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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4554-N-01]

FINAL REPORT OF HUD REVIEW OF MODEL BUILDING CODES

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Final report.

**SUMMARY:** The United States Department of Housing and Urban Development (HUD or the Department) issues a policy statement and Final Report of HUD Review of Model Building Codes (Final Report) that identifies the variances between the design and construction requirements of the Fair Housing Act (the Act) and the:

BOCA National Building Code (BNBC), Building Officials and

Code Administrators International (BOCA) 1996 edition;

Uniform Building Code (UBC), International Conference of

Building Officials (ICBO) 1997 edition;

Standard Building Code (SBC), Southern Building Code

Congress International (SBCCI) 1997 edition; and

International Building Code First Draft (IBC), International

Code Council (ICC) November 1997; Proposed

International Building Code 2000, International Code

Council (IBC-2000) Chapters 10 and 11, Appendix to Chapter 11, and Section 3407 (1999).

This Final Report also contains guidance on the Department's policy concerning the relationship between the requirements of the Act and its standards.

The U.S. House of Representatives Committee on Appropriations directed HUD to complete its review of a matrix that summarized the provisions of the four model codes and to issue a policy statement by December 31, 1999. H.R. Rep. No. 286, 106th Cong., 1st Sess. 34 (1999). This Final Report is intended to meet that Congressional mandate. This Final Report additionally is intended to provide technical assistance to other interested parties on this issue. The Department has not and does not intend to promulgate any new technical requirements or standards by way of this Final Report. The Department does not intend this Final Report to be considered an endorsement of any model building code.

The Department does not wish to suggest through the issuance of this report that it is shifting its responsibility to enforce the design and construction requirements of the Act to any model code organization or to state and local building officials.

However, the Department recognizes that one important way to increase compliance with the design and construction requirements of the Act is to incorporate those requirements into state and local building codes.

This Final Report is divided into chapters as follows:

Chapter 1.....Introduction and Response to Public Comments

Chapter 2.....Policy Statement

Chapter 3.....IBC Analysis

Chapter 4.....UBC Analysis

Chapter 5.....SBC Analysis

Chapter 6.....BOCA Analysis

**FOR FURTHER INFORMATION CONTACT:** Ms. Cheryl Kent, Director, Program Compliance and Disability Rights Support Division, 451 Seventh Street, SW, Room 5240, Washington, DC 20410-0500, telephone (202) 708-2333, extension 7058. (This telephone number is not toll-free.) Hearing or speech-impaired individuals also may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

This Final Report and the policy statement are also located at [www.hud.gov/fhe/modelcodes](http://www.hud.gov/fhe/modelcodes). The Fair Housing Act, as amended in 1988, the regulations implementing the Act, and the Fair

Housing Accessibility Guidelines can also be obtained through links provided at this web site. You may view the matrix or the updated matrix, or the chapters of the codes that the Department reviewed; or purchase copies of CABO/ANSI A117.1-1992 and ICC/ANSI A117.1-1998, at [www.intlcode.org/fairhousing](http://www.intlcode.org/fairhousing). ANSI A117.1-1986 is **only** available for purchase from Global Engineering Documents, 15 Inverness Way

East, Englewood, Colorado 90112. However, copies of the 1986, 1992 and 1998 editions of ANSI A117.1 may be viewed at the HUD headquarters library at 451 Seventh Street, SW, Washington, DC 20410 and at HUD Fair Housing Offices in the following locations:

Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Fort Worth, Texas; Kansas City, Kansas; Denver, Colorado; San Francisco, California; and Seattle, Washington.

Copies of all of the relevant documents, including the ICC/ANSI A117.1-1998, the ANSI A117.1-1986, and the CABO/ANSI A117.1-1992 are also available for viewing at the HUD Library at 451 Seventh St., SW, Washington, DC 20410. To gain admission to the HUD Library you must present identification to the security guards and ask to visit the library. Photocopying in the HUD library is limited to 40 pages and all of the documents, with the exception of the HUD produced documents, are copyrighted and, therefore, not available for photocopying.

Dated: March 14, 2000

Eva M. Plaza

Assistant Secretary for Fair Housing  
and Equal Opportunity

## CHAPTER 1: INTRODUCTION AND RESPONSE TO PUBLIC COMMENTS<sup>1</sup>

### BACKGROUND

Title VIII of the Civil Rights Act (the Fair Housing Act), 42 U.S.C. § 3601 et seq., prohibits discrimination in housing and housing related transactions based on race, color, religion, national origin, and sex. In 1988, Congress extended the protections of the Act to families with children and persons with disabilities. 42 U.S.C. § 3604. (The Act refers to people with "handicaps." Subsequently, in the Americans with Disabilities Act of 1990 and other legislation, Congress adopted the term "persons with disabilities," or "disability," which is the preferred usage. Accordingly, this Final Report hereinafter uses the terms "persons with disabilities," "disability" or "disabled.") In response to the serious lack of accessible housing in the United States, Congress provided that all covered multifamily dwellings built for first occupancy after March 13, 1991, must include certain basic features of accessible and adaptive design. 42 U.S.C. § 3604(f)(3)(C).

These basic accessibility requirements are known as the Act's design and construction requirements. One of the underlying concepts of the design and construction requirements is the creation of housing that is accessible for persons with disabilities but that does not necessarily appear to be different from conventional housing.

The Act mandates that all covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed so that: (1) the public and common use portions of such dwellings are readily accessible to and usable by persons with disabilities; (2) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and (3) all premises within such dwellings contain the following features of adaptive design: (a)

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<sup>1</sup> In this document, citation for the United States Code is U.S.C.; the citation for the Code of Federal Regulations is CFR; and the citation for Federal Register publication is FR.

an accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C).

The Act's design and construction requirements apply to "covered multifamily dwellings," which means "buildings consisting of 4 or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of 4 or more units." 42 U.S.C. § 3604(f)(7). The Act's design and construction requirements apply to all covered multifamily dwellings built for first occupancy after March 13, 1991. The Act's design and construction requirements do not apply to alterations or renovations to multifamily dwelling units or to single family detached houses.

The Act does not set forth specific technical design criteria that have to be followed in order to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly referred to as ANSI A117.1, satisfies the Act's design and construction requirements for the interiors of dwelling units. 42 U.S.C. § 3604(f)(4).

The Act states that Congress did not intend the Department to require states and units of local government to include the Act's accessibility requirements in their state and local procedures for the review and approval of newly constructed covered multifamily dwellings. 42 U.S.C. § 3604(f)(5)(C).

However, Congress authorized the Department to encourage the inclusion of these requirements into their procedures. Id.

The Act also makes it clear that it does not invalidate or limit any other state or federal laws that require dwellings to be designed or

constructed in a manner that affords persons with disabilities greater access than that required under the Act. 42 U.S.C. § 3604(f)(8). Further, federally funded facilities and dwelling units covered by section 504 of the Rehabilitation Act of 1973 (Section 504), the Architectural Barriers Act (ABA), or, where applicable, the Americans with Disabilities Act (ADA), must also comply with their respective regulatory requirements, including the Uniform Federal Accessibility Standard (UFAS). For Section 504, these regulatory requirements may be found at 24 CFR part 8; for the ABA, 24 CFR part 40; and for the ADA, 28 CFR parts 35 and/or 36, as applicable.

In 1989, the Department issued its regulations implementing the design and construction requirements of the Act. 24 CFR 100.205. In the regulations, the Department specifically stated that compliance with the appropriate requirements of ANSI A117.1-1986 satisfies the requirements of the Act relating to interiors of dwelling units. 24 CFR 100.205(e).

Congress directed the Secretary of HUD to "provide technical assistance to states and units of local government and other persons to implement [the design and construction requirements]." 42 U.S.C. § 3604(f)(5)(C). To this end, on March 6, 1991, the Department published the "Final Fair Housing Accessibility Guidelines," (the Guidelines) at 56 FR 9472-9515. The Guidelines set forth specific technical guidance for designing covered multifamily dwellings to be consistent with the Fair Housing Act.

Section I of the Guidelines states:

These guidelines are not mandatory, nor do they prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. These guidelines are intended to provide a safe

harbor for compliance with the accessibility requirements of the Fair Housing Act.

56 FR at 9499.

On June 24, 1994, the Department published its "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines," at 59 FR 33362-33368 (the Questions and Answers About the Guidelines). The Department published a Fair Housing Act Design Manual (Design Manual) in 1996 that was reissued in 1998 with minor changes.

In 1992, the Department was contacted by the Council of American Building Officials (CABO) and model building code organizations. CABO advised the Department of its interest in drafting building code language that would reflect the design and construction requirements of the Act, and asked the Department to provide technical assistance to its Board for Coordination of Model Codes (BCMC). The Department recognized that incorporation of building code requirements that are consistent with the Act's requirements would provide increased compliance. Therefore, in support of this effort, the Department agreed to provide technical assistance to BCMC and the building industry organizations during 1992 and 1993. Subsequently, the model building code organizations incorporated the results of their efforts into the model building codes.

