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*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 100

[Docket No. FR-6138-F-02]

RIN 2529-AA99

#### Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends HUD's Fair Housing Act design and construction regulations by incorporating by reference the 2009 edition of the International Code Council (ICC) Accessible and Usable Buildings and Facilities (ICC A117.1-2009) standard, as a safe harbor. The Accessible and Usable Buildings and Facilities standard is a technical standard for the design of facilities that are accessible to persons with disabilities. This rule also designates the 2009, 2012, 2015 and 2018 editions of the International Building Code (IBC) as safe harbors under the Fair Housing Act. The IBC is a model building code and not law, but it was adopted as law by various states and localities. The IBC provides minimum standards for public safety, health, and welfare as they are affected by building construction.

**DATES:** *Effective Date:* March 8, 2021. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 8, 2021. The incorporation by reference of certain other publications listed in the rule is approved by the Director of the Federal Register as of November 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Lynn Grosso, Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451

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#### SUPPLEMENTARY INFORMATION:

##### I. Background

Title VIII of the Civil Rights Act of 1968, as amended, (42 U.S.C. 3601 *et seq.*) (the "Fair Housing Act" or "Act") prohibits discrimination in housing and housing-related transactions based on race, color, religion, national origin, sex, disability and familial status.<sup>1</sup> The Act provides, *inter alia*, that unlawful discrimination against persons with disabilities includes the failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in a manner that "(1) the public and common use portions of such dwellings are readily accessible to and usable by handicapped persons; (2) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and (3) all premises within such dwellings contain the following features of adaptive design: (a) 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."<sup>2</sup> The Fair Housing Act does not contain specific technical design criteria that need to be followed 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), suffices to satisfy the requirements of [42 U.S.C. 3604(f)(3)(C)(iii)]," which states the Act's design and construction

<sup>1</sup> The Fair Housing 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 document hereinafter uses the terms "persons with disabilities," "disability," or "disabled," unless directly quoting the Fair Housing Act.

<sup>2</sup> 42 U.S.C. 3604(f)(3)(C).

requirements for the interiors of covered multifamily dwellings.

The Fair Housing Act directs HUD to "provide technical assistance to states and units of local government and other persons to implement [the design and construction requirements]."<sup>3</sup> On March 6, 1991 (56 FR 9472), HUD published the "Final Fair Housing Accessibility Guidelines" which set forth specific technical guidance for designing covered multifamily dwellings to be consistent with the Act. Section I of the Guidelines states, "[t]hese guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act." On June 24, 1994 (59 FR 33362), HUD published its "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines." HUD published a Fair Housing Act Design Manual (Design Manual) in 1996 that was reissued in 1998 with minor changes. The Design Manual is also a safe harbor for compliance with the Act.<sup>4</sup>

Since HUD published its Fair Housing Act final rule on January 23, 1989 (54 FR 3232), the ANSI A117.1 accessibility standard has been updated several times. HUD, as a member of the A117 Committee that updates the A117.1 standard, participates in these updates. HUD also periodically reviewed these updated standards, as part of its mandate to provide technical assistance to state and local governments to incorporate the Act's design and construction requirements into their laws and procedures for review and approval of newly constructed multifamily dwellings. HUD published a final rule on October 24, 2008 (73 FR 63614) that incorporated by reference ICC/ANSI-2003 and clarified that compliance with the appropriate requirements of CABO/ANSI A117.1-1992 and ICC/ANSI-1998 continued to meet the design and construction requirements of the Fair Housing Act. *See* 24 CFR 100.201a(b)(1). The 2008 final rule also updated the regulations to reference certain editions of the IBC as safe harbors for compliance with the accessibility requirements in the Fair Housing Act. HUD's final rule codified these additional design and construction standards that HUD recognized as safe harbors at § 100.205(e).

<sup>3</sup> 42 U.S.C. 3604(f)(5)(C).

