

Accessibility Standards (UFAS), the Minimum Guidelines and Requirements for Accessible Design (MGRAD) issued by the U.S. Architectural and Transportation Barriers Compliance Board, and many State and local government accessibility codes.

One Set of Design Standards

Comment. A number of commenters objected to the fact that the proposed guidelines included more than one set of design standards. The commenters stated that the final Guidelines should present only one set of design standards so as not to weaken the Act's accessibility requirements.

Response. The inclusion of options for accessibility design in the proposed guidelines was both to encourage a maximum range of public comment, and to illustrate that there may be several ways to achieve compliance with the Act's accessibility requirements. Congress made clear that compliance with the Act's accessibility standards did not require adherence to a single set of design specifications. In section 804(f)(4) of the Act, the Congress stated that compliance with the appropriate requirements of the ANSI Standard suffices to satisfy the accessibility requirements of the Act. In House Report No. 711, the Congress further stated as follows:

However this section (section 804(f)(4)) is not intended to require that designers follow this standard exclusively, for there may be other local or State standards with which compliance is required or there may be other creative methods of meeting these standards. (House Report at 27)

Similarly, the Department's Guidelines are not the exclusive standard for compliance with the Act's accessibility requirements. Since the Department's Guidelines are a safe harbor, and not minimum requirements, builders and developers may follow alternative standards that achieve compliance with the Act's accessibility requirements. This policy is consistent with the intent of Congress, which was to encourage creativity and flexibility in meeting the requirements of the Act.

Reliance on Preamble to Guidelines

Comment. One commenter asked whether the explanatory information in the background section of the final Guidelines may be relied upon, and deemed to have the same force and effect as the Guidelines themselves.

Response. The Fair Housing Accessibility Guidelines are—as the name indicates—only guidelines, not regulations or minimum requirements. The Guidelines consist of recommended design specifications for compliance

with the specific accessibility requirements of the Fair Housing Act. The final Guidelines provide builders with a safe harbor that, short of specifying all of the provisions of the ANSI Standard, illustrate acceptable methods of compliance with the Act. To the extent that the preamble to the Guidelines provide clarification on certain provisions of the Guidelines, or illustrates additional acceptable methods of compliance with the Act's requirements, the preamble may be relied upon as additional guidance. As noted in the "Summary" portion of this document, 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.).

"User Friendly" Guidelines

Comment. A number of commenters criticized the proposed guidelines for being too complicated, too ambiguous, and for requiring reference to a number of different sources. These commenters requested that the final Guidelines be clear, concise and "user friendly". One commenter requested that the final Guidelines use terms that conform to terms used by each of the three major building code organizations: the Building Officials and Code Administrators International, Inc. (BOCA); the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI).

Response. The Department recognizes that the Accessibility Guidelines include several highly technical provisions. In drafting the final Guidelines, the Department has made every effort to explain these provisions as clearly as possible, to use technical and building terms consistent with the terms used by the major building code organizations, to define terms clearly, and to provide additional explanatory information on certain of the provisions of the Guidelines.

2. Section-by-Section Analysis of Final Guidelines

The following presents a section-by-section analysis of the final Guidelines. The text of the final Guidelines is organized into five sections. The first four sections of the Guidelines provide background and explanatory information on the Guidelines. Section 1, the Introduction, describes the purpose, scope and organization of the Guidelines. Section 2 defines relevant terms used. Section 3 reprints the text of 24 CFR 100.205, which implements the Fair Housing Act's accessibility

requirements, and Section 4 describes the application of the Guidelines. Section 5, the final section, presents the design specifications recommended by the Department for meeting the Act's accessibility requirements, as codified in 24 CFR 100.205. Section 5 is subdivided into seven areas, to address each of the seven areas of accessible design required by the Act.

The following section-by-section analysis discusses the comments received on each of the sections of the proposed Option One Guidelines, and the Department's response to these comments. Where no discussion of comments is provided under a section heading, no comments were received on this section.

Section 1. Introduction

Section 1, the Introduction, describes the purpose, scope and organization of the Fair Housing Accessibility Guidelines. This section also clarifies that the accessibility guidelines apply only to the design and construction requirements of 24 CFR 100.205, and do not relieve persons participating in a federal or federally-assisted program or activity from other requirements, such as those required by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157). (The design provisions for those laws are found at 24 CFR Part 8 and 24 CFR Part 40, respectively.) Additionally, section 1 explains that only those sections of the ANSI Standard cited in the Guidelines are required for compliance with the accessibility requirements of the Fair Housing Act. Revisions to section 1 reflect the Department's response to the request of several commenters for further clarification on the purpose and scope of the Guidelines.

Section 2. Definitions

This section incorporates appropriate definitions from § 100.201 of the Department's Fair Housing regulations, and provides additional definitions for terms used in the Guidelines. A number of comments were received on the definitions. Clarifications were made to certain definitions, and additional terms were defined. New terms defined in the final Guidelines include: *adaptable*, *assistive device*, *ground floor*, *loft*, *multistory dwelling unit*, *single-story dwelling unit*, and *story*. The inclusion of new definitions reflects the comments received, and also reflects new terms introduced by changes to certain of the Option One design specifications. In several instances, the clarifications of existing definitions, or the new terms

defined, were derived from definitions of certain terms used by one or more of the major building code organizations. Comments on specific definitions are discussed either below or in that portion of the preamble under the particular section heading of the Guidelines in which these terms appear.

