HUD 223(f) Fair Housing Accessibility Repairs: *Going Away?*

Tracking HUD's 2026 Shift on Fair Housing Act Design and Construction Repairs

This paper traces how HUD came to require accessibility repairs on post-1991 properties as a condition of a 223(f) loan, what changed in 2026, and what has not. We will update it as HUD issues guidance.

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STATUS AS OF NOVEMBER 10, 2026

HUD's fair housing office has changed how it applies the statute of limitations to design and construction complaints, and HUD's Office of Housing has indicated that it will review case-by-case waivers of related repairs on 223(f) loans. A Mortgagee Letter has not been published. We will update this page as more guidance is issued.

In summary. For decades, HUD treated a Fair Housing Act design and construction violation as a continuing violation until the building was fixed, and the MAP Guide required post-1991 properties with accessibility deficiencies to be repaired as a condition of a 223(f) loan. The Act has always set a one-year limit for complaints filed with HUD and a two-year limit for lawsuits, but under the continuing-violation view those clocks never started while the deficiency remained. In August 2026, HUD's Office of Fair Housing and Equal Opportunity (FHEO) reversed that view for administrative complaints, treating the violation as occurring once and ending at the initial certificate of occupancy. HUD's Office of Housing is now considering lender waivers of those repairs on individual 223(f) transactions while a Mortgagee Letter is in process. The accessibility standards themselves are unchanged, and the shift does not apply to new construction or to properties whose last certificate of occupancy was issued within the past two years.

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BACKGROUND

1988: The Requirements and the *Limitation Periods*

The Fair Housing Amendments Act of 1988 added accessibility requirements for "covered multifamily dwellings" built for first occupancy after March 13, 1991 (42 U.S.C. § 3604(f)(3)(C), implemented at 24 CFR 100.205). In a building with an elevator and four or more units, every unit is covered. In a building without an elevator and four or more units, the ground-floor units are covered.

The Act sets two limitation periods. An administrative complaint filed with HUD must be filed within one year after the alleged discriminatory housing practice "occurred or terminated" (§ 3610), and a private lawsuit must be filed within two years (§ 3613). For a design and construction claim, the discriminatory housing practice is the failure to design and build the property to the Act's standards. The disagreement over the last three decades has been about when that failure happens: once, when the building is finished, or again every day the inaccessible feature remains in place.

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HISTORY

The *Continuing-Violation* Position

For most of that period, HUD's answer was that the violation restarted every day it existed. Under the continuing-violation view, a design and construction violation wasn't complete when the building was finished. It continued for as long as the inaccessible feature remained, so the one- and two-year clocks didn't start until the feature was fixed. The revised Fair Housing Act Design Manual (1998) took that position. The courts, however, did not all agree: in *Garcia v. Brockway* (2008), the Ninth Circuit, sitting en banc, held that the violation ends when construction is completed.

The 2013 HUD/DOJ Joint Statement put the continuing-violation position in writing jointly with the Department of Justice. It stated that the limitation period began when an aggrieved person was injured by the inaccessible feature, which meant a building completed in 1995 could still produce a timely complaint in 2025. The Joint Statement became HUD's reference point on design and construction compliance, and the MAP Guide points lenders to it for that guidance (Appendix 5, Section A.5.2.3.3). It is also the document HUD and DOJ partially rescinded in 2026.

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HUD 223(F)

How It Played Out on *223(f) Loans*

The MAP Guide carried HUD's view into the FHA mortgage underwriting rules. Section 3.7.6 of the MAP Guide requires any property available for first occupancy after March 13, 1991 that doesn't comply with the design and construction requirements to be repaired. The Needs Assessor identifies the deficiencies in the CNA, the remedies are treated as critical repairs, and HUD may allow them to be completed after endorsement with a 120% escrow funded at closing. The requirement did not go away even if the current owner of the project did not build the project and had no hand in designing the accessibility features.