<sup>4</sup> The Fair Housing Design Manual, August 1996, revised 1998, is available at <https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

## II. This Final Rule

On Wednesday, January 15, 2020, HUD published a proposed rule in the **Federal Register** (85 FR 2354) to amend HUD's Fair Housing Act design and construction regulations by incorporating by reference the 2009 edition of International Code Council (ICC) Accessible and Usable Buildings and Facilities (ICC A117.1–2009)<sup>5</sup> standard, as a safe harbor. HUD is adopting the proposed rule as final with no substantive changes.

This rule does not change either the scoping requirements or the substance of the existing accessible design and construction requirements contained in the Fair Housing Act or its regulation. This final rule also designates the 2009, 2012, 2015 and 2018 editions of the IBC as safe harbors under the Fair Housing Act. Unlike the Act, the IBC is a model building code and not a law. It provides minimum standards for public safety, health, and welfare as they are affected by building construction. The IBC is published by the International Code Council, which was formed to bring national uniformity to building codes. Representatives of three former national model code bodies joined together to develop what are now called the International Codes or I-Codes. The IBC is a major volume of the I-Codes and contains provisions for accessibility designed to reflect the intent of the Act, the regulations, and the Guidelines. Compliance with the IBC or another model building code is not required unless mandated by a state or local jurisdiction. A jurisdiction may adopt a model building code in its entirety or with modifications.

With respect to housing, the IBC contains requirements for three different types of accessible units, which include sleeping units (when such units are used as a residence). The most accessible of these three types is an "Accessible Unit," which is wheelchair accessible and may be found in numerous types of residential buildings. A second accessibility level is set forth in the requirements for "Type A" dwelling units. The IBC specifies that a percentage of "Type A" units must be provided containing a high level of accessibility, especially in kitchens and bathrooms, as well as some features of adaptability. The third accessibility level is a "Type B" dwelling unit, which is a unit that is intended to comply with those features of accessible and adaptable design required under the Act. Like the Act, the requirements for

Type B dwelling units apply to a greater number of dwelling units in a building, but the level of accessibility is less than that of the Type A dwelling units.

In addition, the IBC provides scoping requirements for the three types of dwelling units described above. The scoping requirements for the Type B dwelling units are intended to be consistent with the scoping requirements in the Act, the regulations, and the Guidelines. For the technical requirements, the IBC references the A117.1 accessibility standard. Thus, the IBC contains both scoping requirements and technical requirements that are consistent with the Act, the regulations, and the Guidelines. After reviewing the 2009, 2012, 2015 and 2018 IBC editions, HUD found that the accessibility provisions in these IBC editions are consistent with the requirements in the Act, HUD's regulations, and the Guidelines. HUD did not find any provision that it believes provides for less accessibility than what is required in the Act, the regulations, and the Guidelines, and HUD notes that in certain respects, the IBC provides for greater accessibility. Similarly, in its review of the ICC A117.1–2009, HUD did not find any provisions that provide for less accessibility than what is required in the Act, HUD's regulations, and the Guidelines.

HUD is also amending § 100.205(e)(3) to provide that, in the future, HUD may propose new safe harbors by **Federal Register** notice. HUD would provide a minimum 30-day public comment period and, after considering public comment, publish a final notice announcing any new safe harbor. HUD will periodically codify new safe harbors in part 100 in the course of later rulemaking. Compliance with safe harbors established by **Federal Register** notice will satisfy the requirements of paragraphs (a) and (c) of § 100.205.

## III. The Public Comments

HUD received 60 public comments on the proposed rule from various interested parties, including advocacy groups, members of the general public, and architects. One comment discussed another HUD rulemaking, and will not be addressed here.

### General Support

Many commenters overwhelmingly supported the rule and urged HUD to promulgate it. Several commenters stated that A117.1–2009 and IBC–2009, 2012, 2015 and 2018 meet or exceed HUD's Guidelines. Some commenters stated that making the newer A117.1 and International Building Codes safe harbors would improve compliance

with the Fair Housing Act's design and construction requirements. Other commenters stated that the rule will provide code officials, architects, and builders with needed tools to ensure that buildings are accessible to persons with disabilities, eliminate confusion concerning the use of older codes, and increase accessibility. Some commenters stated the new standards' incorporation and safe harbor designation will align the Act's requirements with the requirements of many U.S. jurisdictions, which already adopt and enforce one of these IBC editions and, by reference, ICC A117.1–2009. A commenter expressed that because the proposed safe harbors are more current, they provide clarity on certain aspects of design.

