



April 6, 2020

Submitted via: www.regulations.gov

Office of the General Counsel, Rules Docket Clerk
U.S. Department of Housing and Urban Development
451 7th Street, SW Room 10276
Washington, D.C. 20410-0500

Re: Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors Proposed Rulemaking, Docket No. FR-6138-P-01, RIN 2529-AA99

Dear General Counsel Compton,

Thank you for the opportunity to comment on the Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors Proposed Rulemaking. The National Disability Rights Network (NDRN) writes to raise a number of concerns about the proposed rule.

NDRN is the non-profit membership association of Protection and Advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities, including advocacy on community integration to ensure people with disabilities who want to live in the community can do so.

People with disabilities and their families face a national shortage of accessible housing. The lack of accessible housing limits housing options for many people with disabilities and particularly makes moving from segregated facilities into the community extremely challenging.

NDRN has no opposition to incorporating newer editions of the International Building Code (IBC) as additional safe harbors. However, the proposed rule's failure to explicitly state that a developer must comply with the new IBC standards to claim the safe harbor is a fatal flaw. The final rule must include provisions that clearly and unambiguously state that covered multifamily dwellings must comply with the new IBC standards.

In order to assure that an owner, developer or designer may safely rely on one of the IBC standards described in HUD's proposed rule, HUD must require, through rewriting the regulation to specifically require the following:

1. The standard must have been adopted by a state or local entity without limiting amendments that would reduce the level of accessibility required by the IBC standard that has been reviewed and approved by HUD.
2. The owner, developer and designer must have fully complied with the safe harbor.

Additionally, HUD has failed to include in its proposed rule a requirement that 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, in order to ensure the full benefit of the safe harbor.¹ So, HUD should include in its regulation an additional requirement:

3. That the covered multifamily dwellings for which safe harbor is sought must comply with all of the provisions in the safe harbor.

Finally, HUD has noted in prior safe harbor announcements² that American National Standards Institute standards lack adequate specifications for scoping. Scoping criteria define when a building, element or space must be accessible. Because it is critically important that any technical standards identified by HUD be consistent with the scoping requirements found in the Fair Housing Act as interpreted by case law, its regulations, and the Fair Housing Act Accessibility Guidelines, HUD's rule should include this requirement as well.

This is important especially because "covered multifamily dwellings," which are required to comply with fair housing accessibility requirements, have been defined in judicial decisions, and adoption of a safe harbor cannot be interpreted to change a judicial ruling or a HUD regulation that addresses what the law requires be covered.

The technical specifications set forth 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.

Finally, as HUD indicates in its preamble to the proposed rule, the Fair Housing Act itself provides that, "[d]eterminations by a State or unit of general local government under [the Act] shall not be conclusive in enforcement proceedings...." 42 U.S.C. 3604(f)(6)(a). The fact that a property has been designed in compliance with plans that

¹ See, e.g., "Report of HUD Review of the Fair Housing Accessibility Requirements in the 2006 International Building Code," 72 FR 39432, 39438 (July 18, 2007).

² Id., 72 FR at 39434.

are approved by a state or local official is not an assurance to an owner, developer, architect or designer that the plans comply with a safe harbor, and the fact that a local or state official has not waived or misapplied a provision does not assure that the building has been built to comply with the requirements. Safe harbor status cannot be provided unless the provisions described above are met.

Please contact Cyrus Huncharek, Public Policy Analyst, at cyrus.huncharek@ndrn.org should you have any questions or concerns with these comments.

Sincerely,



Curtis L. Decker
Executive Director