The American National Standards Institute (ANSI) is responsible for establishing technical standards in many different areas. Among the standards addressed by the ANSI, through the A117 Committee, are technical standards for the design of housing and facilities that are accessible to persons with disabilities. BCMC recommended that the ANSI A117 Committee set up a Residential Task Force to develop technical criteria to address the Act's accessibility requirements. The Department is a member of the ANSI A117 Committee and served on the Residential Task Force. The focus of the ANSI Residential Task Force was to develop technical criteria to address the accessibility requirements for dwelling units that are covered by the Act.

This effort was completed and included in the ICC/ANSI A117.1-1998. (The reference to ICC, International Code Council, reflects an organizational change in the ANSI only.) Because prior to 1998, ANSI A117.1 already included technical criteria for fully accessible dwelling units, the 1998 ICC/ANSI A117.1 refers to fully accessible dwelling units as "Type A dwelling units." Section 1003 of ICC/ANSI A117.1-1998 contains the technical criteria for "Type B dwelling units," which are intended to reflect the technical requirements for dwelling units required by the Act to be accessible.

In 1997, CABO, three model building code organizations, and several building industry organizations contacted the Department to discuss, among other items, the importance of assuring that the design and construction requirements of the Act were accurately reflected in the three model building codes and in the draft International Building Code (IBC), which was scheduled for completion in 2000. The Department met with representatives of these groups along with representatives of disability advocacy organizations and indicated its willingness to review the model building codes for consistency with the requirements of the Act, the regulations, and the Guidelines, and then convene a public meeting at a later date to share the results of that review.

In December 1997, CABO submitted to the Department a matrix that compared four model building codes to the Act's design and construction requirements. In the fall of 1998, the Department awarded a contract to Steven Winter Associates, Inc. (SWA) to analyze the matrix and the model building codes and to identify those sections of the codes that did not meet the requirements of the Act, regulations, and the Guidelines. The Department also requested that SWA provide recommendations on how each identified variance could be revised to conform with the Act, the regulations, and the Guidelines.

The original matrix focused on the 1997 First Draft of the IBC. Because the IBC had progressed to a proposed IBC 2000 in 1999, the International Code

Council (ICC) asked the Department to include in its review, to the greatest extent possible, the proposed IBC 2000. The Department also was asked to review the new 1999 edition of the National Building Code published by BOCA. The Department agreed to undertake a limited review of the proposed IBC 2000, but due to time constraints, was unable to review the 1999 BOCA National Building Code. To facilitate review of portions of the proposed IBC 2000, BOCA prepared an update to the matrix that compared the Guidelines with the First Draft IBC and the proposed IBC 2000. In addition, the Department was provided with copies of Chapters 10 and 11, Appendix to Chapter 11, Section 3407, and Appendix 34-2 of the proposed IBC 2000.

The Department formed a Model Code Working Group (Working Group) to work with its contractor, SWA, on the review of the model building codes. The Working Group consisted of staff from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U. S. Department of Justice (DOJ) also participated in the Working Group.

On October 26, 1999, the Department published a draft policy statement and draft report of four model building codes which identified the variances between these codes and the Act's design and construction requirements (the draft report). On November 10, 1999, the Department convened a public meeting to listen to comments on the draft report. Ten persons, many representing consolidated comments from various groups, presented oral comments at the public meeting. The Department also solicited and received written comments.

The Department received 30 public comments, representing input from many organizations and individuals. Almost all of those who submitted comments focused on the draft report's discussion of the proposed IBC 2000.

Those who submitted comments included Acanthus Architecture and Planning PC (Arizona), the American Institute of Architects (AIA), the American Seniors Housing Association, the Arizona Center for Disability Law, the Bazelon Center for Mental Health Law, Paul Bishop (California architect), the Boston Office

of Civil Rights, the Building Officials and Code Administrators International (BOCA), the Colorado Civil Rights Division, the Consortium of Citizens with Disabilities, the Disability Rights Action Coalition for Housing, the Disability Rights Action Committee, Disability Rights Inc., the Eastern Paralyzed Veterans Association (EPVA), Larry Field (Delaware accessibility consultant and codes enforcement expert), the International Code Council (ICC), the International Conference of Building Officials (ICBO), the Kansas Disability Rights Action Coalition for Housing, Marsha Mazz with the United States Access Board, Bruce McKarley (California building code official), the Monroe County Legal Assistance Corporation (Rochester, New York), the National Apartment Association (NAA), the National Association of Home Builders (NAHB), the National Fair Housing Alliance, the National Multi Housing Council (NMHC), the New Mexico Governor's Committee on Concerns of the Handicapped, the Paralyzed Veterans of America (PVA), Larry Perry (AIA), the Rochester Center for Independent Living, Emory Rodgers (an Arlington, Virginia building code official), the Southern Building Code Congress International (SBCCI), the Topeka Independent Living Resource Center, Wheelchair Access Now Today, Bill Wright (Oklahoma architect), and Leslie Young with the Center for Universal Design at NC State University.

The AIA, the BOCA International, the ICC, the ICBO, the NMHC, and Larry Perry, Architect, AIA, submitted one set of consolidated comments and later submitted specific recommended code language to address variances that the Department had identified in the draft report. The Department met with this group and others, including the NAHB and EPVA, to discuss the recommendations.

In addition, HUD staff members had telephone conversations with some of the commenters in order to obtain clarification of their comments or solicit their technical knowledge of the issues raised in their comments.

#### **GENERAL COMMENTS ON THE DRAFT REPORT**

##### **DIALOGUE WITH CODE ORGANIZATIONS**

Comments:

The overwhelming majority of the commenters praised or endorsed HUD's efforts to provide technical assistance to the model building code organizations to help ensure that the model codes meet the accessibility requirements of the Act. A number of commenters strongly urged HUD to continue to maintain a dialogue with the model code organizations to ensure that future updates to the International Building Code are consistent with the Act's accessibility requirements. Some commenters cautioned that no loopholes should weaken the scoping or technical requirements of the Act.

Response:

The Department agrees with these comments and intends to be actively engaged in development of future editions of ANSI A117.1 through its participation on the ANSI A117 Committee. The Department also is available for consultation in the development of future editions of the International Building Code. In this Final Report, the Department recommends code language that may be used by model code organizations and states and localities that wish to modify their codes to be consistent with the Act. However, the Department believes that its recommendations are a continuing step in the dialogue needed to achieve consistency between the model codes, particularly the International Building Code, and the Act's design and construction requirements.

**CABO/ANSI A117.1-1992 AND ICC/ANSI A117.1-1998 AS SAFE HARBORS**

Comments:

Many commenters commended the Department for recognizing ANSI A117.1-1998 as a safe harbor under the Fair Housing Act. Several commenters stated that ICC/ANSI A117.1-1998 is the basis for the accessibility provisions in the model codes and that in their view, HUD's acceptance of ANSI A117.1-1998 as a safe harbor resolves many of the concerns of the multifamily housing industry.

One commenter also urged the Department to accept future editions of the ANSI A117.1 standard as being a safe harbor for complying with the Fair Housing Act.

As new editions of ANSI A117.1 have been developed, various organizations have encouraged HUD to acknowledge that compliance with those new editions constitutes safe harbors for compliance with the Act. For example, in 1998, one commenter wrote to HUD that:

"The ANSI standard has been revised...and a 1998 version is about to be published. It is logical to rely on the latest version of a standard, unless a statute specifically refers to a particular edition. In addition, there are sound policy reasons to rely on the latest version of the ANSI standard, since it reflects improvements in accessible design. Since the Fair Housing Act does not refer to a particular edition of the ANSI standard, it would be reasonable for the [HUD Design] Manual and the Guidelines to specifically permit the use of the current 1998 ANSI standard. The 1998 ANSI standard is currently used by local code officials around the country. Therefore, we urge HUD to clarify that the most recent version of ANSI meets the requirements of the Fair Housing Act."

Response:

In response to the many commenters who have encouraged the Department to adopt the ICC/ANSI A117.1-1998, the Department will soon be publishing an interim rule, amending certain sections of 24 CFR 100.200 to state that compliance with the appropriate requirements of the 1986, 1992, or 1998 editions of ANSI A117.1 suffices to satisfy the Act's design and construction requirements for the interiors of dwellings and public and common use areas. Compliance with these versions of ANSI A117.1, the Guidelines, or the Design Manual are all safe harbors under the Act.

The Act explicitly states that compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the Act's design and construction requirements for the interiors of dwellings. 42 U.S.C. § 3604(f)(4). However, Congress did not intend to limit the ways to comply with the requirements of the Act to the ANSI A117.1 standard. Congress specified

the ANSI A117.1 standard in the Act in order to assure designers of new multifamily housing that if they follow the ANSI standard, they will have met the Act's adaptive design requirements. Congress also noted that its reference to ANSI was not intended to require "that designers follow this standard exclusively, for there may be other local or state standards with which compliance is required or there may be other creative methods of meeting these standards." H.R. Rep. No. 711, 100<sup>th</sup> Cong., 2d Sess., p.27. (1988).

In 1989, the Department issued its regulations implementing the design and construction requirements of the Act. 24 CFR 100.205. At the time Congress passed the Act, and the Department promulgated its regulations, the current edition of ANSI A117.1 was the 1986 edition. In response to concerns that an "open ended" reference to the ANSI standard constituted an unlawful delegation of the Department's rulemaking authority, the Department identified the 1986 ANSI A117.1 edition in its final rule implementing the Fair Housing Act, and stated its intent to review and, if appropriate, to adopt future editions as they were published.

It is important to note that ANSI A117.1 contains only technical criteria, whereas the Fair Housing Act, the implementing regulations, and the Accessibility Guidelines contain both "scoping" and technical criteria. Scoping criteria define when a building element or space must be accessible; technical criteria provide the technical specifications on how to make an element accessible. Thus, designers and builders who wish to follow ANSI A117.1 instead of the Accessibility Guidelines must still look to the Act and the Department's regulations to determine which buildings, dwelling units, and elements are covered by the Act.

#### **TYPE A UNITS**

##### Comment:

A commenter stated that the HUD draft report does not point out that Type A units in ICC/ANSI A117.1-1998 exceed the Fair Housing Act Accessibility Guidelines and urged HUD to clarify that Type A units are not required under

the Act.

Response:

Since 1980, ANSI A117.1 has included technical criteria for fully accessible dwelling units. At the time the Act was passed, the only ANSI A117.1 standard for residential design were standards for a fully accessible dwelling unit. The ICC/ANSI A117.1-1998 now references two types of dwelling units, a "Type A dwelling unit," which is intended to be a fully accessible dwelling unit as has been traditionally provided for in ANSI A117.1, and a "Type B dwelling unit," which is intended to meet the Act's technical requirements for the interiors of dwellings.

The Department agrees that the Act does not require that private developers build new construction to the Type A standard, although a Type A unit will satisfy the Fair Housing Act requirements. Congress specifically recognized this when it stated that compliance with the appropriate requirements of ANSI A117.1 suffices as compliance with the Act.

**TYPE B UNITS**

Comment:

One commenter disagreed with the draft report's conclusion that the ICC/ANSI A117.1-1998 standard is consistent with the Act's requirements. This commenter stated that there are numerous requirements in the ICC/ANSI A117.1 standard for Type B units that go beyond Fair Housing Act requirements, although Type B units are supposed to reflect the Fair Housing Act accessibility requirements. The commenter proffered that the draft report should have made an explicit comparison between the Act's requirements and Type B requirements in ICC/ANSI A117.1. This commenter subsequently submitted a list of eight areas where this commenter believes the requirements in the IBC exceed those in the Guidelines. These eight areas are: (1) the definition, scoping and requirements for Type A dwelling units; (2) location of accessible routes; (3) requirements for a minimum number of accessible entrances; (4) technical provisions for security and intercom controls and

exceptions for redundant controls; (5) requirements for laundry equipment within dwelling units; (6) exceptions for provisions for bath facilities; and (7) dwelling units with accessible communication features; and (8) exceptions to provisions for "lavatory."

Response:

The Department will take the commenter's concerns under advisement and will work with this commenter and other interested organizations to review these areas of concern. In addition, the Department will continue to work with members of the Committee in the development and refinement of the ANSI A117.1 criteria. The Department will provide technical assistance to state and local governments that are considering adopting, either completely or with modification, model codes or other provisions in their building codes in order to reflect the requirements of the Act.

Further, the Department pledges to work with the model code organizations as they review and revise the International Building Code. The ICC plans to issue a "stand-alone" document containing the accessibility requirements found in the IBC 2000, incorporating its responses to the Department's recommendations in this Final Report. This "stand alone" document will contain the IBC provisions that meet or exceed the design and construction requirements of the Fair Housing Act. The ICC and the National Association of Homebuilders (NAHB) are working on an appendix to the "stand alone" document to address the eight areas where they agree that the Type B dwelling unit exceeds the Fair Housing Accessibility Guidelines. The Department has agreed to review those documents and is committed to working with those organizations and others to arrive at a document in code language to serve as a safe harbor under the Fair Housing Act Amendments for persons who design and construct multifamily dwellings to its specifications.

By way of further explanation with respect to the Department's draft report, the purpose of the Department's review was to identify any instances where the technical criteria in the later versions of ANSI A117.1 did not

provide the same level of accessibility as described in the Guidelines, the 1986 ANSI A117.1, or as mandated by the Act. The Department found no such instances where a difference in the technical criteria was inconsistent with the requirements of the Act.

The Act does not require that developers of covered multifamily housing build according to the ANSI A117.1 standard or to its Type B dwelling unit design criteria. Compliance with the ICC/ANSI A117.1 for Type B dwelling units is one of several ways to comply with the Act. As stated above, the Fair Housing Act's accessibility requirements can be achieved in a number of ways. However, a developer would be required to comply with a state or local code or law to which they are otherwise subject, that has adopted either a model code or accessibility standard that includes the Type B dwelling unit.

The Act recognized that many states and localities, as well as certain other federal laws, already had established stricter accessibility requirements than those provided for under the Act. The Act states that it shall not be construed to invalidate or limit any law that requires dwellings to be designed and constructed in a manner that affords persons with disabilities greater access than is required under the Act. 42 U.S.C. § 3604(f)(8). To the extent that states and localities adopt ANSI A117.1 standards that go beyond the Act's minimum standards, the Department is without authority or desire to invalidate or limit this adoption.

The Accredited Standards Committee on Architectural Features and Site Design of Public Buildings and Residential Structures for Persons With Handicaps (A117) developed the A117.1 ANSI standards in 1986, 1992, and 1998.

That Committee included this Department as well as other federal agencies, building and housing industry representatives, building code organizations, disability advocacy organizations, and many of the commenters on HUD's draft report. The American National Standards Institute which adopted the standards submitted by the Committee, requires that due process and consensus be met by the Committee. The ANSI Board of Standards Review considers that consensus

has been met when "substantial agreement has been reached by directly and materially affected interests." Consensus means more than a simple majority but does not necessarily require unanimity, and requires that all points of view be heard.

**RELATIONSHIP BETWEEN THE ACT'S REQUIREMENTS AND OTHER ACCESSIBILITY REQUIREMENTS AND STANDARDS**

This Final Report addresses only the application of the requirements of the Act to covered multifamily dwellings. Certain of these dwellings, as well as certain public and common use areas of such dwellings, may also be covered by various other laws, such as the Architectural Barriers Act of 1968, 42 U.S.C. § 4151-4157 (the ABA); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504); and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101-12213 (the ADA).

The ABA applies to certain buildings financed in whole or in part with federal funds. The Department's regulations for the ABA are found at 24 CFR parts 40 and 41. Section 504 applies to programs and activities receiving federal financial assistance, and programs and activities conducted by Executive agencies, including the Department. The Department's regulations for Section 504 are found at 24 CFR parts 8 and 9. The Fair Housing Act accessibility requirements apply to both private housing and to government-funded housing, including federally funded housing, which is also subject to the accessibility requirements of Section 504. HUD funded housing must be designed and constructed to meet the scoping and technical requirements of both the Fair Housing Act and Section 504, and in certain instances, the ABA.

The ADA is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. The Department of Justice (DOJ) is the lead federal agency for implementation of the ADA. HUD does not have the authority to review the model building code standards for compliance with the ADA.

Comments:

A number of commenters expressed concern that the draft report included within the coverage of the Act types of occupancies and uses that are also covered under the ADA. They urged the Department to make it clear that the Act does not preempt any of the accessibility requirements of the ADA. One commenter requested that HUD coordinate with DOJ with respect to the Act and ADA accessibility standards as they apply to public and common use areas.

One commenter requested that the Department encourage architects and builders to follow design and construction concepts incorporated in standards for "universal design" of accessible housing.

Response:

Although the Department's team which reviewed the model building codes included staff from DOJ, the focus of the review was the Fair Housing Act. In addition, as stated above, the Department does not have authority to review the model building codes for compliance with the ADA.

Title II of the ADA applies to housing that is designed and constructed by a state or local governmental entity (including a public housing authority). Because most government-constructed housing is constructed with federal funds, in the majority of circumstances, there will be overlapping coverage of that housing under the Act, Title II, and Section 504. In some cases a state or local government may develop housing without the use of federal funding. In those cases, the requirements of the Act and Title II of the ADA, but not Section 504, would apply to the housing.

Title III of the ADA, in relevant part, applies to commercial facilities and public accommodations. Inns, hotels, motels, and other places of lodging are public accommodations under Title III of the ADA, as are dormitories, homeless shelters, nursing homes, and some timeshares. See 28 CFR 36.104. In addition, the common areas for public use at "covered multifamily dwellings" under the Act must meet the ADA Standards for Accessible Design (ADA Standards). A rental office in a multifamily residential development, a

convenience store located in that development, or a room in a home that is used as a day care center or medical office, would be covered under Title III of the ADA. 28 CFR 36.104. Common use areas that are for use only by the residents and their guests would not be covered by the ADA.

The Department recognizes that the Act's design and construction requirements do not preempt the ADA and wishes to clarify that in those cases where a development is subject to more than one accessibility standard, the laws and the standards must be read together and followed together.

There are certain properties, or portions thereof, that are covered by both the Act and Title II and/or Title III of the ADA. These may include certain timeshares, dormitories, residential hotels, boarding houses, nursing homes, homeless shelters, congregate care facilities, public use portions of private multifamily dwellings, and public housing. These properties must be designed and built in accordance with the accessibility requirements of both the Act and the ADA. In addition, to the extent that the requirements of these various laws overlap, the more stringent requirements of each law must be met, in terms of both scoping and technical requirements.

In the preamble to its rule implementing Title III, DOJ discussed the relationship between the requirements of the Fair Housing Act and the ADA. The preamble noted that many facilities are mixed use facilities. For example, a hotel may allow both residential and short term stays. In that case, both the ADA and the Fair Housing Act may apply to the facility. The preamble to the Title III rule also stated that residential hotels, commonly known as "single room occupancies," may fall under the Fair Housing Act when operated or used as long term residences, but they are also considered "places of lodging" under the ADA when guests are free to use them on a short term basis. The preamble also discussed a similar analysis with respect to homeless shelters, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. The preamble concluded that such facilities should be analyzed separately under both the

Fair Housing Act and the ADA. 56 FR at 3551-52.

#### **ENFORCEMENT OF THE FAIR HOUSING ACT**

##### Comments:

Many of the commenters specifically urged HUD to continue to vigorously enforce the Act's accessibility requirements. Several other commenters made clear that they see incorporation of the Act's requirements into the codes as a supplement to the enforcement methods currently available under the Act, not as a replacement for that enforcement. One commenter, a local building code official, stated that by adoption of codes that include the requirements of the Act, state and local jurisdictions will be assisting HUD in its enforcement efforts. Finally, several of the commenters indicated that once the Act's requirements are incorporated into a building code, the permitting and inspection process should not create a safe harbor for builders who receive permits, nor should it absolve housing industry professionals from their responsibilities under the Act.

##### Response:

The Act is clear that while state and local building code officials are responsible for enforcing the building code standards adopted in their respective jurisdictions, 42 U.S.C. § 3604 (f)(5)(B); 24 CFR 100.205(g), the Department is responsible for enforcing the design and construction requirements of the Act. 42 U.S.C. §§ 3604(f)(6)(A), 3610. If a jurisdiction adopts a model building code that HUD has determined conforms with the design and construction requirements of the Act, then covered residential buildings that are constructed in accordance with plans and specifications approved during the building permitting process will be in compliance with the requirements of the Act, unless the building code official has waived one or more of those requirements, or the building code official has incorrectly interpreted or applied the building code provisions.

However, the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, or that construction of a

residential building was approved under a code, does not change the Department's statutory responsibility to conduct an investigation based on receipt of a complaint from an aggrieved person to determine whether the requirements of the Act have been met. 42 U.S.C. § 3604(f)(6)(A); 24 CFR 100.205(h). Section 804 of the Act provides that "determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title." 42 U.S.C. § 3604(f)(6)(B). A full discussion of the Department's enforcement responsibilities may be found in the Department's policy statement connected with this Final Report.

#### **CERTIFICATION OF CODES**

##### Comments:

Two commenters recommended that HUD consider certifying state and local building codes as meeting the accessibility requirements of the Fair Housing Act.

##### Response:

There are over 40,000 state and local building code jurisdictions in the United States. The Act does not require the Department to certify codes. However, through its work with the model code organizations, and existing and planned activities to provide technical assistance to state and local building code officials, the Department intends to work with building code organizations to ensure that those codes incorporate the requirements of the Act.

#### **COMMENTS RELATED TO THE MODEL CODE REPORTS**

##### **DEFINITION OF DWELLING UNIT**

In Draft Recommendation Number 1 in the draft report on the proposed IBC 2000, the Department suggested that the proposed IBC 2000 be revised to modify the definition of "dwelling unit," for purposes of the accessibility requirements of the proposed IBC 2000 at Section 1102.1, so that it covers all the residential structures that are covered by the Act, as follows:

"A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. For purposes of Chapter 11, sleeping accommodations intended for occupancy by a separate household in structures with shared cooking or toileting facilities shall be considered to be separate dwelling units."

Comments:

A large number of commenters believed that the IBC's definition of "dwelling unit" should remain as it is. Two commenters pointed out that adopting Recommendation 1 would result in the inclusion of such buildings as hotels, hospitals and prisons that otherwise are neither R-2 properties nor covered by the Act's design and construction requirements. One commenter also noted that adoption of Recommendation 1 would require building officials to make a decision as to whether residents of a building with shared kitchens and bathrooms were separate households or a single "family." That commenter also stated that HUD's scoping recommendations may create confusion by suggesting that certain technical terms mean something different in Chapter 11 than they do in other chapters of the existing model codes and the proposed IBC.

One commenter specifically supported Recommendation 1. That commenter noted that the Act recognizes that group homes that operate as a single housekeeping unit are indistinguishable (for land use purposes) from homes that house traditional families. In the clearest sense, then, according to the commenter, such group homes do not constitute "covered multifamily dwellings." The commenter noted further that, as a practical matter, most group homes are established in existing single family structures. Those few group homes that are newly constructed under HUD's Section 811 program are required to meet the accessibility requirements set forth in the Department's Section 504 regulations.

One commenter recommended that a new word or phrase should be used to ensure coverage of those situations in which sleeping rooms with shared

kitchens or bathroom facilities are covered by the Act. Another commenter had a similar suggestion that, rather than revising the definitions of "dwelling unit" and the use groups, ICC should adopt one new term that describes all covered multifamily dwellings, including dormitories, timeshares, congregate care facilities, shared kitchens and bathrooms, and excludes such transient properties as hotels. In subsequent discussions with the Department, the ICC recommended adding a new term and definition for "sleeping unit," which captures covered units not now covered by the IBC. The ICC suggested, "Sleeping Unit - a room or space in which people sleep, which can also include permanent provisions for living, eating, and sanitation, but does not include permanent kitchen facilities." That term would be used in conjunction with the term dwelling unit where appropriate in the IBC.

Another commenter also suggested an alternate revision, specifically that the term "Dwelling Unit, Type B" be revised to include a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. The revised term would also include units with permanent provisions for living and sleeping with shared cooking or sanitation facilities outside the unit. The Type B unit would be designed and constructed in accordance with ICC/ANSI A117.1, intended to be consistent with the technical requirements of fair housing required by federal law.

Response:

Rather than revising the definition of "dwelling unit," in new Recommendation Number 2, the Department recommends adding the term "sleeping accommodation intended as a residence" to Chapter 11 of the proposed IBC 2000.

The comments to the proposed IBC 2000 also apply, with variation, to the remaining three model building codes. In its Final Report on the UBC, the Department has recommended changes to appropriate sections of Chapter 11 covering "guestrooms" that are intended as a residence. In the Final Report on the BNBC and the SBC, the Department has recommended the addition of a new

term, "sleeping unit," defined as a room in which people sleep intended to be occupied as a residence," and adding that term to the appropriate sections of Chapter 11 of BNBC and SBC.

However, the Department recognizes that there may be other approaches to resolving this variance that may be as or more effective. The Department will continue to work with the model code organizations and other interested members of the public on this issue.

It is the Department's position that detached single family dwellings occupied by persons who function as a single household, including group homes that function as a single household, are not "covered multifamily dwellings" for purposes of the design and construction requirements of the Act. However, the Department's regulations make it clear that all group homes are "dwelling units" for purposes of the Act's prohibitions on discrimination based on disability. See 24 CFR 100.201. The Department further recognizes that other accessibility standards, including accessibility requirements mandated under programs providing federal financial assistance, apply to detached single family group homes.

**RECOMMENDED REVISION TO THE DEFINITION OF "DWELLING UNIT, TYPE B"**

Section 1102 of the proposed IBC 2000 defines a "Dwelling Unit, Type B" as a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1-1998, "intended to be consistent with the technical requirements of fair housing required by federal law." The Department did not discuss this definition in its draft report.