*HUD Response:* HUD thanks the public commenters for their support.

### Clarifications

*Comment:* A commenter asked that HUD clarify who needs to be aware of the rule to ensure accessible housing, including developers, designers, and others involved in the design and construction of covered multifamily dwellings.

*HUD Response:* HUD agreed with the comment that there are many building industry professionals who are involved in the design and construction of multifamily housing covered by the Act (e.g., owners, developers, architects, engineers, construction contractors). Any person or entity involved in the noncompliant design and construction of buildings or facilities subject to the Act's design and construction requirements may be held liable for violations of the Act. This includes a person or entity involved in only the design, only the construction, or both the design and construction of covered multifamily housing.<sup>6</sup> So all such persons should be aware of the requirements.

*Comment:* Several commenters requested that HUD make clear in the rule that the technical specifications in the HUD-identified safe harbors must be read in conjunction with the scoping requirements in the Fair Housing Act, its implementing regulations and the Fair Housing Act Accessibility Guidelines. One commenter expressed difficulty in finding the requirements in the IBC. Another commenter stated that HUD should clarify that use of one of the IBCs as a safe harbor must be in conjunction with use of the incorporated A117.1.

<sup>5</sup> Unlike prior versions of the American National Standard, the ICC A117.1–2009 does contain ANSI in its title.

<sup>6</sup> See 42 U.S.C. 3604(f)(3)(C); Joint Statement Q&A 56.

*HUD Response:* Persons designing and constructing covered multifamily dwellings should understand that, to be correctly applied to ensure compliance with the design and construction requirements of the Act, each safe harbor must be read in the context of the requirements of the Act itself, HUD's implementing regulations, and the Fair Housing Act Accessibility Guidelines. The IBC provides scoping requirements for Type B dwelling units that are intended to be consistent with the scoping requirements in the Act, the regulations, and the Guidelines. For the technical requirements, the IBC references the A117.1 accessibility standard. Thus, the IBC contains both scoping requirements and technical requirements that are consistent with the Act, the regulations, and the Guidelines.<sup>7</sup>

*Comment:* Some commenters urged HUD to specify, consistent with its prior safe harbor rule at 72 FR 39432, 39438 (July 18, 2007) and the HUD-DOJ Joint Statement, that to avail oneself of a safe harbor, the owner, developer and designer must comply with the safe harbor in its entirety without modification or waiver.

*HUD Response:* When HUD adopts a safe harbor for compliance with the Fair Housing Act, it has determined that compliance with all elements of the safe harbor, read in conjunction with the Act, HUD's implementing regulations, and the Fair Housing Accessibility Guidelines, will provide accessibility consistent with the Act's requirements. This level of overall accessibility permits individuals with a wide variety of disabilities to access and use the public and common use areas of the housing without adaptation and the dwelling units with or without certain minimum adaptations, such as the installation of grab bars. To ensure compliance with the Act, covered entities must select one safe harbor; once a specific safe harbor document has been selected, the building in question must comply with all of the provisions in that document that address the Fair Housing Act design and construction requirements to ensure the full benefit of the safe harbor. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more than one of the above safe harbor documents, from a variety of sources, or if waivers of provisions are requested and received. If it is shown that the designers and builders departed from the provisions of a safe harbor document, they bear the burden of

demonstrating that the dwelling units nonetheless comply with the Act's design and construction requirements.<sup>8</sup>

#### ANSI

*Comment:* One commenter opposed HUD's adoption of ANSI A117.1-2009, stating that HUD should permit use only of ANSI A117.1-1986 as it provides greater usability and access than subsequent ANSI A117.1 codes.