Accessible

Comment. A number of commenters stated that the Department used the terms "accessible" and "adaptable" interchangeably, and requested clarification of the meaning of each. The commenters noted that, under several State building codes, these terms denote different standards for compliance. The commenters requested that if the Department intends these two terms to have the same meaning, this should be clearly stated in the final Guidelines, and, if the terms have different meanings, "adaptable" should also be defined.

Response. The Department's use of the terms "adaptable" and "accessible" in the preamble to the proposed guidelines generally reflected Congress' use of the terms in the text of the Act, and in the House and Senate conference reports. However, to respond to commenters' concerns about the distinctions between these terms, the Department has included a definition of "adaptable dwelling units" to clarify the meaning of this term, within the context of the Fair Housing Act. In the final Guidelines, "adaptable dwelling units", when used with respect to covered multifamily dwellings, means dwelling units that include features of adaptable design specified in 24 CFR 100.205(c) (2)-(3).

The Fair Housing Act refers to design features that include both the minimal "accessibility" features required to be built into the unit, and the "adaptable" feature of reinforcement for bathroom walls for the future installation of grab bars. Accordingly, under the Fair Housing Act, an "adaptable dwelling unit" is one that meets the minimal accessibility requirements specified in the Act (i.e., usable doors, an accessible route, accessible environmental controls, and usable kitchens and bathrooms) and the "adaptable" structural feature of reinforced bathroom walls for later installation of grab bars.

Assistive Device

Comment. Several commenters requested that we define the phrase "assistive device."

Response. "Assistive device" means an aid, tool, or instrument used by a person with disabilities to assist in

activities of daily living. Examples of assistive devices include tongs, knob turners, and oven rack pusher/pullers. A definition for "assistive device" has been included in the final Guidelines.

Bathroom

In response to the concern of several commenters, the Department has revised the definition of "bathroom" in the final Guidelines to clarify that a bathroom includes a "compartmented" bathroom. A compartmented bathroom is one in which the bathroom fixtures are distributed among interconnected rooms. The fact that bathroom facilities may be located in interconnecting rooms does not exempt this type of bathroom from the Act's accessibility requirements. This clarification, and minor editorial changes, were the only revisions made to the definition of "bathroom". Other comments on this term were as follows:

Comment. Several commenters requested that the Department reconsider its definition of "bathroom", to include powder rooms, i.e., rooms with only a toilet and sink. These commenters stated that persons with disabilities should have access to all bathrooms in their homes, not only full bathrooms. One commenter believed that, unless bathroom was redefined to include single- or two-fixture facilities, some developers will remove a bathtub or shower from a proposed second full bathroom to avoid having to make the second bathroom accessible. The commenter suggested that bathroom be redefined to include any room containing at least two of the possible bathroom fixtures (toilet, sink, bathtub or shower).

Response. In defining "bathroom" to include a water closet (toilet), lavatory (sink), and bathtub or shower, the Department has followed standard dictionary usage, as well as Congressional intent. Congressional statements emphasized that the Act's accessibility requirements were expected to have a minimal effect on the size and design of dwelling units. In a full-size bathroom, this can be achieved. To specify space for wheelchair maneuvering in a powder room would, in most cases, require enlarging the room significantly. However, a powder room would be subject to the Act's accessibility requirements if the powder room is the only toilet facility on the accessible level of a covered multistory dwelling unit. Additionally, it should be noted that doors to powder rooms (regardless of the location of the powder room), like all doors within dwelling units, are required by the Act to be wide enough for wheelchair passage. Some

powder rooms may, in fact, be usable by persons in wheelchairs.

Comment. One commenter requested that the final Guidelines provide that a three-quarters bathroom (water closet, lavatory and shower) would not be subject to the accessibility requirements—specifically, the requirement for grab bar reinforcement.

Response. The Fair Housing Act requires reinforcements in bathroom walls to allow for later installation of grab bars at toilet, bathtub or shower, if provided. Accordingly, the Fair Housing regulations specifically require reinforcement in bathroom walls to allow later installation of grab bars around the shower, where showers are provided. (See 24 CFR 100.205(c)(3)(iii).)

Building

Comment. One commenter suggested that the Department use the term "structure" in lieu of "building". The commenter stated that, in the building industry, "building" is defined by exterior walls and fire walls, and that an apartment structure of four units could be subdivided into two separate buildings of two units each by inexpensive construction of a firewall. The commenter suggested that the final definition of "building" include the following language: "For the purpose of the Act, firewall separation does not define buildings."

Response. The term "building" is the term used in the Fair Housing Act. The Department uses this term in the Guidelines to be consistent with the Act. With respect to the comment on firewall separation, the Department believes that, within the context of the Fair Housing Act, the more appropriate place for the language on firewall separation is in the definition of "covered multifamily dwellings". Since many building codes in fact define "building" by exterior walls and firewalls, a definition of "building" in the Fair Housing Accessibility Guidelines that explicitly excludes firewalls as a means of identifying a building would place the Guidelines in conflict with local building codes. Accordingly, to avoid this conflict, the Department has clarified the definition of "covered multifamily dwelling" (which is discussed below) to address the issue of firewall separation.