Response:

In response to the comments concerning the definition of "dwelling unit," and the comments concerning the relationship between the requirements of the Fair Housing Act and other federal accessibility standards, the Department has added a new finding of a variance, and a new Recommendation Number 1, in the Final Report on the proposed IBC 2000 with respect to the definition of a "Dwelling unit, Type B." This Recommendation is intended to

clarify that the Type B dwelling unit incorporates the requirements of the Fair Housing Act, but not necessarily the requirements of any other federal law.

#### **TRANSIENT HOUSING**

In Draft Recommendation 2 of its draft report on the proposed IBC 2000, HUD suggested that the proposed IBC 2000, and other model codes, be revised to make clear that certain types of housing that the model codes viewed as transient are dwellings subject to the requirements of the Fair Housing Act, including the design and construction requirements. This housing may include timeshares, residential hotels, or homeless shelters. Most of the model codes use a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to their accessibility requirements for dwellings in Chapter 11.

It is the Department's position that a 30-day measure is inappropriate in determining whether a building is covered by the Act. As stated in its draft report, the Department's position on this issue is discussed in the Questions and Answers About the Guidelines. Thus, the draft report echoed the Questions and Answers when it noted that length of stay is only one factor in determining whether a building is a "covered multifamily dwelling." Other factors to be considered include: (1) whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (2) whether the terms and length of occupancy will be established through a lease or other written agreement; (3) what amenities will be included inside the unit, including kitchen facilities; (4) how the purpose of the property will be marketed to the public; (5) whether the resident possesses the right to return to the property; and (6) whether the resident has anywhere else to which to return.

#### Comments:

Only one commenter supported the Department's recommendation, and that commenter encouraged HUD to provide a more detailed means to measure whether a

residential occupancy is "primarily transient in nature" or "primarily permanent in nature."

Several commenters suggested that HUD should endorse the 30-day measure of transience used in the model codes, stating that length of stay is the most prevalent, substantive and reliable criteria.

With respect to timeshares specifically, one group of commenters suggested: 1) deleting "vacation" because the reason for the timeshare is irrelevant, and 2) listing timeshares as R-1 occupancies, but scoping them in Chapter 11 with the same criteria as for R-2 occupancies. The Department agrees that the term "vacation" is unnecessary.

Response:

After considering the comments, HUD agrees that revising the IBC's residential use groups, as reflected in Draft Recommendation 2, would not be the most appropriate way to ensure that timeshares, residential hotels, homeless shelters occupied as a residence, boarding houses, and similar short-term housing meet the accessibility requirements in Chapter 11 of the Code. However, the Department continues to believe that the 30-day test of transience used by the IBC is inappropriate. To endorse such a requirement would mislead designers, builders and other readers of the code because it would give the false impression that such housing need not meet the requirements of the Act. The Department endorses the factor analysis stated in the above response for determining whether a dwelling is not transient.

In promulgating the fair housing regulations and the Guidelines, HUD specified as dwellings covered by the Act and its design and construction requirements such short-term housing as time-sharing properties and homeless shelters. See 24 CFR 100.201; 56 FR at 9500; 54 FR at 3238 & 3244. Courts also have applied the Act's general requirements to various types of short-term housing, including timeshare units, Louisiana Acorn Fair Housing v. Quarter House, Oak Ridge Park, Inc., 952 F. Supp. 352, 359 (E.D. La. 1997); housing for migrant farm workers, Lauer Farms, Inc. v. Waushara County Board

of Adjustment, 986 F. Supp. 544, 559 (E.D. Wis. 1997), Hernandez v. Ever Fresh Co., 923 F. Supp. 1305, 1308 (D. Ore. 1996), Villegas v. Sandy Farms, Inc., 929 F. Supp. 1324, 1328 (D. Ore. 1996); nursing homes, Hovsons, Inc. v. Township of Brick, 89 F.3d 1096, 1102 (3d Cir. 1996), United States v. Commonwealth of Puerto Rico, 764 F. Supp. 220 (D.P.R. 1991); a facility for people with HIV, Baxter v. City of Belleville, 720 F. Supp. 720, 731 (S.D. Ill. 1989); homeless shelters, Turning Point v. City of Caldwell, 74 F.3d 941 (9<sup>th</sup> Cir. 1996), Woods v. Foster, 884 F. Supp. 1169, 1173 (N.D. Ill. 1995); a residential school for emotionally disturbed children, United States v. Massachusetts Industrial Finance Agency, 910 F. Supp. 21, 26 n.2 (D. Mass. 1996); and seasonal vacation bungalows, United States v. Columbus Country Club, 915 F.2d 877, 881 (3d Cir. 1990), cert. denied, 501 U.S. 1205 (1991).

In finding that these types of short-term residencies are subject to the Act's requirements, the courts have noted that length of stay is not the sole measure of whether the property is a "dwelling" under the Act. The courts have looked to various factors, including whether the resident possesses the right to return to the property, whether he or she has anywhere else to which to return, and the amenities at the property. See, e.g., Louisiana Acorn Fair Housing, 952 F. Supp. at 359; Woods v. Foster, 884 F. Supp. at 1173; Baxter v. City of Belleville, 720 F. Supp. at 731.

The factors that HUD set forth in the draft report seek to provide guidance on determining whether a property is a short-term dwelling covered by the Act or a transient property that is not covered by the Act. HUD continues to believe that these factors must be considered by owners, designers, builders, developers and architects in determining whether a building must be designed and constructed in accordance with the Act.

In sum, the Department cannot endorse the 30-day measure that the proposed IBC 2000 and other model codes use. Therefore, the Department is retaining its determination that three of the model codes do not meet the requirements of the Act in that regard. The UBC defines residential use

groups differently than the other three model codes, and the Department did not find a variance with respect to that model code.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet IBC Chapter 11's requirements for dwelling units, the IBC is not consistent with the Act, the regulations and the Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the IBC and the Department's regulations. Therefore, the Department is withdrawing Draft Recommendation Number 2. The Department will continue to work with ICC and other interested code, industry and advocacy organizations to develop language that appropriately conveys to builders and designers that certain residencies of less than 30 days must meet the Act's accessibility requirements. In the meantime, the Department believes the factors listed above must be considered by owners, builders, developers, designers and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

#### **ASSISTED LIVING/CONGREGATE HOUSING**

In Draft Recommendation Number 3 on the proposed IBC 2000, the Department suggested that the definition of "dwelling unit" contained in Draft Recommendation Number 1 be adopted and that the proposed IBC 2000 be revised to modify the language of the charging paragraph of the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units. Modification to the charging paragraph would require that in occupancies in Group R-2 and R-3, as applicable in Section 101.2, where there are four or more dwelling units in a single structure, every dwelling unit shall be a Type B dwelling unit. In occupancies in Group R-4 where there are four or more dwelling units in a single structure, at least one shall be Type A, and all other dwelling units shall be Type B dwelling units. In occupancies in Group I-1 where there are four or more dwelling units in a single structure, at least 4 percent, but not less than one, of the dwelling units shall be Type A, and all other dwelling

units shall be Type B. In nursing homes of Group I-2, where there are four or more dwelling units in a single structure, at least 50 percent, but not less than one, of the dwelling units shall be Type A dwelling units, and all of the other dwelling units shall be Type B.

Comments:

One group of commenters suggested that rather than adopting Draft Recommendation Number 3, the IBC should be revised to make it clear that all covered units must comply with the requirements for Type B dwelling units, in addition to the ADA Standards for accessible units.

Response:

After consideration of all of the comments, the Department has decided to modify its Draft Recommendation Number 3 with a new Recommendation Number 2 in the Final Report on the proposed IBC 2000 which recommends new language to be included in Section 1107.5.4 that requires "sleeping accommodations intended to be occupied as a residence" to be Type B. In addition, under its new Recommendation Number 2, the Department recommends modifications to the charging paragraphs of Sections 1107.3.1 (Group I-1), 1107.3.2 (Group I-2), and 1107.5.7 (Group R-4) which require all sleeping accommodations intended to be occupied as a residence to be Type B. Additionally, since these comments also apply to other model building codes reviewed, similar modifications have been made to each of those reports.

**DEFINITION OF "GROUND FLOOR"**

In its draft report, the Department concluded that the IBC's scoping of Type B dwelling units does not adequately address situations where there may be more than one ground floor in a building. The Department's Draft Recommendation Number 4 for addressing this variance was that the proposed IBC 2000 define the term ground floor for purposes of Chapter 11 to match the regulations and the Guidelines and delete the definition of "dwelling unit, ground floor" from Section 1102.

Comments:

One commenter believed that an exception may be needed for dwelling units in which the entry to the unit is on the ground floor, but the living and sleeping areas are on the second floor, and that in such case, the unit would not be required to meet the accessibility requirements of the Act.