*HUD Response:* HUD disagreed with the comment. HUD notes that although there may be slight differences between ANSI A117.1-2009 and ANSI A117.1-1986, those differences do not result in decreased accessibility. Nor are they inconsistent with the Act's requirements. While there are some differences among the designated safe harbors, there is broad consensus about what is required for accessibility based on the ANSI standards and the safe harbors. These standards result from a process that includes input from a variety of stakeholders, including builders, designers, managers, and disability-rights advocates.

*Comment:* A commenter stated that ANSI A117.1-2009 is less restrictive than the Act because while HUD's Guidelines require all fixtures in a Specification A Bathroom to be accessible, A117.1-2009 requires only one lavatory to be accessible, even when a dual sink is provided in the bathroom. The commenter asked HUD to provide clarification as to this difference.

*HUD Response:* As indicated above, while there may be slight differences among the various editions of the A117.1 standard, those differences do not result in bathrooms that provide less accessibility and are consistent with the Act's requirements. While there are some differences among the designated safe harbors, these standards result from a process that includes input from a variety of stakeholders with broad consensus about what is required for accessibility based on the ANSI standards and the safe harbors.

*Comment:* A commenter recommended that HUD add language to the rule stating that if a jurisdiction mandates a higher level of accessibility than ICC 2009, the jurisdiction's standard should be favored over the ICC standard.

*HUD Response:* Some states and localities adopt accessibility requirements that provide for a higher level of accessibility for individuals with disabilities than the basic level of accessibility required by the Act. HUD noted that the adoption of a safe harbor for compliance with the Act does not

diminish the legal obligation to comply with more stringent accessibility requirements imposed by state or local law. The Act is not intended to invalidate or limit any state or local law that requires dwellings to be designed and constructed in a manner that affords greater access for persons with disabilities.<sup>9</sup> HUD agreed that compliance with a safe harbor does not ensure compliance with a state or local law that mandates greater accessibility.

#### IBC

*Comment:* A commenter stated that HUD should specify in the final regulation that the covered multifamily dwelling must be designed and constructed in accordance with plans and specifications approved during the permitting process and that the building code official must not waive, incorrectly interpret or misapply any of the accessibility requirements of the safe harbor. If not, the safe harbor status is forfeited.

*HUD Response:* HUD agreed with the comment. HUD's purpose in recognizing a number of safe harbors for compliance with the Act's design and construction requirements is to provide a range of options that, if followed in their entirety during the design and construction phase without modification or waiver, will result in residential buildings that comply with the Act's design and construction requirements. The standards and codes adopted by HUD as safe harbors represent safe harbors only when used in their entirety; that is, once a specific safe harbor document has been selected, the covered multifamily dwellings in question need to comply with all of the provisions in that document that address the Act's design and construction requirements. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more than one of the safe harbor documents or from a variety of sources. In addition, the benefit of safe harbor status will be lost if any waivers of accessibility provisions are requested and/or obtained from state or local governmental agencies. A designer or builder taking this approach runs the risk of building an inaccessible property. While this does not necessarily mean that failure to meet all of the respective provisions of a specific safe harbor will result in unlawful discrimination under the Act, designers and builders that choose to depart from provisions of a specific safe harbor bear the burden of demonstrating that their actions nevertheless result in covered

<sup>7</sup> Preamble to NPRM.

<sup>8</sup> Joint Statement, Q&A 38.

<sup>9</sup> 42 U.S.C. 3604(f)(8).

multifamily dwellings that comport with the Act's design and construction requirements.<sup>10</sup>

*Comment:* Several commenters stated that the rule should explicitly state that a developer must comply with one of the new IBC standards to claim a safe harbor. These commenters stated further that HUD should include language in the rule specifying that a state or local entity must adopt the IBC without any revisions that reduce the level of accessibility required by the IBC standard and the entities responsible for the design and construction must fully comply with the chosen safe harbor.

