

provided. The alteration of housing facilities shall also be in conformance with additional scoping requirements contained in this part. Persons interested in obtaining a copy of the UFAS are directed to § 40.7 of this title.

(b) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical handicaps.

(c) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

(d) For purposes of this section, section 4.1.4(11) of UFAS may not be used to waive or lower the minimum of five percent accessible units required by § 8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.

(e) Except as otherwise provided in this paragraph, the provisions of §§ 8.21 (a) and (b), 8.22 (a) and (b), 8.23, 8.25(a) (1) and (2), and 8.29 shall apply to facilities that are designed, constructed or altered after July 11, 1988. If the design of a facility was commenced before July 11, 1988, the provisions shall be followed to the maximum extent practicable, as determined by the Department. For purposes of this paragraph, the date a facility is constructed or altered shall be deemed to be the date bids for the construction or alteration of the facility are solicited. For purposes of the Urban Development Action Grant (UDAG) program, the provisions shall apply to the construction or alteration of facilities that are funded under applications submitted after July 11, 1988. If the UDAG application was submitted before July 11, 1988, the provisions shall apply, to the maximum extent practicable, as determined by the Department.

[53 FR 20233, June 2, 1988, as amended at 61 FR 5203, Feb. 9, 1996]

§ 8.33 Housing adjustments.

A recipient shall modify its housing policies and practices to ensure that

these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps. The recipient may not impose upon individuals with handicaps other policies, such as the prohibition of assistive devices, auxiliary alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with handicaps in the recipient's federally assisted housing program or activity in violation of this part. Housing policies that the recipient can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications to them would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

Subpart D—Enforcement

§ 8.50 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance to HUD, or in the case of a subrecipient to a primary recipient, on a form specified by the responsible civil rights official, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, 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.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

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(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure non-discrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 8.51 Self-evaluation.

(a) Each recipient shall, within one year of July 11, 1988, and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps:

(1) Evaluate its current policies and practices to determine whether, in

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whole or in part, they do not or may not meet the requirements of this part;

(2) Modify any policies and practices that do not meet the requirements of this part; and

(3) Take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.

(b) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (a)(1) of this section, maintain on file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) A list of the interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

(Approved by the Office of Management and Budget under control number 2529-0034)

[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

§ 8.52 Remedial and affirmative action.

(a) *Remedial action.* (1) If the responsible civil rights official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the responsible civil rights official deems necessary to overcome the effects of the discrimination.

(2) The responsible civil rights official may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action—

(i) With respect to individuals with handicaps who are no longer participants in the program but who were participants in the program when such discrimination occurred or

(ii) With respect to individuals with handicaps who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take nondiscriminatory steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with handicaps.