

## §9.153

this section is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments. If state or local requirements for alterations require greater action than this paragraph, those requirements shall prevail.

(b) *Other alteration.* (1) Subject to paragraph (c) of this section, alterations to dwelling units in a PDP multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Once two percent of the dwelling units in a project are readily accessible to or usable by individuals with hearing or vision impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph.

(2) Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities, shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with disabilities.

(c) The agency may establish a higher percentage or number of accessible units than that prescribed in paragraphs (a) or (b) of this section if the agency determines that there is a need for a higher percentage or number, based on census data or other available current data. In making such a determination, HUD shall take into account the expected needs of eligible persons with and without disabilities.

(d) The definitions, requirements, and accessibility standards that apply to PDP multifamily housing projects covered by this section are those contained in the UFAS, except where the ADAAG provides for greater accessibility for the type of alteration being

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undertaken, and, in this case, the definitions, requirements and standards of the ADAAG shall apply.

(e) With respect to multifamily housing projects operated by HUD, but in which HUD does not have an ownership interest, alterations under this section need not be made if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

### §9.153 Distribution of accessible dwelling units.

Accessible dwelling units required by §9.152 shall, to the maximum extent feasible, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with disabilities' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same agency conducted program. This provision shall not be construed to require (but does allow) the provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

### §9.154 Occupancy of accessible dwelling units.

(a) The agency shall adopt suitable means to assure that information regarding the availability of accessible units in PDP housing facilities reaches eligible individuals with disabilities, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the agency (or its management agent) before offering such units to an applicant without disabilities shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having disabilities requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a disability requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having disabilities requiring the accessibility features of the unit, the agency may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

#### § 9.155 Housing adjustments.

(a) The agency shall modify its housing policies and practices as they relate to PDP housing facilities to ensure that these policies and practices do not discriminate, on the basis of disability, against a qualified individual with disabilities. The agency may not impose upon individuals with disabilities other policies, such as the prohibition of assistive devices, auxiliary aids, alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with disabilities in any agency conducted housing program or activity in violation of this part. Housing policies that the agency can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

(b) The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

#### § 9.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with disabilities.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries or members of the public by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance