Clinton Presidential Records
Digital Records Marker

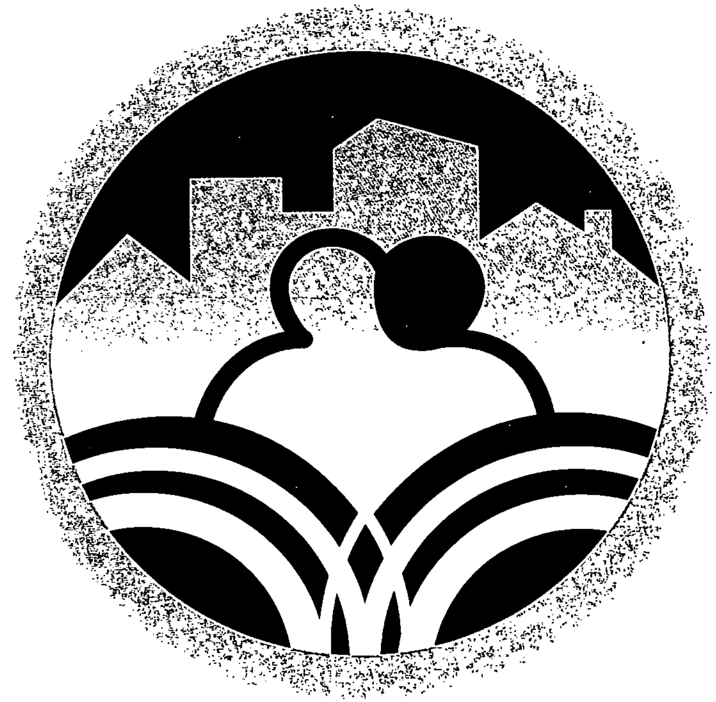
This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

Elderly Housing with Supportive Services

Best Practices



U.S. Department of Housing and Urban Development
U.S. Department of Health and Human Services, Administration on Aging

SENIORS AND HOUSING

The Clinton Administration is increasing housing opportunity, creating stronger neighborhoods and cities, and fostering fair housing for all Americans, giving special attention to senior housing needs.

Increased Housing Opportunity.

During the first two years of the Clinton Administration, the Department of Housing and Urban Development (HUD):

- Funded 7,665 units of elderly housing and 2,559 units of disabled housing;
- Insured more than 2.2 million loans for homeowners, with 788,000 of these for first-time homeowners;
- Initiated an innovative partnership with pension funds to help build 2,500 units of housing;
- Provided rental assistance to 102,000 low-income households; and
- Provided 100,000 new units of housing through the HOME program in FY 1994.

The Department of Housing and Urban Development continues to pursue initiatives designed to specifically address the needs of older Americans:

- This summer, HUD and the Administration on Aging will jointly announce examples of "best practices" in selected public and assisted housing developments that serve elderly and disabled residents. These awards will cite developments that excel in coordinating with community agencies to assure services to the residents and integration into the broader community.
- Strengthened and streamlined the Non-Profit Elderly Housing Section 202 Program by simplifying the application process, providing clearinghouse activities with an 800-number for program information; and establishing guidelines for uniform application of rating criteria. HUD continues to improve the program by linking elderly housing with supportive services.
- To provide older Americans housing options with which they are comfortable, HUD has established rules under which public housing agencies may designate public housing projects as "elderly only."
- Funded 700 service coordinators to link elderly and disabled persons with supportive services in the community; the Department expects to have service coordinators in every eligible assisted housing development.

- Insured 11,000 reverse annuity mortgages, enabling seniors who are house rich but cash poor to have the security of a steady income to pay for health care and other needs.

- Published an Assisted Living Facilities rule to develop or rehabilitate buildings that support increased independence for elderly individuals.

The Administration's Department of Agriculture (USDA) has financed 153,920 units of renta housing for elderly in rural areas. In addition, USDA's loan and grant housing programs, funded at $35 million and $25 million, help more than 8,000 senior households remove healt or safety hazards in their homes.

USDA has funded projects to review housing needs of the rural elderly, conduct outreach conferences and forums, and to identify barriers to delivery of needed housing to seniors.