*HUD Response:* HUD declined to mandate that the new IBC standards are the only safe harbors that may be used. Rather, any of the designated safe harbors may be used. If a state or locality has adopted one of these safe harbor documents without amendment or deviation that reduces the level of accessibility, then covered residential buildings that are built to those specifications will be designed and constructed in accordance with the Act as long as the building code official does not waive or incorrectly interpret or apply one or more of those requirements. Moreover, as noted above, the entities responsible for the design and construction must fully comply with the chosen safe harbor.<sup>11</sup>

*Comment:* One commenter asked a question about meeting the Act's design and construction requirements. Specifically, the commenter asked: If units are designed to comply with the Fair Housing Act, as well as with HUD's Uniform Federal Accessibility Standards (UFAS) or ADA if there is federal assistance, would the stricter requirements of an IBC Type A unit apply; and Alternatively, if one were to choose to design to the IBC standard, would this be considered in compliance with the Act?

*HUD Response:* As discussed above, if a covered multifamily dwelling is designed in accordance with one of the IBC standards designated as safe harbors, it will comply with the Act so far as no deviation from the standard has occurred. If the property is also subject to multiple accessibility laws and standards, such as UFAS and the ADA, it must be designed and built in accordance with the accessibility requirements of each law. To the extent that the requirements of different federal laws apply to the same feature, the requirements of the law imposing greater accessibility requirements must

be met, in terms of both scoping and technical requirements.

#### *Specific Accessibility Features*

*Comment:* A commenter inquired whether a project that designates the 2009, 2012, 2015, or 2018 editions of the IBC as its safe harbor, and fails to meet all requirements of the 2009 ICC A117.1, but still meets the requirements of the Guidelines, would violate the Fair Housing Act? The commenter provided the following example: Kitchens in Type A units require a work surface to be 34" Above Finished Floor (AFF) max and provide for a forward approach, whereas the Guidelines have no requirements for work surfaces within kitchens. A failure to provide a work surface will not meet the requirements of the 2009 ICC A117.1, but will meet the Guidelines' requirements.

*HUD Response:* The IBC standards specify that a percentage of "Type A" units must be provided containing a high level of accessibility, especially in kitchens and bathrooms, as well as some features of adaptability. The IBC also provides for "Type B" dwelling units, which are intended to comply with those features of accessible and adaptable design required under the Act. Like the Act, the requirements for Type B dwelling units apply to a greater number of dwelling units in a building, but the level of accessibility is less than that of the Type A dwelling units. The IBC provides scoping requirements for Type B dwelling units that are intended to be consistent with the scoping requirements in the Act, the regulations, and the Guidelines. For the technical requirements, the IBC references the A117.1 accessibility standard. A case of discrimination may be established by showing that the housing does not meet HUD's Guidelines. As discussed above, the building in question must comply with all of the provisions in that document that address the Fair Housing Act design and construction requirements to ensure the safe harbor's full benefit.<sup>12</sup>

*Comment:* A commenter hoped the safe harbor status would supersede the dimensional conflict that currently exists for centerline of water closets to the adjacent walls supporting the grab bar.

*HUD Response:* As noted above, while there may be slight differences among the various editions of the A117.1 standard, the standards are consistent with the Act's requirements and the differences do not result in bathrooms that provide less accessibility.

*Comment:* A commenter asked: In ICC A117.1–2009, Type A and Type B units require that blocking be provided for the future installation of grab bars at toilets, showers, and bathtubs but describes only the location of the grab bars, not where blocking is to be provided. In contrast, the Guidelines provide diagrams for where blocking is to be located. If the 2012, 2015 or 2018 editions of the IBC are chosen as a safe harbor and blocking is provided for the grab bar locations described in the ICC A117.1–2009, but blocking is not provided to meet the requirements of the Guidelines, would this be a Fair Housing Act violation?

*HUD Response:* If the 2012, 2015 or 2018 editions of the IBC are chosen as a safe harbor, blocking should be provided as specified in chapters 6 and 10 of ICC A117.1–2009.

