

HUD's FHA "Safe Harbors"

What else.....





HUD's FHA "Safe Harbors"

What was....



Section 504 of the Rehab Act (504) has **ONE** accessibility standard: UFAS

Americans with Disabilities Act (ADA) has **ONE** accessibility standard: ADAAG

Fair Housing Amendments Act (FHA) for the first time offered a **CHOICE** of accessibility standards or "**safe harbors**"

HUD's FHA "Safe Harbors"

What was....



Fair Housing regulations, guidelines, and standards developed through a consensus process

HUD FHA regulations at 24 CFR 100 developed

HUD wanted to give owners, developers, and contractors a **CHOICE** - meet one of the listed standards - "**safe harbors**" - or a "comparable standard"

HUD's FHA "Safe Harbors"

What was....



➔ Initial list (1991) included:

➔ ANSI A117.1-1986, used with the Fair Housing Amendments Act, HUD regulations, and the Guidelines

➔ HUD Fair Housing Accessibility Guidelines published March 6, 1991



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HUD's FHA "Safe Harbors"

What is....

➔ HUD set up a process to review other standards, and if determined "comparable" by HUD, added to the list of "**safe harbors**"

➔ HUD wrote "HUD Fair Housing Act Design Manual" in 1998 and added it as a "**safe harbor**"

➔ Most "**safe harbors**" added have been ICC building codes, with newer versions of ANSI A117.1



HUD's FHA "Safe Harbors"

What is....

 Presently, the **"safe harbors"** include: (choices for standards to follow)

1. ANSI A117.1-1986, used with the with the Fair Housing Amendments Act, HUD regulations, and the Guidelines.
2. HUD Fair Housing Accessibility Guidelines published on March 6, 1991 and the Supplemental notice to the Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, published on June 28, 1994.
3. HUD Fair Housing Act Design Manual (1998).
4. CABO / ANSI A117.1-1992, used with the Fair Housing Amendments Act, HUD regulations, and the Guidelines.
5. ICC / ANSI A117.1-1998, used with the Fair Housing Amendments Act, HUD regulations, and the Guidelines.

(continued)



HUD's FHA "Safe Harbors"

What is....

 Presently, the **"safe harbors"** include: (choices for standards to follow)

6. Code Requirements for Housing Accessibility 2000 (CRHA).
7. International Building Code 2000 as amended by the 2001 Supplemental to the International Codes.
8. International Building Code 2003, with one condition.
9. ICC / ANSI A117.1-2003 used with the Fair Housing Amendments Act, HUD's regulations, and the Guidelines.
10. 2006 International Building Code (loose leaf).

(Please note the lack of a "safe harbor" newer than 2006)





HUD's FHA "Safe Harbors"

What will be....



Notice no "safe harbor" accepted by HUD since 2006

- Budgetary cuts at federal departments / agencies
- Staffing changes / reductions
- "Safe Harbor" studies not a priority
- No great "push" from industry for HUD to update "safe harbors"
- Building codes (and ANSI standard) typically updated every three years or so

HUD's FHA "Safe Harbors"

What will be....



Proposed Rule published in Federal Register on 01/15/2020, recommending adding newer "safe harbors"



These new "safe harbors" go into effect **March 8, 2021**



International Code Council building code editions 2009, 2012, 2015, and 2018 would be added to the list of HUD "safe harbors"



Each ICC building code edition references newer versions of ANSI A117.1

HUD's FHA "Safe Harbors"

What will be....



By aligning “safe harbors” with newer / existing ICC building codes, it is hoped that the building code adopted by a locality would be a “safe harbor” for Fair Housing

If / when local building inspectors are trained on accessibility and ANSI A117.1, then (potentially) a final building inspection by a locality **might** equate to a property that meets Fair Housing requirements.



