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Final Report of HUD Review of Model Building Codes; Notice

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. 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. 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 [1]

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

[1] 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.

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. 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, 100th 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 (9th 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.

Chapter 2: Policy Statement

Introduction

This policy statement provides information on the design and construction requirements of the Fair Housing Act (the Act) with regard to new construction of residential housing built for first occupancy after March 13, 1991, and the U.S. Department of Housing and Urban Development's (HUD or the Department) administration and enforcement of these requirements. The policy statement, together with the Final Report of HUD Review of Model Building Codes (Final Report), provide technical assistance to building code organizations and officials regarding the accessibility provisions of four model building codes and identify variances between the model building codes and the requirements of the Act, the Department's implementing regulations at 24 CFR Part 14 *et al.* (the regulations), and the Fair Housing Accessibility Guidelines (the Guidelines).

This policy statement and the Final Report also provide guidance on the Department's policy concerning the relationship between the requirements of the Act and its enforcement by the Department and the model building codes and other accessibility laws and standards.

Further, this policy statement and Final Report responds to the House of Representatives Committee on Appropriations directive to HUD to complete its review of a matrix submitted by building and code organizations that compared the Guidelines with the accessibility provisions in the model building codes and to issue a policy statement by December 31, 1999. H.R. Rep. No. 298, 106th Cong., 1st Sess. 34 (1999).

Background

The Fair Housing Act mandates that all covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, must contain specified features of accessible and adaptable design. 42 U.S.C. 3604(f)(3)(C). In 1989, the Department issued its regulations implementing the Act's design and construction requirements. 24 CFR 100.205. Both the Act and the regulations state that compliance with the appropriate requirements of the American National Standards Institute (ANSI) A117.1 standard suffices to satisfy the Act's accessibility requirements. (The Act uses the term ''handicap,'' however, in keeping with preferred terminology established in the Americans with Disabilities Act of 1990, this policy statement and Final Report uses the terms ''persons with disabilities,'' ''disability,'' or ''disabled.'')

On March 6, 1991, after consideration of extensive public comment from architects, developers, builders, persons with disabilities, and other interested groups, the Department published the ''Fair Housing Accessibility Guidelines,'' which set forth specific guidelines for designing dwelling units consistent with the Act. 56 FR 9472–9515. In keeping with the Act and the regulations, the Guidelines are largely based on the ANSI A117.1 standard.

In 1992, the Department was contacted by the Council of American Building Officials (CABO), and the 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) in this regard. The Department recognized that incorporation of building code requirements that are consistent with the Act's requirements would provide an increased measure of compliance. Therefore, in support of this effort, the Department agreed to provide technical assistance to BCMC and the building industry organizations, and did so during 1992 and 1993. The model building code organizations subsequently 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 was asked to appoint representatives to serve on the Residential Task Force. The technical criteria developed by the ANSI Residential Task Force were included in the ICC/ANSI A117.1–1998. (The reference to ICC, International Code Council, reflects an organizational change in the ANSI only.)

Since 1961, ANSI A117.1 has been the accessibility standard used by the private industry, and, since 1980, has included technical criteria for fully accessible dwelling units. The 1998 ICC/ANSI A117.1 calls these fully accessible dwelling units ''Type A dwelling units.'' The requirements for Type A dwelling units are found at Section 1002 of ICC/ANSI A117.1–1998. The 1998 ANSI also contains technical criteria for a ''Type B dwelling unit.'' These criteria are found at Section 1003 of ICC/ANSI A117.1–1998 and are intended to reflect the technical requirements for dwelling units required to be accessible by the Act. Note, however, that the Act does not require that developers build new construction to the Type A standard in order to meet the requirements of the Act, although a Type A unit will satisfy the Act's requirements.

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 these 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 late December 1997, CABO submitted to the Department a matrix that compared model four building codes to the Fair Housing 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 which did not meet the requirements of the Act, the regulations, and the Guidelines. The Department also requested that SWA draft recommendations on how each identified variance could be corrected in order to conform with the Act, the regulations, and the Guidelines. The four model building codes are as follows:

National Model Building Codes

National Building Code, Building Officials and Code Administrators International (BOCA), 1996 edition

Uniform Building Code, International Conference of Building Officials (ICBO), 1997 edition

Standard Building Code, Southern Building Code Congress International (SBCCI), 1997 edition

International Building Code

International Building Code, (First Draft) International Code Council (ICC) November 1997

Although the original matrix focused on the 1997 First Draft of the International Building Code (IBC), because the IBC had progressed to a proposed IBC 2000, the ICC asked the Department to include in its review, to the greatest extent possible, the proposed IBC 2000 and 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. To facilitate review of portions of the proposed IBC 2000, BOCA prepared an update to the December, 1997 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 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.

The Department published a draft report and policy statement on October 26, 1999. On November 10, 1999, the Department convened a public meeting to listen to comments on the draft report. The Department solicited written comments as well. The Department carefully considered all of the comments it received and has made revisions accordingly so that the policy statement and Final Report reflects the public comments.

The Final Report consists of an Introduction (preamble), this policy statement, and four reports on the model building codes. The four model building code reports were prepared by SWA and have been reviewed and adopted by the Department.

The Final Report serves solely to respond to CABO's request for technical assistance and 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 is not attempting through the issuance of this Final Report to shift its responsibility to enforce the design and construction requirements of the Act to any model code organization or to state and local building code officials. However, the Department recognizes that an 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.

History of Fair Housing Act Design and Construction Requirements

In 1988, Congress extended the protections of the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, the nation's primary housing civil rights law, to families with children and to persons with disabilities. 42 U.S.C. 3604. 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, 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.

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 areas are readily accessible to and usable by persons with disabilities;

(2) All doors designed to allow passage into and within all premises in covered dwellings are sufficiently wide to allow passage by persons using wheelchairs;

(3) All premises within 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 bathroom such that an individual using a wheelchair can maneuver about the space.

42 U.S.C. 3604(f)(3)(C). These provisions were incorporated in the Department's Fair Housing Accessibility Guidelines as seven requirements. The underlying concept behind the design and construction requirements is to create housing that is accessible for persons with disabilities but which does not necessarily appear to be different from conventional housing.

The Act's design and construction requirements apply to ''covered multifamily dwellings,'' which are 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. The terms ''dwelling unit,'' ''ground floor,'' and ''building'' all have particular meanings that are set forth in the Act, the regulations, and the Guidelines. 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 builders have to follow 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 Accessible and Usable Buildings and Facilities (commonly referred to as ANSI A117.1) would satisfy the Act's design and construction requirements for the interiors of dwelling units. 42 U.S.C. 3604(f)(4).

In the Department's 1989 regulations implementing the design and construction requirements of the Fair Housing Act, the Department specifically stated that compliance with the appropriate requirements of ANSI A117.1–1986 suffices to satisfy the requirements of the Act relating to interiors of dwelling units. 24 CFR 100.205(e). The Department also references ANSI A117.1–1986 for the public and common use areas, in its definition of ''accessible.'' At the time Congress passed the Act, and the Department promulgated its regulations, the current version of ANSI A117.1 was the 1986 edition.

The Act emphasizes 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. However, Congress authorized the Department to encourage the inclusion of these requirements into their procedures. 42 U.S.C. 3604(f)(5)(C).

The Act 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).

Congress charged the Secretary of HUD to ''provide technical assistance to states and units of local government and other persons to implement the requirements of paragraph 3(C) [setting forth the design and construction requirements].'' 42 U.S.C. 3604(f)(5)(C). To this end, in order to properly meet this obligation, on March 6, 1991, the Department published the ''Fair Housing Accessibility Guidelines,'' (the Guidelines) published at 56 FR 9472–9515, which set forth specific guidelines for designing dwelling units consistent with the Fair Housing Act. On June 24, 1994, the Department published its ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,'' published at 59 FR 33362–33368 (the Questions and Answers About the Guidelines).

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.

The Department also published a Fair Housing Act Design Manual (Design Manual). In addition to describing the design and construction requirements of the Act, the Design Manual provides further technical guidance of a practical nature on the application of the Guidelines. The Design Manual also serves as a safe harbor for compliance.

CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 as Safe Harbors

Through its review of the SWA draft reports, the Department reviewed the technical standards in the CABO/ANSI A117.1–1992 and the ICC/ANSI A117.1–1998, particularly the latter's technical standards for the interiors of dwelling units, called Type B dwelling units, to determine whether these later editions of ANSI meet the requirements of the Act, the Guidelines, and the 1986 edition of ANSI A117.1. The 1992 and 1998 editions of ANSI A117.1 have been adopted by several of the model building code associations. Mindful of the language of the Act, and having now reviewed those technical standards, the Department believes that CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 are consistent with the Act and are additional safe harbors for compliance with the Act's technical accessibility requirements. Therefore, 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 ICC/ANSI A117.1–1998, ANSI A117.1–1986, and CABO/ANSI A117.1–1992 suffices to satisfy the requirements of the Act related to interiors of dwelling units and public and common use areas. Additionally, the Department maintains its position that compliance with its Fair Housing

Accessibility Guidelines also constitutes compliance with the Act. The Design Manual also serves as a safe harbor for compliance.

It is important to note that ANSI A117.1 contains only technical criteria, whereas the Fair Housing Act, the implementing regulations, and the 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. Therefore, designers and builders relying on ANSI A117.1 also need to consult the Act and the Department's regulations, or the Guidelines for the scoping criteria.

As a further note, the Department wishes to emphasize that the safe harbors for compliance outlined above apply only to the accessibility requirements of the Fair Housing Act, and do not constitute a safe harbor for compliance for Federally funded facilities and dwelling units covered by Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794(a); 24 CFR 8 and 9; the Architectural Barriers Act of 1968 (ABA), 42 U.S.C. 4151–4157; 24 CFR 40 and 41, which must comply with their respective regulatory requirements, including the Uniform Federal Accessibility Standard (UFAS); and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213. However, to the extent that the requirements of the Fair Housing Act overlaps with the requirements of Section 504, the ABA, or the ADA, it is necessary to read the laws together and meet the requirements of all applicable laws.

Enforcement of the Fair Housing Act Design and Construction Requirements Where a State Has Adopted a Building Code That Conforms to the Act

The Act makes it 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 Fair Housing 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).

Fair Housing Act Procedures When a Design and Construction Complaint is Filed

The Department is required to conduct investigations of housing discrimination in response to a complaint filed with the Department. 42 U.S.C. 3610; 24 CFR 103.200. Discrimination complaints may be filed by an individual or organization that is an ''aggrieved person'' under the Act. 42 U.S.C. 3602(i)–(j); 24 CFR 103.15. A discrimination complaint may also be filed by the Secretary or his designee, the Assistant Secretary for Fair Housing and Equal Opportunity. 42 U.S.C. 3610(a); 24 CFR 103.15.

When a complaint is filed with the Department, all of the parties to a complaint are notified of its receipt. 42 U.S.C. 3610(a)(1)(B)(i)(ii); 24 CFR 103.45 and 103.50. The Department then conducts an investigation to determine whether there is reasonable cause to believe that the allegations in the complaint are true. 42 U.S.C. 3610(a)(1(B)(iv); 24 CFR 103.200. The Department also attempts to resolve housing discrimination complaints through conciliation. 42 U.S.C. 3610(b)(1); 24 CFR 103.300. If the Department finds that there is reasonable cause to believe that the allegations of unlawful discrimination are true, and attempts to resolve the complaint through conciliation have failed, then the Department issues a charge of discrimination. 42 U.S.C. 3610(g)(1)–(2); 24 CFR 103.400(a)(2). The parties then have the right to elect to pursue litigation through the Department's administrative adjudicative process or in federal district court. 42 U.S.C. 3612(a); 24 CFR 103.410.

The Department refers to the appropriate administrative agency a complaint that arises in a jurisdiction that has been determined to have a state or local law that provides rights and remedies substantially equivalent to the Act, and which has a Cooperative Agreement with the Department to process housing discrimination complaints. 42 U.S.C. 3610(f); 24 CFR 103.100. Additionally, the United States Department of Justice (DOJ) has authority to commence litigation when it determines that there is a pattern or practice of discrimination. 42. U.S.C. 3614(a); 24 CFR 103.500.

When the Department receives a potential housing discrimination complaint alleging violations of the design and construction requirements of the Act, it first makes an initial determination whether it has jurisdiction to investigate the complaint. In making that determination, the Department examines whether: (1) The person or organization filing the complaint alleges an injury because of the fact that the property in question was not designed and constructed to meet the accessibility requirements of the Act; (2) The complaint was filed within one year of the date on which the alleged discrimination occurred or terminated; (3) The Department has jurisdiction over the owners, developers, architects and others involved in the design and construction who are named in the complaint (the respondents); and (4) The property is a ''covered multifamily dwelling'' under the Act that was designed and constructed for first occupancy after March 13, 1991.

An investigation of an accessibility discrimination complaint under the Act typically involves a review of building permits and certificates of occupancy, plans and specifications showing the design of the buildings and the site, and an on site inspection of the property. During the investigation, Department investigators or contractors takes measurements of relevant interior and exterior elements on the property. All parties to the complaint have an opportunity to present evidence concerning whether the Department has jurisdiction over the complaint, and whether the Act has been violated as alleged.

In making a determination whether the design and construction requirements of the Act have been violated, the Department uses the language of the Act, the regulations, the Guidelines, and the technical standards for the interiors of dwellings and for public and common use areas found in the ANSI A117.1–1986 standard. The

respondents to the complaint have an opportunity to demonstrate that the requirements of the Act have been met even if the standards in the Guidelines, the Design Manual, or ANSI A.117.1–1986 have not been met. Upon publication of an interim rule announcing the Department's position that ICC/ANSI A117.1–1998 and CABO/ANSI A117.1–1992 also constitute safe harbors for compliance, as explained earlier in this policy statement, the Department will also consider evidence provided by a respondent showing that the respondent has complied with either of those editions of ANSI A117.1.

When the Department or DOJ finds that the design and construction requirements of the Act have been violated, the Department or DOJ seek to remedy the violation, including appropriate remedies for the victim of discrimination. Where technically and otherwise feasible, the Department or DOJ seek to have the property retrofitted so that it meets the requirements of the Act. The requirement to retrofit applies even though a building code may not require properties to be altered in order to meet the requirements of the Act. Where it is not feasible to retrofit the property, the Department or DOJ explore with all parties other remedies that will provide accessible housing opportunities for persons with disabilities.

Other Accessibility Standards

Nothing in the Act precludes a jurisdiction from adopting accessibility standards that provide a greater degree of accessibility than is required under the Act. 42 U.S.C. 3604(f)(7). In addition, residential properties may be subject to more than one accessibility standard. For example, when a residential property receives federal financial assistance, it must comply with the accessibility requirements of Section 504, 24 CFR 8.1, *et seq.*; and may also be subject to the ABA.

The Americans with Disabilities Act (the ADA) also contains accessibility requirements, which have been incorporated in the Americans with Disabilities Act Standards for Accessible Design (ADA Standards), 28 CFR Part 36, Appendix A (1999). The requirements of Title II of the ADA, which prohibits discrimination on the basis of disability by public entities, apply, in relevant part, to housing that is designed and constructed by a state or local governmental entity (including a public housing authority). 42 U.S.C. 12131–12134. The requirements of Title III of the ADA, which prohibits discrimination by private owners or operators of public accommodations, apply, in relevant part, to commercial facilities and public accommodations in connection with housing. 42 U.S.C. 12181–12189.

The Department wishes to stress that developments may be subject to more than one accessibility requirement and all applicable laws must be read together. If the Fair Housing Act's accessibility requirements apply to a development that is also subject to the ADA, Section 504 or the ABA, the Fair Housing Act requirements do not preempt the ADA, Section 504 or ABA requirements.

Conclusion

Overall, the Final Report acknowledges that the model building codes reflect the majority of the technical requirements of the Act. In addition, the Final Report found that all four model building codes applied accessibility requirements to most, but not all, of the covered multifamily dwellings that are subject to the design and construction requirements of the Act. The Final Report identifies areas where the model building codes need to be revised in order to ensure that they are consistent with the requirements of the Act, and makes recommendations to assist the model building code organizations in developing model building codes that are consistent with the design and construction requirements of the Act.

Chapter 3: International Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the International Building Code (IBC) First Draft and proposed Chapters 10, 11, Appendix to Chapter 11, and Section 3407 of the International Building Code 2000 (IBC 2000) that do not meet the requirements of the Fair Housing Act (the Act), the Department's regulations implementing the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, recommendations are provided for how the IBC should be revised to meet the requirements of the Act, the regulations, or the Guidelines.

