National Association of Home Builders
National Multi Housing Council/National Apartment Association

October 8, 1998

Ms. Eva Plaza
Assistant Secretary
Office of Fair Housing and Equal Opportunity
451 7th St. SW, Room 5100
Washington, D.C. 20410

Dear Ms. Plaza:

Earlier this year, our organizations met with you to discuss various fair housing compliance issues. At our meeting in March, we expressed our concern about the HUD Fair Housing Act Design Manual and indicated that we would undertake a comprehensive review of the Manual to determine if there were any inconsistencies between the Manual and the Fair Housing accessibility guidelines and submit to you the results of our review.

Since our meeting, we have undertaken such a review. The review was completed by an independent architect, at our request. Based on this review, we have concluded that while the Manual provides useful guidance for builders and others on how to comply with the guidelines, it is clear that on some key points, the Manual has gone beyond the guidelines. Our findings indicate that the Manual has adopted several policies that are not found in the guidelines. We believe that such policies should not be enforced by HUD unless and until there is a public notice and comment period on these issues as required under the Administrative Procedure Act.

Our organizations applauded Secretary Cuomo's decision earlier this year to pull the original Design Manual and reissue a clearer version, without the disclaimer. During our discussions earlier this year on the Manual, Peter Kaplan indicated that HUD's revisions to the Manual in April would be limited to minor changes that did not necessitate rulemaking. He indicated that any changes that required a rulemaking process would have to be handled at a later time. While we are pleased that the disclaimer has been removed in the revised version and minor issues were clarified, our technical review indicates that there are over 150 inconsistencies between the Manual and the guidelines. While some of these points may be considered "minor" and can be clarified by HUD expeditiously, we have uncovered 13 items that present serious compliance problems for the industry. These issues can only be resolved through the public notice and comment process. We attached a summary of those significant issues, along with a copy of our detailed study.

We urge HUD to move quickly to resolve these issues. The need for a clear and unambiguous Manual is critical to industry compliance with the Fair Housing Act Accessibility Guidelines. It is also required by law. The Small Business Regulatory Enforcement Fairness Act ("SBREFA") requires that agencies prepare small business compliance guides that clearly and completely explain the actions necessary to comply with federal regulatory requirements. The most basic tenets of due process also direct that HUD clarify these regulations that carry substantial penalties for the regulated community before using the Manual in its enforcement activities.

We applaud HUD's recent action indicating a commitment to move forward to review the model building codes for consistency with the Fair Housing Act accessibility guidelines. However, it is clear that it will be difficult to review the model codes for consistency with the guidelines while there are conflicts between the guidelines and the Design Manual. This is another reason why the Department should move expeditiously to resolve the issues our study has revealed.

We want to continue to work with you to ensure that the Department's guidance on the accessibility requirements is clear, unambiguous, and based on the law. We urge you to closely review the enclosed material and take appropriate action to begin a public comment process on the issues we have raised.

We would like to meet with you and your staff to further explain this report and our findings. Please contact Rhonda Daniels at NAHB at 202-822-0328 or Jay Harris at NMHC/NAA at 202-974-2344.

Sincerely,

National Association of Home Builders
National Multi Housing Council/National Apartment Association

cc: Secretary Andrew Cuomo

SUMMARY OF ISSUES PRESENTED IN DESIGN MANUAL

The issues identified below represent those areas where the Design Manual goes beyond the Fair Housing Accessibility Guidelines, fills in where the Guidelines are silent, or fails to adequately address a significant design issue. The comments presented below are based on an independent, third party analysis of the Design Manual. We strongly believe that the issues raised merit public notice and comment in accordance with the Administrative Procedure Act.

1. Issue Concerning Update of ANSI Standards

The Guidelines reference ANSI A117.1(1986). The Design Manual points out that any citation in the Manual to ANSI refers to the 1986 version of the ANSI standard. (Design Manual at page 1.4).

The Fair Housing Act (42 USC Section 3604 (f)(4) refers to the "ANSI A117.1" standard, but does not reference the year. Presumably, Congress intended that the ANSI standard in effect at the time of the passage of the Fair Housing Amendments Act in 1988 would be the appropriate version to follow.