A group of commenters stated that the proposed IBC 2000 is intended to be consistent with the Department's regulations and Guidelines, which state that a building may have more than one ground floor or may have ground floor dwelling units on different levels of a building. However, this group noted that it is not unreasonable to consider clarifying its intent by making it more evident in the code that there can be more than one ground floor or ground floor units on different levels of a building.

This group pointed out that any unit that meets the IBC's definition of "Dwelling unit, ground floor," is a ground floor unit, regardless on which floor or level of the building it is located. The IBC definition is:

Dwelling unit, ground floor - a dwelling unit with a primary entrance and habitable space at grade.

The group added, however, that the Department's recommended language is not consistent with the language and style that is customary to building codes. The group concluded that the potential confusion can be eliminated and the intent of the Act achieved by requiring that at least one level containing dwelling units be provided with an entrance from the exterior (and thus have Type B dwelling units); and any other levels that have an entrance from the exterior and contain dwelling units have Type B dwelling units. The group, however, did not offer language to accomplish this recommendation.

Another commenter agreed that a definition of "ground floor" is needed in Chapter 11, since the exceptions in 1107.5.4 use the term, and it is not defined elsewhere in the code. This commenter also noted that the IBC definition of "Dwelling unit, ground floor" does not describe ground floor units that are on an accessible route that is above grade.

This commenter suggested that some of the wording in the Department's

recommendation should be in the commentary section of the code. The commenter suggested that the definition of ground floor be: "Any floor of a building with an entrance on an accessible route." The commenter also stated that the provision in the Department's recommendation that states: "Where the first floor containing dwelling units in a structure is above grade, all units on that floor shall be served by an entrance on an accessible route," is a requirement, and should not be buried in a definition. The commenter recommended adding this language to the end of the charging paragraph of 1107.5.4, just before the exceptions.

In addition, during the review of the public comments, two new concerns arose: (1) whether or not the IBC scoping language, in combination with the definition of "dwelling unit, ground floor," makes it clear that there must be at least one ground floor in a building, and (2) whether the language of Exception 2 of 1107.5.4 results in requiring builders to make the lowest floor of a building containing dwelling units accessible even if it were more practical to make a different floor (such as the second or third floor) containing dwelling units accessible when that floor is closer to the grade, even if not "at grade."

Response:

The Department carefully considered all comments received on this issue. The Department believes this is one of the more difficult issues to address because the Act is a civil rights law, and the language of the statute and the Department's regulations make it clear that covered multifamily dwellings must be designed and constructed in a manner that incorporates those features of accessible and adaptable design. The Department's regulatory definition of ground floor is also clear that a building may have one or more ground floors.

The Department is also mindful of the fact that the language in the Department's definition of ground floor is not couched in building code terminology. While some commenters offered alternative language, the Department does not believe the alternative language offered addresses the

variances discussed above. Therefore, the Department is retaining its finding that the proposed IBC 2000 language, and the comparable language of the other three model codes, is not consistent with the requirements of the 1988 Act. The Department maintains that the IBC is not clear with respect to requiring additional ground floors to be accessible, and that the scoping language and exception discussed above creates another potential variance with respect to the fact that there must be at least one ground floor (unless it is impractical as provided in the Department's regulations and the Guidelines).

However, the Department is withdrawing its recommendation with respect to the proposed IBC 2000 and the other model codes that also contained a similar recommendation. The Department will work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction. In the meantime, builders, developers, owners, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of "ground floor" when making decisions about the applicability of the accessibility requirements of the Act.

#### **FIRST LEVEL OF LIVING**

In its draft report on the UBC, the Department concluded that the language of Section 1103.1.9.3, Multi-unit dwellings, Exception 2, was ambiguous and could be interpreted to exclude the first floor of dwelling units in a building in which dwelling units are not on the floor at grade. Draft Recommendation Number 5 of the UBC analysis proposed to clear up the ambiguity by changing the language of Section 1103.1.9.3, as follows:

Where no elevator service is provided in a structure and a floor at grade does not contain dwelling units, only those dwelling units located on the first floor containing dwelling units of either Group R, Division 1 apartment occupancies or Group R, Division 3 occupancies need comply with the requirements of this section.

Comments:

A commenter that reviewed the draft report on the UBC commented that Draft Recommendation Number 5 to the UBC did not sufficiently clear up the ambiguity noted by the Department. This commenter suggested revising the Recommendation to read: "...only those dwelling units located on the first floor containing dwelling units above the floor at grade."

Response:

The Department has adopted the commenter's suggested language and revised the applicable recommendation in the UBC draft report, as well as in any other relevant model code report.

**DEFINITION OF BUILDING AND STRUCTURE**

In Draft Recommendation Number 5 to the IBC 2000 draft report, the Department recommended that the proposed IBC 2000 Exceptions in Section 1107.5.4 be modified by eliminating any reference to the term "building" and replacing it with the term "structure" to ensure that firewall criteria are eliminated for the purpose of scoping the accessibility requirements for Type B dwelling units.

Comments:

Several commenters opposed Draft Recommendation Number 5. One commenter noted that replacing "building" with "structure" is unnecessary and may have unintended consequences. Another commenter believed that there is a better way of fixing the variance and proposed modifying the definition of a Type B unit to say that dwelling units separated by firewalls do not constitute separate buildings. A group of commenters suggested that changing the term "building" to "structure" would mean that, in a newly-built project, if one townhouse owner elected to have an elevator installed in his/her unit, all other units would then have to be constructed with elevators. The ICC also believed that changing "building" to "structure" could actually reduce the number of units required to be accessible.

Response:

After re-examining the proposed IBC 2000, the Department believes that

the proposed IBC 2000 is clear that dwelling units separated by firewalls do not constitute separated buildings and that the suggested revision to IBC is not needed. Thus, the Department has withdrawn this recommendation from the Final Report on the proposed IBC 2000. The Department also has made modifications to the reports on the other model codes as appropriate.

#### **BREEZEWAYS**

The Department noted in its draft report in Draft Recommendation Number 6 on the proposed IBC 2000 that in most cases two structures that are connected by a breezeway or stairway and share the same roof are considered one building. However, in cases where the breezeway or stairway that structurally connects both buildings does not provide the only means of egress and does not share the same roof as the two structures, whether or not this is one building must be determined under the IBC on a case by case basis. In addition, in some cases, the IBC considers walkways, breezeways, and stairways accessory structures and not integral to the building. If they are determined to be accessory structures, each building that they connect is examined separately. The Department, therefore, concluded that the IBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways, and recommended adding language to Section 3104.2 to make it clear that for purposes of accessibility under Chapter 11, buildings or structures structurally connected to other buildings or structures by pedestrian walkways, breezeways, or stairways shall be considered one structure.

#### Comments:

A number of commenters thought that the Department's recommendation was incorrect and impractical. They pointed out that the word "structure" includes sidewalks and utility lines that link single family homes. Another pointed out that two unrelated buildings separated by a distance of more than "a few feet" but connected by a bridge could be considered to be a single building, when this may not have been the Department's intent.

Response:

The Department has carefully considered all of these comments, but continues to believe that for purposes of calculating the total number of dwelling units required to be Type B dwelling units, buildings that are structurally connected and buildings with multiple wings are a single building and must be treated as such. In addition, Section 3104 of the proposed IBC 2000 applies specifically to connections between buildings such as pedestrian walkways or tunnels, located at, above, or below grade level, that are used as a means of travel by persons. The Department also disagrees with the conclusion that all of the structures referenced by some of the commenters would come into consideration, i.e., pipes, gas lines, telephone poles, etc. The Department's recommendation specified what facilities would be deemed as being connecting, that is, pedestrian walkways, breezeways, or stairways.

On the other hand, the Department agrees with the concern that the reference to Chapter 11 in its recommendation is too broad. The Department notes that it did not intend to address two clearly separate structures that are joined only by a walkway or a tunnel of considerable distance. Therefore, the Department is revising its recommendation to state that for purposes of calculating the number of Type B dwelling units and Type B sleeping accommodations required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure. Similar modifications are being made to the reports concerning the other model codes.

**MULTISTORY UNITS**

The Department concluded that the proposed IBC 2000's definition of "dwelling unit, multistory," which is a dwelling unit with habitable or bathroom space located on more than one story, could result in a unit being considered multistory if one level contains living or "habitable" space and the floor above or below contains only a bathroom. Therefore, the Department recommended in Draft Recommendation Number 7, that this definition be revised to delete the reference to bathroom space.

Comments:

One group of commenters agreed with the Department's recommended definition of multistory units, but suggested that it be prefaced with the statement, "[f]or purposes of accessibility." Another commenter disagreed with the Department's recommendation and believed that bathroom space should be considered part of the living space.

Response:

The Department disagrees with the contention that bathroom space is living space. The Department believes that the inclusion of bathroom space in the definition of "Dwelling unit, multistory" creates the possibility that a dwelling unit designed with a small "loft," or a ground floor with an entry foyer and a bathroom would be treated as a multistory dwelling unit and thereby not covered by the requirements of the Act.

