

Substantial Equivalency between Federal and State/Local Accessible Housing Codes:

**A discussion of how this can create
barriers to building accessible housing
and best practices to proactively address
this issue**

Statement of Problem

In many communities there is a lack of consistency between state/local accessibility building codes and federal mandates. This lack of consistency can cause confusion regarding mandatory scoping and coverage among the codes as well as the access standards. This makes it questionable whether the minimum number of units for persons with disabilities are being built.

Definition of Federal Substantial Equivalency and Code Certification

- The Department of Housing and Urban Development (HUD) designates Safe Harbors. Safe Harbors are access standards whose provisions are consistent with the design and construction requirements of the Fair Housing Amendments Act of 1988. A Safe Harbor is an access standard that is deemed substantially equivalent by HUD.
- The Department of Justice (DOJ) has the authority to certify that state or local building codes meet or exceed the ADA Standards for Accessible Design Guidelines (ADAAG). This certification means that a code is substantially equivalent to the ADA as determined by DOJ.

Accessibility Design Process

- Determine which local, state and/or federal accessibility mandates are covering the specific project.
- Based on the relevant access codes or standards, determine the minimum number of required accessible units. This would be following the access code or standard that mandated the highest number of units.
- Review in a specification by specification manner which code or standard offers the higher level of accessibility for that particular feature, such as which mandates the widest door width.

		New Construction		
Type of Funding for Multi-family Housing	ADA Title II ADAAG or UFAS	ADA Title III ADAAG	Sec. 504 UFAS	Federal Fair Housing Any of the 10 Safe Harbors
Private Funding Only		Only if the housing has a public accommodation such as a leasing office		X
Some or All Federally Funded		Only if the housing has a public accommodation such as a leasing office	X	X
Some or All State/ Local Government Funded	X	Only if the housing has a public accommodation such as a leasing office		X
State or Federal Tax Credit		Only if the housing has a public accommodation such as a leasing office		X

		Rehabilitation		
Type of Funding for Multi-family Housing	ADA Title II ADAAG or UFAS	ADA Title III ADAAG	Sec. 504 UFAS	Federal Fair Housing Any of the 10 Safe Harbors
Private Funding Only		Only if the housing has a public accommodation such as a leasing office		
Some or All Federally Funded		Only if the housing has a public accommodation such as a leasing office	X	
Some or All State/ Local Government Funded	X	Only if the housing has a public accommodation such as a leasing office		
State or Federal Tax Credit		Only if the housing has a public accommodation such as a leasing office		

What Happens When Local/State Codes
and Federal Access Mandates are Not
Substantially Equivalent

MISTAKES

What Happens When Local/State Codes and Federal Access Mandates are Not Substantially Equivalent

- Less than the minimum number of required accessible units
- Lower levels of accessibility on individual specifications
- Violations under Fair Housing Act, ADA and Sec. 504
- Violations under state/local access building codes

Options

- Adoption of federal access standards in their entirety as state/local code
- Adoption of federal access standards as framework of state/local code with amendments for higher level of accessibility
- Adoption of a model code in its entirety that has been deemed substantially equivalent by HUD and/or DOJ
- Adoption of a model code that has been deemed substantially equivalent by HUD and/or DOJ as framework of state/local code with amendments for higher level of accessibility.
- Adapt state/local code to include those specifications and/or scoping & coverage of the federal standards that offer a higher level of accessibility.

Process

- Form coalition of all concerned parties
 - A. Persons with disabilities
 - B. State/local regulatory authorities
 - C. Code inspection staff
 - D. Disability Advocates
 - E. Architects
 - F. State/local housing funding agencies
 - E. Housing Advocates
 - F. Code specialists
- Maintain priority of improving accessibility not lessening it.
 - A. Develop baseline of accessible specifications that are essential
 - B. Develop level of scoping and coverage that will cover the most numbers of units and types of housing

Process: 2

- Develop work plan including
 - A. Achievable goals
 - B. A flexible and reasonable timeline
 - C. Tasks assigned based on individual coalition member skills and interests
 - D. An end report that includes recommendations on the state/local code but also documents the comparative analysis process

- Do comparative analysis of state/local code to federal access standards
 - A. Analysis can be done by an independent code consultant, state/local code regulatory officials or the coalition itself
 - B. Document the methodology that is used
 - C. Have the analysis done in a way that “like” is compared directly to “like” as much as possible.
 - D. Have the differences clearly delineated
 - E. Prioritize the differences that indicate that the state/local code is less than substantially equivalent with the federal access standards

Process: 3

- After the comparative analysis is done, develop consensus on what major code framework will work best in serving persons with disabilities, developers, architects, contractors and state/local regulatory officials based on the comparative analysis.
- Develop advocacy strategy once consensus is reached on what the coalition wishes to do with the state/local code regulations
- Propose and advocate for the identified regulatory code changes with
 - A. Disability advocacy groups
 - B. Architects, especially the local American Institute of Architects Chapter
 - C. Developers
 - D. State/local code regulatory officials
 - E. State/local housing funding agencies
 - F. State legislators if statutorily necessary
 - G. County or municipal authorities if statutorily necessary
- Propose and advocate for extensive training on regulatory code changes

Recommendations

- Maintain coalition to continue work on promoting accessibility in housing
- Periodically review any changes within the federal access standards for incorporation into state/local code
- Periodically review any changes in the state/local access code to determine if they are substantially equivalent with the federal standards.

Web Site Resources

- Fair Housing Accessibility First
888-341-7781 (voice/tty)
www.fairhousingfirst.org
- United States Access Board
Phone (202) 272-0080 toll free: (800) 872-2253 (voice)
(202) 272-0082 toll free: (800) 993-2822(tty)
(202) 272-0081 (fax)
info@access-board.gov (email)
www.access-board.gov
- Dept. of Housing and Urban Development
<http://www.hud.gov/offices/fheo/index.cfm>
- Dept of Justice
800-514-0301 (voice)
800-514-0383 (tty)
<http://www.ada.gov/>

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