The ANSI standard has been revised since 1986, 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 to accessible design.

Since the Fair Housing Act does not refer to a particular edition of the ANSI standard, it would be reasonable for the Manual and the Guidelines to specifically permit the use of the current 1998 ANSI standard. As the independent study points out on page 2.5, specific reference to the 1998 ANSI standard would clarify treatment of sinks (Study at page 2.14), passenger loading zones (Study, at page 2.21), and areas affected by knee-toe turning space. 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.

2. Manual's "Accessible Route" Requirements Exceed Guidelines

a. The Design Manual at page 1.25 requires an "interior accessible route" between the lobby and the two-story wing." However, nothing in the Guidelines requires an interior accessible route under any condition.

b. The Design Manual at page 1.35 requires that if an accessible route in lieu of, or in addition to steps or stairs, is provided between levels, then the route must not be "remote, hidden, circuitous, or require people with disabilities to travel excessively long distances to arrive at the same point as others."

While this may be a good design tip, there is nothing in the Guidelines addressing the location of accessible routes in relation to general circulation paths.

c. The Design Manual at page 1.35 also states that the accessible route between levels "must not be locked or require keys, attendants, or special services or permits for use." There is nothing in the Guidelines to support this requirement. Furthermore, the language in the Design Manual could prohibit many standard security practices whenever a general circulation path was also an accessible route. It would seem more reasonable to state that if locks, keys, attendants, special services, or permits are not required for all residents or visitors, then they should not be permitted.

d. The Design Manual at page 1.8 states that "voluntary accessible walks must meet the same requirements as an accessible route except that handrails are not required." However, since this sentence is addressing a recommendation that additional routes be accessible where "possible", it is inappropriate for the Manual to set forth mandatory requirements. In fact, under Guideline Requirement 2, accessible routes connecting accessible buildings on the same site are not required to comply with all ANSI A117.1 ramp provisions other than handrails.

3. Manual Should Provide Additional Guidance on How to Determine Multiple Ground Floors

The Design Manual should provide some additional guidance on how to determine multiple ground floors. While Page 1.28 provides good guidance as to conditions where multiple ground floors would be required, additional guidance is necessary.

We recommend the following approach to this issue. If there are multiple ground floors and parking on both sides of the building, then both sides should be accessible. If there is parking only on one side of the building, and the site is such that there is more than a 10% grade to the next level, then only one side must be accessible.

4. Manual Exceeds Guidelines By Requiring a "Primary" Entrance to be Accessible

The Design Manual's discussion of accessible entrances indicates that the accessible entrance must be the entrance of "primary use." (Manual at page 1.10). It is clear that a service entrance cannot serve as the only accessible entrance to a building. However, nothing in the Guidelines requires that the accessible entrance to the building be the "primary" entrance.

It is a common industry practice to provide a door into the unit from the patio area. Based on the Manual, a door into the unit from the patio is not permitted to serve as the only accessible entrance into the unit since the patio door is not a "primary" entrance. However, the guidelines make no distinction between a "primary" entrance and a "secondary" entrance and therefore, it is unclear how to apply such a distinction. The Guidelines require only an "accessible entrance on an accessible route." Therefore, any door that meets the standard for accessibility set forth in the Guidelines, including a patio door or a swing door that meets the ANSI requirements, should be considered an acceptable accessible entrance.

5. Manual Requires a Higher Level of Accessibility for Elements or Features Provided for Public or Common Use of Residents

The Design Manual at page 2.12, note 9 indicates that "when ANSI does not contain specifications for the specific facility or feature in question, then related human factors and performance specifications must be used to achieve accessibility." This appears to require a higher level of accessibility than is required by the Guidelines. The Preamble to the Guidelines states that while access to the facility is expected, specialized features for access into the facility are not expected (Federal Register, March 6, 1991, page 9487).

