



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: FHEO Headquarters Staff, FHEO Office of Enforcement Staff, FHEO Regional Directors

FROM: Craig W. Trainor, Assistant Secretary for Fair Housing and Equal Opportunity *Craig W. Trainor*

DATE: August 31, 2026

SUBJECT: The Statute of Limitations Under the Fair Housing Act as Applied to Design and Construction Cases

This memorandum concerns the proper understanding of how the statute of limitations applies to administrative claims alleging a violation of the design and construction requirements of the Fair Housing Act.¹ In short, the Act's one-year statute of limitations for administrative complaints alleging design and construction violations in covered multifamily dwellings begins to run upon issuance of the certificate of occupancy. That is because noncompliance with the Act's accessibility requirements is a discrete, rather than continuing, violation of the law.

As a result, effective immediately, the U.S. Department of Housing and Urban Development (HUD or the Department) will treat an alleged violation of 42 U.S.C. § 3604(f)(3)(C) as a distinct discriminatory housing practice that ends when the design and construction of a covered multifamily dwelling is completed. An administrative complaint alleging such a violation must be filed with the Department's Office of Fair Housing and Equal Opportunity (FHEO) within one year of the issuance of the initial certificate of occupancy.

Background

On April 30, 2013, the Department issued a joint statement with the U.S. Department of Justice (DOJ) addressing the Fair Housing Act's design and construction requirements for covered multifamily housing (2013 Joint Statement).² This guidance misinterpreted the statutes of limitations for administrative enforcement and private actions under the Act. Accordingly, on August 13, 2026, HUD and DOJ jointly

¹ The Fair Housing Act and the Fair Housing Amendments Act are codified at 42 U.S.C. §§ 3601-3619.

² U.S. Dep't of Hous. & Urb. Dev. & U.S. Dep't of Just., Joint Statement on Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act, <https://www.justice.gov/crt/media/1457641/dl?inline> (last modified Aug. 13, 2026) [hereinafter 2013 Joint Statement of HUD and DOJ].

rescinded the inconsistent portions of the 2013 Joint Statement related to the limitations period.³

Statutory Framework

The Fair Housing Amendments Act of 1988 (FHAA) added handicap as a protected characteristic under the Fair Housing Act, making discrimination because of a disability unlawful in different housing contexts.⁴ Discrimination because of a disability includes failing to “design and construct” “covered multifamily dwellings,” built after March 13, 1991, with certain accessible features.⁵ Covered multifamily dwellings include all units in buildings with an elevator and four or more residential units, as well as all ground floor units in buildings without an elevator and four or more units.⁶ According to a HUD Secretarial Order issued in 2006, any deviations from the Department’s accessibility guidelines are presumed to render the dwelling inaccessible to disabled persons.⁷

The Fair Housing Act cabins fair housing enforcement, including its design and construction requirements, within a statute of limitations. Statutes of limitations require complaints to be filed, if at all, in a timely manner.⁸ In the design and construction context, limitations periods are especially important because developers sell properties, relinquish control over those properties, and lose the ability to control changes in the condition of the buildings after construction.

When the FHAA added handicap and familial status as protected characteristics, it extended the statute of limitations for fair housing claims. Previously, administrative and private fair housing complaints had to be filed “within one hundred and eighty days after the alleged discriminatory housing practice occurred.”⁹

The FHAA, however, changed this rule to provide a one-year statute of limitations for administrative enforcement: “An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice.”¹⁰

³ *Id.* at 28-29.

⁴ 42 U.S.C. § 3604(f)(1)-(3).

⁵ *Id.* § 3604(f)(3)(C).

⁶ *Id.* § 3604(f)(7).

⁷ *U.S. Dep’t of Hous. & Urb. Dev.. v. Nelson*, HUD ALJ 05-068FH, 2006 WL 4573902, *5 (Sept. 21, 2006).

⁸ Statutes of limitations in civil matters vindicate several critical interests, including reducing uncertainty for defendants, minimizing evidence deterioration, ensuring plaintiffs and defendants are on equal footing, promoting diligence in enforcing claims, encouraging prompt enforcement of substantive law, avoiding retrospective application of current standards, and reducing litigation volume. Andrew J. Wistrich, *Procrastination, Deadlines, and Statutes of Limitations*, 50 Wm. & Mary L. Rev. 607, 616-17 (2008).

