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Office of General Counsel  
Rules Docket Clerk  
Department of Housing and Urban Development  
451 Seventh Street, SW, Room 10276  
Washington, DC 20410-0500

**Re: Comments on Proposed Rule in Docket FR-5006-P-01**

The International Code Council® (Code Council) offers its observations on the proposed rule regarding design and construction requirements and compliance with ANSI A117.1 standards.

The Code Council is an association of building safety and fire prevention professionals whose membership of over 42,000 includes broad representation from local, state and federal public and private sector interests. The Code Council's mission is to provide the highest quality codes, standards, products, and services for all concerned with the safety and performance of the built environment. This mission and the activities of the Code Council directly relate to providing a safe physical environment through the adoption, implementation and use of codes and standards developed by our membership, and through the robust supporting infrastructure the Code Council provides to aide the effective use of our codes and standards. These codes and standards, and the infrastructure the Code Council provides, are key means by which the design and building industries work together with building safety and fire prevention authorities in protecting America's built-environment.

The codes developed under the auspices of the Code Council, with the participation of all interested and affected parties, serve as a baseline for the design, construction, operation and maintenance of the majority of both public and private sector buildings in the U.S. They are readily recognized and understood by building owners, product manufacturers, designers, contractors, insurance interests, policy decision-makers, code officials and all others involved in building design, construction, approval, and operation. Through their adoption and implementation by federal, state and local government, new and existing buildings are increasingly safer and more responsive to both natural and man-made disasters and other building safety and performance related issues.

**Section II, Part A: Updated ANSI A117.1 References Adopting 2003, 1998 and 1992 Editions**

The attached language from the Preface section of the Final Committee Report on the development of the A117.1 – 2003 Edition identifies the process of development of voluntary sector consensus and consideration of public appeals associated with the latest version of the A117.1 that this proposed rule would recognize. As a process that met or exceeded the criteria for recognition as a voluntary consensus standard, and as a standard developed under an ANSI accredited process, the ANSI A117.1 -2003, as well

as the 1998 and 1992 versions of the standard proposed for recognition by this rule, represent a full public/private consensus on design and construction elements that that meet or exceed the requirements of the Fair Housing Act. The Agency has completed its analysis and determined that the each of these editions satisfy the requirements of the FHA, and the formal regulatory recognition proposed by this rule is appropriate and supported in the public record.

In finalizing this proposed rule the Code Council observes that use of the word “adopt” in this notice may create confusion as opposed to use of “recognize”. We believe that the action of the agency should be to recognize the versions of the standard in regulation based on a determination of compliance with the FHA. We are concerned about a misunderstanding that this action supersedes, as opposed to builds upon, earlier actions in recognizing documents for safe harbor. Our views on the maintenance of safe harbor recognition are discussed further below.

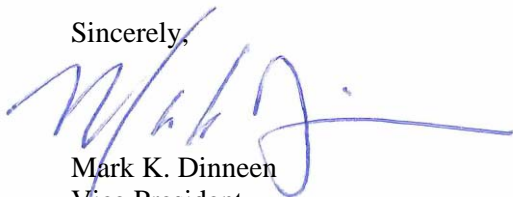
**B. HUD-Recognized Safe Harbors for Compliance With the Fair Housing Act’s Design and Construction Requirements.**

In this proposed rule the agency has listed the 10 documents presently recognized as a Safe Harbor and requests public comment on the efficacy of recognizing older editions of the ANSI A117.1 standard. As discussed in this proposed rule, the model code is not an enforceable building requirement until a state or local jurisdiction has taken action to adopt the code. As also noted, adoption timeframes and frequency of adopting updates of the model code do vary among jurisdictions depending upon state and local expectations and resources. As a standard and model code developer, the International Code Council does recommend and promote the purpose and benefits of adoption and application of the most current version of a code or standard, including all of those referenced in each of the the I-Codes™. At the same time, because it is not typical for jurisdictions to update as frequently as the I-Codes are reissued, the Code Council continues to provide support for jurisdictions with adoptions of older versions of our model codes.

Given the likelihood that state or local jurisdictions continue to rely on legal adoptions of or references to the 10 safe harbor documents, AND given that each of the 10 documents can still be recognized as meeting the requirements of the FHA, the ICC believes that is incumbent on HUD to maintain its regulatory recognition of those documents. In addition, any action regarding the recognition of safe harbor should be understood to preserve the legal status of buildings constructed under the authority of recognized documents while that recognition was in force.

We thank the agency for the consideration of these comments, and welcome the opportunity to reply to any additional concerns the agency may wish to address.

Sincerely,



Mark K. Dinneen  
Vice President  
Congressional Relations

## **PREFACE TO THE 2003 A117.1 - FINAL COMMITTEE REPORT (FCR) (excerpt)**

This FCR dated November 20, 2003 contains information on the Final Committee Action on the development of ICC/ANSI A117.1-2003. Editorial corrections to the August 14, 2003 version have also been made. There were no substantive corrections to the August 14, 2003 version. The main changes were to the text of the Preface. An additional agenda item, FCA-095b (FCA-130) has been added. The section on Appeals was been removed as this FCR contains information on all appeals received in conjunction with the Final Committee Action.