Where an IBC Section citation refers to ''IBC 2000'' in this report, it is for the purpose of reflecting revisions to substance or numbering of the Section that were made from the First Draft of the IBC to the proposed IBC 2000. If the citation does not include a reference to the proposed IBC 2000, it is SWA's understanding that there is no difference in substance between the IBC and the proposed IBC 2000. However, it should be noted that some chapters of the proposed IBC 2000, notably Chapter 3, were not available for review at the time of this report.

II. Methodology

The analysis of the IBC by the Department and Steven Winter Associates, Inc. (SWA), its contractor, consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the regulations, 24 CFR 100.201 and 205, the Guidelines,'' 56 FR at 9472–9515 (March 6, 1991), and the ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,'' 59 FR 33362–33368 (June 28, 1994) (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997, copyrighted comparative matrix developed by the International Code Council, Inc. (ICC), Building Officials & Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International, Inc. (SBCCI), and the Council of American Building Officials (CABO). The matrix consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three national model building codes and the IBC. The analysis of the IBC began with a review of the column of the matrix that includes the IBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between IBC's accessibility requirements and those of the Act, the regulations, and Guidelines.

—A review of the accessibility provisions of the IBC, First Draft, November 1997, herein referred to as the IBC; and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and ICC/ANSI A117.1–1998. The IBC, First Draft, November 1997, refers to CABO/ANSI A117.1–1992 for the technical provisions for accessibility. In the July 1998, Final Draft, the title of the referenced standard was editorially revised from CABO A117.1 to ICC/ANSI A117.1–1998 to reflect the change in the secretariat. Proposed changes to the Final Draft to be included in the IBC 2000 include changing the title of the referenced standard to ICC A117.1–1998. However, this standard is herein referred to as ICC/ANSI A117.1–1998. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the IBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Kim Paarlberg, BOCA Staff Architect and the liaison to the IBC Means of Egress/Accessibility Committee, to gain insight into how the ICC responds to

variances that were identified. SWA found it necessary to understand ICC's interpretations of its own requirements that may not be apparent when reviewing code text.

—A review of the August 23, 1999 update to the December 15, 1997 comparative matrix, prepared by BOCA. The updated matrix compared the Guidelines with the November 1997 First Draft International Building Code and the proposed IBC 2000. The updated matrix includes the final text of any changes to the first draft subject to final approval by ICC.

—A review of the proposed IBC 2000 Chapters 10 and 11, Section 3407, and the Appendix to Chapter 11. Hereafter, all references to IBC 2000 refer to these chapters only. They were used to cross check sections of the updated matrix that indicated changes to the first draft to be included in the IBC 2000. The updated matrix included ''challenges,'' or proposed changes to the Final Draft, that were voted on during hearings on September 12–17, 1999. The analysis was completed based on information from ICC that the challenges did not pass.

The Department formed a Model Code Working Group consisting of representatives 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. The Working Group conferred with SWA by conference call on September 15, 1999, asking questions and making comments and suggestions about the analysis. This meeting led to further conversations between SWA and Kim Paarlberg, and conversations between Department staff and other code staff.

The draft report was made available for public comment on October 26, 1999, and a public meeting on the draft report was held on November 10, 1999. In addition to oral testimony, and written testimony provided at the public meeting, the Department received 30 written comments on the report. These written comments included one set of consolidated comments from a group of organizations. All comments were reviewed and considered. The Final Report incorporates many of those comments and has been revised from the draft report.

III. The International Building Code

The International Code Council (ICC) is an umbrella organization created in 1994 to assist common code development. The International Building Code (IBC) represents an effort to bring national uniformity to building codes. Drafts of the proposed code were developed by representatives of the three national model code bodies: The Building Officials and Code Administrators International (BOCA), Inc., the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI), Inc.

The IBC includes provisions for accessibility intended to reflect the intent of the Act, the regulations and the Guidelines. Chapter 11 of the Code, ''Accessibility'' addresses the accessibility provisions of the Act. Any jurisdiction that adopts the IBC 2000 code must follow these accessibility provisions.

A Working Draft of the IBC was published in May, 1997. This draft was revised to include approved changes and was published as the First Draft, November 1997. The first draft was revised to include approved changes and was published as the Final Draft, July 1998. Hearings on the proposed changes to the Final Draft were held in September, 1999. The IBC 2000 Edition is now scheduled to be published. The IBC 2000 consists of the IBC Final Draft plus all approved 1999 Cycle changes. (ICC has informed SWA that November 1, 1999, is the start of the next code development cycle, called the 2000 Cycle during which the ICC will address proposed changes to the 2000 Edition. The 2000 Cycle will end in September of 2000, and approved changes from that cycle, along with approved changes from the subsequent 2001 Cycle and a 2002 Cycles, will be incorporated and will constitute the 2003 Edition of the IBC.)

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. Compliance with the IBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as ''model codes.''

Historically, model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for accessibility that have been defined in versions of ANSI A117.1 prior to 1998. These dwelling units are referred to in the IBC in Section 1102 as a ''Type A dwelling unit.'' ICC/ANSI A117.1–1998 is the first edition of ANSI A117.1 to include technical standards for what is referred to as a ''Type B dwelling unit.'' The ICC/ANSI A117.1 does not define a Type B unit, however, Section 101 of the standard states: ''Section 1003 of this standard provides technical criteria for Type B dwelling units. These criteria are intended to be consistent with the intent of only the technical requirements of the Federal Fair Housing Amendments Act Accessibility Guidelines. These Type B dwelling units are intended to supplement, not replace, accessible Type A dwelling units as specified in this standard.'' *See* ICC/ANSI A117.1–1998, Section 101. Therefore, the purpose of the ICC/ANSI A117.1–1998 technical criteria for Type B dwelling units is to incorporate technical provisions for the interiors of dwelling units, intended to be consistent with the Act, the regulations, and the Guidelines. It is important to note, however, that ICC/ANSI A117.1–1998 does not contain scoping provisions. The importance of this distinction is discussed below.

In the IBC 2000, Section 1102 defines Type B dwelling units as follows: ''A dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1, intended to be consistent with the technical requirements of fair housing required by federal law.''

As noted under ''Methodology,'' above, the IBC references the ICC/ANSI A117.1–1998 standard, but in the code, the reference is to ''ICC A117.1.'' The reference to ''ANSI'' has been dropped. While not a variance, the Department recommends that the IBC consider reinstating the use of ''ANSI'' in the title, since the Act itself references the ANSI A117.1 standard.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as ''scoping'' provisions. This section of the analysis sets forth areas where the scoping provisions of the IBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of the IBC included an examination of the following:

IBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

IBC's classification of residential buildings according to use and occupancy; and IBC's scoping of dwelling units to which the accessibility provisions apply.

Based on the First Draft of the IBC, those chapters of the proposed IBC 2000 that were available for review, and

conversations with representatives of the ICC, the Department and SWA concludes in this analysis that the proposed IBC 2000 covers most of the same dwelling units, buildings and residential uses as do the Act, the regulations, and the Guidelines. For example, the Department and SWA concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single-story townhouses and modular units are covered; and additions of four or more dwelling units to existing buildings are included within the IBC's scoping requirements for Type B dwelling units.

However, the Department and SWA have concluded that the following provisions of the proposed IBC 2000 do not or may not include ''covered multifamily dwellings'' as they are defined in the Act, the regulations, and Guidelines.

Definition of ''Dwelling Unit''—(Draft Recommendation #1)

The regulations define the term ''dwelling unit'' as:

A single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

24 CFR 100.201. It is clear from the discussion in the preamble to the regulations, 54 FR 3232–3317 (Jan. 23, 1989) (the preamble), that the Department intended that each sleeping room occupied by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are ''covered multifamily dwelling units'' for purposes of the Act. 54 FR at 3244.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by one household is not considered to be a ''covered multifamily dwelling'' under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a ''covered multifamily dwelling.'' In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a ''group home,'' would not be considered to be a ''covered multifamily dwelling'' for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The IBC defines the term ''dwelling unit'' in Section 310.2, Definitions, 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.'' The IBC does not consider sleeping accommodations intended for occupancy by separate households in a building with shared toileting or kitchen facilities to be dwelling units.

In general, the IBC 2000 (1107.5.4) applies the accessibility requirements in a Type B dwelling unit to occupancies in Group R–2 containing four or more dwelling units and in occupancies in Group R–3 where there are four or more dwelling units in a single structure. The list of R–2 occupancies includes non-transient boarding houses and dormitories, as well as fraternity and sorority houses. Dormitories are listed in both the regulations and the Guidelines as being covered under the Act's accessibility requirements. Subsequent interviews with representatives of ICC have clarified that the IBC does not define a dormitory room whose occupants share kitchen or bathroom space with the other residents of that building as a ''dwelling unit.'' According to ICC representatives, there is no circumstance in which the IBC considers a separate sleeping room to be ''dwelling unit.''

In its draft report, SWA proposed revising the IBC definition of ''dwelling unit'' to be consistent with the regulations, to include sleeping rooms occupied by separate households. In response to comments on the draft report, the Department determined that it would withdraw this recommendation. Instead, recommendations respecting the scoping requirements of Chapter 11 have been revised to add references to both dwelling units and ''sleeping accommodations'' as defined by the IBC in chapter 1. *See* Recommendation 2, below. Therefore, the former Recommendation Number 1 has been eliminated.

Dwelling Unit, Type B

The IBC 2000 (1102) defines ''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 IBC 2000 (1102) also defines Dwelling Unit, Type A as a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998. The Department has determined that the difference in the definitions of Type A and Type B units is unclear. In addition, by referring to ''fair housing required by federal law'' in the definition of Dwelling Unit, Type B, it may be incorrectly inferred that this encompasses all federal laws, including, for example, the Americans with Disabilities Act (ADA) of 1990, and Section 504 of the Rehabilitation Act of 1973 (Section 504). Type B dwelling units are intended to be consistent with the federal Fair Housing Act only.

Recommendation Number 1

It is recommended that the proposed IBC 2000 be revised to include a modification of the definition of Dwelling Unit, Type B (1102) as follows:

Dwelling Unit, Type B: A dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998, intended to be consistent with the design and construction requirements of the federal Fair Housing Act.

Residential Care/Assisted Living Facilities—(Draft Recommendations Numbers 1 and 3)

The Act defines a ''dwelling'' as ''any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.'' 42 U.S.C. 3602 (b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

The Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states:

The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least

one building with four or more dwelling units. Whether a facility is a ''dwelling'' under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings. 59 FR at 33364.

According to the IBC, most of these types of facilities, referred to by the IBC as Residential Care/Assisted Living facilities, are classified as R–4, I–1, or I–2 occupancies and are not required to comply with the proposed IBC 2000, Section 1107.5.4, Accessible dwelling units. According to the IBC, Section 310.2, Definitions, the term ''Residential Care/Assisted Living Facilities'' is defined as follows:

A building or part thereof housing a maximum of sixteen (16) or less persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are mostly capable of responding to an emergency situation without physical assistance from staff. The classification shall include residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities. Residential Care/Assisted Living Facilities housing more than sixteen (16) persons shall be classified as a Group I–1.

If a Residential Care/Assisted Living Facility has between 6 and 16 occupants, it is classified as R–4, and not covered under the proposed IBC 2000 1107.5.4. In group R–4, at least one of the sleeping rooms and associated toilet and bathing facilities shall be accessible. (IBC 2000 Section 1107.5.7.)

The only instance where a Residential Care/Assisted Living Facility is required to comply with the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units, is if the facility has five or less occupants, regardless of whether the occupants are capable of self preservation. Sections 308.2; 308.3. In that case, they are classified as R–3 occupancies, which are required to comply with the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units, *if* they have four or more dwelling units as defined by the IBC.

If the same facility has more than 16 occupants who are mostly capable of responding to an emergency situation without physical assistance from staff, it is classified as I–1. Section 308.2, Group I–1, is defined by the IBC as follows:

This occupancy shall include a building or part thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment but which provides personal care services. The occupants are mostly capable of responding to an emergency situation without physical assistance from staff. Where accommodating persons of the above description, the following types of facilities shall be classified as I–1 facilities: residential board and care facilities, assisted living facilities, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities.

In occupancies classified as I–1, at least 4% of the sleeping rooms and their bathing and toilet facilities must be accessible. (IBC 2000 1107.3.1.)

If the occupants of a facility with more than five occupants are not capable of responding to an emergency situation without physical assistance from staff, the facility is classified as I–2. Section 308.3, Group I–2, is defined by the IBC as follows:

This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. Where accommodating persons of the above description, the following types of facilities shall be classified as I–2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or less persons shall be classified as a residential occupancy.

For nursing homes in Group I–2, at least 50% of the patient facilities and their bathing and toilet facilities must be accessible. (IBC 2000 1107.3.2).

The fact that a facility covered under R–4, or I–1, such as a group home, may be considered to be a ''single family'' residence for zoning and land use or other purposes, does not preclude its inclusion in the R–4 or I–1 classification of the IBC. Additionally, a group home or assisted living facility receiving federal financial assistance may be required under the applicable HUD program regulations to comply with the design and construction requirements of the Act, as well as the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a), and, where appropriate, the accessibility requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.*

The scoping provisions of the IBC with respect to ''Residential Care/Assisted Living'' facilities do not meet the requirements of the Act, the regulations, or the Guidelines, because the classification of these facilities as R–4, I–1, or I–2 may exclude from coverage dwelling units within those facilities that would be covered by the Act, the regulations and the Guidelines.

Recommendation Number 2 (Draft Recommendation 1 and 3)

To ensure that the IBC covers the same dwelling units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the proposed IBC 2000 be revised as follows:

Modify Sections 1107.3, 1107.3.1, 1107.3.2, 1107.4, 1107.5.1, and 1107.5.7 as follows:

1107.3.1 Group I–1. In occupancies in Group I–1, at least 4 percent, but not less than one, of the residential sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in residential board and care facilities, assisted living facilities, group homes, congregate care facilities, and convalescent facilities of Group I–1 occupancies, in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B dwelling units as required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

1107.3.2 Group I–2. In nursing homes of Group I–2, at least 50 percent, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in nursing homes of Group I–2 in structures with four or more sleeping accommodations intended to be occupied as a residence every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

1107.4 Care facilities. Occupancies containing care facilities (Group E, I–2 and I–4) shall be accessible as provided in this chapter.

Exception: Where a care facility is part of a dwelling unit, only the portion of the structure utilized for the care facility is required to be accessible. In Nursing homes of Group I–2 where a care facility is part of a dwelling unit or sleeping accommodation intended to be occupied as a residence in structures with four or more dwelling units or sleeping accommodations intended to be occupied as a residence, every dwelling unit and sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B dwelling units and Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided in Section 1107.5.4.

1107.5.1 Accessible sleeping accommodations. In occupancies in Groups R–1 and R–2 with sleeping accommodations, accessible sleeping accommodations shall be provided in accordance with Table 1107.5.1. In addition, In Group R–1 occupancies intended to be occupied as a residence, R–2, R–3, and R–4 occupancies in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations as required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

Exception: Group homes intended to be occupied by a single household and detached single-family homes occupied by a single household.

Modify 1107.5.4, as follows:

1107.5.4 Accessible dwelling units. In occupancies in Group R–2 and R–3 where there are four or more dwelling units or sleeping accommodations intended to be occupied as a residence in a single structure, every dwelling unit and sleeping accommodation intended to be occupied as a residence shall be Type B. Dwelling units required to * * * (the rest of 1107.5.4 remains as it currently appears in the IBC).

Exceptions:

1. Where no elevator service is provided in a building, Type A and B dwelling units and Type B sleeping accommodations need not be provided on floors other than the ground floor * * *

2. Where no elevator service is provided in a building and the ground floor does not contain dwelling units or sleeping accommodations intended to be occupied as a residence, only those dwelling units and sleeping accommodations intended to be occupied as a residence located on the lowest floor containing dwelling units or sleeping accommodations intended to be occupied as a residence need comply with the requirements of this section.

3. A multistory dwelling unit * * *

4. The number of Type B dwelling units and Type B sleeping accommodations provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling units and sleeping accommodations intended to be occupied as a residence which is equal to the percentage of the entire site having grades, prior to development, which are less than 10 percent; but in no case shall the number of Type B dwelling units or Type B sleeping accommodations be less than 20 percent of the ground floor dwelling units or ground floor sleeping accommodations intended to be occupied as a residence on the entire site.

