in some ways to rise to the HUD level of accessibility expectations. This bodes the question, can HUD find a single, comprehensive federal or national code-based accessibility standard which will meet those expectations?

At this time, the answer is no. Given this realization, how should HUD proceed with the revisions to the Section 504 accessibility standards at 24 CFR 8.32? It appears that there are a few factors to consider when addressing this issue and it logically comes down to two broad options for HUD's revision of the Section 504 accessibility standards – an ICC Code-based approach with exceptions or the 2010 ADA Standards-based approach with exceptions.

ICC Code-Based Accessibility Approach - HUD can rely on the most state-of-the-art accessibility specifications available via the IBC cited **ICC A117.1-2017** accessibility standards when updating its Section 504 regulations. This will achieve novel accessibility for scooter and motorized wheelchair users with larger (30" x 52") clear floor space specifications, along with larger (67" minimum diameter) wheelchair turning spaces and new specifications for accessible electric vehicle charging stations placing program recipients with disabilities on the cutting edge of accessibility compliance. HUD would still have to use the exceptions process (with updated exceptions) it used with its 2014 Deeming Notice for the **2010 ADA Standards** to ensure that a consistent level of accessibility currently provided in the HUD Section 504 regulations is maintained. HUD could also defer until the anticipated 2024 publication of the A117.1 which is likely to include an even higher level of accessibility for these program recipients. These are both accessibility standards created as part of a consensus process of the ANSI A117.1 Committee with members from a broad spectrum of interests including federal agencies like HUD. It also includes disability advocates, leading housing designers and construction industry representatives who all understand that accessibility compliance via the various state and local building codes has led over the last 20 years to an environment in most states where UFAS-like (Type A) units are available for a small percentage (generally 2% minimum of units in a development) of residents with disabilities, including in market rate housing. Reliance on a consensus based national accessibility standard is also supported by the National Technology Transfer and Advancement Act of 1995 which specifically states that... *"Except as provided in paragraph (3) of this subsection, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."*¹

2010 ADA Standards Based Accessibility Approach - HUD can rely on the HUD's Deeming Notice which already includes extensive guidance on how the **2010 ADA Standards** can be used with a few exceptions and as noted in HUD's Question 6 above, many of the Section 504 projects will also be covered by ADA Title II requiring harmonization with the **2010 ADA Standards**. While at the 2023 ADA Symposium, I spoke with representatives of the US Access Board – the federal agency tasked with updating the ADA Accessibility Guidelines used as the basis for the **2010 ADA Standards** – and was told that there is little enthusiasm for another update to the ADA Standards in the foreseeable future. Therefore, whatever updated standards HUD adopts will require an updated Deeming Notice to support full implementation in the field.

Conclusion – I recommend that HUD adopt the state-of-the-art accessibility standards offered in the **ICC A117.1-2017**, with accessibility new scoping provisions included in the revised Section 504 regulations consistent with those found in the **2010 ADA Standards** amended as needed to conform with HUD's 2014 Deeming Notice exceptions. Reliance on Section 233.3 of the **2010 ADA Standards** would be particularly appropriate as part of the revised HUD Section 504 regulations. I particularly prefer the Section 223.3 scoping provisions as an alternative to the current HUD Section 504 regulatory provisions related to new construction and alteration projects. I would suggest the ADA Title II regulatory scheme for new construction and alterations language as opposed to the current 24 C.F.R 8.23 Substantial Alterations and Other Alterations requirements. It is nearly impossible to enforce the substantial alterations provision after a project has been completed because project costs and existing market rate values are fluid. This has been such a challenge in recent 504 public housing litigation in which I have been an expert witness that I have had to rely solely on the "other alterations" provisions to demonstrate my findings to the trier of fact. This change to harmonize with the ADA Title II regulatory language will ease enforcement and compliance as the same time.

¹ See <https://uscode.house.gov/statutes/pl/104/113.pdf> at Section 12(d)(1).

If the changes to the HUD regulations will extend into 2024, I recommend that HUD use the most recent state of ICC accessibility standards applicable at the time the Department actually finalizes the Section 504 regulations revisions, which is likely to be the 2024 ICC A117.1 accessibility standards. The current HUD Section 504 regulations definition (24 C.F.R. 8.3) of a “project” can be confusing and must also be revised to ensure that all new construction and alterations “projects” related to the programs, services, and activities of recipients of federal financial assistance must comply with these new accessibility standards. Other definitions in HUD’s regulations that are inconsistent with the same or similar terms found in the ADA Title II regulations should also be revised for harmonization of requirements that may apply to the same design and construction projects.