With the Elderly Housing Coalition, HUD sponsored a White House Conference on Aging "Mini Conference" in February 1995. The recommendations from this Mini Conference will be an integral part of debate at the national White House Conference on Aging.

Stronger Neighborhoods and Cities

The Administration's Empowerment Zones and Enterprise Communities initiative gives communities across America critical resources for economic and social development.

In the first two years of the Clinton Administration, the Section 108 program successfully infused $579 million into economic development projects.

Fair Housing for All Americans

Aggressive HUD action is reducing barriers to homeownership caused by unlawful discrimination.

As part of efforts to eliminate lending discrimination, HUD has signed best practice agreements with the Mortgage Bankers Association and individual lenders.

Reinventing HUD to Meet Housing and Community Development Needs.

The Clinton Administration and Secretary Cisneros have proposed dramatic restructuring of HUD to respond more fully to local needs and local efforts to help people improve their liv These changes include: giving maximum flexibility to decisionmakers at the neighborhood local and state levels; supporting initiatives that help lower-income families become self-sufficient; and creating an entrepreneurial FHA Corporation.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

COVER SHEET

Number of Pages (excluding cover sheet): 4 Date: 12/20/95

To:

Name: Molly Dvostum

Address:

Telephone:

FAX Number: 6-7028

From:

Name: MOON TRAN

Address: 725 17TH STREET, N.W.
WASHINGTON, D.C. 20503

Telephone: (202) 395-4610

FAX Number: (202) 395-1307

Time:

→ PHAs prefer elderly

SPECIAL INSTRUCTIONS:

H.R. 660

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 20, 1995

Honorable Alice M. Rivlin
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Ms. Rivlin:

This letter represents the views of the Department of Justice on H.R. 660, the Housing for Older Persons Act, as enrolled.

The Department has consistently opposed H.R. 660, and believes that its provisions could be construed as "anti-family" and "anti-children." See letter to the Honorable Henry J. Hyde, March 15, 1995, letter to the Honorable Hank Brown, July 24, 1995, and letter to the Honorable Orrin G. Hatch, September 20, 1995. The Department continues to believe that enactment of this bill will weaken anti-discrimination protections for families with children by creating a far more lenient standard for what constitutes "housing for older persons" as used in the Fair Housing Act.

The enrolled bill is somewhat of an improvement on the bill passed by the House. Unlike the House version of H.R. 660, the enrolled bill makes clear that the entire housing community must be intended for occupancy by persons 55 years of age or older, not merely 80 percent of occupied units, as required in the House bill. Thus, under enrolled legislation, exempt housing communities must be intended for older persons, and at least 80 percent of occupied units must be occupied by persons 55 years of age or older.

We remain troubled by the fact that the enrolled bill continues to contain a good faith reliance defense. Given that the standard for "housing for older persons" would become a clear, bright line test, a good faith reliance defense against a violation of the standard is not warranted. As stated in our earlier letters, nothing in existing law prevents a court from considering good faith reliance before imposing monetary damages. Codifying this standard into the law would encourage persons to violate it by claiming good faith reliance. We know of no instances where courts have imposed money damages when a claim of good faith reliance has been raised. The good faith reliance standard does not exist under the Fair Housing Act, and adoption

OMB/HOUSING ID:202-395-1307 DEC 20,95 18:29 No.002 P.02

in this bill would create a troubling precedent for future civil rights laws.

For these reasons, the Department continues to be concerned about the discriminatory effects that H.R. 660 may have on families with children who are seeking housing. However, our concerns are not sufficiently serious so as to warrant a recommendation that the President veto H.R. 660. Therefore, we recommend Executive approval of the enrolled bill. The Department will monitor the effect of the change in the law, and if discrimination against families with children increases because of this change, we will propose legislation to address the problem.

We appreciate the opportunity to comment on the bill as enrolled.

Sincerely,

Andrew Fois m A.F.
Assistant Attorney General

H.R. 660

One Hundred Fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday, the fourth day of January, one thousand nine hundred and ninety-five

An Act

To amend the Fair Housing Act to modify the exemption from certain familial status discrimination prohibitions granted to housing for older persons.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Housing for Older Persons Act of 1995".