#### *Requests for Additional Guidance*

*Comment:* Some commenters urged HUD to also update guidance documents, including the Fair Housing Act Design Manual, the HUD–DOJ Joint Statement, and Fair Housing First to reflect current construction practices. A commenter stated that this would allow HUD's guidance documents and the Design Manual to be consistent with and fully reflect the current accepted safe harbors, the additional safe harbors as proposed in this rulemaking, and the various building codes used across the country by state and local communities. One commenter suggested HUD develop "Fact Sheets" covering the Act's design requirements that highlight each requirement with text and examples, along with links for users to access additional information.

*HUD Response:* The commenters' request is outside this rule's scope. HUD will, however, consider the commenters' recommendations to provide additional guidance on the Act's design and construction requirements.

*Comment:* One commenter asked that HUD provide additional guidance on what dwellings and buildings containing elevators are covered by the design and construction requirements.

*HUD Response:* HUD notes that the comment is outside the rulemaking scope, but directs the commenter to its prior guidance on this topic, including the Fair Housing Act Design Manual<sup>13</sup> and the Joint Statement of the Department of Housing and Urban Development and the Department of Justice on the Accessibility (Design and Construction) Requirements for Covered

<sup>10</sup> Joint Statement, Q&A 38.

<sup>11</sup> Joint Statement, Q&A 38.

<sup>12</sup> Joint Statement, Q&A 40.

<sup>13</sup> <https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

Multifamily Dwellings under the Fair Housing Act,<sup>14</sup> which contain detailed discussions of dwellings and buildings with elevators.

#### Other Issues

*Comment:* Commenters stated that going forward, HUD should designate new safe harbors in a timely fashion. Commenters requested that HUD review and adopt more recent versions of ANSI A117.1 and the IBC. Two commenters supported HUD's proposal to designate new safe harbors by **Federal Register** notice with a minimum 30-day comment period, stating that establishing a procedure to evaluate new editions of codes and standards against the Act's accessibility requirements will help ensure HUD's safe harbor list stays current.

*HUD Response:* HUD agrees that the process for adopting new safe harbors can be more timely and expects that the addition of § 100.205(e)(3) will serve that end. The new provision permits HUD to propose new safe harbors by **Federal Register** notice with a minimum public comment period of 30 days and, after considering public comment, to publish a final notice announcing any new safe harbor. HUD will also periodically codify new safe harbors in part 100 in the course of later rulemaking.

*Comment:* Several commenters requested that HUD continue to make the matrix, prepared by the ICC and forming a basis for the proposed rule, publicly available on its website as well as through the Fair Housing FIRST program. They stated that the continued availability of the matrix will enable designers, developers, and advocates to understand key components of the safe harbors, vis a vis the Act's requirements.

*HUD Response:* HUD notes that the matrix is part of this rulemaking's administrative record. Interested parties may contact the ICC concerning the electronic public posting of this document.

*Comment:* A commenter asked HUD to explain how this rule's adoption contributes to tackling the affordability crisis among people with disabilities so that they can afford to live in these advantageous living spaces.

*HUD Response:* As many commenters have noted, the adoption of additional safe harbors will make it easier for persons who design and construct covered multifamily dwellings to comply with the Act and state and local building codes. HUD believes this will also facilitate greater availability of

accessible housing across all affordability levels.

#### Outside the Rulemaking Scope

*Comment:* Some commenters stated that the Act and HUD's Guidelines should provide for accessibility meeting universal design and promoting visitability. One commenter noted that bathtubs are not usable to people with serious mobility impairments. The commenter added that accessible bathtubs are not expensive to build from the design phase, but are expensive to retrofit, and urged HUD to compel developers to plan for the needs of older adults and people with disabilities.

*HUD Response:* HUD notes that the comment is beyond this rulemaking's scope. HUD notes further that the Act is intended to place "modest accessibility requirements on covered multifamily dwellings" that will ensure accessibility for a broad range of individuals with disabilities.<sup>15</sup> Universal design often provides a greater level of accessibility design and visitability than the Act. HUD agreed with the commenter though that developers and designers should consider the needs of the aging population as they plan and build new housing or modernize existing housing.

*Comment:* A commenter thought that using these documents as default standards would undermine the other design codes like the Americans with Disabilities Act (ADA) and state building codes, which built upon them for better accessibility.