Comments on HUD ANPRM for Section 504 Regulations – Question 7

Question for Comment 7: *HUD's Deeming Notice allowed HUD recipients to use the 2010 ADA Standards under Title II of the ADA—with identified exceptions, as an alternative accessibility standard in lieu of UFAS for purposes of Section 504 compliance. The Deeming Notice identified eleven (11) exceptions where UFAS provides greater accessibility than the 2010 ADA Standards and must continue to be utilized.[9] Are there other UFAS provisions that HUD did not identify in its Deeming Notice that should be retained to further accessibility in HUD-assisted programs?*

Response to HUD Question 7 – Deeming Notice Exceptions

As mentioned above, HUD’s 2014 Deeming Notice publication in the Federal Register included 11 exceptions where UFAS was seen as offering a greater level of accessibility than the 2010 ADA Standards. I have made an extensive review of UFAS and found no additional UFAS specifications that offer greater levels of accessibility than similar specifications found in the 2010 ADA Standards. In general, the accessible and adaptable specifications for dwelling units with mobility features per 2010 ADA Standards offer a significantly greater level of accessibility in the units than the current UFAS specifications for the same type of accessible and adaptable units with mobility features. HUD should offer “safe harbor” technical assistance for harmonization of the ADA Title II and Section 504 accessibility requirement, such as the deeming notice. The Deeming Notice has been very important and helpful for those of us who work in the field, enabling us to readily harmonize accessibility provisions in actual housing projects developed or altered through programs receiving federal funding.

Comments on HUD ANPRM for Section 504 Regulations – Question 8

Question for Comment 8: *As the Federal agency with primary responsibility for administering the Nation's federally assisted housing programs, the Department has a unique role in considering how residential and connected spaces (e.g., spaces for laundry, mail, telecommunications, office, maintenance, parking, recreation, service, and community functions) must be made accessible. HUD is looking at the accessibility and usability of spaces and elements within one's own home and connected spaces that will impact daily living, which is different than considering accessibility in places of public accommodation or other settings. HUD is considering how the development of various enhanced accessibility features can be incorporated or incentivized into the design and construction of affordable housing developments.*

Advances in the types of accessibility features can assist individuals with various types of disabilities obtain, remain in, and receive the full benefits of their housing. For example, for individuals with mobility disabilities, such features may include: power operated or other keyless proximity-based entry at entrances and exits from buildings and passageways through the building; light weight or low resistance doors; detachable shower-heads; smart, remotely adjustable thermostats; adjustable shelves in closets and storage; full extension pull-out drawers, shelves, and racks; roll-in showers; avoiding swinging interior doors within individual accessible dwelling units; faucets with touch or

motion sense water controls; and reinforced ceilings to accommodate a track and harness system. For individuals who are blind or have low vision, examples of such features may include: audible elevator indicators; innovative entry systems that do not solely rely on an individual's ability to see in order to gain access; controls with audio feedback as opposed to or in addition to touch screens; and enhanced lighting. For individuals who are deaf or hard of hearing, examples of such features may include: innovative entry systems that do not solely rely on an individual's ability to hear in order to gain access; doorbells with light alerts; activated close captioning on televisions located in public areas; and video phones or other video connections for communications.

In addition, specific accessibility features assist individuals to remain in their homes and to age in place, such as vertical and angled grab bars to get up and down from toilets and for stepping in and out of bathing fixtures. Examples to assist individuals who are blind or have low vision include contrasting surfaces, enhanced lighting, tactically discernible controls, and elimination of tripping hazards. Examples to assist individuals who are deaf or hard of hearing include innovative entry systems, doorbells with light alerts, and emergency alarms for fire and carbon monoxide leaks that can accommodate personal notification devices.