SEC. 2. DEFINITION OF HOUSING FOR OLDER PERSONS.

Section 807(b)(2)(C) of the Fair Housing Act (42 U.S.C. 3607(b)(2)(C)) is amended to read as follows:

"(C) intended and operated for occupancy by persons 55 years of age or older, and—

"(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

"(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

"(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—

"(I) provide for verification by reliable surveys and affidavits; and

"(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.".

SEC. 3. GOOD FAITH ATTEMPT AT COMPLIANCE; DEFENSE AGAINST CIVIL MONEY DAMAGES.

Section 807(b) of the Fair Housing Act (42 U.S.C. 3607(b)) is amended by adding at the end the following new paragraph:

"(5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

"(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—

OMB/HOUSING ID:202-395-1307 DEC 20,95 18:30 No.002 P.04

"(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

"(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FACSIMILE TRANSMITTAL SHEET

The Office of Fair Housing and Equal Opportunity

From: MARTIN ROUSE

Office Number: ~~(202) 708-4252~~

Fax Number: ~~(202) 708-4483~~

Number of pages 14 (including cover page)

To: Molly B.

Company Name:

Office Number:

Fax Number: 456-7028

REMARKS:

If you do not receive all pages, please call:

(202) 708-4252

U. S. Department of Justice

Office of Legislative Affairs

MAR 16 1995

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 1995

Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This presents the views of the Department of Justice on H.R. 660, the "Housing for Older Persons Act of 1995," as ordered reported today by the Subcommittee on the Constitution. We generally defer to other, more directly affected agencies with respect to whether this proposal should be enacted. We do, however, have serious concerns, as explained below, about two provisions of the legislation that could be construed as both "anti-family" and "anti-children."

1. Section 2 of the bill would amend the "exemption" section of the Fair Housing Act (i.e., section 807(b)) to provide a new definition for "housing for older persons." Under the Fair Housing Act, discrimination on the basis of familial status is prohibited, with a limited exemption provided for "housing for older persons." We believe that the legislation will not add clarity to determinations on whether housing is or is not "housing for older persons," an issue that has been a major concern of persons seeking to determine whether or not a property complies with the housing for older persons criteria.

Congress enacted civil rights protections for families with children in housing in response to demonstrated pervasive discrimination against families with children during Congressional hearings in 1986 and 1987. See, Hearings before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, on H.R. 4119, 99th Congress (Serial No. 120), and on H.R. 1158, 100th Congress (Serial No. 9). See also, H. Rept. 100-711. But while providing these important protections, Congress also recognized the need to allow bona fide retirement communities to continue without the presence of children. See H.R. 1158, 100th Congress, as introduced.

Existing law provides an exemption for legitimate retirement communities from compliance with the familial status anti-discrimination protection in the Fair Housing Act. Two types of exemptions are provided. First, de facto retirement communities in which all residents are 62 years of age or older are exempt. No other requirements except age are necessary to obtain the exemption.

Second, organized retirement communities that have "significant facilities and services" to meet the needs of their older residents are also exempt. Because these communities provide significant facilities and services, flexibility is provided for occupancy by some residents under 55, such as spouses of residents 55 or older. These organized communities must be intended for occupancy by at least one person 55 years of age or older per unit, and at least 80 percent of the units must be occupied by at least one person 55 years of age or older.

The Department of Justice strongly opposes the proposed amendment to existing law. Enactment of section 2 would severely weaken anti-discrimination protection based on familial status, and would allow the very proliferation of "all-adult" housing facilities the law sought to proscribe.

By enacting protections for families with children, Congress was responding to proven pervasive discrimination against families and children. At the same time, Congress clearly demonstrated its intent to allow housing that was housing genuinely designed for senior citizens. Both concepts can be protected, not by amending a major piece of civil rights legislation, but by clarifying the standards for housing for older persons. The Administration strongly supports providing protection and opportunities for families with children, and strongly supports continuation of this protection. Weakening of existing law would allow increased discrimination in housing against families with children.