5. The required number of Type A and Type B dwelling units and Type B sleeping accommodations shall not apply. * * *

1107.5.7 Group R–4. In Group R–4, at least one of the sleeping rooms and associated toilet and bathing facilities shall be accessible. In addition, in R–4 occupancies in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

Note: See other changes to Exceptions 4 and 5 under new Recommendations 5, 6 and 7 later in this report.

Transient Housing—(Draft Recommendation Number 2)

In its Draft Recommendation 2, HUD proposed that the IBC be revised to make clear that certain types of housing that the IBC 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 and motels, and homeless shelters. The IBC uses a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to the Act or chapter 11.

A 30-day measure is inappropriate in determining whether a building is covered by the Act. The IBC's 30-day test of transience is inappropriate because it misleads designers, builders and other readers of the code that such housing need not meet the requirements of the Act. 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 is 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.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet IBC Chapter 11 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 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 requirement of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Ground Floor—(Draft Recommendation Number 4)

The regulations define ''ground floor'' as a ''floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.'' 24 CFR 100.202. The Guidelines further state: ''Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.'' 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines question number 6. 59 FR at 33364.

The IBC defines a Dwelling Unit, Ground Floor as: ''A dwelling unit with a primary entrance and habitable space at grade.'' (1102.1)

IBC 2000 Exception 1, Section 1107.5.4, Accessible dwelling units, states that where no elevator service is provided in a building, Type B dwelling units need not be provided on floors other than the ground floor. The IBC's definition of ''dwelling unit, ground floor'' does not specifically provide that a building can have more than one ground floor. For example, if a building is built into a hill, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. The proposed IBC 2000 is not clear that there may be more than

one ground floor or ground floor units on different levels of a building.

In its draft report for public comment, the Department offered a recommendation that the IBC 2000 define ground floor to match the regulations and the Guidelines, and delete the definition of ''dwelling unit, ground floor'' from Section 1102. In addition, the Department recommended that Exception 1 to Section 1107.5.4 be modified to recognize that there may be more than one ground floor. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the IBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional 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, and (2) Whether the language at Exception 2 of 1107.5.4 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.''

The Department will, however, 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.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1107.5.4 use the term ''structure'' instead of ''building.'' This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, IBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments the Department received on this recommendation, the Department has withdrawn this recommendation.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 6)

The regulations define a building as ''a structure, facility or portion thereof that contains or serves one or more dwelling units.'' 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

In most cases, under the IBC, two structures that are connected by a breezeway or stairway and share the same roof as the breezeway or stairway are also considered one building. As a result, if the total units in both structures equals four or more, then the building must comply with the IBC's accessibility provisions.

It appears, however, that 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 design is considered 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. As a result, the IBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 3 (Draft Recommendation 6)

It is recommended that the proposed IBC 2000 be modified to include a revision to Section 3104.2, Separate structures, as follows:

3104.2. Separate structures. Connected buildings shall be considered to be separate structures. 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.

Multistory Dwelling Units—Draft Recommendation Number 7

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a ''covered multifamily dwelling'' because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a ''multistory dwelling unit'' as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A ''single-story dwelling unit'' is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The IBC defines ''Dwelling Unit, multistory'' as a dwelling unit with habitable or bathroom space located on more than one story. IBC 1102.1. The IBC defines ''habitable space'' as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces. The IBC does not define the term ''single-story dwelling unit.'' IBC 202.8.

According to the IBC's definition of ''dwelling unit, multistory'', a unit would be considered multistory if one level contains living or ''habitable'' space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space. 56 FR at 9500–01. The IBC's definition of ''dwelling unit, multistory'' does not meet the Department's interpretation of what constitutes a ''multistory dwelling unit'' under the Act, the regulations and the Guidelines.

Recommendation Number 4 (Draft Recommendation 7)

It is recommended that the reference to ''or bathroom space'' in the IBC's definition of ''multistory dwelling unit'' be deleted as follows:

Section 1102, Definitions—Dwelling unit, multistory: For purposes of accessibility, this term shall mean a dwelling unit with habitable space located on more than one story.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. At the time the Act was passed and the

Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The proposed IBC 2000 utilizes the technical criteria contained in ICC/ANSI A117.1–1998. As stated in the Department's policy statement and the Introduction to this final report, the Department reviewed the technical standards in the CABO/ANSI A117.1–1992 and the ICC/ANSI A117.1–1998 for consistency with the requirements of the Act, the regulations, the Guidelines, and the 1986 edition of ANSI A117.1. The Department recognizes that the 1992 and 1993 editions of ANSI have been adopted by several of the model code organizations, and under many building codes. The purpose of the Department's review was to identify any instances where the technical criteria in the later editions of ANSI A117.1 did not provide the same level of accessibility described in the Guidelines, or as mandated under the Act, so that the Department could conclude whether the model codes that adopted the ANSI A117.1 technical criteria were consistent with the Act. In this review, the Department was mindful that the Act states that compliance with the ANSI A117.1 standards constitutes compliance with the Act. The Department found no such instances where a difference between ANSI A117.1–1992 or 1998 standard was inconsistent with the Guidelines or the Act.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics; however, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. 56 FR at 9504.

The IBC's provisions relating to the requirement of an accessible building entrance on an accessible route are consistent with the Act, the regulations, and the Guidelines except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to Step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variance Related to Site Analysis Test—(Draft Recommendation Number 8)

Section 1107.5.4, Exception 4, of the proposed IBC 2000 provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines require the grades to be ''less than 10%''. In addition, the Exception fails to provide equivalent language to Step C, i.e., it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the IBC does not meet this aspect of the Guidelines.

Moreover, according to the Guidelines, 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. 56 FR at 9504. The IBC does not include any language that reflects these requirements. As a result, the IBC does not meet these provisions of the Guidelines.

Recommendation Number 5 (Draft Recommendation 8)

In order to address these inconsistencies, we recommend the following modification to 1107.5.4, Exception 4:

The number of Type B dwelling units and Type B sleeping accommodations provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units and sleeping accommodations intended to be occupied as a residence which is equal to the percentage of the entire site

having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling units and Type B sleeping accommodations be less than 20 percent of the ground floor dwelling units and ground floor sleeping accommodations intended to be occupied as a residence on the entire site. In addition to the percentage established, all ground floor units and ground floor sleeping accommodations intended to be occupied as a residence in a building, or ground floor units and ground floor sleeping accommodations intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units and the sleeping accommodations intended to be occupied as a residence and a pedestrian or vehicular arrival point is no greater than 8.33%; or 4.2 An elevator provides access to the ground floor only; or 4.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variance Related to Buildings with Elevators—(Draft Recommendation Number 9)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503. The IBC 2000 does not reflect this requirement in Section 1107.5.4, Exception 5.

Recommendation Number 6 (Draft Recommendation 9)

It is recommended that Exception 5, Section 1107.5.4 be modified to exempt buildings with elevators from site impracticality as follows:

The required number of Type A and Type B dwelling units and Type B sleeping accommodations shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings are required to be at or above the base floor elevation resulting in * * *

Variance Related to Sites with Unusual Characteristics—(Draft Recommendation Number 10)

The criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies 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 point. 56 FR at 9504.

The IBC's corresponding provision at Section 1107.5.4, Exception 5, states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 7 (Draft Recommendation 10)

It is recommended that Section 1107.5.4, Exception 5, paragraph 5.1, be revised as follows:

5.1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to, and usable by, people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205 (c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes, Protruding objects, Ground and floor surface treatments, Parking and passenger loading zones, Curb ramps, Ramps, Stairs, Elevators, Platform lifts, Drinking fountains and water coolers, Toilet rooms and bathing facilities, Seating, tables, or work surfaces, Places of assembly, Common-use spaces and facilities, Laundry rooms.

56 FR at 9505. When a variance is identified in the IBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, it is noted below.

Accessible Route(s)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

Vehicular Route—(Draft Recommendation Number 11)

IBC 2000 Section 1107.5.5 contains language that is comparable to the Guidelines with one exception. That section 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 IBC does not include language making it clear that accessible parking must be available at each public or common use facility if access is provided by a vehicular route.

Recommendation Number 8 (Draft Recommendation 11)

It is recommended that the proposed IBC 2000 1107.5.5, Accessible route, be modified to include the following language:

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 accessible parking in accordance with 1106, at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 12)

Based on the public comments received, the Department has determined that the IBC adequately addresses this issue.

Stairs—(Draft Recommendation Number 13)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

Since stairs are not parts of accessible routes and they are not specifically referenced in Chapter 11, Accessibility, of the proposed IBC 2000, one must refer to Chapter 10, Means of Egress, for stair provisions. However, the Chapter 10 requirements do not necessarily apply to stairs that connect levels not connected by an elevator if they are not a part of a means of egress. There are variances between the proposed IBC 2000 and the Guidelines' requirements for stairs located along accessible routes not connected by an elevator.

Recommendation Number 9 (Draft Recommendation 13)

It is recommended that the IBC include a provision for stairways under Section 1108, Other Features and Facilities as follows:

Stairways

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with ICC/ANSI A117.1–1998.

Parking and Passenger Loading Zones—(Draft Recommendation Number 14)

The Questions and Answers About the Guidelines (Question and Answer 14c) states that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The IBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, there be * * * *accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings,* and *accessible parking at facilities.* The Guidelines also require accessible parking on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) which clarifies that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department is not recommending that the IBC revise any of its broader scoping requirements for parking. However, the IBC does not include comparable language in Section 1106, Parking and Passenger Loading Facilities, with respect to the above variances. Therefore, the IBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 10 (Draft Recommendation 14)

In order to address these inconsistencies, it is recommended that the proposed IBC 2000 add the following language to Section 1106.2, Group R–2 and R–3.

Where there are several individual garages grouped together, either in a separate area of a structure or in a detached structure, for assignment or rental to residents, at least 2% of parking garages provided for Type B dwelling units and Type B sleeping accommodations must be at least 14′2″ wide and have a vehicular door at least 10′ wide * * *

* * * Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

Recreational Facilities

The Guidelines, in Requirement 2, state that: ''If provided in the facility or at the site; (a) where 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'' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The IBC Section 1108.14.1 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of ''sufficient to provide equitable opportunity for use'' may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each serving different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered ''sufficient'' by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

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.

Requirement 3: Usable Doors

The Act and the regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604

(f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. 56 FR at 9506. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

56 FR at 9506. The Department has determined that the IBC meets the requirements of the Act, the regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and the regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. The proposed IBC 2000 meets the provisions of the Act, the regulations, and Guidelines with respect to Requirement 4, except the following:

Multistory Units Served by Elevators—(Draft Recommendation Number 15)

Among the criteria for Requirement 4 is the requirement that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

The IBC does not mention that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the IBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 11 (Draft Recommendation 15)

It is recommended that the IBC modify Section 1107.5.4, Exception 3 as follows:

A multistory dwelling unit which is not provided with elevator service is not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided.

Requirement 5: Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations

The Act and the regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. § 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205(c)(3)(ii). Requirement 5 of the Guidelines sets forth criteria to meet these requirements. 56 FR at 9507. The IBC meets the provisions of the Act, the regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. § 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specify that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10. The proposed IBC 2000 provisions meet the requirements of the Act, the regulations, and the Guidelines.

Requirement 7: Usable Kitchens and Bathrooms

The Act and the regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205(c)(3)(iv). Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15. The proposed IBC 2000 provisions meet the requirements of the Act, the regulations, and Guidelines.

Chapter 4: Uniform Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1997 edition of the Uniform Building Code (UBC), published by the International Conference of Building Officials (ICBO) that do not meet the requirements of the Fair Housing Act (the Act), the regulations implementing the 1988 Amendments to the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, the Department recommends how they may be revised to meet the requirements of the Act, the regulations, or the Guidelines.

II. Methodology

The analysis of the UBC by the Department and Steven Winter Associates, Inc. SWA, its contractor, consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the regulations at 24 CFR 100.201 and 205, the Guidelines, 56 FR at 9472–9515, and the June 28, 1994 ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,'' 59 FR 12 33362–33368 (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), Buildings Officials & Code Administrators International (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis, consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three model building codes and the UBC. SWA began its analysis of the UBC by reviewing the column of the matrix that includes the UBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent

variances between the UBC's accessibility requirements and those of the Act, regulations, and Guidelines.

—A review of the accessibility provisions of the UBC, 1997 edition and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the UBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Paul Armstrong, ICBO Senior Staff Engineer, to gain insight into how the UBC responds to variances that SWA identified. SWA found it necessary to understand ICBO's interpretations of its own requirements that may not be apparent when reviewing code text.

The Department formed a Model Code Working Group consisting of representatives 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 also participated on the Working Group. The Working Group met with SWA on September 29, 1999, asked questions and made comments and suggestions about the analysis.

The draft report was published for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The Uniform Building Code

The ICBO administers the UBC series of model regulatory construction codes.

Unlike the Fair Housing Act, the UBC 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. Compliance with the UBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as ''model codes.''

The 1997 UBC, published January 1, 1997, includes provisions for accessibility intended to reflect the intent of the Guidelines. Previous editions of the code include provisions for accessibility, but not as required by the Act. The 1997 UBC, Chapter 11, Accessibility, is the first attempt at codifying the accessibility provisions of the Act. Any jurisdiction that adopts the 1997 UBC code must follow these accessibility provisions.

In the past, some model building codes, including the UBC, have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117.1. These dwelling units are referred to in the UBC in Section 1102 as a ''Type A dwelling unit.'' It is important to note, however, that CABO/ANSI A117.1–1992, adopted by the UBC, does not contain scoping provisions, discussed below. The UBC also includes scoping and technical provisions for a ''Type B dwelling unit,'' which is intended to reflect the requirements of the Act, the regulations, and the Guidelines, in Section 1106.

It is the Department's understanding that ICBO will no longer publish subsequent updates to the latest version of the UBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as ''scoping'' provisions. This section of the analysis sets forth areas where the scoping provisions of the UBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, regulations, or the Guidelines. This analysis of the scoping provisions of the UBC included an examination of the following:

UBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

UBC's classification of residential buildings according to use and occupancy; and

UBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that the UBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, the Department has concluded that, with respect to buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, and modular units are covered. Additions of four or more units to existing buildings are also included within the UBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of the UBC do not or may not include ''covered multifamily dwellings'' as they are defined in the Act, regulations or Guidelines.

UBC Classification of Residential Use Groups

The UBC Section 310.1 defines residential occupancies (Group R occupancies) as follows:

Division 1: Hotels and apartment houses. Congregate residences (each accommodating more than 10 persons). Section 204, Chapter 2, defines congregate residences as follows: any building or portion thereof that contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels or lodging houses.

Division 2: Not used.

Division 3: Dwellings and lodging houses. Congregate residences (each accommodating 10 persons or less). Includes detached one- and two-family dwellings.

The reference to ''detached one- and two-family dwellings'' under Division 3 refers to structures that are physically detached.

The UBC requires that in Group R, Division 1 occupancy apartments containing four or more dwelling units, and in Group R, Division 3 occupancies where there are four or more dwelling units in a single structure, all dwelling units shall be Type B dwelling units. Section 1103.1.9. In Section 1102, Type B dwelling units are defined as units that are designed and constructed for accessibility in accordance with Section 1106. Section 1106 provides the design and construction requirements for Type B units.

Congregate Residences—(Draft Recommendation Numbers 1 and 2)

The regulations define the term ''dwelling unit'' as:

A single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons. 24 CFR 100.201.

It is clear from the discussion in the preamble to the regulations, found at 54 FR at 3244 (Jan. 23, 1989), that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are ''covered multifamily dwelling units'' for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by one household is not considered to be a ''covered multifamily dwelling'' under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a ''group home,'' would not be considered to be a ''covered multifamily dwelling'' for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of this Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The UBC defines the term ''dwelling unit'' in Section 205, Chapter 2, Definitions and Abbreviations, as follows:

Dwelling Unit is any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by this code, for not more than one family, or a congregate residence for 10 or less persons.

According to Section 1103.1.9.3, Multi-unit dwellings, the UBC's accessibility provisions apply to Group R, Division 1 and 3 occupancies. In order to determine whether or not dwelling units covered by the regulations are covered in the same way by the UBC, one must examine the UBC's classification of each type of unit.

According to Section 310.1 of the UBC, Group R, Division 1 occupancies include hotels, apartment houses, including residential condominiums, and congregate residences accommodating more than 10 persons. Group R, Division 3 occupancies include dwellings, lodging houses (containing not more than five guest rooms where rent is paid in money, goods, labor, or otherwise), and congregate residences accommodating 10 persons or less.