### **Introduction**

This Final Committee Report (FCR) and resulting Final Draft of the A117.1-2003 was developed by the ANSI Accredited Standards Committee (ASC) A117 on *Architectural Features and Site Design of Public Buildings and Residential Structures for Persons with Disabilities*. The Committee operates under American National Standards Institute (ANSI) Approved Procedures. The purpose of the August 14, 2003 FCR and Final Draft was to present to general public and others for Public Comment, the final proposed changes made by the A117 Committee to revise the 1998 edition of the ICC/ANSI A117.1 *Standard on Accessible and Usable Buildings and Facilities*.

### **Development**

An ANSI Project Initiation Notification System (PINS) was published in the February 23, 2001 edition of ANSI Standard Action. A call for Public Proposals was announced on the ICC website on March 12, 2001. The deadline to receive Public Proposals was September 10, 2001. The Committee acted upon the 429 Public Proposals, and developed 566 Committee Proposals at three meetings. These meetings were held December 10-14, 2001; February 11-15, 2002; and May 29-31, 2002. The formal Committee Ballot on the Public Proposals closed on July 3, 2002. In accordance with Committee procedures, to allow the committee to address resolved and unresolved objections, all Affirmative Comments and Negative Reasons received on the Ballot automatically became a Public Comment. The results of the formal Ballot on Public Proposals are reflected in the Public Proposals Report (PPR) and Draft of the A117.1-2003.

A call for Public Comments was posted in the July 19, 2002 edition of ANSI Standard Action. The deadline to receive Public Comment was September 2, 2002. The Committee acted upon the 521 Public Comments at a meeting held September 16-20, 2002. The formal Committee Ballot on the Public Comments closed on October 21, 2002. Affirmative Comments and Negative Reasons received on the Ballot were circulated to the committee to afford voting members a chance to change or reaffirm their Public Comments Ballot vote. The recirculation period closed on November 8, 2002. The results of the final Ballot on Public Comments were reflected in the Tentative Public Comments Report (PCR) dated March 17, 2003. The final PCR is dated August 15, 2003 and, with the exception of the preface text, contains only typographical corrections from the Tentative version.

To address resolved and unresolved objections resulting from the Ballot on Public Comments, in conformance with Committee Procedures, a call to both the Committee members and the public for comment on the Committee Actions to date on both the PPR and PCR was made.

This resulted in 130 Final Committee Action (FCA) agenda items (Requests). To reflect changes made by the Committee Action on Public Comments and preliminary editorial changes proposed by the A117 Task Group on Editorial Changes (TGEC), Draft #c of A117.1-2003 was released. The Committee acted upon the FCA at two meetings held April 14-15, 2003, and May 12, 2003.

At the meetings, a voice vote was taken on each proposed change to the A117.1-1998 as related to a Final Committee Action agenda item. In conformance with Committee Procedures, a voice vote of 2/3's affirmative was required to make a change to the A117.1-1998. This voice vote produced the tentative Final Committee Action that was issued as the Tentative Final Committee Report (FCR), and reflected in the Final Draft of the A117.1-2003. The tentative Final Committee Action was balloted by the full Committee using a written electronic/paper ballot. The formal FCA Ballot closed on June 20, 2003.

Concurrent with the formal Committee Ballot on the FCA agenda items was the Public Comment period. A call for Public Comment was posted in the May 23, 2003 edition of ANSI Standard Action. The closing date to receive Public Comment was July 7, 2003. Affirmative Comments and Negative Reasons received on the Ballot, and the single Public Comment were circulated to the committee to afford voting members a chance to change or reaffirm their FCA Ballot vote. The circulation period closed on August 4, 2003. The results of the final Ballot are reflected in this FCR as the Final Committee Action. No tentative Final Committee Action changed as a result of the Comment circulation.

All meetings were open to the general public, and interested individuals and organizations from across North America participated.

### **Appeals**

Two appeals were received in conjunction with the final Committee Action on the 2003 edition of A117.1. The appeals were on Final Committee Action Agenda Item 095 (FCA-095). The A117 Committee Chair determined these appeals were unresolved objections. In accordance with Committee Procedures, to address these appeals, Agenda Item 095b (FCA# 130) was developed by the Task Group on Assembly Areas (TGAA). FCA-095b was balloted by the full Committee on October 1, 2003 using a written electronic/paper ballot. The FCA-095b Ballot closed on October 31, 2003. Concurrent with the formal FCA-095b Ballot was the Public Comment period. A call for Public Comment, including text of FCA-095b, was posted in the October 10, 2003 edition of ANSI Standard Action. The closing date to receive Public Comment was November 9, 2003. No Ballot Comments or Public Comments were received. As a result of these actions, both appellants agreed to withdraw their appeals.

### **Unresolved Objections**

As no Ballot Comments were received in conjunction with the final Committee Ballot on FCA-095b, and no Public Comment was received in conjunction with FCA-095b, and all appeals have been satisfied, there were no unresolved objections to the final revisions to ICC/ANSI A117.1-1998.