However, the Department agrees with the suggestion that the language be prefaced, "For purposes of accessibility," and has revised the recommendation accordingly in the report on the proposed IBC 2000 and all other model code reports that discuss this issue.

**SITE IMPRACTICALITY**

In its draft report on the proposed IBC 2000, and in other model code reports, the Department noted that the model code language describing site impracticality due to site terrain, using the site analysis test set forth in the Guidelines, did not include language clarifying that all ground floor units in buildings with a common entrance, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. The reports also pointed out that the codes did not use the term "less than 10%" in the test. The reports also found that the model codes did not meet the provisions of the Guidelines because they failed to include language that, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are

covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. The Department made several recommendations to address these inconsistencies under Draft Recommendation Number 8.

Comments:

One commenter, in its review of the draft report on the UBC, agreed with the general intent of the recommendation, but thought that the use of the term "walkway" implies something actually constructed, and the Department should substitute the term "accessible route". The commenter stated that it had encountered a situation where the slope between a planned entrance and a vehicular or pedestrian arrival point was less than 8.33% but there was no "walkway" connecting the entrance and arrival point. The commenter discussed a specific situation where a development had been constructed on a steep site but all buildings on top of the site were on a completely flat area. However, there was always at least one step between the parking lot and each unit, and consequently there was no accessible route between the unit entrance and the parking lot. The commenter asked whether a builder could calculate the number of units that had to comply with the Act based on the total buildable area that has an existing natural grade of less than 10% slope only, excluding dwelling units that have a grade of less than 10% slope but lack an accessible route because of the imposition of a step along the route from the entrance to the planned arrival point.

Another commenter agreed with the strategy to incorporate an elevated walkway concept into the site analysis test. A group of commenters agreed with our recommendation with respect to the proposed IBC 2000, but restated the recommendation in code language and format.

Response:

The Department believes that it is clear from the language of the regulations, and the language of the Guidelines, that the site impracticality exception cannot be applied to instances in which the lack of an accessible

route is due to manmade barriers, such as the failure to provide a walkway or the construction of a step. The language of Exception 4, Section 1103.1.9.3 of the UBC refers to measurement of the slope of grades prior to development.

The Department believes that this language adequately addresses the commenter's concern.

The Department has reviewed proposed language submitted by the ICC to address these issues, and has adopted these recommendations, with some modifications, in the Final Report on the proposed IBC 2000 as well as in the other model code reports. The Department believes these revisions also help to address the concerns raised by the commenter on the UBC.

#### **APPLICATION OF THE SITE IMPRACTICALITY TEST TO BUILDINGS WITH ELEVATORS**

The Department found that the language of the model codes did not adequately clarify that buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. The Department recommended language that addressed this variance, in Recommendation Number 9 of the proposed IBC 2000 and comparable recommendations in the reports on the other model codes.

The only comments received on this recommendation endorsed it. The Department's recommendation remains unchanged in the model code reports.

#### **SITES WITH UNUSUAL CHARACTERISTICS**

In Draft Recommendation Number 10 on the proposed IBC 2000, and in comparable recommendations in the other model code reports, the Department addressed its concern that the model code language describing the site impracticality test for sites with unusual characteristics did not contain the provision that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and ALL vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival points. The Department believed that the omission of the words "AND"

and "ALL" constituted a variance with the provisions of the Guidelines.

Comments:

The only two organizations to comment on this recommendation agreed with the recommendation. However, one of the commenters pointed out that the term "all" is implied based on the construction of building code language, and therefore is unnecessary.

Response:

The Department agrees with the commenter on this point and has revised its recommendation in all of the model code reports accordingly, while retaining its recommendation related to substitution of "and" for "or."

**VEHICULAR ROUTE AS AN ALTERNATIVE TO AN ACCESSIBLE PEDESTRIAN ROUTE**

Proposed IBC 2000 Section 1107.5.5, and comparable sections of the other model codes, contain an Exception that is similar to the provision in the Guidelines that permits a vehicular route as an alternative to an accessible pedestrian route under certain circumstances. That Exception states:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

The Department concluded that the IBC does not include language making it clear that accessible parking and curb ramps must be available at each public or common use facility to which access is provided by a vehicular route.

Comments:

According to one group of commenters, Recommendation Number 11 is not needed. This group believed that the IBC's current reference to "parking" under Exception 1 to Section 1107.5.5 is adequate. The group believed that there is no need to insert the term "accessible" before the term "parking" and the terms "spaces and curb ramps" after the term "parking" because it may

create an "undesirable restriction of configurations". The group referred to Section 1106, which regulates parking and requires a certain percentage of parking spaces to be accessible, and 1106.5, which requires accessible parking spaces to be located on the shortest accessible route to an accessible entrance. The group indicated that curb ramps are needed only where curbs are provided. It stated that ANSI requires curb ramps to be provided where accessible routes cross curbs and that this is adequate.

This group of commenters further indicated that, in some cases, not all public and common use facilities are required to be accessible. They stated that the Department's recommendation would require accessible parking at non-accessible facilities. They indicated that inserting the terms "public or common use" in the Department's recommendation is not necessary because the charging paragraph applies to "exterior and interior spaces and facilities" that serve the accessible dwelling unit which includes the "public and common use" spaces.

Another commenter agreed with our recommendation and believes it adds clarity to the code.

Response:

The Department agrees that the language of IBC Section 1107.5.5, together with the language of Section 1106, incorporate the technical requirements associated with the vehicular route exception. For purposes of clarity, the Department recommends that the language of the Exception to IBC Section 1107.5.5 be modified to add a reference to Section 1106. Similar revisions have been made to the other model code reports.

Subsection 1(d) of the section of Requirement 2 of the Guidelines that addresses accessible routes states: "Where site or legal constraints prevent a route accessible to wheelchair users between covered multifamily dwellings and public or common use facilities elsewhere on the site, an acceptable alternative is the provision of access via a vehicular route so long as there is accessible parking on an accessible route to at least 2% of covered

dwelling units, and necessary site provisions such as parking and curb cuts are available at the public or common use facility." This language does not limit the requirement to provide accessible parking to accessible facilities.

Similarly, subsection 4 of Requirement 2 of the Guidelines provides that, if provided at the site, there must be accessible parking at facilities that serve accessible buildings. The Department is not implying in this recommendation that each public or common use facility on a site must be accessible.

#### **HEADROOM**

In its draft report on the proposed IBC 2000, and in other model code reports, the Department noted that the code apparently did not include headroom requirements in its technical provisions for accessible routes. However, the IBC 2000 does include headroom requirements in the provisions for protruding objects. In Draft Recommendation Number 12 in the proposed IBC 2000, and in the other draft reports, the Department recommended a revision to the code language regarding accessible route.

#### Comments:

While one commentator agreed with our recommendation, another pointed out that the IBC's requirement included all "circulation paths" and not just the means of egress as would the Department's recommendation.

#### Response:

The Department has concluded that it is appropriate to delete Draft Recommendation Number 12 in the proposed IBC 2000 Final Report and in the other model code reports because similar language in the code addresses the Department's concerns.

#### **STAIRS**

In its draft report on the proposed IBC 2000, and other model codes, the Department expressed concern that the requirements related to the accessibility provisions for stairs, because they were found in Chapter 10, Means of Egress, did not necessarily apply to stairs that connect levels not

connected by an elevator if they are not part of a means of egress. The Guidelines state that accessibility should be provided on stairs located along routes connecting levels not connected by an elevator. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. In Draft Recommendation Number 13 to the proposed IBC 2000, and in comparable sections of the reports on other model codes, the Department proposed revised language to the codes addressing this issue.

Comments:

Commenters suggested that accessible stair design should reference IBC Chapter 10 instead of the ICC/ANSI A117.1-1998 and that the Department's requirement would actually allow non-complying stairs where the two levels are served by an elevator. One organization commented that: "The IBC requires all stairs on a means of egress (except those within a dwelling unit) to meet requirements conforming to ICC/ANSI A117.1-1998. Essentially, all stairs except those in a dwelling unit will comply, and dwelling units with stairs will inevitably be multistory and therefore not covered by the requirements of the Act. The SWA proposal would actually reduce compliance by allowing levels served by elevators to be served by non-complying stairs. At any rate, the proposed change to Section 1108 would be overridden by the 'mainstreamed' requirements found in IBC Chapter 10." Another commenter stated: "We agree with the intent and recommendation, but think that to avoid inconsistency, the reference should be to Section 1003.3.3 in IBC chapter 10, rather than to ICC/ANSI A117.1-1998."

One group of commenters conceded that there were a few differences between the stairway requirements in the IBC 2000 and those in the ICC/ANSI A117.1. They also pointed out a recommended editorial revision to the reference to stairs along accessible routes connecting floor levels that are not connected by an elevator.