- (a) What barriers do individuals with disabilities face in public and common use areas of housing and non-housing facilities (e.g., building entrances, building entry systems, recreation and fitness facilities, mail and package rooms, coworking facilities, parking structures, laundry rooms)? What accessibility features or advanced technology can help overcome these barriers?
- (b) What accessibility features or advanced technology should the Department be aware of that improve accessibility in designated accessible units for individuals with mobility disabilities?
- (c) What accessibility features or advanced technology should the Department be aware of that improve accessibility in designated accessible units for individuals with vision and hearing disabilities?
- (d) Given the increasing aging population, the Department is considering its role in providing affordable housing opportunities to this population and how to enable households to remain in their housing. Are there specific accessibility features that can help individuals to age in place?
- (e) There are alternative accessibility provisions in accessibility standards that address the more limited reach ranges and need for lower seat heights and dining surfaces for children with disabilities that are different than accessibility features configured for adult use. The Department is interested in any comments related to dimensions for children.
- (f) To what extent does the failure to maintain accessible features, including elevators and lifts, limit individuals with disabilities access to affordable housing?

Response to HUD Question 8 – Enhanced Accessibility Options

HUD should consider updating the access standards as noted above, which may cover many of these issues. HUD may want to consider including in the updated regulations some additional accessibility features beyond those in the updated ICC standards, many of which are noted in the request for comments and the responses. Generally, I suspect that HUD will find the greatest opportunity for incentivizing enhanced accessibility features via the Section 504 request for “reasonable accommodations” by a program recipient as described at HUD’s Section 504 website.² A few illustrative questions and answers on Section 504 related to reasonable accommodation requests are included below and might be cited in the revised regulations as applicable to qualified residents with disabilities needing features of adaptability modified by the housing providers.

Question: What is a reasonable accommodation under Section 504?

Answer: A reasonable accommodation is a change, adaptation, or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. Reasonable accommodations may include, for example, those

² https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications/faqs

which may be necessary in order for the person with a disability to use and enjoy a dwelling, including public and common use spaces. Since persons with disabilities may have unique needs due to their disabilities, in some cases, simply treating persons with disabilities exactly the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling.

Question: How do you determine whether a request for a certain accommodation is reasonable?

Answer: Whether a particular accommodation is reasonable depends on a variety of factors and must be decided on a case-by-case basis. The determination of whether a requested accommodation is reasonable depends on the answers to two questions. First, does the request impose an undue financial and administrative burden on the housing provider? Second, would making the accommodation require a fundamental alteration in the nature of the provider's operations? If the answer to either question is yes, the requested accommodation is not reasonable. However, even where a housing provider is not obligated to provide a particular accommodation because the particular accommodation is not reasonable, the provider is still obligated to provide other requested accommodations or alternative accommodations to the one initially requested that do qualify as reasonable. For example: As a result of a disability, a tenant is unable to open the dumpster provided by his housing provider for his trash. The tenant requests that the housing provider send a maintenance staff person to collect his trash from his apartment daily. Because the housing development is a small, low-budget operation and the maintenance staff are not on site daily, it may be an undue financial and administrative burden for the housing provider to provide daily trash service to the tenant and the housing provider may refuse to provide the requested accommodation. However, the housing provider is obligated to provide the tenant with a requested alternative accommodation – such as, for example, providing either an open trash can or placing a trash can that the tenant can open in an accessible location so that the tenant may dispose of his trash.

Question: What happens if providing a requested accommodation involves some costs on the part of the federally-assisted housing provider?

Answer: Section 504 requires that in making an accommodation, a federally-assisted housing provider will be required to bear costs which do not amount to an undue financial and administrative burden. In application, this means that a housing provider may be required to spend money to provide legally required reasonable accommodations. For example, a public housing agency receives a request to install the deadbolt lock on the front door of a unit higher up on the door from a resident whose child has autism. The request makes clear that the child can reach the deadbolt and may wander out of the unit and is not able to follow instructions not to leave the unit because of her autism. The public housing agency would be required to pay for the cost of installing a deadbolt higher up on the door.

Really good examples of enhanced accessibility options or features can be found in the 2019 Voluntary Compliance Agreement (VCA) between HUD and the City of Los Angeles.³ Options to select among these additional features provide an incentive for competitive funding opportunities by developers of multifamily housing projects.