Covered Multifamily Dwellings

The Department has revised the definition of "covered multifamily dwellings" to clarify that dwelling units within a single structure separated by firewalls do not, for purposes of these Guidelines, constitute separate buildings.

A number of questions and comments were received on what should, or should not, be considered a covered multifamily dwelling. Several of these comments requested clarification concerning "ground floor dwelling units". These comments generally concluded with a request that the Department define "ground floor" and "ground floor unit". The Department has included a definition of "ground floor" in the final Guidelines. The Department believes that this definition is sufficiently clear to identify ground floor units, and that therefore a separate definition for "ground floor unit" is unnecessary. Specific questions concerning ground floor units are discussed below under the heading "Ground Floor". Comments on other covered multifamily dwellings are as follows:

Comment. (Garden apartments) One commenter requested that the Department clarify whether single family attached dwelling units with all living space on one level (i.e. garden units) fall within the definition of covered multifamily dwellings.

Response. The Fair Housing Act and its regulations clearly define "covered multifamily dwellings" as buildings consisting of four or more dwelling units, if such buildings have one or more elevators, and ground floor dwelling units in other buildings consisting of four or more dwelling units. Garden apartments located in an elevator building of four or more units are subject to the Act's requirements. If the garden apartment is on the ground floor of a nonelevator building consisting of four or more apartments, and if all living space is on one level, then the apartment is subject to the Act's requirements (unless the building is exempt on the basis of site impracticality).

Comment. (Townhouses) Several commenters requested clarification concerning whether townhouses are covered multifamily dwellings.

Response. In the preamble to the Fair Housing regulations, the Department addressed this issue. Using an example of a single structure consisting of five two-story townhouses, the Department stated that such a structure is *not* a covered multifamily dwelling if the building does not have an elevator, because the entire dwelling unit is not on the ground floor. Thus, the first floor of a two-story townhouse in the example is not a ground floor unit, because the entire unit is not on the ground floor. In contrast, a structure consisting of five single-story townhouses would be a covered multifamily dwelling. (See 54 FR 3244; 24

CFR Ch. I, Subch. A, App. I at 575-576 (1990).)

Comment. (Units with basements) One commenter asked whether a unit that contains a basement, which provides additional living space, would be viewed as a townhouse, and therefore exempt from the Act's accessibility requirements. The commenter stated that basements are generally designed with the top of the basement, including the basement entrance, above finished grade, and that basement space cannot be made accessible without installation of an elevator or a lengthy ramp.

Response. If the basement is part of the finished living space of a dwelling unit, then the dwelling unit will be treated as a multistory unit, and application of the Act's accessibility requirements will be determined as provided in the Guidelines for Requirement 4. If the basement space is unfinished, then it would not be considered part of the living space of the unit, and the basement would not be subject to the Act's requirements. Attic space would be treated in the same manner.

Dwelling Unit

"Dwelling unit" is defined as a single unit of residence for a household of one or more persons. The definition provides a list of examples of dwelling units in order to clarify the types of units that may be covered by the Fair Housing Act. The examples include condominiums and apartment units in apartment buildings. Several commenters submitted questions on condominiums, and one commenter requested clarification on whether vacation time-sharing units are subject to the Act's requirements. Their specific comments are as follows:

Comment. (Condominiums) A few commenters requested that condominiums be excluded from covered dwelling units because condominiums are comparable to single family homes. The commenter stated that condominiums do not compete in the rental market, but compete in the sale market with single family homes, which are exempt from the Act's requirements.

Response. The Fair Housing Act requires all covered multifamily dwellings for first occupancy after March 13, 1991 to be designed and constructed in accordance with the Act's accessibility requirements. The Act does not distinguish between dwelling units in covered multifamily dwellings that are for sale, and dwelling units that are for rent. Condominium units in covered multifamily dwellings

must comply with the Act's accessibility requirements.

Comment. (Custom-designed condominium units) Two commenters stated that purchasers of condominium units often request their units to be custom designed. The commenters questioned whether custom-designed units must comply with the Act's accessibility requirements. Another commenter stated that the Department should exempt from compliance those condominium units which are pre-sold, but not yet constructed, and for which owners have expressly requested designs that are incompatible with the Act's accessibility requirements.

Response. The fact that a condominium unit is sold before the completion of construction does not exempt a developer from compliance with the Act's accessibility requirements. The Act imposes affirmative duties on builders and developers to design and construct covered multifamily dwellings for first occupancy after March 13, 1991 in accordance with the Act's accessibility requirements. These requirements are mandatory for covered multifamily dwellings for first occupancy after March 13, 1991, regardless of the ownership status of covered individual dwelling units. Thus, to the extent that the pre-sale or post-sale construction included features that are covered by the Act (such as framing for doors in pre-sale "shell" construction), they should be built accordingly.