Many facilities are not addressed by ANSI, including recreational areas such as swimming pools, pool tables, and exercise equipment, and features in common use areas such as reception desks, dumpsters, and sinks. Many of these facilities have not been designed to be fully accessible to disabled persons. Instead of referring to ambiguous "human factors" and "performance specifications" standards, the Design Manual should be revised to state with clarity that the builder is required to build in an accessible manner only "up to" the facility, as noted in the Preamble to the Guidelines, March 6, 1991, page 9487. It is the responsibility of the manufacturer of the equipment, facility, or feature to ensure that the product is useable by a disabled person, not the builder or developer.

6. The Manual Conflicts with Guidelines on Whether a Standard Sliding Glass Door is Acceptable

The Design Manual at page 3.10 quotes from the Guidelines text that "the nominal 32" clear opening provided by a standard 6-foot sliding patio door is acceptable." However, the manual goes on to state that "many of the standard 6-foot assemblies yield only a 28-1/2 " maximum clear opening in the full open position" and "28 ½" is not an acceptable 32-inch nominal width."

The problem here is that there is no language in the Guidelines that addresses the tolerance permitted for a 32" nominal width. Therefore, the Manual's statement on the 28 ½" width is not supported by the Guidelines.

7. The Manual Misconstrues the Guidelines Requirement on Special Design Features

The Design Manual at page 4.5 states that the "combination of both a loft and a sunken area within the same dwelling unit prohibits residents with mobility impairments from using a significant percentage of their units and is thus not permitted under the Guidelines."

This does not appear to be clearly stated in the Guidelines. Guideline 4 does not clearly state that a unit cannot have both a loft and a sunken living room. The Guideline appears to contain two distinct "exceptions": (a) one allowing a loft, and (b) one allowing a raised or sunken area. There is nothing in the Guideline as written to indicate that a unit cannot have a loft <u>and</u> a sunken living room.

The precise language of the Guideline does not state that these two design features cannot be built into one unit. It is reasonable to construe the Guideline as allowing a loft and a sunken or raised area in a unit, as long as all spaces other than the loft are on an accessible route, and as long as the sunken area does not interrupt the accessible route throughout the remainder of the unit.

8. The Manual Impermissibly Requires a Forward Approach to Controls and Outlets

The Design Manual at page 5.6 states that there must be a clear floor space of 30 inches by 48 inches perpendicular to the wall, adjoining a 36-inch wide accessible route, to allow a person using a wheelchair to approach and get into position to execute a forward reach to the control or outlet.

This "requirement" does not appear to be supported by the Guidelines. The Guidelines do not address the issue of approach in its text. The only sentence addressing unobstructed reach conditions states in part "… operable parts of controls are located no higher than 48 inches, and no lower than 15 inches, above the floor." (Guideline Requirement 5).

The issue of accessible controls involves two factors: the height of the control, and adequate space for a person in a wheelchair to reach the control. While Figure 2(a) in Guideline 5 does illustrate the "forward reach limit" in an unobstructed condition, it is not presented as the only permitted approach. The Guidelines do not appear to prohibit a parallel approach.

If the interpretation provided in the Manual is applied as a requirement, covered dwelling units would be impacted in several areas. First, no light switch or outlet could be provided within the typical dwelling unit corridor of 3'-0" to 3'-6" width – corridors would either need to be 48 inches wide, to accommodate a forward approach to controls, or controls would need to be precisely located opposite door openings, so a portion of the 48-inch depth of the clear floor space could be borrowed from another room. In kitchens, controls on walls that permit an unobstructed reach would be required to provide a forward approach, while those located over counters would be allowed to provide only a parallel approach.

9. The Manual's Requirements for Thresholds at Exterior Doors Creates a Hazard

The Design Manual at page 4.12 states that with respect to the permissible change in level on the exterior side of the primary entry door, the changes in level must be beveled with a slope no greater than 1:2. The beveling requirement is not required by the Guidelines, and creates a tripping hazard.