Question: What types of accessibility features are part of the Enhanced Accessibility Program? The “Enhanced Accessibility Program,” which is detailed in Appendix 5 of the VCA, consists of both required features for developers to include as part of their applications for competitive funding from the City, as well

³<https://archives.hud.gov/news/2019/Fact-Sheet-and-QA-HUD-City-of-Los-Angeles-VCA.pdf>

as optional features of which at least five must be selected to be considered for funding. Examples of the types of features include:

- Residential grade power operated manual door for designated mobility units, with an automatic push plate button or keyless proximity-based entry and exit, while ensuring security measures are in place for the unit.
- In designated accessible units provide either motion activated light switches with “touch pad” or “rocker-pad” override options, except in unit bathrooms, or provide “rocker-pad” switches.
- In all designated accessible units, in kitchens and bathrooms, provide full extension pull-out drawers, shelves, and racks in all base cabinets, instead of swing-open doors.
- In all designated accessible units provide pantry storage with pull-out, adjustable height shelves.
- In designated accessible units, provide adjustable height closet rods and shelves in all closets. Rods and shelves will be adjusted to meet the needs of the resident.
- Provide accessible trash disposal options at all trash disposal sites throughout the development by providing power or (in the case of fire doors) manually operated door openers and closers that allow for five pounds maximum force.
- The design of designated mobility units will ensure that ceilings are properly reinforced such that a track and harness system could be installed as a reasonable accommodation. Following sound building practices, generally nothing additional is required to ensure the potential for installation.
- In designated mobility units, provide open concept floor plans that maximize space utilization for or overlap of kitchen, dining, and living room spaces. Such spaces may have features to close them off for privacy, e.g., pocket or sliding doors, with accessible hardware. Bedrooms and bathrooms will always have doors.
- For 50% of designated mobility units in developments that consist of studios/efficiencies, or 1-bedrooms, provide roll-in showers. For designated mobility units that have more than 1 full bathroom, provide at least one roll-in shower in the unit.
- Ensure visible alarms are installed along with the audible fire alarm system throughout the development, including all units, consistent with 2010 ADA Standards 215 and 702.
- Install accessible in-home controls (e.g., thermostat, lighting, etc.).
- In designated mobility units, provide single-lever faucets with touch or motion sense water controls at all sinks and lavatories.

HUD might offer similar incentives with other recipients of federal funding for housing or consider some or all of these important features for inclusion in the updated standards. Another technical assistance opportunity by HUD might include the development of “best practice” design and construction measures similar to these enhanced accessibility features for architects tasked with design of Section 504 housing projects. HUD appeared to have good success with its 2012 accessible design and construction YouTube videos “Addressing Accessibility in Capital Needs”⁴ describing detailed accessibility requirements by senior HUD legal staff and that success could be repeated with videos describing these enhanced design features. Many of these enhanced features may be addressed in future projects. They should include accessible parking opportunities for residents of the units with mobility features. It is also critical for affordable housing projects to have a drop-off area at every project that is accessible for people with disabilities who rely on accessible ride-share companies, paratransit, or service providers with accessible vehicles to transport them to and from their housing. This link is vitally necessary for people who cannot easily use public transportation, or where public transit is not easily accessed from their homes.

⁴ see the website at: <https://youtu.be/ENL3iLLSx8>

Regarding question (a) about technologies that may assist disabled residents and their guests in the public and common use areas, the list of areas offered in the question above is quite complete. Of those areas of accessibility HUD included in its question above, there is good technology for automatic package lockers via IPAD based software that is programed for each resident who may require their packages to be left only in lockers within the 15" - 48" AFF wheelchair reach range specified by the **2010 ADA Standards**.

Important new technologies that are becoming more common in multifamily dwelling unit projects include: Electric Vehicle (EV) Charging Stations which should be accessible to those with mobility impairments who use adapted vehicles, but there are no federal accessibility specifications at this time. **ICC A117.1-2017** accessibility standards do include specifications for accessibility of EV charging stations and might be a good guide, along with **California Building Code Chapter 11B** accessible EV charging station standards (see, e.g., 11B-228 et seq.). With the popularity of Uber and Lyft "ride-share" company services, multifamily housing projects need to incorporate accessible passenger loading zones at the designated "ride share" and Paratransit drop-off and/or pickup areas. Accessible passenger load zones also assist individuals who rely on service providers, including but not limited to those with adapted vehicles, to transport them.

Other new common use facilities becoming more popular in multifamily housing projects includes car wash facilities that are amenities for residents that must be accessible, but there are no specific federal accessibility specifications for these types of facilities. Pet wash facilities also include few accessibility specifications for the actual basins where service and support animals are washed by disabled residents. Additionally, pet blow-dryers are often mounted much too high to allow the controls to be within reach ranges of disabled resident. These pet wash facilities are many times fundamentally tied to the health and well-being of people with disabilities who have a service or support animal at their home.