Comment. (Vacation timeshare units) One commenter questioned whether vacation timeshare units were subject to the Act's requirements. The commenter stated that a timeshare unit may be owned by 2 to 51 individuals, each of whom owns, or has the right to use, the unit for a proportionate period of time equal to his or her ownership.

Response. Vacation timeshare units are subject to the Act's accessibility requirements, when the units are otherwise subject to the accessibility requirements. "Dwelling" is defined in 24 CFR 100.20 as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof". The preamble to the final Fair Housing rule states that the definition of "dwelling" is "broad enough to cover each of the types of dwellings enumerated in the proposed rule: mobile home parks, trailer courts, condominiums, cooperatives, and time-

sharing properties." (Emphasis added.) (See 54 FR 3238, 24 CFR Ch. I, Subch. A, App. I, at 567 (1990).) Accordingly, the fact of vacation timeshare ownership of units in a building does not affect whether the structure is subject to the Act's accessibility requirements.

Entrance

Comment. One commenter requested clarification on whether "entrance" refers to an entry door to a dwelling unit, or an entry door to the building.

Response. As used in the Guidelines, "entrance" refers to an exterior entry door. The definition of "entrance" has been revised in the final Guidelines to clarify this point, and the term "entry" is used instead of "entrance" when referring to the entry into a unit when it is interior to the building.

Ground Floor

As noted above, under the discussion of covered multifamily dwellings, several commenters requested clarification concerning "ground floor" and "ground floor dwelling unit". In response to these comments, the Department has included a definition for "ground floor" in the final Guidelines. The Department has incorporated the definition of "ground floor" found in the Fair Housing regulations (24 CFR 100.201), and has expanded this definition to address specific concerns related to implementation of the Guidelines. In the final Guidelines, "ground floor" is defined as follows:

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

Specific comments concerning ground floor units are as follows:

Comment. (Nonresidential ground floor units) Two commenters advised that, in many urban areas, buildings are constructed without an elevator and with no dwelling units on the ground floor. The ground floor contains either parking, retail shops, restaurants or offices. To bring these buildings into compliance with the Act, one of the commenters recommended that the Department adopt a proposal under consideration by the International Conference of Building Officials (ICBO). The commenter stated that the proposal provides that, in buildings with ground floors occupied by parking and other nonresidential uses, the lowest story containing residential units is considered the ground floor. Another commenter recommended that a

building should be exempt from compliance with the Act's requirements if the ground floor is occupied by a non-residential use (including parking). The commenter stated that if an elevator is to be provided to serve the upper residential floors, then the elevator should also serve the ground floor, and access be provided to all the dwelling units.

Response. The Department believes that the definition of "ground floor unit" incorporated in the final Guidelines addresses the concerns of the commenters.

Comment. (More than one ground floor) One commenter requested guidance on treatment of nonelevator garden apartments (i.e., apartment buildings that generally are built on slopes and contain two stories in the front of the building and three stories in the back). The commenter stated that these buildings arguably may be said to have two ground floors. The commenter requested that the Department clarify that, if a building has more than one ground floor, the developer must make one ground floor accessible—but not both—and the developer may choose which floor to make accessible. Another commenter suggested that, in a garden-type apartment building, the floor served by the primary entrance, and which is located at the parking lot level, is the floor which must be made accessible.

Response. In the preamble to the final Fair Housing rule, the Department addressed the issue of buildings with more than one ground floor. (See 54 FR 3244, 24 CFR Ch. I, Subch. A, App. I at 576 (1990).) The Department stated that if a covered building has more than one floor with a building entrance on an accessible route, then the units on each floor with an accessible building entrance must satisfy the Act's accessibility requirements. (See the discussion of townhouses in nonelevator buildings above.)

Handicap

Comment. Several commenters requested that the Department avoid use of the terms "handicap" and "handicapped persons", and replace them with the terms "disability" and "persons with disabilities".

Response. "Handicap" and "handicapped persons" are the terms used by the Fair Housing Act. These terms are used in Guidelines and regulations to be consistent with the statute.

Principle of Reasonableness and Cost

Comment. Four commenters noted that, in the preamble to the proposed guidelines, the Department indicated

that the Fair Housing Accessibility Guidelines were limited by a "principle of reasonableness and cost". The commenters requested that the Department define this phrase.

Response. In the preamble to the proposed guidelines, the Department stated in relevant part as follows: "These guidelines are intended to provide a safe harbor for compliance with respect to those issues they cover. * * * Where the ANSI Standard is not applicable, the language of the statute itself is the safest guide. The degree of scoping, accessibility, and the like are of course limited by a principle of reasonableness and cost." (55 FR 24371)

In House Report No. 711, the accessibility requirements of the Fair Housing Act were referred to by the Congress as "modest" (House Report at 25), "minimal" and "basic features of adaptability" (House Report at 25). In developing the Fair Housing Accessibility Guidelines, the Department was attentive to the fact that Congress viewed the Act's accessibility requirements as reasonable, and that the Guidelines for these requirements should conform to this "reasonableness" principle—that is, that the Guidelines should provide the level of reasonable accessibility envisioned by Congress, while maintaining the affordability of new multifamily construction. The Department believes that the final Guidelines conform to this principle of reasonableness and cost.

