TCAP Questions and Answers:
Section 504 of the Rehabilitation Act of 1973

The following questions and answers are intended to assist TCAP grantees and project owners to understand and comply with the nondiscrimination requirements established by Section 504 of the Rehabilitation Act of 1973 and promulgated at 24 CFR Part 8 with respect to TCAP projects. These questions and answers are not a substitute for reading and understanding the regulations. For further information, please consult HUD's Section 504 webpage.

1. The TCAP Notice states that Section 504 (24 CFR Part 8) requirements apply to TCAP. What is Section 504 and how does it apply to TCAP grantees and funds?

Answer: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based upon disability in all programs or activities operated by recipients of Federal financial assistance, including TCAP grantees and the entities to which they provide TCAP funds.

The Section 504 provisions extend to all aspects of program administration and implementation by TCAP grantees, as well as the actual housing projects that receive TCAP funds. Section 504 and its implementing regulations at 24 CFR Part 8 obligate TCAP grantees, subgrantees and project owners to make their programs accessible to persons with disabilities, including:

- Providing a policy, practice, or rule modification, or an accessible feature in a unit or common area, if needed as an accommodation by an applicant or tenant with a disability, unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden.
- Providing auxiliary aids and services necessary for communication with persons with disabilities;
- Operating housing that is not segregated based upon disability or type of disability unless authorized by Federal statute or executive order or unless necessary to provide as effective housing, aid, benefit, or services as those provided to others; and
- Performing a self-evaluation of their programs and policies to ensure that they do not discriminate based on disability.

In addition, the regulations implementing Section 504 establish physical accessibility requirements when Federal financial (TCAP) assistance is used in

projects involving new construction or rehabilitation of housing. The Part 8 regulations require a minimum percentage of accessible units.

In order for a unit to be considered accessible under Part 8, it must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). The Part 8 accessibility requirements for TCAP grantees are **in addition to** the requirements imposed by the Fair Housing Act for newly constructed multifamily housing.

2. What are the accessibility requirements applicable to TCAP projects and how are they triggered?

Answer: HUD regulations implementing Section 504 (24 CFR Part 8) contain accessibility requirements for new construction and rehabilitation of multifamily housing projects. Part 8 defines "multifamily housing" as a project with five or more dwelling units. A "project" is defined as the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application under TCAP, or are treated as a whole for processing purposes, whether or not located on a common site. In accordance with this definition, five single family units covered by a single contract or a single building with five units each constitute a multifamily housing project.

***Newly Constructed Rental Housing* -** The regulations at 24 CFR 8.22 and 8.32 state that for new construction of multifamily rental projects, a minimum of five percent of the dwelling units in a project (but not fewer than one unit) must be accessible to individuals with mobility impairments in accordance with the Uniform Federal Accessibility Standards (UFAS). UFAS is the standard that applies to facilities that are designed, built, or altered with Federal funds. An additional two percent of the dwelling units (but not fewer than one unit) must be accessible to individuals with hearing or vision impairments.

***Rental Housing with Substantial Alterations* -** The regulations at 24 CFR 8.23(a) state that if alterations are undertaken in a project containing fifteen or more units, and the cost of the alterations is 75 percent or more of the replacement cost of the completed development, then the owner must follow the new construction provisions (of 24 CFR 8.22, described in the preceding paragraph): a minimum of five percent of the units (but not less than one unit) must be made accessible to persons with mobility impairments, in accordance with UFAS. In addition, a minimum of two percent of the units (but not less than one unit) must be made accessible to persons with hearing or visual impairments.

***Rental Housing with Other Alterations* -** The regulations at 24 CFR 8.23(b) apply when alterations are not substantial, as described in the preceding paragraph. Under 24 CFR 8.23(b), alterations to multifamily dwelling units shall,

to the maximum extent feasible, be made readily accessible to and usable by individuals with disabilities. If alterations to single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, then the entire unit must be made accessible. At a minimum, HUD considers alteration of an entire unit to take place when at least all of the following individual elements are replaced:

- Renovation of whole kitchens, or at least replacement of kitchen cabinets;
- Renovation of the bathroom, if at least a bathtub or shower is replaced or added, or a toilet and flooring is replaced; and
- Entrance door jams are replaced.

When the entire unit is not being altered, 100 percent of the single elements being altered must be made accessible. However, HUD strongly encourages a recipient to make the entire unit(s) accessible to and usable by individuals with mobility impairments. Doing so avoids having to make every element altered accessible, which may result in having partially accessible units that are of little or no value for persons with mobility impairments. It is also more likely that the cost of making the units accessible up-front will be less than making each and every element altered accessible. Once five percent (5%) or the higher minimum percentage prescribed by HUD, of the housing units are accessible to and usable by individuals with disabilities, the TCAP grantee no longer has to make additional units or elements of units accessible. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities must also be made to be accessible to and usable by individuals with disabilities, to the maximum extent feasible. All alterations must meet the applicable sections of the UFAS that govern alterations. Further, alterations that require removing or altering load-bearing structural members are not required.

Pursuant to 24 CFR 8.23(b), the TCAP grantee is not required to make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

The 504 accessibility requirements apply in addition to, not in lieu of, the design and construction standard provisions established in the Fair Housing Act for new construction of “covered dwellings.” The HUD regulations implementing these Fair Housing Act requirements can be found at 24 CFR 100.205.

3. Do the Section 504 physical accessibility requirements apply to projects that were already under construction at the time the owner applied for TCAP funds?

Answer: Yes. Any project that is awarded TCAP funds must comply fully with the regulations at 24 CFR Part 8. TCAP funds can be awarded to a project involving new construction (as defined in 24 CFR section 8.22) or substantial alteration (as defined in 24 CFR section 8.23(a)) only if the project can meet the physical accessibility standards established in 24 CFR 8.22. For projects that are undergoing other alterations, as described in 24 CFR 8.23, at the time the project owner applies for TCAP funds, the grantee must determine whether applying the accessibility requirements would impose undue financial and administrative burdens on the operation of the project. The TCAP grantee must document the basis for any such decision.

If you have additional questions after reviewing the applicable laws, regulations and guidance provided in this Question and Answer, please send an email to the TCAP mailbox at TCAP@hud.gov.