Regarding question (b) about technologies applicable within the accessible dwelling units, the "smart house" systems which control lights, HVAC, window draperies, and security cameras that can allow entry doors to be unlocked are great options for those with mobility impairments that may not be able to conveniently move between locations where those features are positioned or reach controls. As an example, this technology can allow an individual with disabilities who may have fallen and injured themselves to open the door and contact first-responders who can offer aid as needed. The most recent "smart technologies" even incorporate AI features into the programs that assist residents.

Regarding questions (c), (d) & (e) about technologies applicable within the dwelling units designed for those with hearing or vision impairments, aging-in-place issues and children's accessibility specifications: It is important to update the TTY section to address the realization that most individuals who used TTY's in the past are now using text-technology as a handy and more effective alternative. Many properties are not yet using the text options for applications and management issues, and they should be required to have that option available. These "smart home" technologies can also assist with those who have vision and hearing impairments, as mentioned above.

Projects should be encouraged to have computers in the leasing or management offices available to all applicants who may benefit from real-time assistance by staff. This would require accessible and screen-reader technology. Owners should be required, when communicating with tenants and applicants, to use software that is accessible and usable by screen reader programs.

Regarding question (f) about maintenance of accessible features and the effect on outages of those features on individuals with disabilities, I concur with opinions of the US Department of Justice in such situations described in their preamble to the 1991 ADA Title III regulations. I believe that the ADA maintenance clause is a great example with which HUD's Section 504 regulations can harmonize. The Department of Justice's preamble to the 1991 ADA Title III regulations expands on this concept of limited interruptions to accessibility due to maintenance issues.

Section 36.211 Maintenance of Accessible Features

Section 36.211 provides that a public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part. The Act requires that, to the maximum extent feasible, facilities must be accessible to, and usable by, individuals with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them. Inoperable elevators, locked accessible doors, or "accessible" routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities.

Some commenters objected that this section appeared to establish an absolute requirement and suggested that language from the preamble be included in the text of the regulation. It is, of course, impossible to guarantee that mechanical devices will never fail to operate. Paragraph (b) of the final regulation provides that this section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This paragraph is intended to clarify that temporary obstructions or isolated instances of mechanical failure would not be considered violations of the Act or this part. However, allowing obstructions or "out of service" equipment to persist beyond a reasonable period of time would violate this part, as would repeated mechanical failures due to improper or inadequate maintenance. Failure of the public accommodation to ensure that accessible routes are properly maintained and free of obstructions, or failure to arrange prompt repair of inoperable elevators or other equipment intended to provide access, would also violate this part.

Other commenters requested that this section be expanded to include specific requirements for inspection and maintenance of equipment, for training staff in the proper operation of equipment, and for maintenance of specific items. The Department believes that this section properly establishes the general requirement for maintaining access and that further, more detailed requirements are not necessary.

Many residents with disabilities have communicated to me that elevator access is really challenging because of safety/security and cleanliness issues which often impact the usability for those who are most in need of these elements in federally funded housing projects. If there is a temporary outage for fundamental accessibility elements, like elevators, parking spaces, ramps, then the management must seek prompt repairs and provide alternate accessible strategies for disabled residents as a reasonable accommodation. This can include, depending on the length of the outage, delivering groceries and medications to tenants with disabilities, relocating tenants to accessible dwelling units in alternate locations, or relocating tenants to accessible hotel rooms for short-term outages. Assistance with this alternate accommodation must also include help with moving and accommodation management. Projects should be required to have emergency plans that address outages, as well as technology such as Evacu-chairs used in stairways during emergency situations where disabled residents or visitors can't rely on the elevator which will have been directed by emergency programming to the ground floor. To minimize even temporary outages of key accessibility elements in housing projects it is critical that these elements be regularly maintained and repaired or if necessary, then replaced as expeditiously as possible.

If there is a need to contact me regarding my comments on HUD's questions related to the proposed Section 504 regulations revisions, please feel free to contact me using the information found on the first page of this correspondence. I am confident that HUD will act as needed to modernize and harmonize the Section 504 regulations so those of us who work in the field of developing and rehabilitating multifamily housing projects can feel confident in our understanding of the accessibility requirements and duties. Thank you for the opportunity to share my input on this important topic.

Warmest regards,

A handwritten signature in black ink that reads "Bill Hecker, AIA". The signature is written in a cursive, slightly slanted style.

Bill Hecker, AIA – Accessibility Consultant

Hecker Design, LLC

Submitted electronically on July 23, 2023