*HUD Response:* In many instances, multifamily housing is subject to the accessibility requirements of more than one statute, such as the Fair Housing Act, the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973. In such circumstances, the housing must comply with the law that provides for the greatest level of accessibility in a particular element. Furthermore, the Act specifically provides that it does not invalidate or limit any state or local law that requires dwellings to be designed and constructed in a manner that affords greater accessibility than the Act does. For these reasons, the adoption of safe harbors does not undermine the requirements of any standard that is applicable under other laws.

*Comment:* Two commenters suggested changes concerning the Uniform Federal Accessibility Standards (UFAS), with one commenter recommending that HUD adopt a rule creating consistency between UFAS and building codes to

facilitate Section 504 compliance in rehabilitation projects.

*HUD Response:* HUD declined to respond because the rule concerns safe harbors under the Fair Housing Act, not Section 504, so the comment is outside this rulemaking's scope.

#### IV. Incorporation by Reference

The referenced standard incorporated in this rule was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This rule incorporates the voluntary consensus standard ICC A117.1–2009 Accessible and Usable Buildings and Facilities, as satisfying the Fair Housing Act's design and construction requirements. It does not incorporate interpretations of ICC A117.1–2009 issued by the ICC or any other entity or person. The rule also cannot account for editions of ICC A117.1 issued after the 2009 edition. Therefore, if HUD were to revise the standard in the future to codify newer editions of ICC A117.1, further rulemaking would be required.

ICC A117.1–2009 is available online for review, via read-only access, at [https://codes.iccsafe.org/content/ICCA117\\_12009?site\\_type=public](https://codes.iccsafe.org/content/ICCA117_12009?site_type=public). Members of the public may visit the link and create a username and password to view the free-access edition. The standard may also be obtained from the International Code Council, 500 New Jersey Avenue NW, 6th Floor, Washington, DC 20001–2070, telephone number 1–888–422–7233, <http://www.iccsafe.org/e/category.html>. This phone number may also be reached by persons who are deaf or hard of hearing, or have speech disabilities, by dialing 711 via teletype (TTY).

The following standards, included in the regulatory text, were all previously approved for incorporation by reference in their respective locations and those references remain unchanged: ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, ANSI A117.1–1986.

#### V. Findings and Certifications

##### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis on any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions.

<sup>14</sup> <https://www.hud.gov/sites/documents/JOINTSTATEMENT.PDF>.

<sup>15</sup> House Report No. 711, 100th Congress, 2nd Session.

This final rule's purpose is to update a codified regulation that provides technical standards for the design of covered multifamily dwellings to ensure accessibility for persons with disabilities as required by the Fair Housing Act. Specifically, the rule incorporates by reference the 2009 edition of ICC A117.1 as a safe harbor, compliance with which would satisfy the Fair Housing Act's requirements. The final rule also retains as safe harbors the 1986, 1992, 1998 and 2003 editions of ANSI A117.1, as well as the 2000, 2003 and 2006 IBC editions, which HUD has previously adopted. In addition, the rule adds the 2009, 2012, 2015 and 2018 IBC editions as safe harbors. Consequently, small entities would not incur a significant economic impact as they may continue to use any of the previously codified standards. Additionally, adopting the 2009 ICC A117.1 and the other new safe harbors may alleviate a significant economic impact for small entities, as those entities may find compliance with these standards to be less burdensome because their state or local building codes may use these later editions of the A117.1 standard or the IBC. Therefore, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *Federalism Impact*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### *Environmental Impact*

This final rule is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1531–1538) requires federal agencies to

assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose, within the meaning of the UMRA, any federal mandates on any state, local, or tribal governments, or on the private sector.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number for this program is 14.400.

#### **List of Subjects in 24 CFR Part 100**

Aged, Fair housing, Incorporation by reference, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD is amending 24 CFR part 100 as follows:

#### **PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT**

■ 1. The authority for 24 CFR part 100 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3600–3620.

