

April 13, 2020

Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

Via regulations.gov

Re: Joint Comments in Support of the U.S. Department of Housing and Urban Development's Proposed Rule Adopting Additional Fair Housing Act Safe Harbors, Docket No. FR-6138-P-01

Our organizations strongly support the Department of Housing and Urban Development's (HUD) proposal to recognize the 2009 ICC A117.1 Accessible and Usable Buildings and Facilities standard (2009 ICC A117.1), 2009 International Building Code (IBC), 2012 IBC, 2015 IBC, and 2018 IBC as safe harbors for compliance with the Fair Housing Act's (FHA) accessibility requirements, as detailed in the above-captioned proposed rule.

Adopted in all 50 states, the IBC, developed by the International Code Council (ICC), has become the standard model code for the built environment in the United States. It contains the scoping (what, where, and how many) for residential accessibility. The 2012, 2015, and 2018 IBC editions reference the ICC A117.1-2009 for technical requirements for accessible design. The 2009 IBC references the 2003 edition of that standard.

HUD has previously granted safe harbor for the 2006, 2003, and 2000 (with 2001 Supplement) editions of the IBC, Code Requirements for Housing Accessibility (CRHA), as well as the 1986, 1992, 1998, and 2003 editions of the A117.1 standard. However, the existing safe harbors are now outdated as compared to existing building code requirements, and are applicable to only one state with statewide adoption of the IBC.¹ Requiring reliance on outdated building codes in order for a developer or designer to avail themselves of one of the FHA's recognized safe harbors can cause confusion as well as noncompliance with existing codes. That's why HUD's proposal to broaden its list of recognized safe harbors is so important.

Expanding the list of safe harbors through to the most recent edition of the IBC will have immediate positive implications for the governments, the accessibility community, and the construction industry. The updated safe harbors will prove an asset to governments by clarifying that their adopted codes and standards satisfy the FHA. For designers and developers, the safe harbors will improve compliance with the FHA by providing clarity and guidance, which in turn furthers the benefits of the FHA's policies for the accessibility community.

¹ <https://www.iccsafe.org/wp-content/uploads/Master-I-Code-Adoption-Chart-FEB-2020.pdf>.

We commend HUD on its thorough review of the four IBC editions and 2009 ICC A117.1. We concur that no provisions within these documents provide lower levels of accessibility than those required by the FHA, and that in certain respects, the IBC editions provide for greater accessibility.²

Finally, we support HUD's proposed clarification that it may propose new safe harbors by Federal Register notice with a minimum 30-day comment period. The IBC is updated on three-year cycle, and the Code Council finalized a subsequent A117.1 accessibility standard in 2017. Many states and local governments adopt current code and standard editions after their publication, such that the Department's safe harbor list will require periodic updates in order to keep pace with building requirements in much of the country. HUD's establishing a procedure to evaluate new editions of codes and standards against the FHA's accessibility requirements will help ensure the Department's safe harbor list stays current.

Thank you for the opportunity to provide comment. If you have any questions concerning our proposals please do not hesitate to contact us.

Sincerely,

ADA Professional Team, LLC
American Institute of Architects
American Society of Interior Designers
Anne Arundel County, Maryland
Building Intuition, LLC
Building Owners and Managers Association
Bureau Veritas, Building and Infrastructure
Division
City of Overland Park, Kansas
Code Consultants, Inc.
Codes and Standards International
Create Access, Architects / Consultants
Disability Rights Education & Defense Fund
Forcon International Corporation
Great Plains ADA Center
Hirsch Group Architecture
Idaho Association of Building Officials

IDEA Center at the University at Buffalo
International Association of Building Officials
International Code Council
Jensen Hughes
National Electrical Manufacturers Association
New Mexico Governor's Commission on
Disability
North Carolina, Office of the State Fire Marshall
Olivieri Brothers Architects
Plumbing Manufacturers International
RESNA
Scully ADA Consulting, Ltd.
Steven Winter Associates, Inc.
United Spinal Association
Virginia Building and Code Officials Association
Washington Association of Building Officials

² All referenced editions of the IBC and ICC A117.1 standard as well as the additional I-Codes and standards the Code Council publishes are freely accessible at <https://codes.iccsafe.org/>.