⁹ The Fair Housing Act, Pub. L. 90-284, §§ 810, 812, 82 Stat. 73, 86, 88 (1968).

¹⁰ 42 U.S.C. § 3610(a)(1)(A)(i).

For private enforcement, the FHAA provides a two-year statute of limitations: “An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice ... to obtain appropriate relief[.]”¹¹ The computation of the limitations period for private actions “shall not include any time during which an administrative” complaint is being processed.¹²

Prior Guidance on Timely Design and Construction Complaints

In the 2013 Joint Statement on design and construction accessibility requirements, HUD stated “that the Act is violated, and the one- or two-year statute of limitations begins to run, when an ‘aggrieved person’ *is injured* as a result of the failure to design and construct housing to be accessible as required by the Act.”¹³ In support of this claim, the 2013 Joint Statement’s cited the statutory definition of “aggrieved person” at 42 U.S.C. § 3602(i), which can include “testers.”¹⁴ In a sweeping declaration, the guidance claimed that such an injury may occur “at any time until the violation is corrected.”¹⁵

That unbounded theory of liability reflected HUD’s view that failing to design and construct a building with accessible features is a continuing violation of the Fair Housing Act until remedied. The Department applied this theory to its administrative enforcement posture, holding that “complaints could be filed at any time that the building continues to be in noncompliance, because the discriminatory housing practice—failure to design and construct the building in compliance—does not terminate.”¹⁶ In other words, HUD considered failures in accessible design and construction to be a violation that does not terminate “until the building is brought into compliance with the Act.”¹⁷

This theory swallowed the Act’s statute of limitations whole, rendering Congress’s judgment on when these claims become time-barred “inoperative or superfluous, void or insignificant.”¹⁸ That result cannot be squared with the Act. Nor is it the role of

¹¹ *Id.* § 3613(a)(1)(A).

¹² *Id.* § 3613(a)(1)(B).

¹³ 2013 Joint Statement of HUD and DOJ at 28 (emphasis added).

¹⁴ Under the Fair Housing Act, testers “are individuals who, without an intent to rent or purchase a home or apartment,” attempt to collect evidence of discrimination. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). *See also Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 23 (2023) (Thomas, J., concurring in the judgment) (discussing Americans with Disabilities Act “tester” who “scours the internet for hotel websites” that are noncompliant and “has filed over 600 lawsuits”).

¹⁵ Joint Statement of HUD and DOJ at 28.

¹⁶ *Fair Housing Act Design Manual* 22 (last modified Apr. 1998).

¹⁷ 2013 Joint Statement of HUD and DOJ at 28.

¹⁸ *Corley v. United States*, 556 U.S. 303, 314 (2009) (observing that “one of the most basic interpretive canons” is “that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void, or insignificant”) (cleaned up).

this Department to “second-guess Congress’ decision” on when these claims become untimely.¹⁹

Judicial Interpretation of the Statute of Limitations

The 2013 Joint Statement itself refutes any claim that its view represented a reasoned consensus, conceding that “some courts have had differing views” and that “not all courts have agreed with these interpretations.”²⁰ Indeed, it acknowledges that the U.S. Court of Appeals for the Ninth Circuit held “that the Act’s statute of limitations for individual [design and construction] complaints begins to run upon the completion of the covered dwelling.”²¹ And yet the guidance makes no attempt to explain why the Ninth Circuit’s interpretation is flawed.

Critically, the only two federal appellate courts to address the limitations period for design and construction claims rejected HUD’s continuing violation theory. These decisions are reason alone to bury the proposition that design and construction claims remain viable until the violation is remediated. Where these courts diverged, however, is on the accrual date for the statute of limitations.