Slope

Comment. One commenter, the Building Officials & Code Administrators International, Inc. (BOCA), requested clarification of the term, "slope". The commenter stated the definition indicates that slope is calculated based on the distance and elevation between two points. The commenter stated that this is adequate when there is a uniform and reasonably consistent change in elevation between point (i.e., one point is at the top of a hill and the other is at the bottom), but the definition does not adequately address land where a valley, gorge, or swale occurs between two points. The commenter stated that the definition also does not adequately address conditions where there is an abrupt change in the rate of slope between the points (i.e. a sharp drop off within a short distance, with the remaining distance being flat or sloped much more gradually).

Response. Slope is measured from ground level at the entrance to all arrival points within 50 feet, and is

considered impractical only when it exceeds 10 percent between the entrance and all these points. Since multifamily dwellings typically have an arrival point fairly close to the building, a significant change such as a sharp drop would likely result in an impractical slope. Minor variations, such as a swale, if more than 5 percent, would be easily graded or ramped; a gorge would be bridged or filled, in any event, if it was on an entrance route.

Usable Door

Comment. One commenter stated that a clear definition of "usable door" is required.

Response. The Guidelines for Requirement 3 (usable doors) fully describe what is meant by "usable door" within the meaning of the Act.

Section 3. Fair Housing Act Design and Construction Requirements

This section reprints § 100.205 (Design and Construction Requirements) from the Department's final rule implementing the Fair Housing Act. A reprint of § 100.205 was included to provide easy reference to (1) the Act's accessibility requirements, as codified by § 100.205; and (2) the additional examples of methods of compliance with the Act's requirements that are presented in this regulation.

Section 4. Application of the Guidelines

This section states that the design specifications that comprise the final Guidelines apply to all "covered multifamily dwellings" as defined in Section 2 of the Guidelines. Section 4 also clarifies that the Guidelines, are "recommended" for designing dwellings that comply with the requirements of the Fair Housing Amendments Act of 1988.

Under the discussion of Section 4 in the proposed guidelines, the Department requested comment on the Act's application to dwelling units with design features such as a loft or sunken living room (55 FR 24377). A number of comments were received on this issue. Since the Act's application to units with such features is relevant within the context of an accessible route into and through a dwelling unit, the comments and the Department's response to these comments are discussed in section 5, under the subheading, "Guidelines for Requirement 4".

Section 5. Guidelines

The Guidelines contained in this Section 5 are organized to follow the sequence of requirements as they are presented in the Fair Housing Act and in the regulation implementing these requirements, 24 CFR 100.205. There are

Guidelines for seven requirements: (1) An accessible entrance on an accessible route; (2) accessible and usable public common use areas; (3) doors usable by a person in a wheelchair; (4) accessible route into and through the covered dwelling unit; (5) light switches, electrical outlets and environmental controls in accessible locations; (6) bathroom walls reinforced for grab bars; and (7) usable kitchens and bathrooms.

For each of these seven requirements, the Department adopted the corresponding Option One guidelines, but changes were made to certain of the Option One design specifications. The following discussion describes the Guidelines for each of the seven requirements, and highlights the changes that have been made.

Guidelines for Requirement 1

The Guidelines for Requirement 1 present guidance on designing an accessible entrance on an accessible route, as required by § 100.205(a), and on determining when an accessible entrance is impractical because of terrain or unusual characteristics of the site.

The Department has adopted the Option One guidelines for Requirement 1, with substantial changes to the specifications for determining site impracticality. These changes, and the guidelines that remain unchanged for Requirement 1 are discussed below.

Site Impracticality Determinations. The Guidelines for Requirement 1 begin by presenting criteria for determining when terrain or unusual site characteristics would make an accessible entrance impractical. Section 100.205(a) recognizes that certain sites may have characteristics that make it impractical to provide an accessible route to a multifamily dwelling. This section states that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site.

Comments. The Department received many comments on the site impracticality specifications presented in the proposed guidelines (55 FR 24377-24378). The majority of the members of the disability community who commented on this issue supported the Option One guidelines, and recommended no change. However, other commenters, including a few disability organizations, members of the building industry, State and local government agencies involved in the development and enforcement of accessibility codes, and some of the

major building code organizations, criticized one or more aspects of the Option One and Option Two guidelines for Requirement 1. Specific comments are noted below.

A few commenters suggested that the 10% slope criterion was too low, and easily will be met by a project site having a hilly terrain which could (and typically would) be made more level. These commenters recommended a higher slope criterion ranging anywhere from 12% to 30%. Other commenters stated that the slope criterion for the planned finished grade should not exceed 8.33%. The Congressional sponsors of the Act (U.S. Representatives Edwards, Fish, and Frank) stated that a limited exemption for slopes greater than 10% "was not contemplated by the Act"; but that they believed the Department has the discretion to develop such an exemption if it is "carefully crafted and narrowly tailored".

Several commenters stated that any evaluation of the undisturbed site should be done only on the percentage of land that is buildable. Several commenters stated that the final Guidelines should not require an evaluation of the undisturbed site between the planned entrance and the arrival points—that the only evaluation of the undisturbed site should be the initial threshold slope analysis.