A proposed regulation soon to be published by the Department of Housing and Urban Development (HUD), which interprets the "significant facilities and services" portion of the current 55-and-older exemption, promises to provide the certainty and clarity that has been lacking in the past. Following five public hearings around the country and consideration of over 15,000 written comments on the former proposed rule describing "significant facilities and services," HUD is developing a workable standard that will be sufficiently precise to achieve the level of certainty the public has demanded, without requiring great expense or services or facilities that only serve the frail elderly. Because it addresses the major concerns expressed about implementation of the Act in this regard, HUD's proposed new rule should be carefully examined and assessed before any additional amendments to the Act are considered.

By eliminating the "significant facilities and services requirement," section 2 would also in effect eliminate the 62-and-over exemption and dramatically lower the minimum requirements for housing for older persons. Instead of requiring that all persons living in the facility be 62 and over, or that the community provide "significant facilities and services" for its 55 and older residents, section 2 would require only that one person 55 or older live in 80 percent of the units, without any requirement that significant facilities and services be provided for the senior citizen residents.

Thus, under the proposed amendment, more than half the persons living in a facility designated as "housing for older persons" could be younger than 55, and that facility would not be required to provide any significant facilities and services specifically designed to meet the needs of older persons. For example, assume a 100-unit facility, with two persons per unit, and 80% of the units occupied by one person 55 or older. Under the proposed amendment, using this hypothetical example, of the two hundred residents in the facility, as few as 80 residents could be 55 or over, while 120 could be under 55.

Exemptions to civil rights laws should be limited, and created only with great care and deliberation. When Congress enacted this exemption in 1988, it recognized the legitimate need of senior citizens to continue to live in retirement communities. The exemption was crafted to allow exemption for de facto informal retirement communities, in which everyone was old, and for organized communities that provided significant facilities and services to meet the needs of its elderly residents. The statute provides an alternative way for a housing provider to meet the requirement for "housing for older persons" if it is impracticable to provide significant facilities and services.

The Department of Justice recognizes the need to provide clear standards for housing providers as to what constitutes "significant facilities and services." Towards that end, the Department of Housing and Urban Development has been conducting public hearings on this issue to provide additional guidance on the parameters of that requirement.

2. Section 3 of the bill would amend the Fair Housing Act to create a "good faith reliance" defense against imposition of money damages.

In order for monetary damages to serve as a deterrent, they must remain available for use in every case. Adoption of a "good faith reliance" standard would allow a willful and egregious lawbreaker to claim good faith reliance and thus avoid imposition of damages. Nothing in existing law prevents a court from considering good faith reliance, yet codifying a standard into the law would encourage persons to violate the law by claiming good faith reliance. We think this would be an undesirable result.

Section 3 would be superfluous if section 2 were enacted. Under section 2, there would be no need to allow "good faith reliance," because compliance would be just a matter of verifying the occupancy status of each unit. The judgment of whether the facility had "significant facilities and services" would no longer be required. Moreover, if HUD adopts a final rule providing a flexible and workable approach to the "significant facilities and services" problem, there would be no need for a "good faith reliance" defense, because the needed clarity will have been achieved through interpretation of the existing statute.

Thank you for the opportunity to present our views on this proposal. Please let us know if we may be of additional assistance in this or any other matter. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

Kent Markus
Acting Assistant Attorney General

cc: Honorable John Conyers
Ranking Minority Member

✓Honorable Charles Canady
Chairman
Subcommittee on the Constitution

Honorable Barney Frank
Ranking Minority Member
Subcommittee on the Constitution

PROPOSED RULE ON SIGNIFICANT FACILITIES AND SERVICES FOR HOUSING FOR OLDER PERSONS (55 OR OVER)

BACKGROUND

The Fair Housing Act was enacted in 1968. It prohibits discrimination in housing and related real estate transactions on the basis of race, color, religion, sex, or national origin. In 1988 the Fair Housing Act was amended, adding familial status (families with children) and disability as protected classes.

Before these amendments, Congress held hearings to determine the need for legislation to protect families with children from discrimination in housing. The hearings revealed that numerous private housing providers were excluding families with children from their developments. Congress found that the proliferation of "adults only" housing was creating obstacles to families seeking housing and, therefore, determined to protect families by adopting a general prohibition against discrimination in housing on the basis of familial status.