The accessibility requirements for congregate residences are covered under UBC Section 1103.1.9.2, hotels, lodging houses, and congregate residences as follows:

In hotels, lodging houses and congregate residence occupancies containing six or more guest rooms, multi-bed rooms or spaces for more than six occupants, one for the first 30 guest rooms or spaces and one additional for each additional 100 guest rooms or space, or fraction thereof, shall be accessible. In hotels with more than 50 sleeping rooms or suites, roll-in-type showers shall be provided in one half, but not less than one, of the required accessible sleeping rooms or suites.

Congregate residences that accommodate less than six guest rooms for less than six occupants are required to provide accessibility according to 1103.1.9.3, Multi-unit dwellings. However, if a congregate residence accommodates between six and nine occupants, it can be covered by either Sections 1103.1.9.3, Multi-unit dwellings or Section 1103.1.9.2, Hotels, lodging houses and congregate residences. According to ICBO staff interviews, in these cases the UBC requires that the stricter provision apply.

To the extent that the UBC does not require in congregate residences that all ground floor sleeping rooms occupied by a separate household in buildings without an elevator, or all sleeping rooms occupied by a separate household in elevator buildings, meet the requirements of a Type B dwelling unit, it does not meet the requirements of the regulations.

Continuing Care Facilities—(Draft Recommendation Number 3)

Continuing care facilities are covered by the Act. 59 FR at 33364. The UBC Section 308.1 classifies these types of facilities as Group I, Division 1.1 and 2 occupancies. These occupancies are defined as follows:

Group I, Division 1.1: Nurseries for the full-time care of children under the age of six (each accommodating more than five children). Hospitals, sanitariums, nursing homes with nonambulatory patients and similar buildings (each accommodating more than five patients).

Group I, Division 2: Nursing homes for ambulatory patients, homes for children six years of age or over (each accommodating more than five patients or children).

The UBC's accessibility provisions for Group R occupancies of four or more dwelling units do not apply to UBC's Group I occupancies. However, they are required to provide accessibility as follows:

Section 1103.1.7 Group I Occupancies. Group I occupancies shall be accessible in public-use, common-use and employee-use areas, and shall have accessible patient rooms, cells, and treatment or examination rooms as follows:

In Group I, Division 1.1 and 2 nursing homes and long-term care facilities, at least one in every two patient rooms, or fraction thereof, including associated toilet rooms and bathing rooms.

Under the definition of ''dwelling unit'' contained in the regulations, a sleeping room in a nursing home or a home for juveniles occupied by an individual as a residence in a building with four or more such dwelling units would be covered under the accessibility requirements of the Act. To the extent therefore that sleeping rooms in Group I, Division 1.2 occupancies are not covered under the requirements for Type B dwelling units under the UBC, the UBC does not meet the requirements of the Act.

Recommendation Number 1 (Draft Recommendation Numbers 1, 2 and 3)

To ensure that the UBC covers the same dwelling units and sleeping rooms required to provide accessibility according to the Act, it is recommended that the UBC be revised to modify Sections 1103.1.7, 1103.1.9.2, and 1103.1.9.3. 1103.1.7 Group I Occupancies. Group I Occupancies shall be accessible in public-use, common-use and employee-use areas, and shall have accessible patient rooms, cells, and treatment or examination rooms as follows:

3. In Group I, Divisions 1.1 and 2 nursing homes and long-term care facilities, at least one in every two patient rooms, or fraction thereof, including associated toilet rooms and bathrooms. In addition, in structures with four or more patient rooms intended to be occupied as a residence, all patient rooms intended to be occupied as a residence shall comply with the requirements for Type B dwelling units required by 1103.1.9.3 with the same exceptions as provided for in Section 1103.1.9.3.

Section 1103.9.2 Hotels, lodging houses and congregate residences.

In addition to the accessible guest rooms required above, and in addition to the accessible guest rooms for persons with hearing impairments required above, in congregate residences in structures with four or more guest rooms intended to be occupied as a residence, all guest rooms intended to be occupied as a residence shall comply with the requirements for Type B dwelling units required by 1103.1.9.3 with the same exceptions as provided for in Section 1103.1.9.3. Section 1103.1.9.3 Multi-unit dwellings.

In Group R, Division 1 Occupancy apartments, and guest rooms intended to be occupied as a residence containing four or more dwelling units or guest rooms intended to be occupied as a residence, and Group R, Division 3 Occupancies where there are four or more dwelling units in a single structure, or where there are four or more guest rooms intended to be occupied as a residence, all dwelling units and guest rooms intended to be occupied as a residence shall be Type B. In Group R, Division 1 apartment occupancies containing more than 20 dwelling units, at least 2 percent, but not less than one, of the dwelling units shall be Type A dwelling units. All dwelling units on a site shall be considered to determine the total number of accessible dwelling units. All guest rooms intended to be occupied as a residence shall be considered to determine the total number of accessible guest rooms intended to be occupied as a residence on the entire site.

Exceptions:

1. Where no elevator service is provided in a building, Type B dwelling units and Type B guest rooms intended to be occupied as a residence need not be provided on floors other than the ground floor.

2. Where no elevator service is provided in a building and the ground floor does not contain dwelling units or guest rooms intended to be occupied as a residence, only those dwelling units and guest rooms intended to be occupied as a residence located on the first floor containing dwelling units or guest rooms intended to be occupied as a residence above the floor at grade of either Group R, Division 1 apartment occupancies or guest rooms intended to be occupied as a residence, or Group R, Division 3 Occupancies need comply with the requirements of this section.

3. A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

4. The number of Type B dwelling units and Type B guest rooms provided in multiple non-elevator buildings on a single site may be reduced to a percentage of the ground floor dwelling units and ground floor guest rooms intended to be occupied as a residence, that is equal to the percentage of the entire site having grades, prior to development, that are less than 10%; but in no case shall the number of Type B dwelling units or Type B guest rooms be less than 20% of the ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence, on the entire site. In addition to the percentage established, all ground floor units and ground floor guest rooms intended to be occupied as a residence in a structure, or ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units or guest rooms intended to be occupied as a residence, and a pedestrian or vehicular arrival point is no greater than 8.33%; or

4.2 An elevator provides access to the ground floor only; or

4.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.3%.

5. The required number of Type A and Type B dwelling units and Type B guest rooms shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base floor elevation resulting in:

5.1 NO CHANGE

5.2 NO CHANGE

6. Single family detached houses with four or more sleeping rooms occupied by a single household of related or unrelated persons.

Note: See Recommendations later in this report regarding explanations for modifications made to some of the exceptions to 1103.1.9.3 above.

Ground Floor Dwelling Unit—(Draft Recommendation Number 4)

The regulations define ''ground floor'' as a ''floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.'' 24 CFR 100.202. The Guidelines further state: ''Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.'' 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. 59 FR at 3364.

Since, according to the example above, both levels of the building have entrances to dwelling units at grade, the UBC requires accessibility to these units.

In Section 1102, the UBC defines Ground Floor Dwelling Unit as ''a dwelling unit with a primary entrance and habitable space at grade.'' However, it is unclear from the UBC's definition of ''ground floor dwelling unit'' that there can be more than one ground floor, or ground floor units on different levels of a building. Exception 1, Section 1103.1.9.3, Multi-unit dwellings, states that where no elevator service is provided in a building, Type B dwelling units need not be provided on floors other than the ground floor.

In its draft report for public comment, the Department offered a recommendation that the UBC define ground floor to match the regulations and the Guidelines, and delete the definition of ''ground floor dwelling unit'' from Section 1102 (Draft Recommendation Number 4). In addition, the Department recommended that Exception 1 to Section 1103.1.9.3 be modified to recognize that there may be more than one ground floor. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the UBC is

inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the UBC scoping language, in combination with the definition of ''ground floor dwelling unit,'' makes it clear that there must be at least one ground floor, and (2) Whether the language at Exception 2 of 1103.1.9.3 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.'' The Department will, however, 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, the Department believes that owners, builders, developers, 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—(Draft Recommendation Number 5)

The Department considers the first level of dwelling units above retail, parking, commercial space, etc. in buildings without elevators as the ground floor and all units on that floor must be designed with an accessible entrance on an accessible route. 56 FR at 9500. The UBC intends on covering these same units by stating the following in Exception 2, Section 1103.1.9.3, Multi-unit dwellings:

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

The reference to ''first floor'' in Exception 2 above may be misleading because floor numbers can vary from one building to the next. For example, what is considered the first floor in one building may be considered the second floor in another. Although the UBC intends on covering the first level of living above retail, parking, commercial space, or private garages if the level at grade does not contain dwelling units, its intention can be made more clear.

Recommendation Number 2 (Draft Recommendation 5)

It is recommended that 1103.1.9.3, Exception 2 be modified as follows:

1103.1.9.3 Multi-unit dwellings:

Exception: 2 Where no elevator service is provided in a building and the ground floor does not contain dwelling units or guest rooms intended to be occupied as a residence, only those dwelling units and guest rooms intended to be occupied as a residence located on the first floor containing dwelling units or guest rooms intended to be occupied as a residence above the floor at grade of either Group R, Division 1 apartment occupancies or guest rooms intended to be occupied as a residence, or Group R, Division 3 Occupancies need comply with the requirements of this section.

Multistory Dwelling Units—(Draft Recommendation Number 6)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a ''covered multifamily dwelling'' because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a ''multistory dwelling unit'' as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A ''single-story dwelling unit'' is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The UBC Defines ''Multistory dwelling unit'' as a dwelling unit with habitable or bathroom space located on more than one story. (UBC Chapter 11, Section 1102.) The UBC defines ''habitable space'' as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable spaces. (UBC 209)

According to the UBC's definition of ''multistory dwelling unit,'' a unit is considered multistory if one level contains living or ''habitable'' space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space.

Therefore, the UBC's definition of ''multistory dwelling unit'' does not meet the Department's interpretation of the Act, the regulations and the Guidelines of what constitutes a ''multistory dwelling unit.''

Recommendation Number 3 (Draft Recommendation 6)

It is recommended that the reference to ''or bathroom space'' in the UBC's definition of ''multistory dwelling unit'' be deleted as follows:

Section 1102, Definitions:

Multistory dwelling unit: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

Definition of Building and Structure—(Draft Recommendation Number 7)

In this recommendation, the Department recommended that the Exceptions to 1103.1.9.3 be modified to eliminate any reference to the term ''building'' and replacing it with the term ''structure.'' This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, UBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments the Department received on this recommendation, the Department has withdrawn this recommendation.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer editions of the ANSI A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping

requirements. The Department believes that code officials may rely on the edition of ANSI A117.1 that has been adopted by the model code organization or state or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

The UBC utilizes the technical criteria contained in CABO/ANSI A 117.1–1992. Therefore, the Department has determined that there is no variance between the requirements of the Act and the model code provision if the model code provision is based on CABO/ANSI A117.1–1992, even where those criteria differ from the ANSI A117.1–1986 criteria or the Guidelines.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, *regardless* of terrain or unusual characteristics of the site.

The UBC's provisions are consistent with the Act, the regulations, and the Guidelines, except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A) 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variance Related to Site Analysis Test—(Draft Recommendation Number 8)

Section 1103.1.9.3, Exception 4, of the UBC provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines require the grades to be ''less than 10%''. 56 FR at 9504. In addition, the Exception fails to provide equivalent language to Step C—*i.e.,* it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the UBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, 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. 56 FR at 9504. The UBC does not include any language that reflects these requirements. As a result, the UBC does not meet these provisions of the Guidelines.

In order to address these inconsistencies, it is recommended the UBC include a modification to Section 1103.1.9.3, Exception 4 as follows:

Recommendation Number 4 (Draft Recommendation 8)

1103.1.9.3 Multi-unit dwellings:

Exception 4: The number of Type B dwelling units and Type B guest rooms provided in multiple non-elevator buildings on a single site may be reduced to a percentage of the ground floor dwelling units and ground floor guest rooms intended to be occupied as a residence, that is equal to the percentage of the entire site having grades, prior to development, that are less than 10%; but in no case shall the number of Type B dwelling units or Type B guest rooms be less than 20 percent of the ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence on the entire site. In addition to the percentage established, all ground floor units and ground floor guest rooms intended to be occupied as a residence, in a structure, or ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units or guest rooms intended to be occupied as a residence and a pedestrian or vehicular arrival point is no greater than 8.33%; or

4.2 An elevator provides access to the ground floor only; or

4.3 An elevated walkway with a slope not exceeding 10 percent is planned

between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.3%.

Variance Related to Buildings with Elevators—(Draft Recommendation Number 9)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503.

The UBC, Exception 5, Section 1103.1.9.3, states in relevant part that:

The required number of Type A and Type B dwelling units shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base floor elevation resulting in * * *

Recommendation Number 5 (Draft Recommendation 9)

It is recommended that Section 1103.1.9.3, Exception 5 be modified to exempt buildings with elevators from site impracticality as follows:

Section 1103.1.9.3 Multi-unit dwellings:

Exception 5. The required number of Type A and Type B dwelling units and Type B guest rooms shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base floor elevation resulting in * * *

Variance Related to Sites with Unusual Characteristics—(Draft Recommendation Number 10)

The criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies 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 point. 56 FR at 9504.

The UBC does not reflect this requirement in Section 1103.1.9.3 Exception 5. The UBC's corresponding provision states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 6 (Draft Recommendation 10)

It is recommended that Section 1103.1.9.3, Exception 5, be modified as follows:

5.1 A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205(c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505.

Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes
Protruding objects
Ground and floor surface treatments
Parking and passenger loading zones
Curb ramps
Ramps
Stairs
Elevators
Platform lifts
Drinking fountains and water coolers
Toilet rooms and bathing facilities
Seating, tables, or work surfaces
Places of assembly
Common-use spaces and facilities
Laundry rooms

56 FR at 9505. When a variance is identified in the UBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, it is noted below.

Preliminarily, it is noted that Section 1103.1.9.1, General, provides that rooms and spaces available to the general public and spaces available for the use of residents that serve Group R, Division 1 occupancy accessible dwelling units shall be accessible. This section does not require accessibility in rooms and spaces available to the general public in Group R, Division 3 occupancies which are covered by Section 1103.1.9.3, Multi-unit dwellings. This is not equivalent to the accessibility provisions of the Guidelines.

Recommendation Number 7 (Draft Recommendation 11)

It is recommended that the UBC modify Section 1103.1.9.1, General, by including Group R, Division 3 occupancies as follows:

Section 1103.1.9.1, General:

Group R Occupancies shall be accessible as provided in this chapter. Rooms and spaces available to the general public and spaces available for the use of the residents that serve accessible dwelling units and accessible guest rooms in Group R, Division 1 and Division 3 occupancies shall be accessible.

Accessible Route(s)

Vehicular Route—(Draft Recommendation Number 12)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

The UBC Section 1103.2.2 contains language which is comparable to the Guidelines with one exception. That section states:

For Group R, Division 1 apartment occupancies, when the slope of the finished grade between accessible buildings and facilities exceeds 1 unit vertical in 12 units horizontal (8.33% slope), or when physical barriers of the site prevent the installation of an accessible route, a vehicular route with parking at each accessible building or facility may be provided in place of the accessible route.

The UBC does not include language making it clear that accessible parking must be available at the accessible facility if access is provided by a vehicular route.

Recommendation Number 8 (Draft Recommendation 12)

It is recommended that the UBC Section 1103.2.2, Accessible route, be modified to include the following language:

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 accessible parking spaces in accordance with Appendix Chapter 11 at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 13)

Based on the public comments received, the Department has determined that the UBC adequately addresses this issue.

Parking and Passenger Loading Zones—(Draft Recommendation Numbers 14, 15 and 16)

Division I of Appendix Chapter 11 includes the only provisions for accessible parking and passenger loading zones. These provisions do not apply if the appendix is not specifically adopted. Therefore, a jurisdiction that adopted the UBC 1997 without the Appendix would not meet the accessibility requirements of the Act, regulations and Guidelines.

Recommendation Number 9 (Draft Recommendation 14)

It is recommended that Appendix Chapter 11 be automatically adopted by a jurisdiction that adopts UBC 1997.

The Questions and Answers About the Guidelines (Question and Answer 14c) state that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but include a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The UBC does not provide minimum requirements for these garages, and therefore, does not meet provision of the Guidelines.

The Guidelines provide that if provided at the site, there must be accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities. The Guidelines also require accessible parking on the same terms and with the full range of choices (*e.g.*, surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) by stating that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds 2%.