In an *en banc* decision, the Ninth Circuit determined that 42 U.S.C. 3604(f)(3)(C) prohibits the practice of designing and constructing an inaccessible building, and that this act “terminates” when the construction phase is completed.²² The issuance of a certificate of occupancy establishes the completion of construction for a covered dwelling.²³

In an unpublished opinion, the U.S. Court of Appeals for the Sixth Circuit determined that the discriminatory act is completed when the allegedly noncompliant unit is sold or rented.²⁴ In reliance upon 42 U.S.C. § 3604(f)(1), the Sixth Circuit reasoned that the Act “focuses on housing discrimination in the sale or rental of housing units.”²⁵

In the Department’s view, the Ninth Circuit’s analysis is correct. The Fair Housing Act creates discriminatory housing practices beyond discrimination in the sale or rental of a dwelling: refusing reasonable modifications, refusing reasonable accommodations, and failing to design and construct a dwelling to be accessible.²⁶

¹⁹ *Rotkiske v. Klemm*, 589 U.S. 8, 14-15 (2019) (“The length of a limitations period reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones. It is Congress, not this Court, that balances those interests. We simply enforce the value judgments made by Congress.”) (cleaned up).

²⁰ 2013 Joint Statement of HUD and DOJ at 28.

²¹ *Id.*

²² *Garcia v. Brockway*, 526 F.3d 456, 462 (9th Cir. 2008) (en banc).

²³ *Id.*

²⁴ *Fair Hous. Council, Inc. v. Vill. of Olde St. Andrews, Inc.*, 210 Fed. Appx. 469, 480 (6th Cir. 2006).

²⁵ *Id.*

²⁶ 42 U.S.C. § 3604(f)(3)(A)-(B).

Just as a violation of the reasonable modification or accommodation provision occurs when a qualifying request is denied, a violation of the design and construction requirement occurs when the covered multifamily dwelling is built in an inaccessible manner. The Ninth Circuit outlines the better approach, and HUD adopts it accordingly.²⁷

Updated Guidance on Timely Design and Construction Complaints

The Fair Housing Act's limitations period begins when the "alleged discriminatory housing practice has occurred or terminated."²⁸ With this language, Congress "created a limitations period that begins with the defendant's action instead of the plaintiff's injury."²⁹ The word "terminate" codifies "the concept of continuing violations, under which the statute of limitations is measured from the last occurrence of the unlawful practice."³⁰ "[I]n connection with the design and construction of covered multifamily dwellings," a "failure to design and construct" consists of acts during the design and construction phase.³¹

Simply put, the existence of a building with inaccessible features is not itself a continuing practice under the Act. Instead, 42 U.S.C. § 3604(f)(3)(C) defines the unlawful practice of designing and constructing an inaccessible dwelling, and that practice terminates when construction is completed.

Indeed, in prior litigation, the Department implicitly recognized that any discriminatory practice under 42 U.S.C. § 3604(f)(3)(C) terminates upon completion of construction.³² It took the position that the FHAA's required accessible features must "be in place at the time of construction," and that a builder's ability "to quickly modify buildings to include those features when necessary or requested" is insufficient to satisfy its initial statutory duty.³³

²⁷ In *Loper Bright Enterprises v. Raimondo*, the Supreme Court clarified "the unremarkable, yet elemental proposition reflected in judicial practice dating back to *Marbury*" that "courts decide legal questions by applying their own judgement," even in agency cases. 603 U.S. 369, 391-92 (2024). Nevertheless, an agency's "expertise has always been one of the factors which give an Executive Branch interpretation particular power to persuade, if lacking power to control." *Id.* at 402 (cleaned up).

²⁸ 42 U.S.C. § 3610(a)(1)(A)(i); *id.* § 3613(a)(1)(A) (Private fair housing suits brought "later than two years after the occurrence or the termination of an alleged discriminatory housing practice" are time-barred.)

²⁹ *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 812 (2024).

³⁰ *Nat'l Fair Hous. All. v. A.G. Spanos Const., Inc.*, 542 F. Supp. 2d 1054, 1062 (N.D. Cal. 2008) (internal quotation marks and citation omitted). *See also Moseke v. Miller and Smith, Inc.*, 202 F. Supp. 2d 492 (E.D. Va. 2002) (existence of inaccessible features is an ongoing effect of a past violation of designing and constructing noncompliant buildings, not a continuing violation); *Sentell v. RPM Mgmt. Co., Inc.*, 653 F. Supp. 2d 917, 921-22 (E.D. Ark. 2009) (same).