At the same time, however, Congress acknowledged that older persons have a genuine interest in having available specialized housing to meet their particular physical and social needs. It created an exception to the general prohibition on discrimination for housing which meets a statutory definition of "housing for older persons."

There are three categories of housing which fall within the housing for older persons exemption:

(1) housing under Federal or State programs designed for the elderly;

(2) housing for those aged 62 or older; and

(3) housing for those aged 55 or older, but only if it meets other requirements (the policies and procedures for the housing facility must demonstrate an intent to provide housing for older persons, and one person in at least 80% of the housing units must be 55 years of age or older) and has "significant facilities and services specifically designed to meet the physical or social needs of older persons." These facilities and services were not defined in the Fair Housing Act.

The U.S. Department of Housing and Urban Development (HUD) published regulations implementing the Fair Housing Act shortly after the enactment of the 1988 amendments (Federal Register, 1/23/89). No detailed guidance pertaining to "significant facilities and services" was contained in the regulation.

Communities which sought the 55 years and older exemption expressed concern about the lack of guidance on what was required to qualify for the exemption and about the impact that requiring "significant facilities and services" might have on their costs. Manufactured (mobile) home parks and other communities that functioned as "adults only" housing were particularly concerned.

In response to those concerns, Congress enacted Section 919 of the Housing and Community Development Act of 1992. It required HUD to issue rules which define what significant facilities and services specifically designed to meet the physical or social needs of older persons are.

On July 7, 1994, HUD published a proposed rule which sought to define significant facilities and services. HUD held an extended public comment period on the proposed rule. The public comment period ended on November 30, 1994. To assure broad public comment, HUD conducted five public hearings around the country during that period. The dates and locations of the hearings were:

August 15, 1994	San Bernadino County, CA Held in Fontana. 1,500 attendees.
August 25, 1994	Tampa, FL Held in Convention Center. 3,000 attendees.
September 29, 1994	Phoenix, AZ Held at Holiday Inn. 1,700 attendees.
October 6, 1994	Washington, DC Under 100 attendees; mostly industry reps.
November 17, 1994	Spokane, WA Held in Coliseum. 300 attendees. Pre-meeting on 11/16 with Sen. Slade Gorton and 50 seniors from communities near Seattle, including Portand, OR.

Assistant Secretary for Fair Housing and Equal Opportunity Roberta Achtenberg personally conducted each hearing.

SIGNIFICANT FACILITIES AND SERVICES FOR HOUSING FOR OLDER PERSONS (55 OR OVER)

- The Fair Housing Act was enacted in 1968. It prohibits discrimination in housing and related real estate transactions on the basis of race, color, religion, sex, or national origin. In 1988 the Fair Housing Act was amended, adding familial status (families with children) and disability as protected classes.

- Before these amendments, Congress held hearings to determine the need for legislation to protect families with children from discrimination in housing.

- The hearings revealed that numerous private housing providers were excluding families with children from their developments. Congress found that the proliferation of "adults only" housing was creating obstacles to families seeking housing and, therefore, determined to protect families by adopting a general prohibition against discrimination in housing on the basis of familial status.

- At the same time, however, Congress acknowledged that older persons have a genuine interest in having available specialized housing to meet their particular physical and social needs. It created an exception to the general prohibition on discrimination for housing which meets a statutory definition of "housing for older persons."

- There are three categories of housing which fall within the housing for older persons exemption:

  (1) housing under Federal or State programs designed for the elderly;

  (2) housing for those aged 62 or older; and

  (3) housing for those aged 55 or older, but only if it meets other requirements (the policies and procedures for the housing facility must demonstrate an intent to provide housing for older persons, and one person in at least 80% of the housing units must be 55 years of age or older) and has "significant facilities and services specifically designed to meet the physical or social needs of older persons."

  These facilities and services were not defined in the Fair Housing Act.

- The U.S. Department of Housing and Urban Development (HUD) published regulations implementing the Fair Housing Act shortly after the enactment of the 1988 amendments (Federal Register, 1/23/89). No detailed guidance pertaining to "significant facilities and services" was contained in the regulation.