That meant the 223(f)'s repair scope on older post-1991 projects could be large: regrading routes to ground-floor entries, rebuilding thresholds and door hardware, relocating controls, and reconfiguring kitchens and bathrooms.

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2026

2026 *Developments*

DATE	DEVELOPMENT
Aug 13, 2026	HUD and DOJ rescind the statute-of-limitations answer in the 2013 Joint Statement.
Aug 31, 2026	FHEO memo treats design and construction violations as discrete, running from the initial certificate of occupancy.
Nov 2026	HUD's Office of Housing begins considering transaction-by-transaction waivers of design and construction repairs on 223(f) loans.
Pending	Mortgagee Letter from the Office of Housing.

August 2026: The FHEO Memo

On August 13, 2026, HUD and DOJ jointly rescinded the statute-of-limitations answer in the 2013 Joint Statement. Then on August 31, 2026, Craig W. Trainor, HUD's Assistant Secretary for Fair Housing and Equal Opportunity, issued a memo to FHEO staff titled "The Statute of Limitations Under the Fair Housing Act as Applied to Design and Construction Cases."

The memo treats a design and construction violation as a discrete act. It occurs once, when construction is complete, as evidenced by the initial certificate of occupancy, and so any administrative complaint must be filed with FHEO within one year of that date. The memo argues that an inaccessible feature that remains in place doesn't restart the clock. For private lawsuits, HUD supports measuring the two-year period from the same date, though courts decide that for themselves.

The memo gives two reasons for the change. The first is how federal courts have read the statute: the only two federal appellate courts to address the question rejected the continuing-violation theory. The second reason is the effect on later owners. The memo states that HUD withheld financing from subsequent owners unless they agreed to retrofits, including owners with no role in the original design or construction. It cites the Eleventh Circuit's decision in *Harding v. Orlando Apartments* (2014) for the point that the Act doesn't impose an ongoing design and construction duty on later owners.

The memo's reach, however, is limited since it only formally governs how FHEO processes administrative complaints. It doesn't change the accessibility standards themselves, doesn't bind courts, and doesn't address DOJ actions under § 3614. On its own it also didn't change FHA multifamily underwriting, because the CNA repair requirement sits in the MAP Guide, which belongs to HUD's Office of Housing. We covered the memo, and the need for guidance from HUD's Office of Housing before anything permanently changed on HUD loans, in the Q3 2026 issue of The HUD Quarterly.

November 2026: Interim 223(f) Waivers

In early November 2026, HUD's Office of Housing informed the industry that it will begin considering lender waiver requests for Fair Housing Act repairs on Section 223(f) transactions. They want requests to be made one transaction at a time, where the lender submits a waiver request on form HUD-2 to the regional office and cites the FHEO memo as the basis.

As we understand it, to be eligible for the waiver, the property's last certificate of occupancy must have been issued at least two years ago. That corresponds with the two-year private lawsuit window rather than FHEO's one-year administrative window. On a multi-building property, the last certificate of occupancy is the date that matters.

In HUD's temporary guidance, they still want the CNA to identify every design and construction deficiency, just as it did before. But the waiver would allow those deficiencies to be entered with a $0 cost amount. Meaning the deficiencies will stay documented in the record but the requirement to fund and complete the repair is waived.

Note that each request is approved at HUD's discretion. We expect requests that meet the criteria to be approved, but until the Mortgagee Letter is published no approval is guaranteed, and the criteria could change when the letter is issued.

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STILL IN PLACE

What Has *Not Changed*

The interim waivers remove one condition of FHA mortgage insurance on one program. The rest of the accessibility framework at the property is still in place.

REQUIREMENT OR EXPOSURE	EFFECT OF THE 223(F) REPAIR WAIVER
Reasonable accommodations and reasonable modifications	Unchanged. The owner must still grant qualifying tenant requests during operations.
Section 504 of the Rehabilitation Act (federally assisted properties)	Unaffected.
Americans with Disabilities Act (leasing offices and other public accommodations)	Unaffected.
State and local accessibility codes; LIHTC QAP accessibility requirements	Unaffected.
DOJ pattern-or-practice actions (42 U.S.C. § 3614)	Unaffected. The FHEO memo expressly does not address them.
Private lawsuits under § 3613	Courts decide when the two-year period begins.
Section 232 healthcare	Requires its own guidance and approvals.
Section 221(d)(4) new construction and substantial rehabilitation	Not covered. The design and construction requirements apply in full.