³¹ 42 U.S.C. § 3604(f)(3)(C).

³² *United States v. Mid-America Apt. Cmtys.*, 247 F. Supp. 3d 30, 37 (D.D.C. 2017).

³³ *Id.*

Against the weight of these authorities, and to harmonize HUD’s guidance with “the unremarkable, yet elemental proposition” that “courts decide legal questions,”³⁴ the Department’s position is that a design and construction violation occurs during the construction of the unit and terminates upon certification of the unit for occupancy.

As a result, effective immediately, administrative complaints alleging design and construction violations must be filed with FHEO within one year after the allegedly unlawful design and construction practice terminates. That occurs upon completion of construction, as evidenced by the issuance of the certificate of occupancy for the covered dwelling. The continued existence of an inaccessible feature does not restart or extend the limitations period because the failure to design and construct a covered multifamily dwelling consistent with the Fair Housing Act is a discrete, rather than continuing, violation.³⁵

The Department’s prior guidance concerning when to file administrative or private fair housing complaints alleging design and construction violations, including any contrary guidance in HUD’s Design Manual, is superseded and has no further force or effect.³⁶

Implications for Current Owners and Operators

HUD’s prior position that the statute of limitations did not apply to “continuing” design and construction violations placed substantial burdens on subsequent innocent owners. Under this misguided approach, the Department withheld financing from owners that lacked any involvement in a property’s original design or construction unless they agreed to undertake costly modifications or retrofits to add accessibility features. This requirement applied regardless of whether any resident requested those features and even forced owners to impose modifications over the objections of current residents.

That is a remarkable proposition: owners who did not design the property, build the property, or violate the law were nevertheless required to remedy the alleged design and construction violation. The Department’s theory thus turned the Fair Housing

³⁴ *Loper Bright*, 603 U.S. at 391.

³⁵ Timely acts forming part of an alleged pattern or practice may permit consideration of related conduct that would otherwise fall outside of the applicable limitations period. This guidance clarifies that the existence of inaccessible features in a completed building does not transform a discrete design and construction violation into a continuing one.

³⁶ Although courts will interpret the statute of limitations for themselves, private actions and administrative enforcement both depend on when the discriminatory practice occurred or terminated. The Department supports a clear, predictable, and reasonable limitations period for private actions challenging alleged violations of the Act’s design and construction requirements: two years from the issuance of the covered dwelling’s initial certificate of occupancy.

Act on its head by transforming a statute designed to prevent discrimination into a vehicle for imposing liability on owners who neither caused nor contributed to alleged violations.

The Fair Housing Act requires “designers and builders to adhere to certain standards of accessibility,” but it does not “impose[] an ongoing duty on subsequent owners to ensure that a dwelling conforms to those standards.”³⁷ Nothing in the Act holds innocent owners of covered multifamily dwellings liable because third parties failed to comply with HUD accessibility guidelines during the property’s original construction.

Conclusion

The 2013 Joint Statement dramatically expanded the scope of the Fair Housing Act by declaring that deviations from HUD’s accessibility guidelines, at the point of initial construction, gave rise to strict liability against the builder in perpetuity.

That interpretation was egregiously wrong. It exceeded the Department’s statutory authority, failed to increase the supply of accessible housing for individuals with disabilities, and imposed an unwarranted and unduly prejudicial burden on American homebuilders.

The Department must faithfully enforce the law as enacted by Congress.³⁸ Consistent with that obligation, HUD will apply the proper statute of limitations to administrative complaints. This guidance neither addresses nor alters the timeframe within which the U.S. Attorney General may bring actions against builders for violations of the Fair Housing Act’s design and construction requirements.³⁹

³⁷ *Harding v. Orlando Apartments, LLC*, 748 F.3d 1128, 1131 (11th Cir. 2014).

³⁸ *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 327 (2014) (“Under our system of government, Congress makes laws and the President, acting at times through agencies ... faithfully executes them.”) (cleaned up).

³⁹ 42 U.S.C. § 3614(a).