■ 2. In § 100.201, revise the definitions of "Accessible," "Accessible route," and "Building entrance on an accessible route" to read as follows:

#### **§ 100.201 Definitions.**

*Accessible* when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase "*readily accessible to and usable by*" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ICC A117.1–2009, ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, ANSI A117.1–1986 (all incorporated by reference, see § 100.201a) or a comparable standard is deemed "*accessible*" within the meaning of this paragraph.

\* \* \* \* \*

*Accessible route* means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the

appropriate requirements of ICC A117.1–2009, ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, ANSI A117.1–1986 (all incorporated by reference, see § 100.201a) or a comparable standard is an "*accessible route*" within the meaning of this paragraph.

\* \* \* \* \*

"*Building entrance on an accessible route*" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ICC A117.1–2009, ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, ANSI A117.1–1986 (all incorporated by reference, see § 100.201a) or a comparable standard is a "*building entrance on an accessible route*" within the meaning of this paragraph.

\* \* \* \* \*

■ 3. Revise § 100.201a to read as follows:

#### **§ 100.201a Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at Department of Housing and Urban Development, 451 Seventh Street SW, Room 5240, Washington, DC 20410–0001, telephone number 202–708–2333, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html). The phone numbers included in this section may also be reached by persons who are deaf or hard of hearing, or have speech disabilities, by dialing 711 via teletype (TTY).

(b) American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, 212.642.4900, [info@ansi.org](mailto:info@ansi.org). <https://webstore.ansi.org>.

(1) ANSI A117.1–1986, American National Standard for Buildings and Facilities: Providing Accessibility and Usability for Physically Handicapped People, 1986 edition, into §§ 100.201 and 100.205.

(2) [Reserved]

(c) International Code Council (ICC), 500 New Jersey Avenue NW, 6th Floor, Washington, DC 20001–2070, telephone

number 1-888-422-7233, <http://www.iccsafe.org/e/category.html>.

(1) CABO/ANSI A117.1-1992, American National Standard: Accessible and Usable Buildings and Facilities, 1992 edition, into §§ 100.201 and 100.205.

(2) ICC/ANSI A117.1-1998, American National Standard: Accessible and Usable Buildings and Facilities, 1998 edition, into §§ 100.201 and 100.205.

(3) ICC/ANSI A117.1-2003, American National Standard: Accessible and Usable Buildings and Facilities, 2003 edition, into §§ 100.201 and 100.205.

(4) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, 2009 edition, approved October 20, 2010, into §§ 100.201 and 100.205.

■ 4. In § 100.205, revise paragraph (e)(1), add paragraphs (e)(2)(vii) through (x), and revise paragraph (e)(3), to read as follows:

**§ 100.205 Design and construction requirements.**

\* \* \* \* \*

(e)(1) Compliance with the appropriate requirements of ICC A117.1-2009, ICC/ANSI A117.1-2003, ICC/ANSI A117.1-1998, CABO/ANSI A117.1-1992, or ANSI A117.1-1986 (all incorporated by reference, see § 100.201a), or suffices to satisfy the requirements of paragraph (c)(3) of this section.

(2) \* \* \*

(vii) 2009 International Building Code, published by ICC (<http://www.iccsafe.org>), and interpreted in accordance with the relevant 2009 IBC Commentary;

(viii) 2012 International Building Code, published by ICC (<http://www.iccsafe.org>), and interpreted in accordance with the relevant 2012 IBC Commentary;

(ix) 2015 International Building Code, published by ICC (<http://www.iccsafe.org>), and interpreted in

accordance with the relevant 2015 IBC Commentary; and

(x) 2018 International Building Code, published by ICC (<http://www.iccsafe.org>), and interpreted in accordance with the relevant 2018 IBC Commentary.

(3) HUD may propose safe harbors by **Federal Register** notification that provides for a minimum of 30 days public comment period. HUD will publish a final notification announcing safe harbors after considering public comments. Compliance with safe harbors established by **Federal Register** notification will satisfy the requirements of paragraphs (a) and (c) of this section.

\* \* \* \* \*

**Anna Maria Fariás,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

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