The Guidelines do not clearly apply this requirement to paragraphs (5) (1/2 inch, 4-inch step exception) and (6) (1/2-inch exception for primary entry door) under Requirement 4. Paragraph 4 of Requirement 4 reads as follows:

"Except as provided in paragraphs (5) and (6) below, thresholds at exterior doors, including sliding door tracks, are no higher than ¾ inch. Thresholds and changes in level at these locations are beveled with a slope no greater than 1:2."

This paragraph can be read to exempt those conditions addressed by paragraphs 5 and 6 from only the ¾ inch provision in the first sentence, or from both the ¾ inch provision and the beveled slope provision in the second sentence of the paragraph. As currently presented in the Manual, both interpretations are used, which is inconsistent. Where paragraphs 5 and 6 specify a ½ inch maximum level change, the Manual indicates that the 1:2 maximum slope is required. However, for the condition under paragraph (5) allowing a 4-inch level change, the Manual indicates that no beveled edge is required and that the change in level can be vertical. Because the beveled edge requirement is addressed in paragraph 4, and not in 5 and 6, it should either apply to each condition, or to none.

The beveling requirement is not supported by the Guidelines, and in practical use, creates a tripping hazard. A better solution is to give the resident the option of adding the bevel for the exterior door conditions addressed in paragraphs (5) and (6) of Guideline 4.

10. The Manual Requires Centering Clear Floor Space at Appliances, Lavatories, and Sinks Which is Not Required by the Guidelines

The Design Manual on page 7.3 calls for clear floor space to be centered on the centerline of the fixture or appliance. (See also Manual at 7.3- 7.9, and 7.47) There is nothing in the Guidelines that requires centering of clear floor space at appliances, sinks and lavatories.

The Guidelines state that a parallel approach is required at the range or cooktop or sink, and that either a parallel or forward approach is required at the oven, dishwasher, refrigerator, or trash compactor. The Guidelines also include a parenthetical phrase "(see Fig. 6)." Figure 6 (noted in Guideline Requirement 7, (1)(a)) shows both a parallel approach and a forward approach, but does not indicate that the clear floor space must be centered on the element served. Requiring sinks and appliances to have centered clear floor spaces will impact the layout of kitchens more significantly than by allowing some degree of offset, which does not appear prohibited by the Guidelines.

With respect to bathrooms, Figure 7 (c) in the Guidelines appears to illustrate the clear floor space centered on the lavatory, but there is no centerline dimension indicated, and no note specifying a centering requirement. The Manual appears to be mandating a provision that is not found in the Guidelines or the Supplemental Notice issued by the Department in June, 1994.

11. The Manual Requires a Clear Floor Space Positioned for Use With Appliance Doors in Open Position

The Design Manual on page 7.10, 7.24 (lower left), and 7.25 states that a clear floor space is required to be positioned for use of the dishwasher and oven

with the door in the open position. Nothing in the Guidelines appears to regulate clear floor space at any appliance when its door is in the open position. The Guidelines require clear floor space “at” the appliance.

12. The Manual Limits the Size and Type of Overlap Permitted at the Water Closet Clear Floor Space Which is Not Required by the Guidelines

The Design Manual in a comment on page 7.44 states that a lavatory, any other fixture, or wing wall must not project into room more than 24". However, the Guidelines do not provide any dimension for the overlap of the water closet clear floor space by a lavatory or wing wall. It appears that this 24” criteria is introduced only in the Design Manual.

Additionally, the Manual states that a shower is prohibited from overlapping the water closet clear floor space. The Guidelines do not specifically address what elements are permitted to overlap the water closet clear floor space – the figure shows only a dotted line. If a wing wall is specifically permitted, it appears that a shower should also be permitted, provided it is recessed enough to project only whatever specific dimension is applied to lavatories and wing walls.

13. The Manual Requires that Walls and Floors Surfaces Behind or Under Removable Cabinets Must Be Finished

The Design Manual on page 7.16 states that knee spaces must have walls and floor spaces finished.

The Guidelines do not address the finish of floor, cabinet, and walls under or behind removable cabinets. While finishing the areas behind removable cabinets is a good practice, it does not appear to be required by the Guidelines.