

### §41.3

any other Department Official to whom authority has been delegated.

#### §41.3 Assurance and declaration required.

(a) Each Assistant Secretary shall, as a condition for approval of any contract or application for assistance under a program imposing standards and/or requirements for accessibility which are subject to this part, require an assurance of compliance with those standards and requirements. Such assurance shall be in a form acceptable to the Secretary.

(b) For each project covered under this part, except a project subject to Departmental examinations and inspections as set forth in §41.5(a), the responsible Assistant Secretary shall require a declaration as to project drawings, specifications, and other construction documents. The declaration shall be signed by the licensed, or registered, architect or engineer, or by such other responsible official as designated by HUD, who has prepared such construction documents. The declaration shall affirm that the proposed project, to the best knowledge and belief of the declarer, conforms to applicable accessibility design standards and requirements. The declaration statement shall be in a form acceptable to the Secretary.

#### §41.4 Waiver or modification of standards.

(a) The applicability of standards and requirements for accessibility by the physically handicapped may be waived or modified on a case-by-case basis upon a written request from a recipient of a Departmental grant or loan or from a Departmental agency leasing a building or facility.

(b) For residential buildings or facilities, a waiver or modification may be granted only by the Secretary.

(c) Upon the recommendation of an Assistant Secretary, a waiver or modification for nonresidential buildings or facilities may be granted only by the Administrator, General Services Administration.

(d) No request for a waiver or modification shall be recommended for approval by an Assistant Secretary or ap-

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proved by the Secretary unless the following criteria obtain:

(1) The granting of the waiver or modification is based upon findings of fact, and is not inconsistent with the provisions of the Architectural Barriers Act, and

(2) Application of the requirement or standard would adversely affect the purposes of the Departmental program under which the loan or grant is being provided or for which the building or facility is being leased.

(e) Requests for a waiver or modification shall be submitted to the appropriate Assistant Secretary for review. Each request shall include:

(1) The name and address of the requestor.

(2) The name and location of the involved building or facility.

(3) Any applicable plans, drawings, specifications or other descriptions of the building or facility.

(4) The standard provision or requirement from which the requestor seeks a waiver or modification.

(5) A description of the building or facility as to its accessibility for the physically handicapped and how the waiving or modification of a standard or requirement would affect that accessibility.

(6) A statement of the facts which establish that the criteria of paragraph (d) of this section would be satisfied.

(7) A description of the steps taken, or to be taken, to comply with standards and requirements for which a waiver or modification is not being requested.

(8) Such other information as the requestor or the responsible Assistant Secretary deems appropriate or necessary.

(f) If the responsible Assistant Secretary finds that the criteria of paragraph (d) of this section are satisfied, then he or she shall submit the request along with his or her recommendations to the Secretary for action or for referral to the Administrator, General Services Administration for action. In reviewing request for waiver and modifications, the Secretary shall assure consistent Department policy regarding the removal of architectural barriers and accessibility by physically handicapped persons.

(g) All waivers and modifications granted pursuant to this part shall have only future effect on; and are limited to cases for which the request is made.

#### §41.5 Achieving compliance.

(a) *Examinations and inspections.* If, for any project, an Assistant Secretary requires Departmental architectural and engineering examinations of drawings and specifications or other construction documents or requires Departmental architectural and engineering inspections during or upon completion of construction, those examinations and inspections shall include a determination of compliance with standards and requirements for accessibility referenced in this part.

(b) *Periodic compliance reviews.* The Secretary, in consultation with the appropriate Assistant Secretary, shall conduct surveys and investigations as deemed appropriate to achieve compliance with standards or requirements subject to this part.

(c) *Complaints.* Any interested person who has reason to believe that there has been noncompliance with standards or requirements subject to this part, may, by himself or herself, or by a representative, file a written complaint with the responsible Department Official or with the Architectural and Transportation Barriers Compliance Board, Washington, DC 20201.

(d) *Investigations.* The Secretary shall, after consultation with the appropriate Assistant Secretary, make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with standards or requirements subject to this part. The investigation should include a determination of the authority under which the standards or requirements were imposed and, where appropriate, a review of the records kept pursuant to 24 CFR 40.6; the circumstances under which the building of facility was designed, constructed or altered; and other factors relevant to a determination as to whether there has been non-compliance with this part.

(e) *Resolution of matters.* (1) If any examination, inspection, periodic compliance review, complaint, or investiga-

tion pursuant to this section indicates a failure to comply with the applicable standards or requirements, the Secretary shall attempt to gain voluntary compliance whenever possible.

(2) If it has been determined that voluntary compliance cannot be achieved, the Secretary shall refer the matter to the appropriate Assistant Secretary for action pursuant to his or her program authority regarding the residential structure or other building or facility under investigation, to achieve compliance with the requirements subject to this part. The Assistant Secretary shall report to the Secretary within 30 days of the date of such referral regarding the action taken and the schedule and means of achieving compliance, except that the Secretary may specify a shorter or longer reporting period, as deemed appropriate.

(f) *Disposition of unresolved complaints.* Unresolved complaints shall be referred to the Architectural and Transportation Barriers Compliance Board to be processed in accordance with 36 CFR part 1150. A complaint shall be deemed unresolved if it is not resolved within 90 days of the date of the filing of the complaint with the Department.

(g) *Compliance action by other individuals.* Individuals other than the Secretary may receive complaints and undertake other appropriate actions to achieve compliance with requirements subject to this part, so long as initial notification of such complaints or proposed actions is given both to the Secretary and the appropriate Assistant Secretary.

#### §41.6 Matters involving the Architectural and Transportation Barriers Compliance Board.

(a) *Complaints.* With respect to any complaint referred to the responsible Department Official by the Architectural and Transportation Barriers Compliance Board (A&TBCB), the procedures set forth in this part shall apply. In such a case, the Secretary shall coordinate all investigations and/or other compliance actions to assure that the Department resolves any architectural barriers deficiencies so as to respond to the A&TBCB within its required 60-day period set forth at 36