There were a number of questions on arrival points, and requests that these points be more clearly defined. Several commenters presented specific examples of possible problems with the use of arrival points, as specified in the Option One guidelines. A few commenters stated that the individual building analysis should involve a measurement between the entrance and only one designated vehicular or pedestrian arrival point.

Other commenters stated that single buildings on a site should be subject to the same analysis as multiple buildings on a site.

A number of commenters criticized the Option One site impracticality analysis as being too cumbersome and confusing. A number of commenters objected to Option Two's requirement that covered multifamily dwellings with elevators must comply with the Act's accessibility requirements, regardless of site conditions or terrain.

Response. Following careful consideration of these comments, the Department has revised significantly the procedure for determining site impracticality, and its application to covered multifamily dwellings.

For covered multifamily dwellings with elevators, the final Guidelines would not exempt these dwellings from the Act's accessibility requirements. 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. The Department has excluded elevator buildings from any exemption from the Act's accessibility requirements because the Department believes that the type of site work that is performed in connection with the construction of a high rise elevator building generally results in a finished grade that would make the building accessible. The Department also notes that the majority of elevator buildings are designed with a primary building entrance and a passenger drop-off area which are easily made accessible to individuals with handicaps. Additionally, many elevator buildings have large, relatively level areas adjacent to the building entrances, which are normally provided for moving vans. These factors lead the Department to conclude that site impracticality considerations should not apply to multifamily elevator buildings.

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 topography of the existing natural terrain.

A site with a single building, 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 these sites for which either test is applicable, 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.

The distinctive features of the two tests for determining site impracticality due to terrain, for nonelevator multifamily dwellings, are as follows:

1. *The individual building test.*

a. This test is applicable to all sites.

b. This test eliminates the slope analysis of the entire undisturbed site that was applicable only to multiple building sites, and, concomitantly, the table that specifies the minimum percentage of adaptable units required for every multiple building site. The only analysis for site impracticality will be the individual building analysis. This analysis will be applied to each building regardless of the number of buildings on the site.

c. The individual building analysis has been modified to provide for measurement of the slopes between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance. The analysis further provides that if there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, then measurement will be made of the slope between the planned entrance and the closest vehicular or pedestrian arrival point. Additionally, the final Guidelines clarify how to measure the slope between the planned entrance and an arrival point.

d. The individual building analysis retains the evaluation of both the undisturbed site and the planned finished grade. Buildings would be exempt only if the slopes of both the original undisturbed site and the planned finished grade exceed 10 percent (1) as measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance; or (2) if there are no vehicular or pedestrian arrival points within that 50 foot area, as measured between the planned entrance and the closest vehicular or pedestrian arrival point.

2. *The site analysis test.*

a. This test is only applicable to sites with multiple buildings, or to sites with a single building with multiple entrances.

b. This test involves an analysis of the existing natural terrain (before grading) of the buildable area of the site by topographic survey with 2 foot contour intervals, with slope determination made between each successive contour interval. The accuracy of the slope analysis is to be certified by a professional licensed engineer, landscape architect, architect or surveyor.

c. This test provides that the minimum number of ground floor units to be made accessible on a site must equal the percentage of the total buildable area (excluding floodplains, wetlands, or other restricted use areas) of the undisturbed site that has an existing natural grade of less than 10% slope.

The Department believes that both tests for determining site impracticality due to terrain present enforceable criteria for determining when terrain makes accessibility, as required by the Act, impractical. The Department also believes that by offering a choice of tests, the Department is providing builders and developers with greater flexibility in selecting the approach that is most appropriate, or least burdensome, for their development project, while assuring that accessible units are provided on every site. As noted earlier in this preamble, this policy is consistent with the intent of Congress which was to encourage creativity and flexibility in meeting the Act's requirements, and thus minimize the impact of these requirements on housing affordability.

With respect to determining site impracticality due to unusual characteristics of the site, the test in the final Guidelines is essentially the same as that provided in the Option One guidelines. This test has been modified to limit measurement of the finished grade elevation to that between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance.

Finally, the final Guidelines for Requirement 1 contemplate that the site tests recommended by the Guidelines will be performed, generally, on "normal" soil. The Department solicits additional public comment only on the issue of the feasibility of the site tests on areas that have difficult soil, such as areas where expansive clay or hard granite is prevalent.

Additional specific comments on the site impracticality determination are as follows:

Comment. One commenter stated that the site impracticality determination seems to suggest that only the most direct path from the pedestrian or vehicular arrival points will be used to evaluate the ability to create an accessible route of travel to the building. The commenter stated that it may be possible to use natural or finished contours of the site to provide an accessible route other than a straight-line route.

Response. To be enforceable, the Guidelines must specify where the line is drawn; otherwise it is not possible to

specify what is "practical". Generally, developers provide relatively direct access from the entrance to the pedestrian and vehicular arrival points. If, in fact, the route as built was accessible, then the building would be expected to have an accessible entrance and otherwise comply with the Act.