The Department is not recommending that the UBC revise any of its broader scoping requirements for parking. However, the UBC does not include comparable language in Appendix Chapter 11 with respect to the above variances. Therefore, the UBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 10 (Draft Recommendation 15)

In order to address the inconsistencies outlined above, it is recommended that the UBC add the following language to Section 1108:

At least 2% of parking garages provided for R–2 and R–3 occupancies required to have Type B dwelling units or Type B guest rooms, where there are several individual garages grouped together, either in a separate area of a building or in a detached building, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide.

Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided. Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

and modify the third provision under Section 1108 as follows:

3. For Group R, Division 1 and Group R, Division 3 occupancies containing accessible or adaptable dwelling units or guest rooms intended to be occupied as a residence, where parking is provided, 2 percent of the parking spaces shall be accessible * * *

In addition, Section 1108.3, Signs, provides an exception which states that accessible parking space signs need not be provided in parking garages or parking facilities that have five or less total parking space. This exception does not meet the requirements of the Guidelines which requires signage at all accessible parking space.

Recommendation Number 11 (Draft Recommendation 16)

It is recommended that the UBC delete this exception. If this exception is deleted from the charging paragraph, then signs will be required at all accessible parking spaces.

Elevators—(Draft Recommendation Numbers 17 and 18)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1, Section 4.10, Elevators. 56 FR at 9505. Section 1105.3 of the UBC, Elevators and Stairway and Platform Lifts, states that elevators on an accessible route shall be accessible. It also states that elevators required to be accessible shall be designed and constructed to comply with CABO/ANSI A117.1–1992. The technical specifications for elevators required by both the Guidelines and the UBC are equivalent.

However, the UBC provides an exception to Section 1105.3 which states that private elevators serving only one dwelling unit need not be accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 12 (Draft Recommendation 17)

It is recommended that the exception under Section 1105.3 be deleted.

The UBC provides an exception to Section 1104.1.3, Elevators, which states that elevators need not be provided to floors provided with a horizontal exit and located at or above the level of exit discharge in fully sprinklered buildings. This exception does not meet the requirements of the Guidelines that requires elevators, if provided to units other than the ground floor, provide access to all floors.

Recommendation Number 13 (Draft Recommendation 18)

It is recommended that the exception under Section 1104.1.3 be deleted.

Laundry Rooms—(Draft Recommendation Number 19)

The Guidelines state that if provided in the facility or at the site, at least one of each type of appliance provided in each laundry area shall be accessible.

UBC Section 1103.1.9.1, General, states that Group R Occupancies shall be accessible as provided in Chapter 11. Rooms and spaces available to the general public and spaces available for the use of residents that serve Group R, Division 1 Occupancy accessible dwelling units, which includes laundry facilities, shall be accessible. The UBC does not include Group R, Division 3 occupancies in Section 1103.1.9.1, which does not meet the requirements of the Guidelines.

Recommendation Number 14 (Draft Recommendation Number 19)

It is recommended that Section 1103.1.9.1 be modified to include Group R, Division 3 occupancies.

Recreational Facilities

The Guidelines, in Requirement 2, state that: ''If provided in the facility or at the site; (a) where 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' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible.'' The UBC Section 1103.1.9.1 requires 25%, but not less than one, of recreational facilities of each type in each group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the UBC with respect to the requirement for accessible recreational facilities because an interpretation of ''sufficient to provide equitable opportunity for use'' may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each of which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered ''sufficient'' by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

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.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

The Department has determined that the UBC meets the requirements of the Act, regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. The UBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following.

Multistory Units Served by Elevators—(Draft Recommendation Number 20)

Among the criteria for Requirement 4 is the provision that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

One of the UBC's exceptions to the requirement for Type B units provides, in Section 1103.1.9.3, as follows:

> A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

The UBC does not mention in this exception that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the UBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 15 (Draft Recommendation 20)

It is recommended that the UBC modify Section 1103.1.9.3, Exception 3 as follows:

> 1103.1.9.3 Multi-unit dwelling: A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

Requirement 5: Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. § 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205. Requirement 5 of the Guidelines sets forth criteria to meet these requirements. The UBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and

shower seat, where such facilities are provided. 56 FR at 9509–10.

Although it is the intent of the UBC at Section 1106.6.3 to require grab bar reinforcement at fixtures located away from walls, sunken or raised tubs for example, the UBC is not clear on this issue.

Recommendation Number 16 (Draft Recommendation 21)

It is recommended that the UBC modify Section 1106.6.3, Toilet and bathing fixtures by adding the following:

Where fixtures are located away from walls alternative reinforcement complying with CABO/ANSI A117.1 4.24.2.5 and 4.24.3 shall be provided for the mounting of grab bars.

Requirement 7: Usable Kitchens and Bathrooms

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205. Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

Usable Kitchens—(Draft Recommendation Number 22)

The Guidelines address a parallel approach to kitchen sinks in Requirement 7 at 56 FR at 9511. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9514. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1 1986, Fig.32 on page 50.) The Department's Guidelines allowed a departure from the ANSI standard. 56 FR at 9511–12. The Guidelines permit the clear floor space to be designed for a parallel position. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

UBC Section 1106.5.2, Clear floor space, requires that a 30-inch-by-48-inch minimum clear floor space be provided at the sink and at each appliance. Provision 1, under Section 1106.5.2, states that the clear floor space at the sink shall be positioned for a parallel approach which must extend 15 inches minimum from each side of the sink centerline. This does not meet the requirements of the Guidelines. The Guidelines require the centering of the parallel approach on the sink.

Recommendation Number 17 (Draft Recommendation 22)

It is recommended that the UBC delete the 15-inch offset requirement and modify Provision 1, Section 1106.5.2, Clear floor space as follows:

1. The clear floor space at the sink shall be positioned for a parallel approach. The clear floor space shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Number 23)

The Guidelines provide two options for designing accessible bathrooms. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the door and exit. 56 FR at 9511.

The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option. The second option requires that they have reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures. 56 FR at 9511.

According to the Guidelines, for covered multistory dwellings in elevator buildings, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit, it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The UBC requires an offset of 15 inches which does not meet the Guidelines' requirement.

Recommendation Number 18 (Draft Recommendation 23)

It is recommended that the reference to 15 inches be deleted from Sections 1106.6.4.1.1, Lavatory, and Section 1106.6.4.2.1, Lavatory, and replaced with the following:

* * * Clear floor space positioned for a parallel approach shall be centered on the lavatory.

Chapter 5: Standard Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1997 edition of the Standard Building Code (SBC), published by the Southern Building Code Congress International (SBCCI) that do not meet the requirements of the Fair Housing Act (Act), the Fair Housing Act regulations, or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, Steven Winter Associates, Inc. (SWA) recommends how they may be revised to meet the requirements of the Act, the Fair Housing Act regulations, or the Guidelines. The 1999 edition of the SBC was published on January 29, 1999. A review of the 1999 edition of the SBC is not part of the scope of the following analysis.

II. Methodology

The analysis of the SBC consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the Fair Housing Act regulations at 24 CFR 100.201 and 205, the Fair Housing Accessibility Guidelines, 56 FR at 9472–9515, and the June 28, 1994 Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, 59 FR at 33362–33368 (the Questions and Answers About the Guidelines);

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), Building Officials & Code Administrators International (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three model building codes and the SBC. SWA began its analysis of the SBC by reviewing the column of the matrix that includes the SBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between SBC's accessibility requirements and those of the Act, regulations, and Guidelines.

— A review of the accessibility provisions of the 1997 edition of the Standard Building Code (herein referred to as the SBC); and a review

of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992, the title of the standard referenced by the SBC. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the SBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with John Battles, Vice-President, Technical Services, to gain insight into how the SBC responds to variances that SWA identified. SWA found it necessary to understand SBCCI's interpretations of its own requirements that may not be apparent when reviewing code text.

The original analysis of the SBC was submitted to HUD on September 27, 1999. HUD formed a Model Code Working Group consisting of representatives 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 also participated on the Working Group. The Working Group met with SWA on September 29, 1999, and asked questions and made comments and suggestions about the analysis.

The draft report was made available for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The Standard Building Code

The SBCCI administers the SBC series of model regulatory construction codes. Compliance with the SBC model building code is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body.

The 1997 SBC includes provisions for accessibility intended to reflect the intent of the Guidelines. The 1994 SBC was the first attempt at codifying the Fair Housing Act accessibility requirements. Type B dwelling units accessibility criteria was codified in the 1997 SBC.

Unlike the Fair Housing Act, the SBC 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. Compliance with the SBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as ''model codes.''

Historically, model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117.1. These dwelling units are referred to in the SBC in Section 202 as a ''Type A dwelling unit.'' A ''Type B dwelling unit,'' which is defined in Section 202 as ''a dwelling unit designed and constructed for accessibility in accordance with 1110'' is an attempt to incorporate the requirements of the design and construction requirements of the Act, the regulations, and the Guidelines. The SBC refers to CABO/ANSI A117.1–1992 for the technical provisions for Type B units.

It is the Department's understanding that SBCCI will no longer publish subsequent updates to the latest version of the SBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as ''scoping'' provisions. This section of the analysis sets forth areas where the scoping provisions of the SBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of the SBC included an examination of the following:

SBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

SBC's classification of residential buildings according to use and occupancy; and

SBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that the SBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, SWA concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, and modular units are covered. Additions of four or more units to existing buildings are included within the SBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of the SBC do not or may not include ''covered multifamily dwellings'' as they are defined in the Act, regulations, or Guidelines. 42 U.S.C. § 3604 (f)(7); 24 CFR 100.201; 56 FR at 9500.

SBC Classification of Residential Use Groups

The SBC defines residential occupancies (Group R occupancies), in section 311.2 of the code, as follows:

R1: Residential occupancies where the occupants are primarily transient in nature including:
- Boarding houses (transient)
- Hotels
- Motels

R2: Multiple dwellings where the occupants are primarily permanent in nature, including:
- Apartment houses
- Convents
- Dormitory facilities which accommodate six or more persons of more than 2½ years of age who stay more than 24 hours
- Fraternities
- Monasteries
- Rectories
- Rooming houses (not transient)

R3: Residential occupancies including the following:
- Child care facilities which accommodate five or less children of any age for any time period
- One and two family dwellings where the occupants are primarily permanent in nature and not classified as R1, R2, or I
- Rooming houses (transient)

R4: Residential Care/Assisted Living Facilities housing six or more occupants on a 24 hour bases; these occupancies include the following:
- Alcohol and drug abuse centers
- Assisted living facilities
- Congregate care facilities
- Convalescent facilities
- Halfway houses

Group homes
Residential board and care facilities
Social rehabilitation facilities

According the SBC, Group R2 occupancies containing four or more dwelling units and Group R3 occupancies where there are four or more dwelling units in a single structure, all dwelling units shall be Type B dwelling units. Type B dwelling units are defined as units that are designed and constructed for accessibility in accordance with Section 1110, Chapter 11, Accessibility. Section 1110, Type B dwelling units provides the design and construction requirements for Type B units.

Definition of Dwelling Unit—(Draft Recommendation Number 1)

The regulations define the term ''dwelling unit'' as:

a single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

24 CFR 100.201.

It is clear from the discussion in the Preamble to the Regulations, found at 54 FR at 3244, that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are ''covered multifamily dwelling units'' for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by *one* household is *not* considered to be a ''covered multifamily dwelling'' under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a ''group home'' would not be considered to be a ''covered multifamily dwelling'' for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The SBC defines the term ''dwelling unit'' in Chapter 2, Definitions, 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.

As a result, many of the examples of R2 and R3 residences provided by the SBC are not covered by the accessibility provisions in Section 1105.4.2 because they do not fall under the SBC's definition of ''dwelling unit.'' A dwelling unit, according to interviews with John Battles, Vice-President, Technical Services at SBCCI, cannot have sleeping rooms with shared common facilities. For example, the SBC lists convents, dormitory facilities which accommodate six or more people who stay more than 24 hours, fraternities, sororities, monasteries, rectories, and rooming houses (not transient), as examples of R2 occupancies. However, if these uses are composed of sleeping rooms with shared toileting or cooking, they do not fall under the SBC's definition of ''dwelling unit.'' Mr. Battles confirmed that the only occupancy examples that fall under the SBC's definition of ''dwelling unit'' are apartment houses (R2) and one and two family dwellings (R3).

In its draft report, SWA proposed revising the SBC definition of ''dwelling unit'' to be consistent with the regulations, to include sleeping rooms occupied by separate households. In response to comments on the draft report, the Department has determined that it would withdraw this recommendation. Instead, the Department proposes that the SBC be revised to include a new term; ''sleeping unit.'' The scoping requirements of Chapter 11 have been revised to add references to both dwelling and sleeping units. Therefore, the former Recommendation Number 1 has been eliminated.

Recommendation Number 1 (Draft Recommendation Number 1)

It is recommended that the SBC be revised to add a definition to 202 as follows:

Sleeping unit: A room in which people sleep intended to be occupied as a residence.

Transient Housing—(Draft Recommendation Number 2)

In Draft Recommendation 2, it was recommended that the SBC be revised to make clear that certain types of housing that may be 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 and motels, boarding houses, and homeless shelters. The SBC does not define what ''transient'' means, though it uses this term in specifying what occupancies come within the R1 Use Group. According to Section 1105.4.2, the SBC accessibility provisions apply to Group R2 and R3 occupancies, but not Group R1. Since transient boarding houses and non-transient hotels and motels are classified as R1, they are not covered by Chapter 11. The SBC classifies transient rooming houses as R2 but classifies transient boarding houses as R1. The basis for this distinction in the code is unclear. However, according to Mr. Battles, hotels and boarding houses would not be covered under the provisions of Section 1105.4.2, apparently under any circumstances. Therefore, the SBC does not meet the requirements of the Act, the regulations, or the Guidelines. To make clear that boarding houses, hotels and motels that are not transient are subject to the Act's design and construction requirements and should meet chapter 11's requirements as well, it was suggested that the SBC be revised. Accordingly, draft Recommendation 2 suggested that these three occupancies and non-transient homeless shelters be added to the list of occupancies in the R2 Use Group.

Factors that should be considered in determining whether an occupancy is transient or not are: (1) Length of stay; (2) Whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (3) Whether the terms and length of occupancy will be established through a lease or other written agreement; (4) What amenities will be included inside the unit, including kitchen facilities; (5) How the purpose of the property is marketed to the public; (6) Whether the resident possesses the right to return to the property; and (7) Whether the resident has anywhere else to which to return.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet the SBC's Chapter 11 requirements, the SBC is not consistent with the Act, its regulations and the

Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the SBC and the Department's regulations. Therefore, the Department is withdrawing its draft recommendation on this issue. However, HUD will continue to work with the SBC and other interested code organizations to develop language that appropriately conveys to builders and designers that certain short-term residencies must meet the Act's accessibility requirements. In the meantime, the Department believes the above factors must be considered by owners, builders, and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Continuing Care Facilities—(Draft Recommendation Number 3)

The Act defines a ''dwelling'' as ''any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families* * *''. 42 U.S.C. 3602 (b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

As mentioned in the discussion of transient residential uses above, the Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states:

> The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a ''dwelling'' under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case by-case basis to determine whether it contains dwellings. Factors that the Department will consider in making such an examination include, but are not limited to: (1) The length of time persons stay in the project; (2) whether policies are in effect at the project that are designed and intended to encourage or discourage occupants from forming an expectation and intent to continue to occupy space at the project; and (3) the nature of the services provided by or at the project.

59 FR at 33364.

As a result of the application of these factors, and the regulations' definition of ''dwelling unit,'' the Department considers that residential care/assisted living facilities with four or more dwelling units, including sleeping rooms occupied by separate households with shared toileting or kitchen facilities, and nursing homes, to be ''covered multifamily dwellings'' for purposes of the accessibility requirements of the Act.

The SBC classifies residential care/assisted living facilities as R4 residential uses. Section 202 of the Code defines Residential Care/Assisted Living Occupancies as follows:

> A building or part thereof housing six or more persons, on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care and supportive services. The occupants are mostly capable of responding to an emergency situation without assistance from staff. And this occupancy subclassification shall include residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.

There are no scoping provisions in Chapter 11 related to the R4 classification. R4 occupancies are not covered under Section 1105.4.2. It is unclear whether this is an oversight, or whether all R4 occupancies are covered under some other accessibility standard.

Recommendation Number 2 (Draft Recommendation Number 2)

It is recommended that the definition of ''sleeping unit'' contained in Recommendation Number 1 be adopted and Section 1105.4 be modified to add a new section, that provides the following, in addition to any other applicable accessibility criteria under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990:

> In R4 occupancies, all ground floor dwelling and sleeping units in structures of four or more dwelling or sleeping units that are not served by elevators, and all dwelling and sleeping units in structures of four or more dwelling and sleeping units served by elevators shall be Type B.