Response:

The Department concurs with the group of commenters' editorial

recommendation, and also concurs with the group of commenters that there are slight differences in the technical requirements for stairs in Chapter 10 from those in the ICC/ANSI A117.1-1998. There also appear to be some differences in the scoping provisions. For these reasons, the Department has modified its recommendation to address part of the group of commenters' recommendation but maintains its position regarding referencing of ICC/ANSI A117.1-1998.

#### **PARKING AND PASSENGER LOADING ZONES**

Section 1106 of the proposed IBC 2000 contains the scoping and technical criteria for parking and passenger loading zones. In its review of Section 1106, the Department noted few variances with the requirements of the Act. However, the Department did note variances with respect to several of the Guidelines' provisions for accessible parking, including: (1) technical criteria to address accessibility of public and common use type single-car parking garages when such garages are made available for assignment or rental, (2) scoping requirements to assure that accessible parking is provided on the same terms and with the full range of choices as those provided to other residents, (3) if visitor parking is provided, accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and (4) where parking is provided at facilities, accessible parking.

In Draft Recommendation Number 14 on the proposed IBC 2000, the Department made recommendations to address these identified variances.

#### Comments:

The Department received a number of comments on this section of its draft report. One commenter stated that including garage provisions from the Questions and Answers About the Guidelines in our recommendation is not appropriate because they are not part of the Guidelines. This commenter also observed that the IBC applies the 2% rule to all the parking at the site and not just to the parking serving covered units; that accessible "visitor" parking is difficult to enforce unless there is a clear separation between

parking for residents and parking for visitors; and that the parking provisions in the IBC are based on "where provided" because local zoning codes, not building codes, require parking. Commenters also stated that the term "sufficient" in HUD's recommendation may be less than required by IBC and the ADA Standards when parking also serves a public accommodation. The term "sufficient" also captures parking serving other use groups, shops on a ground floor, for example. The term "sufficient" is a problem because it is not building code terminology.

In addition, the commenters opined that HUD's recommendation is based on a false assumption that all types of parking are available to all residents. One group of commenters noted that the Act does not require parking where none is intended.

Another commenter stated that the parking requirements of the codes are conflicting. For example, the UBC requirement for accessible parking exceeds that of the FHA. One commenter stated that HUD should not accept any standard that does not specify that accessible parking must be close to an accessible entrance. The commenter noted that the 1986 version of ANSI A117.1 contained a provision that accessible parking spaces shall be located on the shortest possible accessible circulation route to an accessible entrance of the building. The commenter noted that this standard had been eliminated from the CABO ANSI A117.1-1992.

Response:

The Guidelines provide:

If provided at the site, designated accessible parking at the dwelling unit on request of residents with handicaps, on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided for other residents of the project, with accessible parking on a route accessible to wheelchairs for at least 2% of the covered dwelling units; accessible visitor parking sufficient to provide access to grade-level entrances of covered

multifamily dwellings; and accessible parking at facilities (e.g., swimming pools) that serve accessible buildings.

In addition to the above provisions of the Guidelines, the Questions and Answers About the Guidelines provide additional guidance on the requirements for parking related to technical criteria for accessible public and common use type single-car garages, and application of the 2% requirement when there is more than one type of parking. The Questions and Answers are a supplement to the Guidelines and the Department treats them as further interpretation of the Guidelines.

The Department has considered all of these comments, and made some revisions in its recommendations. The Department's identified variances are not intended to recommend that IBC or any of the other model codes revise any scoping requirements that are broader than those in the Guidelines. However, the Department continues to believe that those scoping provisions identified as variances are not consistent with the language in the Guidelines, and is maintaining these identified variances. The Department further notes, however, with respect to accessibility of public and common use single-car parking garages, that there may be other technical criteria that the codes could adopt that will constitute accessibility of such garages, such as by applying the accessibility requirements for van accessible parking spaces to the interiors of such garages, and providing another means of egress from the garage that connects to the accessible route and the entrances of covered dwelling units. The Department's recommendation is not intended to preclude the code organizations from developing alternative language to address this inconsistency. The Department is also willing to work with the code organizations and any other interested persons in developing language to address these variances. The Department is also clarifying the use of the term "sufficient" in its final recommendations.

The ANSI A117 Committee made a specific effort to remove all scoping language from the CABO/ANSI A117.1-1992. Similarly, ICC/ANSI A117.1-1998

removed scoping provisions. The requirement that accessible parking be located on the shortest possible route to an accessible building entrance is a scoping provision. All of the model building codes include this requirement in their code language.

#### **ACCESSIBLE FACILITIES/RECREATIONAL FACILITIES**

In its review of the model codes, the Department did not identify any variances related to the number of accessible recreational facilities that must be provided at a site.

#### Comments:

One commenter, reviewing the draft report on the UBC, commented that the Guidelines state that: "Where multiple recreational facilities, e.g., tennis courts) are provided sufficient accessible facilities of each type should be provided to assure equal opportunity for use by persons with disabilities." However, Section 1103.9.1.1 of the UBC requires that at least 25%, but not less than one, of each type of each group of facilities be accessible. This provision also is found in the other model codes.

#### Response:

The Department recognizes that the UBC's language in Section 1103.9.1.1 and equivalent language in other model codes differ from the provisions of the Guidelines. The Guidelines state that "[w]here multiple recreational facilities (e.g., tennis courts) are provided, sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps." As discussed in the preamble to the final Guidelines, several persons who were commenting on the Department's proposed Guidelines, suggested that the Department adopt the standard that is reflected in the model codes--a minimum of 25% (or at least one) of each type of recreational facility. The Department decided to retain the more flexible approach that the requirements of 24 CFR 100.205(c)(1) are met if "sufficient" accessible facilities are provided.

In many instances, compliance with the scoping requirement under the

model codes for the provision of accessible recreational facilities when there are multiple recreational facilities of the same type on a site will constitute compliance with the Guidelines' provision for "sufficient accessible facilities to assure equitable opportunity for use...". However, there may be instances when, using the model code formula, there are not sufficient accessible recreational facilities to serve the accessible units at a site. Therefore, the Department has added a finding that the model codes that have expressed this formula do not comply with the provisions of the Guidelines. However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

#### **MULTISTORY UNITS SERVED BY ELEVATORS**

The Department noted that the IBC does not state that where a multistory dwelling unit is provided with elevator service to only one floor, the story served by the elevator must be the primary entry to the unit. The Department recommended a change to Section 1107.5.4, Exception 3, to address this issue.

#### Comments:

A group of commenters agreed that there is a need to clarify that the primary entrance be on the floor of elevator service where the elevator only serves one floor of a multistory unit. Another commenter agreed with Recommendation 15. One commenter seemed to interpret this recommendation to be saying that once an elevator is installed in one multistory unit, this would somehow require other units in a townhouse development to be required to be accessible.

#### Response:

The Department's Draft Recommendation Number 15 was intended to address a concern with the language of Exception 3 to Section 1107.5.4 of the proposed IBC 2000, which the Department interprets to be addressing situations in which

a multistory unit is located in a building that has one or more elevators, such as a mid-rise building where the top floor consists of multistory rather than single-story apartments. The Department's recommendation is not intended to require, with respect to a non-elevator building consisting of a row of multistory townhouses, that if one such townhouse is designed and constructed with an elevator, all other multistory units in that building must include an elevator. The Department discussed this issue in the preamble to its regulations, and concluded the multistory townhouses are not covered unless they have elevators. Thus, only the unit that is designed and constructed with an elevator, in a building of four or more dwelling units, would be covered. Therefore, the Department's recommendation on this issue remains the same.

#### **ACCESSIBLE ROUTE AND SPECIAL DESIGN FEATURES**

The Department identified only one variance concerning the UBC language related to Requirement 4 of the Guidelines, Accessible route into and through the covered dwelling unit. That variance dealt with multistory dwelling units in elevator buildings, discussed above.

#### Comments:

One commenter pointed out that the Guidelines state that where a covered dwelling unit has special design features, such as a raised or sunken living room, these areas must not interrupt the accessible route through the remainder of the dwelling unit. The commenter additionally noted that the Design Manual clarified that only one of these special design features is allowed and that no part of the kitchen or bathroom may be located in a raised or sunken area. The commenter believes that the UBC does not sufficiently address these limitations on the use of special design features.

#### Response:

The charging paragraph of UBC Section 1106.2.1 states: "At least one accessible route complying with this section shall connect all spaces and elements that are a part of the dwelling unit. Where only one accessible

route is provided, it shall not pass through bathrooms, closets or similar spaces." The Exception to that paragraph is that only one of either a sunken or raised living, dining, or sleeping room, or a mezzanine that does not have plumbing fixtures or enclosed habitable space is allowed. The Department believes that the language of Section 1106.2.1 is sufficiently clear and means that special design features may not interrupt an accessible route and that bathroom or kitchen space may not be located in a special design feature.