Comment. Another commenter stated that the site impracticality determination does not take into account the many building types and unit arrangements. The commenter stated that some buildings have a common entrance with unit entrances off a common corridor, while others have individual, exterior entrances to the units. The commenter stated that if the Department is going to permit exemptions from the Act's requirements caused by terrain, the commenter did not understand why every entrance in a building containing individually-accessed apartments must comply with the Act's requirements, simply because they are in one building.

Response. The final Guidelines recognize (as did the proposed guidelines) the difference in building types. If there is a single entry point serving the entire building (or portions thereof), that entry point is considered the "entrance". If each unit has a separate exterior entrance, then each entrance is to be evaluated for the conditions at that entrance. Thus, a building with four entrances, each serving one of four units, might have only one accessible entrance, depending upon site conditions, or it might have any combination up to four.

Comment. Another commenter stated that the evaluation for unusual characteristics of the site only takes into account floodplains or high hazard coastal areas, and excludes other possible unique and unusual site characteristics.

Response. The provision for unusual characteristics of the site clearly provides that floodplains or high hazard coastal areas are only two examples of unusual site characteristics. The provision states that "unusual site characteristics" includes "sites subject to similar requirements of law or code."

Comment. A number of commenters expressed concern that the site impracticality determination of the Guidelines may conflict with local health, safety, environmental or zoning codes. A principal concern of one of the commenters was that the final Guidelines may require "massive grading" of a site in order to achieve compliance with the Act. The commenter was concerned that such grading may conflict with local laws directed at minimizing environmental

damage, or with zoning codes that severely limit substantial fill activities at a site.

Response. The Department believes that the site impracticality determination adopted in these final Guidelines will not conflict with local safety, health, environmental or zoning codes. The final Guidelines provide, as did the proposed guidelines, that the site planning involves consideration of all State and local requirements to which a site is subject, such as "density constraints, tree-save or wetlands ordinances and other factors impacting development choices" (55 FR 24378), and explicitly accept the site plan that results from balancing these and other factors affecting the development. The Guidelines would not require, for example, that a site be graded in violation of a tree-save ordinance. If, however, access is required based on the final site plan, then installation of a ramp for access, rather than grading, could be necessary in some cases so as not to disturb the trees. Where access is required, the method of providing access, whether grading or a ramp, will be decided by the developer, based on local ordinances and codes, and on business or aesthetic factors. It should be noted that these nonmandatory Guidelines do not purport to preempt conflicting State or local laws. However, where a State or local law contradicts a specification in the Guidelines, a builder must seek other reasonable cost-effective means, consistent with local law, to assure the accessibility of his or her units. The accessibility requirements of the Fair Housing Act remain applicable, and State and local laws must be in accord with those requirements.

Additional Design Specifications for Requirement 1. In addition to the site impracticality determinations, the final Guidelines for Requirement 1 specify that an accessible entrance on an accessible route is practical when (1) there is an elevator connecting the parking area with any floor on which dwelling units are located, and (2) an elevated walkway is planned between a building entrance and a vehicular or pedestrian arrival point, and the planned walkway has a slope no greater than 10 percent. The Guidelines also provide that (1) an accessible entrance that complies with ANSI 4.14, and (2) an accessible route that complies with ANSI 4.3, meets with the accessibility requirements of § 100.205(a). Finally, the Guidelines provide that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers, or legal

restrictions, outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route. (These design specifications are unchanged from the proposed Option One guidelines for Requirement 1.)

Comment. Several comments were received on the additional design specifications for Requirement 1. The majority of commenters supported 8.33% as the slope criterion for the finished grade between covered multifamily dwellings and a public or common use facility. A few commenters stated that vehicular access was not an acceptable alternative to pedestrian access. Other commenters stated that the 10% slope criterion for the planned walkway was inconsistent with accessibility requirements that prohibit ramps from having a slope in excess of 8.33%.

Response. With respect to access via a vehicular route, the Department's expectation is that public and common use facilities generally will be on an accessible pedestrian route. The Department, however, recognizes that there may be situations in which an accessible pedestrian route simply is not practical, because of factors beyond the control of the owner. In those situations, vehicular access may be provided. With respect to the 10% slope criterion for planned elevated walkways, this is the criterion for determining whether it is practical to provide an accessible entrance. If the site is determined to be practical, then the slope of the walkway must be reduced to 8.33%.

Guidelines for Requirement 2

The Guidelines for Requirement 2 present design standards that will make public and common use areas readily accessible to and usable by handicapped persons, as required by § 100.205(c)(1).

The Department has adopted the Option One guidelines for Requirement 2, without change. The Guidelines for Requirement 2 identify components of public and common use areas that should be made accessible, reference the section or sections of the ANSI Standard which apply in each case, and describe the appropriate application of the design specifications. In some cases, the Guidelines for Requirement 2 describe variations from the basic ANSI provision that is referenced.

The basic components of public and common use areas covered by the Guidelines include, for example: accessible route(s); protruding objects; ground and floor surface treatments; parking and passenger loading zones;

curb ramps; ramps; stairs; elevator; platform lifts; drinking fountains and water coolers; toilet rooms and bathing facilities, including water closets, toilet rooms and stalls, urinals, lavatories and mirrors, bathtubs, shower stalls, and sinks; seating, tables or work surfaces; places of assembly; common-use spaces and facilities, including swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mailbox areas, lounges, halls and corridors and the like; and laundry rooms.