Nursing homes occupied by six or more persons (both intermediate care facilities and skilled nursing facilities) are classified in section 309.1 of the code as Group I Unrestrained Occupancy. This classification is defined below:

> Group I Unrestrained Occupancy. Group I Unrestrained included buildings or portions thereof used for medical, surgical, psychiatric, nursing, or custodial care on a 24 hour basis of six or more persons who are not capable of self-preservation. Facilities with five or less persons not ancillary to other uses are classified as a residential occupancy.

The relevant accessibility standards required for Group I (Unrestrained, Section 1105.3.3, 1105.3.5) are as follows:

> Group I Institutional
> 1105.3.3: In Group I Unrestrained nursing homes, at least 50%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible.
> 1105.3.5: In Group I Unrestrained occupancies, at least one accessible entrance shall include a passenger loading zone complying with CABO/ANSI A117.1–1992.

Recommendation Number 3 (Draft Recommendation Number 4)

To ensure that the SBC covers the same dwelling units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the SBC be revised as follows:

> Modify Sections 1105.3.3, 1105.4.1, 1105.4.2, 1105.4.3 as follows:
> 1105.3.3: Group I Unrestrained nursing homes, at least 50%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in unrestrained nursing homes of Group I, in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.
> 1105.4.1: In Group R1 occupancies containing 6 or more guest rooms, one for the first 30 guest rooms and one additional for each additional 100 guest rooms or fraction thereof shall be accessible. In hotels with more than 50 sleeping rooms or suites, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible sleeping rooms or suites. In addition, in Group R1 occupancies in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.
> 1105.4.2: In Group R2 occupancies containing four or more dwelling or sleeping units and Group R3 occupancies where there are four or more dwelling or sleeping units in a single structure, all dwelling and sleeping units shall be Type B. In Group R2 occupancies containing more than 20 dwelling units, at least 2%, but not less than one, of the dwelling units shall be Type A dwelling units. All dwelling and sleeping units on a site shall be considered to determine the total number of accessible dwelling and sleeping units.
> 1. Requirements for Type B dwelling and sleeping units shall not apply to dwelling or sleeping units that are both located above the

first level containing dwelling or sleeping units and that are not provided with elevator access thereto.

2. A multistory dwelling unit * * *

3. The required number of Type B dwelling and sleeping units provided in multiple nonelevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling units which is equal to the percentage of the entire site having grades, prior to development, which are less than 10 percent, but in no case shall the number of Type B dwelling and sleeping units be less than 20% of the ground floor dwelling and sleeping units on the entire site.

4. The required number of Type A and Type B dwelling and sleeping units * * *

1105.4.3 Rooms and spaces available for the use of residents and which serve accessible dwelling or sleeping units shall be accessible. Exception: Group homes intended to be occupied by a single household and detached single-family homes occupied by a single household.

Note: See other changes to Exceptions 2, 3, and 4 under new recommendations 6, 7, 8, and 14 later in this report.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1105.4 use the term ''structure'' instead of ''building.'' This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, SBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments received on this recommendation, the Department has withdrawn its recommendation.

Ground Floor—(Draft Recommendation Number 6)

The Fair Housing Act regulations define ''ground floor'' as a ''floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.'' 24 CFR 100.202. The Guidelines further state: ''Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.'' 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines, question number 6. 59 FR at 33364.

Exception 1, Section 1105.4.2, states that the requirements for Type B dwelling units shall not apply to dwelling units that are both located above the first level containing dwelling units and that are not provided with elevator access thereto. This implies that if a building is built into a hill, for example, and the front and the back of the building have entrances at grade but at different elevations, the first level containing dwelling units could be considered the level at the lowest elevation. Since a ground floor is a floor of a building with a building entrance on an accessible route and there can be more than one ground floor, it is clear in the example above that both levels of that building built into the hill are considered ''ground floors'' and must comply with the Guidelines.

The SBC defines the term ''ground floor dwelling unit'' in Chapter 2 as a dwelling unit with a primary entrance and habitable space at grade. However, the SBC does not refer to the term in its provisions for accessible dwelling units (Section 1105.4.2). The definition of ''ground floor dwelling unit'' does not indicate that there can be more than one ground or grade levels and therefore more than one level of ground floor dwelling units. According to the SBC, in the example given above, the level at the lowest elevation is the only level required to have accessible dwelling units. Therefore, the SBC definition of ''ground floor dwelling unit'' does not meet the requirements of the Act, regulations, and the Guidelines.

In its draft report for public comment, the Department offered a recommendation that the SBC define ground floor to match the regulations and the Guidelines, and delete the definition of ''dwelling unit, ground floor'' from Section 1102. As the Department stated in the preamble to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the SBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the SBC's scoping language, in combination with the definition of ''dwelling unit, ground floor,'' makes it clear that there must be at least one ground floor, and (2) whether the language at Exception 1 of 1105.4.2 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.'' The Department will, however, 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, the Department believes that owners, builders, developers, 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 determinations whether dwelling units or sleeping units in a non-elevator building with four or more such units are required to comply with the Act.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 7)

The regulations define a building as ''a structure, facility or portion thereof that contains or serves one or more dwelling units.'' 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

According to the SBC, buildings that are structurally connected by a breezeway or stairway are considered two separate buildings. However, there are instances when two buildings connected by a stairway that provides the only means of egress to dwelling units are considered one building. However, this must be determined on a case-by-case. As a result, the SBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 4 (Draft Recommendation Number 7)

It is recommended that the SBC be modified to include an additional provision under Section 3104, Covered and Enclosed Walkways and Tunnels, as follows:

3104.2.1. Separate structures. For purposes of calculating the number of Type B dwelling and sleeping units required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

Multistory Dwelling Units—(Draft Recommendation Number 8)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a ''covered multifamily dwelling'' because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a ''multistory dwelling unit'' as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A ''single-story dwelling unit'' is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The SBC defines ''multistory dwelling units'' as a dwelling unit with habitable or bathroom space located on more than one story. The SBC defines ''habitable space (room)'' as a space in structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable space.

According to the SBC's definition of ''multistory dwelling unit'', a unit would be considered multistory if one level contains living or ''habitable'' space and the floor next above or below contained only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space. The SBC's definition of ''dwelling unit, multistory'' does not meet the Department's interpretation of the Act, the regulations and the Guidelines of what constitutes a ''multistory dwelling unit.''

Recommendation Number 5 (Draft Recommendation Number 8)

It is recommended that the reference to ''or bathroom space'' in the SBC's definition of ''multistory dwelling unit'' be deleted as follows:

Section 1102, Definitions:

Dwelling unit, multistory: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer versions of the ANSI–A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping requirements. The Department believes that Code officials may rely on the edition of ANSI A117.1 that has been adopted by the code organization or State or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

The SBC utilizes the technical criteria contained in CABO/ANSI A117.1–1992. Therefore, the Department has determined that there is no variance between the requirements of the Act and the model code provision if the model code provision is based on CABO/ANSI A117.1–1992, even where those criteria differ from the ANSI A117.1–1986 criteria or the Guidelines.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. 56 FR at 9503. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. 56 FR at 9503. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, *regardless* of terrain or unusual characteristics of the site. 56 FR at 9504.

The SBC's provision related to Requirement 1 are consistent with the Act, the regulations, and the Guidelines, except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance

on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance shall be made accessible if the entrance to the units is on an accessible route.

Variances Related to Site Analysis Test—(Draft Recommendation Number 9)

Section 1105.4.2, Exception 3, of the SBC provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines requires the grades to be ''less than 10%''. 56 FR at 9504. In addition, the Exception fails to provide equivalent language to Step C, *i.e.,* it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the SBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, 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. 56 FR at 9504. The SBC does not include any language that reflects these requirements. As a result, the SBC does not meet these provisions of the Guidelines.

Recommendation Number 6 (Draft Recommendation Number 9)

In order to address these inconsistencies, we therefore recommend the following changes and additions to Section 1105.4.2, Exception 3, of the SBC:

The number of Type B dwelling and sleeping units provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling and sleeping units which is equal to the percentage of the entire site having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling and sleeping units be less than 20 percent of the ground floor dwelling and sleeping units on the entire site. In addition to the percentage established, all ground floor dwelling and sleeping units in a building, or ground floor dwelling and sleeping units served by a particular entrance shall be Type B if any one of the following applies:

3.1 The slope between the entrance to the dwelling and sleeping units and a pedestrian or vehicular arrival point is no greater than 8.33%; or

3.2 An elevator provides access to the ground floor only; or

3.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variances Related to Buildings With Elevators—(Draft Recommendation Number 10)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503.

The SBC does not reflect this requirement in Section 1105.4.2, Exception 4.

Recommendation Number 7 (Draft Recommendation Number 10)

It is recommended that Exception 4, Section 1105.4.2 be modified to exempt buildings with elevators from site impracticality as follows:

The required number of Type A and Type B dwelling units and Type B sleeping units shall not apply to a site where the lowest floor or the lowest structural member of a structure not provided with elevator service is required to be at or above the base floor elevation resulting in * * *.

Variance Related to Sites With Unusual Characteristics—(Draft Recommendation Number 11)

In addition, the criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies 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 point. 56 FR 9504.

The SBC does not reflect this requirement in Section 1105.4.2, Exception 4. The SBC's corresponding provision states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building member is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 8 (Draft Recommendation Number 11)

It is further recommended that Section 1105.4.2, Exception 4, be modified to read:

1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *.

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(c)(i); 24 CFR 100.205(c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes
Protruding objects
Ground and floor surface treatments
Parking and passenger loading zones
Curb ramps
Ramps
Stairs
Elevators
Platform lifts
Drinking fountains and water coolers
Toilet rooms and bathing facilities
Seating, tables, or work surfaces
Places of assembly
Common-use spaces and facilities
Laundry rooms

5656 FR at 9505

When a variance is identified in the SBC that does not meet or exceed the

requirements of the Guidelines for each of the 15 elements or spaces above, they are noted below.

Accessible Route(s)

Vehicular Route—(Draft Recommendation Number 12)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

The Exception in SBC Section 1105.4.4 contains language which is comparable to the Guidelines with two omissions. That section states:

If the slope of the finished grade between accessible facilities and buildings exceeds 1:12, 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 SBC does not include language making it clear that accessible parking and curb ramps must be available at the accessible facility if access if provided by a vehicular route.

Recommendation Number 9 (Draft Recommendation Number 12)

It is recommended that SBC, Section 1105.4.4, Exception, be modified to include the following language:

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 accessible parking , in accordance with 1104, at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 13)

Based on the public comments received, the Department has determined that the SBC adequately addresses this issue.

Stairs—(Draft Recommendation Number 14)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

Since stairs are not parts of accessible routes and they are not specifically referenced in Chapter 11, Accessibility, of the SBC, one must refer to Chapter 10, Means of Egress, for stair provisions. However, the Chapter 10 requirements do not necessarily apply to stairs that connect levels not connected by an elevator if they are not a part of a means of egress. There are variances between the SBC and the Guidelines' requirements for stairs along accessible routes regarding handrail extensions and projections, for example.

Recommendation Number 10 (Draft Recommendation Number 14)

It is recommended that the SBC include a provision for stairways under Section 1106, other Features and Facilities as follows:

Stairways.

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with CABO/ANSI A117.1–1992.

Elevators—(Draft Recommendation Number 15)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1–1986, Section 4.10, Elevators. 56 FR at 9505. This applies to elevators located within multistory dwellings. SBC section 1106.3, Elevators, Lifts, states that all passenger elevators on an accessible route shall be accessible. However, the SBC provides an exception to Section 1106.3 which states that elevators within a dwelling unit are not required to be accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 11: (Draft Recommendation Number 15)

It is recommended that this exception be deleted.

Parking and Passenger LoadinG Zones—(Draft Recommendation Numbers 16 and 17)

The Questions and Answers About the Guidelines (Question and Answer 14c) state that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The SBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, there be accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings, and accessible parking at facilities. The Guidelines also require accessible parking on the same terms and with the full range of choices (*e.g.,* surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) which clarified that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department does not recommend that the SBC revise any of its broader scoping requirements for parking. However, the SBC does not include comparable language in Section 1104, Parking Facilities, with respect to the above variances. Therefore, the SBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 12 (Draft Recommendation Number 16):

In order to address these inconsistencies, it is recommended that

the SBC add the following language to Section 1104.1:

Two percent of parking spaces provided for R2 and R3 occupancies required to have accessible/adaptable dwelling or sleeping units shall be accessible * * *

At least 2% of parking garages provided for R2 and R3 occupancies required to have accessible dwelling or sleeping units where there are several individual garages grouped together, either in a separate area of a structure or in a detached structure, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide * * *

Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

In order to ensure that passenger loading zones comply with the requirements of the Guidelines, it is recommended that SBC add a provision under Section 1104 which states the following:

When provided, passenger loading zones shall be located on an accessible route. Passenger loading zones shall be designed and constructed in accordance with CABO/ANSI A117.1–1992.

Table 1104.3, Accessible Parking Spaces includes a note that states ''the accessible space shall be provided but need not be designated as reserved for the physically disabled.'' In addition, Section 1107, Signs, indicates that elements shall be identified by the International Symbol of Accessibility at four locations, the first of which states that it is required at accessible parking spaces required by 1104.1 (Parking Facilities) but not where the total parking spaces provided are five or less. This does not meet the requirements of the Guidelines that requires signage at all accessible parking space.

Recommendation Number 13 (Draft Recommendation Number 17)

It is recommended that this language from provision 1 under Section 1107.1, Signs, be deleted.

Recreational Facilities

The Guidelines, in Requirement 2, state that: ''If provided in the facility or at the site; (a) where 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'' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The SBC Section 1105.4.5 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of ''sufficient to provide equitable opportunity for use'' may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered ''sufficient'' by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

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.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement. 56 FR at 9506.

The Department has determined that the SBC meets the requirements of the Act, the regulations, and the Guidelines with respect to usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. 3604(f)(3)(C)(iii)(I), 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement 56 FR at 9509–10. The SBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following.

Multistory Units Served by Elevators—(Draft Recommendation Number 18)

Among the criteria for Requirement 4 is the provision that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

The SBC provides the following exceptions to the requirement for Type B units as follows (Section 1105.4.2):

A multistory dwelling unit which is not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with the elevator service shall comply with the requirements for a Type B dwelling unit and a toilet facility shall be provided.

The SBC does not mention that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the SBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 14 (Draft Recommendation Number 18)

It is recommended that the SBC modify Section 1105.4.2, Exception 2 as follows:

A multistory dwelling unit which is not provided with elevator service is not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a

Type B dwelling unit, and a toilet facility shall be provided.

Requirement 5: Light Switches, Electrical Outlets, Thermostats and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. 3604(f)(3)(C)(iii)(II); 24 CFR 100.205. Requirement 5 of the Guidelines sets forth criteria to meet these requirements. The SBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars—(Draft Recommendation Number 19)

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. § 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10.

The SBC Section 1110.9.3, Grab bar and seat reinforcement, states that where walls are located so as to permit installation of grab bars and seats complying with Section 4.17.4, 4.21.4, 4.22.4, 4.23.3, of CABO/ANSI A117.1–1992, reinforcement shall be provided for the installation of grab bars and seats meeting those requirements. The SBC does not include any provisions for the installation of grab bars for fixtures, sunken or raised tubs for example, that are located away from walls, which does not meet the requirements of the Guidelines.

Recommendation Number 15 (Draft Recommendation Number 19)

It is recommended that the SBC modify Section 1110.9.4, Toilet and bathing fixtures, as follows:

Section 1110.9.4 Toilet and bathing fixtures:

Toilet and bathing fixtures shall comply with either Section 1110.9.4.1 Option A or 1110.9.4.2 Option B. Where fixtures are located away from walls alternative reinforcement complying with CABO/ANSI A117.1 4.24.2.5 and 4.24.3 shall be provided for the mounting of grab bars.

Requirement 7: Usable Kitchens and Bathrooms

Usable Kitchens—(Draft Recommendation Number 20)

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205. Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

The Guidelines address a parallel approach to kitchen sinks in Requirement 7. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9511. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1–1986, Fig. 32 on page 50.) The Department's Guidelines allowed a departure from the ANSI standard. The Guidelines permit the clear floor space to be designed for a parallel position. 56 FR at 9511–12. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

SBC, Section 1110.8.2.2, states that the clear floor space at the sink shall be positioned for a parallel approach. The offset of the centerline of the clear floor space and sink is required to be 9 inches which does not meet the requirements of the Guidelines. The Guidelines require the centering of the parallel approach on the sink.