Properties that are or ever were federally assisted, including Section 8 and PBRA properties, carry Section 504 obligations that are similar to the Fair Housing Act's but distinct from them, and HUD's new waiver guidance doesn't include them. And LIHTC properties may face accessibility requirements under the state's Qualified Allocation Plan. Reasonable accommodations and modifications were never part of the CNA; the MAP Guide treats them as separate from accessibility deficiencies identified in a CNA (Appendix 5, Section A.5.2.2), and thus an owner's duty to grant a qualifying tenant request during operations is unchanged.

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OUTLOOK

What We're *Watching For*

The Mortgagee Letter. The interim waivers are a bridge to formal guidance from the Office of Housing. The letter should settle the open implementation questions: how deals already in process are handled, how phased properties are treated, and whether any similar relief extends beyond 223(f). We'll update this page when it is published.

Legal challenges. Challenges to the FHEO memo are expected, and the memo's reading of the private lawsuit period depends on how courts rule. A future administration could also reverse either the memo or the waiver policy.

The effect on deals. If the policy holds, the effect on post-1991 properties could be large. Accessibility items entered at $0 drop out of the critical repair total and the 120% escrow sized from it. Properties that previously went to Fannie Mae or Freddie Mac because of an accessibility retrofit cost may be worth comparing again.

The waivers remove a financing condition. They don't remove legal exposure to DOJ enforcement, to private lawsuits in courts that haven't adopted the discrete-violation reading, or to state and local requirements. This paper isn't legal advice, and owners should talk with fair housing counsel about their own exposure on a specific property, particularly outside FHA financing.

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FREQUENTLY ASKED

Common Questions About *HUD 223(f) Accessibility Repairs*

Does HUD still require accessibility repairs on a 223(f) refinance?

MAP Guide Section 3.7.6 still formally requires post-1991 properties that don't meet the Fair Housing Act design and construction requirements to be retrofitted as a condition of insurance. As of November 2026, however, HUD has indicated that it is considering waivers of those repairs on individual 223(f) transactions.

What is the statute of limitations for Fair Housing Act design and construction claims?

The Act allows one year for an administrative complaint filed with HUD and two years for a private lawsuit. Under HUD's August 31, 2026 FHEO memo, HUD measures the one-year period from the issuance of the initial certificate of occupancy. HUD supports measuring the two-year private lawsuit period the same way, but courts decide that question for themselves.

What did HUD’s August 2026 FHEO memo change?

It changed how FHEO applies the one-year limit to administrative design and construction complaints, treating the violation as occurring once and ending at the initial certificate of occupancy rather than continuing until the building is fixed. It didn’t change the accessibility standards, bind courts, or address DOJ enforcement.

Which properties may qualify for a 223(f) accessibility repair waiver?

Under the interim approach, properties being refinanced or acquired under Section 223(f) whose last certificate of occupancy was issued at least two years ago. Each request is approved at HUD’s discretion, and the criteria may change when the Mortgagee Letter is published.

Does this apply to 221(d)(4) new construction loans?

No. The design and construction requirements apply in full to new construction and substantial rehabilitation under 221(d)(4). The interim waivers are limited to 223f refinances and acquisitions of existing properties.

Does the waiver eliminate fair housing liability?

No. A waiver removes a condition of FHA mortgage insurance. It doesn’t affect DOJ pattern-or-practice actions, private lawsuits where courts haven’t adopted the discrete-violation reading, Section 504, reasonable accommodation obligations, or state and local accessibility codes. Owners should consult fair housing counsel about their own exposure.

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HUD/FHA Multifamily Origination

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