The Violence Against Women Act (“VAWA”)

VAWA Basics

“An **applicant** for assistance or **tenant** assisted under a **covered housing program** may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of **domestic violence, dating violence, sexual assault, or stalking**, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.”

Covered Housing Provider

- Who is included:
 - » Section 202 Supportive Housing for the Elderly
 - » Section 811 Supportive Housing for Persons with Disabilities
 - » Housing Opportunities for Persons With AIDS (HOPWA) program
 - » HOME Investment Partnerships (HOME) program
 - » Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act



Covered Housing Provider

- » Certain multifamily rental housing under section 221(d)(3) of the National Housing Act
- » Multifamily rental housing under section 236 of the National Housing Act
- » HUD programs assisted under United States Housing Act of 1937 public housing under section 6 of the 1937 Act
 - » Tenant-based and project-based rental assistance under section 8 of the 1937 Act, and
 - » Section 8 Moderate Rehabilitation Single Room Occupancy
- » The Housing Trust Fund
- » Low-Income Housing Tax Credit (“LIHTC”) program





Emergency Transfer

- In general
 - » Internal
 - » External
- Can you seek both?
- Safe unit

Who is eligible for a transfer?

- Any victim who:
 - » Expressly requests transfer AND
 - Reasonably believes threat of imminent harm OR
 - If victim of sexual assault
 - » Threat of harm OR
 - » Assault occurred recently



“Safe Unit”

HUD’s Model Plan

- allows the survivor to determine what is a safe unit for purposes of the transfer, ensuring that the survivor has control over their own safety planning
- What about internal transfer to unit in the same development?
 - "If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit."



Internal Transfers

- Transfer plan must:
 - » Contain details regarding priority
 - » Describe policies for assisting tenant



External Transfers

- Transfer plan must:
 - » Describe efforts to assist with external transfer when safe unit is not available
 - » Include policies for assisting tenant who will transfer out of provider's program or project or into a provider's program or project



Confidentiality and Reporting

- Confidentiality:
 - » Location must not be disclosed
- Reporting:
 - » Document all emergency transfers requested
 - » Document outcome of requests
 - » Report to HUD annually



Reasonable Accommodations



- Victim accommodations:
 - » Related to written emergency transfer
 - » Related to physical modifications (units and common areas)
- Abuser accommodations:
 - » Direct threat?



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Potential Legislative and Enforcement Changes under the Biden Administration

Fair Housing Under Biden Administration

- Expansion of affordable housing
- Restore Affirmatively Furthering Fair Housing Rule
- Address exclusionary zoning laws
- Increase fair housing enforcement





AFFH

- Fair Housing Act requires the HUD Secretary to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further” the policies of the FHA
- Accordingly, HUD requires local communities that receive federal financial assistance from HUD to do so as well

AFFH

- In 2015, Obama administrative adopted regulations defining AFFH procedures for recipients
- Trump administrative issued a regulation essentially repealing the 2015 regulation and replacing them with less burdensome procedures



AFFH

- Examples of significant changes:
 - » Recipient may “take any action rationally related to promoting any attribute or attributes of fair housing.”
 - » “sufficient if the program participant takes any action that is rationally related to promoting one or more attributes of fair housing.”



AFFH

- Expect Biden's HUD administration to restore previous rule
- Examples of practical impact:
 - » Evaluate and change impediments such as land use regulations
 - » Evaluate and change what developments are allocated LIHTCs

EXAMPLE

Disparate Impact Rule

- Trump administration adopted an amended Fair Housing Act disparate impact regulation
- Biden administration may issue new rule

POSSIBLE

Enforcement

- Increase in enforcement:
 - » Disparate impact
 - » Exclusionary zoning
 - » Sexual orientation discrimination
 - » Tenant on tenant harassment
- Continue active disability discrimination enforcement

POSSIBLE

Potential, But Less Likely

- Amendment to Fair Housing Act
 - » Source of income discrimination
- Issue new “assistance animal” guidance

POSSIBLE



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