Recommendation Number 16 (Draft Recommendation Number 20)

It is recommended that the SBC delete the 9-inch offset requirement and modify, Section 1110.8.2.2, Clear floor space, as follows:

Section 1110.8.2.2 Clear floor space:

The clear floor space at the sink positioned for a parallel approach shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Numbers 21 and 22):

The Guidelines provide two options for designing accessible bathrooms. 56 FR at 9511. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the doors and exit. 56 FR at 9511. The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option.

The second option for designing accessible bathrooms requires that they have reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures. 56 FR at 9511.

According to the Guidelines, for covered multifamily dwelling units in elevator buildings, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit; it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The SBC clear floor space requirements for lavatories under Option A, Section 1110.9.4.1.1, does not require centering of the clear floor space on the lavatory which does not meet the requirements of the Guidelines.

Recommendation Number 17 (Draft Recommendation Number 21)

It is recommended that Section 1110.9.4.1.1 be modified as follows:

Section 1110.9.4.1.1 Lavatory:

A 30 inch by 48 inch minimum clear floor space positioned for a parallel approach shall be provided and centered on the lavatory.

Section 1110.9.4.2.1, Lavatory, under Option B provisions requires a 9-inch maximum offset of the centerline of the clear floor space and lavatory that does not meet the requirements of the Guidelines.

Recommendation No. 18 (Draft Recommendation Number 22)

It is recommended that Section 1119.9.4.2.1, Lavatory, be modified as follows:

Section 1110.4.2.1 Lavatory:

A 30 inch by 48 inch minimum clear floor space positioned for parallel approach shall be centered on the lavatory.

Chapter 6: BOCA National Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1996 edition of the National Building Code (herein referred to as BNBC), published by the Building Officials & Code Administrators International (BOCA)

that do not meet the requirements of the Fair Housing Act (the Act), the regulations implementing the 1988 Amendments to the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, the Department recommends how they may be revised to meet the requirements of the Act, the regulations, or the Guidelines. The 1999 edition of the BNBC was published in January, 1999. A review of the 1999 edition of BNBC is not part of the scope of the following analysis.

II. Methodology

The analysis of the BNBC by the Department and its contractor, Steven Winter Associates, Inc., consisted of the following:

—A review of the language of the Act, 42 U.S.C. § 3604 (f)(3)(C), the regulations at 24 CFR 100.201 and 205, the Fair Housing Accessibility Guidelines, 56 FR at 9472–9515, and the June 28, 1994 Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,'' 59 FR at 33362–33368 (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), BOCA, International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the model building codes. The analysis of BNBC began by a review of the column of the matrix that includes BNBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between BNBC's accessibility requirements and those of the Act, regulations, and Guidelines.

—A review of the accessibility provisions of the 1996 edition of BNBC; and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992, and the International Plumbing Code—1995, which are referenced by BNBC. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and BNBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Kim Paarlberg, BOCA Staff Architect and the liaison to the IBC Means of Egress/Accessibility Committee, to gain insight into how the BOCA responds to variances identified by SWA. SWA found it necessary to understand BOCA's interpretations of its own requirements that may not be apparent when reviewing code text.

The original analysis of the BNBC was submitted to the Department by SWA on August 5, 1999. The Department formed a Model Code Working Group consisting of representatives 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 also participated in the Working Group. The Working Group met with SWA on September 8, 1999, and asked questions and made comments and suggestions about the analysis. This meeting led to further conversations between SWA and Kim Paarlberg, and conversations between HUD staff and BOCA staff.

The draft report was published for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The BOCA National Building Code

The Building Officials & Code Administrators International (BOCA), Inc., is a nonprofit organization that administers the BNBC series of model regulatory construction codes. The code provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with the BOCA model building code is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body.

The 1996 BNBC, Thirteenth Edition, published January 1, 1996, includes provisions for accessibility intended to reflect the intent of the Act. Previous editions of the code include provisions for accessibility, but not as required by the Act. The 1996 BNBC, Chapter 11, Accessibility, is the first attempt at codifying the accessibility provisions of the Act. Any jurisdiction that adopts the 1996 BNBC must follow these accessibility provisions.

Unlike the Fair Housing Act, BNBC 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. Compliance with BNBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as ''model codes.''

In the past, some model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117. These dwelling units are referred to in BNBC, 1107.4.2, and defined in Section 1102, as a ''Type A dwelling unit.'' Section 1107.4.2 of the code, adopts standards for a ''Type B dwelling unit.'' A ''Type B dwelling unit'' is defined in Section 1102 as a dwelling unit that is designed and constructed to provide a minimal level of accessibility in accordance with the applicable provisions of Chapter 11 and CABO/ANSI A117.1 listed in Chapter 35. The purpose of the Type B dwelling unit is to incorporate the requirements of the design and construction requirements of the Act, the regulations, and the Guidelines. BOCA adopts CABO/ANSI A117.1–1992 and refers to the International Plumbing Code (IPC) for the technical provisions for toileting and bathing facilities, kitchens, and bathrooms. It is important to note, however, that neither CABO/ANSI–A117.1–1992 nor the IPC contain scoping provisions, as discussed below.

It is the Department's understanding that BOCA will no longer publish subsequent updates to the latest version of the BNBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure

to which the technical standards are applied. The provisions in this second component are referred to as ''scoping'' provisions. This section of the analysis sets forth areas where the scoping provisions of the BNBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of BNBC included an examination of the following:

BNBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

BNBC's classification of residential buildings according to use and occupancy; and

BNBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that BNBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, the Department concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, modular units are covered, and additions of four or more units to existing buildings, are included within BNBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of BNBC do not or may not include ''covered multifamily dwellings'' as they are defined in the Act, regulations, or Guidelines.

BNBC Classification of Residential Use Groups

BNBC stipulates that all structures in which sleeping accommodations are provided, excluding those that are classified as institutional occupancies, shall be classified as Use Group R–1, R–2, R–3, or R–4 and defined as follows (Section 310.0):

—Use Group R–1 structures include hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations for more than five occupants who are primarily transient in nature, occupying the facilities for a period of less than 30 days.

—Use Group R–2 structures include all multiple-family dwellings having more than two dwelling units, except as provided for under Use Group R–3 structures, and shall also include all boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature.

—Use Group R–3 structures include all buildings arranged for occupancy as one-or two-family dwelling units, including not more than five lodgers or boarders per family and multiple single-family dwellings where each unit has an independent means of egress and is separated by a 2-hour fire separation assembly.

—Use Group R–4 structures include all detached one-and two-family dwellings not more than three stories in height, and the accessory structures as indicated in the one-and two-family dwelling code.

The reference to ''detached one-and two-family dwellings'' under Use Group R–4 refers to structures that are physically detached. According to BNBC, buildings separated by firewalls are not considered separate structures (see the discussion about BNBC's definition of ''building'' and ''structure'' below).

Definition of ''Dwelling Unit''—(Draft Recommendation Number 1 and 2)

The regulations define the term ''dwelling unit'' as: ''a single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.''

24 CFR.100.201.

It is clear from the discussion in the Preamble to the regulations, found at 54 FR 3244 (Jan. 23, 1989), that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are ''covered multifamily dwelling units'' for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by *one* household is *not* considered to be a ''covered multifamily dwelling'' under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a ''group home'' would not be considered to be a ''covered multifamily dwelling'' for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

BNBC defines the term ''dwelling unit'' in Section 310.2, Definitions, 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.

In general, BNBC (1107.4.2) applies the accessibility requirements in a Type B dwelling unit to occupancies in Group R–2 containing four or more dwelling units and in occupancies in Group R–3 where there are four or more dwelling units in a single structure. According to BOCA representatives, there is no circumstance in which BNBC includes a separate sleeping room as a ''dwelling unit.''

Because sleeping accommodations for separate households in a structure are not covered under BNBC's definition of ''dwelling unit,'' BNBC's scoping provisions do not meet the requirements of the Act, the regulations, or the Guidelines because they do not include all of the dwelling units or residential structures that are covered under the Act, the regulations and Guidelines.

In its draft report, SWA recommended that the definition of dwelling unit be modified in the BNBC. Based on public comments received on the SWA draft report on the BNBC, the Department is withdrawing this recommendation. Instead, SWA recommends that the BNBC adopt a new definition of ''sleeping unit'' as stated below, and add that language as appropriate to the scoping provisions of Chapter 11, as reflected in subsequent recommendations.

Recommendation Number 1 (Draft Recommendation Number 1 and 2)

It is recommended that BNBC be revised to add a definition to 310.2 as follows:

Sleeping unit: A room in which people sleep intended to be occupied as a residence.

BNBC does not require that common use spaces that serve accessible sleeping units must be accessible.

Recommendation Number 2 (New Recommendation)

It is recommended that BNBC add the following provision to 1107.4:

Rooms and spaces available for the use of the residents of accessible sleeping units shall be accessible. Accessible spaces shall include toilet and bathing rooms, kitchen, living and dining areas and any exterior spaces, including patios, terraces and balconies.

Transient Housing—(Draft Recommendation Number 3)

In Draft Recommendation 3, SWA proposed that the BNBC be revised to make clear that certain types of housing that the BNBC viewed as transient are dwellings subject to the requirements of the Act, including the design and construction requirements. This housing may include timeshares, residential hotels and motels, boarding houses, dormitories, and homeless shelters. The BNBC uses a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to the Act or Chapter 11.

A 30-day measure is inappropriate in determining whether a building is covered by the Act. The BNBC's 30-day test of transience is inappropriate because it misleads designers, builders and other readers of the code that such housing need not meet the requirements of the Act. 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 is 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.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet BNBC's Chapter 11 requirements, the BNBC is not consistent with the Act, its regulations and Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the BNBC and the Department's regulations. Accordingly, the Department is withdrawing Draft Recommendation 3. The Department will continue to work with BOCA and other interested code 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, and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Continuing Care Facilities—(Draft Recommendation Number 4)

The Act defines a ''dwelling'' as ''any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.'' 42 U.S.C. 3602(b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

The Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states in part:

The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a ''dwelling'' under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings.

59 FR at 33364.

According to BNBC, continuing care facilities may fall under Use Group I if they have more than five occupants. As a result, they may not be covered under Section 1107.4.2, Accessible dwelling unit, of the BNBC.

Section 308.2, Use Group I–1, is defined by BNBC as follows:

This use group shall include buildings and structures which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I–1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Section 308.3, Use Group I–2, is defined by BNBC as follows:

This use group shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of six or more persons who are not capable of self-preservation. Where accommodating persons of the above description, the following types of facilities shall be classified as I–2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Recommendation Number 3 (Draft Recommendation 4)

To ensure that the BNBC covers the same dwelling and sleeping units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the definition of ''*sleeping unit*'' contained in Recommendation Number 1 be adopted and that BNBC be revised as follows:

Modify Sections 1107.3.1, 1107.3.2, 1107.4.1.1 AND 1107.4.2 as follows:

1107.3.1 Use Group I–1: In occupancies in Use Group I–1, at least 4 percent, but not less than one, of the resident sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, board and care facilities, group homes, and convalescent facilities of Group I–1 occupancies with four or more sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.3.2 Use Group I–2: In nursing homes of Use Group I–2, at least 50 percent, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in nursing homes of Group I–2 in structures with four or more sleeping units, all sleeping units shall comply with the requirements for Type B sleeping units required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.1 Accessible guestrooms: In occupancies in Use Group R–1 containing six or more guestrooms, not less than one accessible guestroom for the first 30 guestrooms shall be provided, and one additional accessible guestroom for each additional 100 guestrooms or fraction thereof shall be provided. In hotels with more than 50 guestrooms, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible guestrooms. In addition, in occupancies in Use Group R–1 sleeping units in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.1.1 Boarding houses: Lodging houses and congregate residences with multiple bedrooms or spaces for more than six occupants shall be provided with the minimum number of accessible guestrooms as required by Section 1107.4.1. The guestrooms shall be accessible in accordance with CABO A117.1 listed in Chapter 35. In addition, lodging houses and congregate residences with four or more sleeping units for more than six occupants shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.2 Accessible dwelling and sleeping units: In occupancies in Use Group R–2 containing four or more dwelling or sleeping units and in occupancies in Use Group R–3 where there are four or more dwelling or sleeping units in a single structure, all dwelling and sleeping units shall be Type B. In occupancies in Use Group R–2 containing more than 20 dwelling units, at least 2 percent, but not less than one, of the dwelling units shall be Type A dwelling units in accordance with CABO A117.1 listed in Chapter 35. In occupancies in Use Group R–2 and R–3, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling and sleeping units shall be accessible.

Exceptions:

1. In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B dwelling units.

2. The requirement for Type B dwelling and sleeping units shall not apply to dwelling or sleeping units that are both located above the first level containing dwelling or sleeping units and that are not provided with elevator access thereto.

3. Where multiple buildings on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling and sleeping units shall be equal to the percentage of buildings on the entire site having grades of less than 10 percent. The site grade shall be based on the site conditions prior to development. In no case shall the number of Type B dwelling or sleeping units be less than 20 percent of the ground floor dwelling or sleeping units on the entire site.

4. In areas where buildings are required to be constructed in accordance with Section 3107.0, the required number of Type A and Type B dwelling units and Type B sleeping units shall not apply * * *

5. Recreational facilities in accordance * * *

6. Dwelling and sleeping units required to be Type B dwelling or sleeping units shall be permitted to be designed and constructed as Type A dwelling units.

7. Group homes intended to be occupied by a single household and detached single family homes occupied by a single household.

Note: See other changes to 1107.4.2 including Exceptions 1, 3, and 4 below under Recommendation numbers 7, 8, 9, and 17.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1107.4.2 use the term ''structure'' instead of ''building.'' This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, BNBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the public comments the Department received on this recommendation, the Department has withdrawn this recommendation.

Ground Floor—(Draft Recommendation Number 6)

BNBC defines Ground Floor Dwelling Unit as follows:

Ground Floor Dwelling Unit (Section 1102.0)—For application of the accessibility requirements, a ground floor dwelling unit is a dwelling unit with a primary entrance and habitable space at ground level or the lowest floor containing dwelling units, whether that floor is at or above grade.

The regulations define ''ground floor'' as a ''floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.'' 24 CFR 100.202. The Guidelines further state: ''Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor. 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines question number 6. 59 FR at 33364.

In Section 1107.4.2, BNBC requires that all dwelling units in Use Group R–2 containing four or more dwelling units, and in Use Group R–3 where there are four or more dwelling units in a single structure be Type B dwelling units. However, this section provides the following exception to this requirement:

The requirement for Type B dwelling units shall not apply to dwelling units that are both located above the first level containing dwelling units and that are not provided with elevator access.

According to BNBC, in the example above, the level at the lowest elevation is the only level required to have accessible dwelling units. Because the Guidelines clearly state that a ground floor is a floor of a building with a building entrance on an accessible route and that there can be more than one ground floor, it is clear in the example above that both levels of that building built into the hill are considered ''ground floors'' and must comply with the Guidelines.

BNBC, Section 1102, defines the term ''ground floor dwelling unit'' as a dwelling unit with a primary entrance and habitable space at ground level or the lowest floor containing dwelling units, whether that floor is at or above grade. However, BNBC does not refer to the term in its provisions for accessible dwelling units (Section 1107.4.2, Accessible dwelling units). It is clear that ground floor units can be at or above grade, but it is unclear that there can be more than one ground floor, or ground floor units on different levels of a building.

In its draft report, the Department offered a recommendation that the BNBC modify its definition of ''ground floor dwelling unit'' and refer to the revised term ''ground floor'' in Exception 2, Section 1107.4.2, Accessible dwelling units. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is,

therefore, withdrawing this recommendation. However, the Department maintains that the BNBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. 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 addition, during review of the public comments, two additional concerns arose: (1) Whether or not the BNBC scoping language, in combination with the definition of ''ground floor dwelling unit,'' makes it clear that there must be at least one ground floor, and (2) whether the language at Exception 2 of 1107.4.2 results in requiring builders to make the first level containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.'' The Department will, however, 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, the Department believes that owners, builders, developers, 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 determinations whether dwelling units or sleeping units in a non-elevator building with four or more such units are required to comply with the Act.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 7)

The regulations define a building as ''a structure, facility or portion thereof that contains or serves one or more dwelling units.'' 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

In most cases, under BNBC, two structures that are connected by a breezeway or stairway, for example, and share the same roof as the breezeway or stairway are also considered one building. As a result, if the total units in both structures equals four or more, then the building must comply with the BNBC's accessibility provisions.