Specific comments on the Guidelines for Requirement 2 are as follows:

Comment. A number of comments were received on the various components listed in the Guidelines for Requirement 2, and the accessibility specifications for these components provided by both options One and Two. A few commenters, including the Granite State Independent Living Foundation, submitted detailed comments on the design standards for the listed components of public and common use areas, and, in many cases, recommended specifications different than those provided by either Option One or Option Two.

Response. Following careful consideration of the comments submitted on the design specifications of Requirement 2, the Department has decided not to adopt any of the commenters' proposals for change. The Department believes that application of the appropriate ANSI provisions to each of the basic components of public and common use areas, in the manner specified on the Option One chart, and with the limitations and modifications noted, remains the best approach to meeting the requirements of § 100.205(c)(1) for accessible and usable public and common use areas, both because Congress clearly intended that the ANSI Standard be used where appropriate, and because it is consistent with the Department's support for uniform standards to the greatest degree possible.

Comment. Other commenters requested that the ANSI provisions applicable to certain components in public and common use areas also should be applied to these components when they are part of individual dwelling units (for example, floor surface treatments, carpeting, and work surfaces).

Response. To require such application in individual dwelling units would exceed the requirements imposed by the Fair Housing Act. The Fair Housing Act does not require individual dwelling units to be fully accessible and usable by individuals with handicaps. For individual dwelling units, the Act limits

its requirements to specific features of accessible design.

Comment. A number of commenters indicated confusion concerning when the ANSI standard was applicable to stairs.

Response. Stairs are subject to the ANSI Standard only when they are located along an accessible route not served by an elevator. (Accessibility between the levels served by the stairs or steps would, under such circumstances, be provided by some other means such as a ramp or lift located with the stairs or steps.) For example, a ground floor entry might have three steps up to an elevator lobby, with a ramp located besides the steps. The steps in this case should meet the ANSI specification since they will be used by people with particular disabilities for whom steps are more usable than ramps.

In nonelevator buildings, stairs serving levels above or below the ground floor are not required to meet the ANSI standard, unless they are a part of an accessible route providing access to public or common use areas located on these levels. For example, mailboxes serving a covered multifamily dwelling in a nonelevator building might be located down three steps from the ground floor level, with a ramp located beside the steps. The steps in this case would be required to meet the ANSI specifications.

Comment. Other commenters indicated confusion concerning when handrails are required. A few commenters stated that the installation of handrails limits access to lawn areas.

Response. Handrails are required only on ramps that are on routes required to be accessible. Handrails are not required on any on-grade walks with slopes no greater than 5%. Only on those walks that exceed 5% slope, and that are parts of the required accessible route, would handrails be required.

Accordingly, walks from one building containing dwelling units to another, would not be affected even if slopes exceeded 5%, because the Guidelines do not require such walks as part of the accessible route. The Department believes that the benefits provided to persons with mobility impairments by the installation of handrails on required accessible routes outweigh any limitations on access to lawn areas.

Comment. A number of proposals for revisions were submitted on the final Guidelines for parking and passenger loading zones.

Response. The Department has not adopted any of these proposals. The Department has retained the applicable provisions of the ANSI Standard for

parking space. As noted previously in the preamble, the ANSI Standard is a familiar and widely accepted standard. The Department is reluctant to introduce a new or unfamiliar standard, or to specify parking specifications that exceed the minimal accessibility standards of the Act. However, if a local parking code requires greater accessibility features (e.g. wider aisles) with respect to parking and passenger loading zones, the appropriate provisions of the local code would prevail.

Comment. A number of commenters requested that the final Guidelines for parking specify minimum vertical clearance for garage parking. Other commenters suggested that the Department adopt ANSI's vertical height requirement at passenger loading zones as the minimal vertical clearance for garage parking.

Response. No national accessibility standards, including UFAS, require particular vertical clearances in parking garages. The Department did not consider it appropriate to exceed commonly accepted standards by including a minimum vertical clearance in the Fair Housing Accessibility Guidelines, in view of the minimal accessibility requirements of the Fair Housing Act.

Comment. Two commenters stated that parking spaces for condominiums is problematic because the parking spaces are typically deeded in ownership to the unit owner at the time of purchase, and it becomes extremely difficult to arrange for the subsequent provision of accessible parking. One of the commenters recommended that the Guidelines specify that a condominium development have two percent accessible visitor parking, and that these visitor accessible spaces be reassigned to residents with disabilities as needed.

Response. Condominiums subject to the requirements of the Act must provide accessible spaces for two percent of covered units. One approach to the particular situation presented by the commenters would be for condominium documents to include a provision that accessible spaces may be reassigned to residents with disabilities, in exchange for nonaccessible spaces that were initially assigned to units that were later purchased by persons with disabilities.

Comment. Several commenters stated that Option One's requirement of "sufficient accessible facilities" of each type of recreational facility is too vague. The commenters preferred option Two's guidelines on recreational facilities,