It appears, however, that 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 it is considered one building must be determined by BOCA on a case-by-case basis. In addition, in some cases, BOCA 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. As a result, BNBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 4 (Draft Recommendation 7)

It is recommended that BNBC be modified to include a revision to Section 3106.1.1, Separate structures, as follows:

3106.1.1 Separate structures. Connected buildings shall be considered to be separate structures. For purposes of calculating the number of Type B dwelling and sleeping units as required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

Multistory Dwelling Units—(Draft Recommendation Number 8)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a ''covered multifamily dwelling'' because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a ''multistory dwelling unit'' as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A ''single-story dwelling unit is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

BNBC includes the following definitions in Section 1102.1:

Multistory dwelling unit. For application of the accessibility requirements, this term shall mean a dwelling unit with habitable or bathroom space located on more than one story.

BNBC defines ''habitable space'' (Section 1202) as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

According to BNBC's definition of ''multistory dwelling unit,'' a unit is considered multistory if one level contains living or ''habitable'' space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, and the factors outlined above that the Department would consider in making a determination as to whether or not the unit is a multistory unit, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. 56 FR at 9500–01. Neither bathroom space alone nor a combination of bathroom space and storage space constitute living space. BNBC's definition of ''multistory dwelling unit'' does not meet the Act, regulations or Guidelines.

Recommendation Number 5 (Draft Recommendation 8)

As a result, it is recommended that the reference to ''or bathroom space'' in the BNBC's definition of ''multistory dwelling unit'' be deleted as follows:

Section 1102, Definitions:
Multistory dwelling unit: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

Single-Story Unit With a Loft/Mezzanine—(Draft Recommendation Number 9)

Under Requirement 4 of the Guidelines, a single-story unit may have a loft without the requirement that there be an accessible route to the loft; *provided that all other parts of the dwelling unit are on an accessible route.* 56 FR at 9507. Only one loft, or raised or sunken area, can be provided within a room and it cannot interrupt the accessible route throughout the remainder of the dwelling unit. These ''special design features'' cannot contain toilet facilities. 56 FR at 9507.

BNBC does not define or use the term loft, and instead uses the term ''mezzanine,'' and defines this term as follows:

Section 502: ''Mezzanine'' means an intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room in which the level or levels are located.

BNBC Section 1107.4.3, Accessible route, includes an exception that states that mezzanines, and raised or sunken floors in Type B dwelling units are not required to be accessible provided they do not contain or interrupt the accessible route to the only bathing facility, lavatory, water closet or living,

eating, sleeping or cooking areas in the dwelling unit. This provision implies that if there are two bathrooms or sleeping areas within a Type B unit, a mezzanine or raised or sunken area is permitted to interrupt the route to one bathroom or sleeping area, which does not meet the Guidelines.

BNBC does not state that only one of these ''special design features'' is permitted within a room in a Type B dwelling unit, and does not require that if a mezzanine has an enclosed area or a toilet or bathing facility then it must be located on an accessible route.

Recommendation Number 6 (Draft Recommendation 9)

To address these inconsistencies it is recommended that BNBC delete Exception 2, Section 1107.4.3 as currently written and replace it with the following language:

Within Type B dwelling units one of the following is not required to be on an accessible route:

1. A raised floor area in a portion of a living, dining, or sleeping room; or
2. A sunken floor area in a portion of a living, dining, or sleeping room; or
3. A mezzanine that does not have plumbing fixtures or an enclosed habitable space.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer editions of the ANSI–A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping requirements. The Department believes that code officials may rely on the edition of ANSI A117.1 that has been adopted by the code organization or state or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

BNBC utilizes the technical criteria contained in CABO/ANSI A117.1–1992, and thus, HUD considers any BNBC requirements that reflect that criteria to meet the requirements of the Act, even where they differ in small part from the ANSI–1986 criteria.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. 56 FR at 9503–04. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. 56 FR at 9504.

BNBC's provisions relating to an accessible building entrance on an accessible route are consistent with the Guidelines with the following exceptions.

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503–04.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503–04.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variances Related to the Site Analysis Test—(Draft Recommendation Number 10)

Section 1107.4.2, Exception 3, attempts to correspond to Steps A and B of the site analysis test. However, it provides that where multiple buildings on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling units shall be equal to the percentage of buildings on the entire site having site grades of 10 percent or less, and not the percentage of buildable area having site grade of less than 10 percent which is required by the Guidelines. 56 FR at 9504. Thus, BNBC does not meet the specifications of the Guidelines.

BNBC also fails to provide equivalent language to Step C—*i.e.,* it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground

floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, BNBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, 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. 56 FR at 9504. BNBC does not include any language that reflects these requirements. As a result, BNBC does not meet the provisions of the Guidelines on these issues as well.

Recommendation Number 7 (Draft Recommendation 10)

In order to address these inconsistencies, it is recommended that Exception 3, Section 1107.4.2 be revised as follows:

Where multiple structures on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling and sleeping units shall be equal to the percentage of the entire site having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling and sleeping units be less than 20 percent of the ground floor dwelling and sleeping units on the entire site. In addition to the percentage established, all ground floor dwelling and sleeping units in a structure, or ground floor dwelling and sleeping units served by a particular entrance shall be Type B if any one of the following applies:

3.1 The slope between the entrance to the dwelling or sleeping units and a pedestrian or vehicular arrival point is no greater than 8.33%; or

3.2 An elevator provides access to the ground floor only; or

3.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variance Related to Buildings With Elevators—(Draft Recommendation Number 11)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9504. BNBC does not reflect this requirement in Section 1107.4.2, Exception 4.

Recommendation Number 8 (Draft Recommendation 11)

It is recommended that Exception 4, Section 1107.4.2 be modified so that the Exception does not apply to buildings with elevators.

In areas where buildings are required to be constructed in accordance with Section 3107.0, the required number of Type A and Type B dwelling units and Type B sleeping units shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base flood elevation resulting in * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205 (c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes,
Protruding objects,
Ground and floor surface treatments,
Parking and passenger loading zones,
Curb ramps,
Ramps,
Stairs,
Elevators,
Platform lifts,
Drinking fountains and water coolers,
Toilet rooms and bathing facilities,
Seating, tables, or work surfaces,
Places of assembly,
Common-use spaces and facilities,
Laundry rooms.

56 FR at 9505

When a variance is identified in the BNBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, they are noted below.

Scoping of Accessibility Requirements for Public and Common Use Facilities—(Draft Recommendation Number 12)

As stated above, the Act, regulations, and Guidelines require accessible public and common use areas for all covered multifamily dwellings. 42 U.S.C. § 3604 (f)(3)(c)(i); 24 CFR 100.205 (c) (1); Section 1107.4.2 of the BNBC states that in occupancies in Use Group R–2, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling units shall be accessible. This provision does not include Use Group R–3 in that sentence. However, in Section 1107.4.3, Accessible Route, BNBC states the following:

In occupancies in Use Group R–2 and R–3, at least one accessible route shall connect accessible building or facility entrances with all accessible dwelling units within the building or facility and with those exterior and interior spaces and facilities that serve the accessible dwelling units.

It is clear from Section 1107.4.3 that accessible routes to public and common areas are intended to be required in both Use Groups R–3 and R–2.

Recommendation Number 9 (Draft Recommendation 12)

For clarity, it is recommended that Section 1107.4.2 be modified to include Use Group R–3 as follows:

Section 1107.4.2, Accessible dwelling units:

In occupancies in Use Group R–2 and R–3, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling and sleeping units shall be accessible.

Accessible Route(s)—(Draft Recommendation Number 13)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

BNBC, Section 1107.4.3 contains language that is comparable to the Guidelines with one exception. That section 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.

BNBC does not include language making it clear that accessible parking must be available at the accessible

facility if access is provided by a vehicular route. In addition, reference must be made to ''structures'' and not ''buildings'' (see discussion of the definition of ''building'' above.)

Recommendation Number 10 (Draft Recommendation 13)

It is recommended that BNBC, Section 1107.4.3, Exception 1, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and structures exceeds one unit vertical in 12 units horizontal (1:12), or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking in accordance with Section 1105 at each public and common use facility is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 14)

Based on the public comments received, the Department has determined that the BNBC adequately addresses this issue.

Parking and Passenger Loading Zones—(Draft Recommendation Numbers 15, 16, 17 and 18)

The Guidelines provide that accessible parking on a route accessible to persons in wheelchairs be provided for at least 2% of the covered dwelling units, and that there be accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities. 56 FR at 9505.

Section 1105, Parking Facilities, of the BNBC requires that, where parking is provided, accessible parking spaces complying with CABO/ANSI A117.1 be provided in compliance with Table 1105.1, except as required by Sections 1105.2 and 1105.3.

Section 1105.2, Use Group R–2, of Section 1105, Parking Facilities, requires that 2% of parking spaces provided for occupancies in use Group R–2 which are required to have accessible dwelling units shall be accessible. Section 1105.3 does not apply to Use Groups R–2 or R–3 and is not applicable. Table 1105.1 stipulates the minimum number of accessible spaces required according to the total number of parking spaces provided. Since 1105.2 clearly applies to Use Group R–2 and not R–3, one must refer to Table 1101.1 for the required minimum number of accessible spaces required for Use Group R–3.

Recommendation Number 11 (Draft Recommendation 15)

It is recommended that Section 1105.2, Use Group R–2, be modified to include R–3 occupancies, as follows:

Section 1105.2, Use Group R–2 and R–3

Two percent of parking spaces provided for occupancies in Use Group R–2 and Use Group R–3 which are required to have accessible dwelling or sleeping units shall be accessible.

Section 1105.1, Required, should be modified to:

Where parking is provided, accessible parking spaces complying with CABO/ANSI A117.1–1992 listed in Chapter 35 shall be provided in compliance with Sections 1105.2 and 1105.3.

By modifying Section 1105.2 to include the reference to the R–3 Use Group, Table 1105.1 (required minimum number of accessible spaces for R–3 dwellings) and any reference to it may be eliminated.

The Questions and Answers About the Guidelines (Question and Answer 14c) states that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The BNBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities must be provided. The Guidelines also require accessible parking on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b), which clarified that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department is not recommending that the BNBC revise any of its broader scoping requirements for parking. However, the BNBC does not include comparable language in Section 1105, Parking Facilities, with respect to the above variances. Therefore, the BNBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 12 (Draft Recommendation 16)

In order to address these two inconsistencies, it is recommended that BNBC include a reference to R–3 in Section 1105.2, Group R–2, as indicated in Recommendation 11 above, and modify that Section as follows:

At least 2% of parking garages provided for R–2 and R–3 occupancies required to have accessible dwelling or sleeping units where there are several individual garages grouped together, either in a separate area of a building or in a detached building, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide. * * *

* * * Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

It is not clear in BNBC whether passenger loading zones are required to comply with the requirements of the Guidelines.

Recommendation Number 13 (Draft Recommendation 17)

In order to ensure that passenger loading zones comply with the requirements of the Guidelines, it is recommended that BNBC add a provision under Section 1105 which states the following:

When provided, passenger loading zones shall be located on an accessible route. Passenger loading zones shall be designed and constructed in accordance with CABO/ANSI A117.1–1992.

Table 1105.1, Accessible Parking Spaces includes a note that states ''the

accessible space shall be provided but is not required to be designated as reserved for physically disabled.'' In addition, Section 1109.2, Signs, indicates that elements shall be identified by the International Symbol of Accessibility at four locations, the first of which states that it is required at accessible parking spaces required by 1105.1 (Parking Facilities) except where the total parking spaces provided are five or less. This does not meet the requirements of the Guidelines which require signage at all accessible parking spaces.

Recommendation Number 14 (Draft Recommendation 18)

It is recommended that BNBC delete this language from provision 1 under Section 1109.2. If deleted, the note in Table 1105.1 will no longer apply.

Stairs—(Draft Recommendation Number 19)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

There are variances between the provisions of BNBC and the Guidelines' requirements for stairs along accessible routes regarding tread and riser measures, and handrails for example.

Recommendation Number 15 (Draft Recommendation 19)

It is recommended that BNBC include a provision for stairways under Section 1108, Building Features and Facilities as follows:

Stairways

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with CABO/ANSI A117.1–1992.

Alternatively, the Department recommends that BOCA consider adopting the technical requirements for residential elevators found in ICC/ANSI A117.1–1998.

Elevators—(Draft Recommendation Number 20)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1, Section 4.10, Elevators. Section 1108.4 of BNBC, Elevators and Stairway and Platform Lifts, states that all passenger elevators on an accessible route shall be accessible. It also states that elevators required to be accessible shall be designed and constructed to comply with Section 3006 which references conformance with CABO/ANSI A117.1–1992.

The technical specifications for elevators required by both the Guidelines and BNBC are equivalent. However, BNBC provides an exception to Section 1108.4, Elevators, that exempts elevators within dwelling units from being accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 16 (Draft Recommendation 20)

It is recommended that the exception to 1108.4 be eliminated.

Recreational Facilities

The Guidelines, in Requirement 2, state that: ''If provided in the facility or at the site; (a) where 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'' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The BNBC Section 1107.4.4 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of ''sufficient to provide equitable opportunity for use'' may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered ''sufficient'' by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

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.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

The Department has determined that BNBC meets the requirements of the Act, regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. BNBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following:

Multistory Units in Elevator Buildings—(Draft Recommendation Number 21)

Among the criteria in Requirement 4 is the requirement that in multistory dwelling units in buildings with elevators, the story of the unit that is

served by the building elevator is the primary entry to the unit. 56 FR at 9507.

BNBC, Section 1107.4.2, provides the following exceptions to the requirement for Type B units as follows:

In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall comply with the requirements for a Type B dwelling unit and a toilet facility shall be provided on that floor.

Recommendation Number 17 (Draft Recommendation 21)

It is recommended that BNBC modify Section 1107.4.2, Exception 1, as follows:

In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for Type B dwelling units and a toilet facility shall be provided on that floor.

Requirement 5: Light Switches, Electrical Outlets, Thermostats and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205(c)(3)(ii). Requirement 5 of the Guidelines sets forth criteria to meet these requirements. 56 FR at 9507. BNBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars—(Draft Recommendation Number 22)

Requirement 6 of the Guidelines sets forth technical specifications to meet 42 U.S.C. 3604(f)(3)(C)(iii)(III), 24 CFR 100.205(c)(3)(iii) which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10. BNBC refers to the International Plumbing Code, 1995, for the technical specifications for reinforcement in walls for grab bars.

Although it is the intent of the International Plumbing Code, 1995, to require grab bar reinforcement at fixtures located away from walls, sunken or raised tubs for example, one cannot make that clear determination.

Recommendation Number 18 (Draft Recommendation 22)

It is recommended that BNBC add an exception under section 1108.2, Toilet and bathing facilities as follows:

Section 1108.2 Toilet and bathing facilities: Within dwelling and sleeping units required by 1107.4.2 to be accessible, alternative reinforcement complying with CABO/ANSI A117.1–1992 4.24 2.5 and 4.24.3 shall be provided for the mounting of grab bars where fixtures are located away from walls.

Requirement 7: Usable Kitchens and Bathrooms

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205 (c)(3)(iv). Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

Usable Kitchens—(Draft Recommendation Number 23)

The Guidelines address a parallel approach to kitchen sinks in Requirement 7 at 56 FR 9511. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9514. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1–1986, Fig.32 on page 50). The Department's Guidelines allowed a departure from the ANSI standard. The Guidelines permit the clear floor space to be designed for a parallel position. 56 FR at 9511–12. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

The International Plumbing Code, 1995 which provides the technical provisions for Type B kitchens does not require that the parallel approach to sinks shall be centered on the sink which does not meet the requirements of the Guidelines.

Recommendation Number 19 (Draft Recommendation 23)

It is recommended that BNBC add an exception to Section 1108.3, Kitchens, as follows:

Exception: If a parallel approach is provided at the sink, it shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Number 24)

The Guidelines provide two options for designing accessible bathrooms. 56 FR at 9511. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the doors and exit. 56 FR at 9511.

The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option. 56 FR at 9511. The second option requires reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures.

According to the Guidelines, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit; it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars. 56 FR at 9511.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The International Plumbing Code, 1995, does not require the centering of the parallel approach on the lavatory basin which does not meet the requirements of the Guidelines.

Recommendation Number 20 (Draft Recommendation 24)

It is recommended that BNBC add an exception under Section 1108.2 as follows:

Exception: If a parallel approach is provided at the lavatory, it shall be centered on the lavatory.

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