STATEMENT BEFORE THE SENATE JUDICIARY
SUBCOMMITTEE ON THE
CONSTITUTION, FEDERALISM, AND PROPERTY RIGHTS

HR 660

WASHINGTON, D.C.
AUGUST 1, 1995

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BY

SARA K. PRATT
DIRECTOR, OFFICE OF INVESTIGATIONS
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Chairman Brown, Senator Simon and Members of the Subcommittee, thank you for inviting the Department of Housing and Urban Development to offer our views today. The Housing for Older Persons exemption to the Fair Housing Act is a subject that has received a considerable amount of attention at HUD and we appreciate the opportunity to share our experience in implementing the provision with you today.

The Fair Housing Act, enacted shortly after the assassination of Dr. Martin Luther King, Jr. in 1968, has been amended only once. The Fair Housing Amendments Act of 1988 augmented the Act in two ways -- it strengthened the enforcement mechanism, providing victims of discrimination with an accessible forum to have their complaints redressed; and it broadened the Act's protections, extending coverage to persons with disabilities and families with children.

The legislative history makes clear that the protections for families with children were included out of concern that many housing providers were arbitrarily excluding children from housing opportunities. Families were facing reduced housing options and higher prices because of the proliferation of adults-only housing.

While Congress recognized the plight of families with children, it also acknowledged the legitimacy of separate housing communities for the elderly and retirees. Older persons frequently prefer to live among their peers. A blanket exemption from the familial status (discrimination against children) provision was created for housing that is restricted to the elderly. Persons over 62 are accorded numerous privileges in our society. Among these is the right to live in age-restricted housing. The Fair Housing Act creates a presumption that housing that is limited to persons over 62 is legitimate elderly housing.

But what about individuals who are not yet 62, but who have retired and are ready to move to a new lifestyle now that their children have grown? The 1988 Amendments also provided for these "older persons." It includes a more relaxed exception to the familial status provision for housing catering to persons 55 and older. As long as 80 percent of the units in a community are occupied by at least one person who is 55 years of age or older, and the housing includes "significant facilities and services specifically designed to meet the physical and social needs of older persons," managers can advertise their properties as housing for older persons, and can exclude families with children. Further, if the housing is necessary to serve important housing needs for older persons, the requirement for specialized services and facilities can be waived.

The significant facilities requirement for "older persons" housing was included to distinguish senior lifestyle communities from ordinary housing complexes. It was thought that something must set these communities apart in order to merit an exemption from the Fair Housing Act.

The significant facilities requirement in the 1988 statute is not very specific. Congress left it to the Secretary of HUD to spell out what exactly is entailed by "significant facilities and services". Not satisfied with HUD's 1989 effort to define the term through regulation, Congress in 1992 directed the Secretary to clarify more specifically the meaning of the Fair Housing Act's significant facilities requirement. The Department, only this week, is completing this Congressional directive.

HUD's initial effort to comply with the 1992 requirement was published as a proposed rule on July 7, 1994. The Department took extraordinary measures to encourage public comment and public participation in the revision of the proposed rule. The period for public comment was extended while former Assistant Secretary Roberta Achtenberg held five public hearings around the country. Hearings were held in Fontana, California, Tampa, Florida, Phoenix, Arizona, Washington, D.C. and Spokane, Washington. The Assistant Secretary and her staff visited dozens of manufactured housing parks and other communities which claimed the Housing for Older Persons exemption, speaking with residents, managers and owners. HUD received a record number of comments on the proposed regulation; on December 12, 1994, HUD withdrew the proposed rule.

Based on the over 15,000 comments to the rule and information provided during the course of the 5 public hearings, HUD completely revised its regulation. A new proposed rule was published on March 15, 1995, with a 60 day comment period.

The new proposed rule was mailed to over 25,000 people who expressed an interest in this issue. HUD received fewer than 1,000 comments on the new proposed rule, with the majority of the comments favoring HUD's new approach to the issue.

For example, one commenter wrote:

> I support the newly proposed rule on significant facilities and service for housing for older persons under the Fair Housing Act. I believe the needs of seniors in senior housing are fairly reflected and supported in the flexibility of the new amendments. The regulations are simple, clear, and realistic. I appreciate HUD staff's willingness to travel across the country and listen compassionately to testimony. Thank you for responding positively to the valid concerns of seniors and community leaders expressed in the hearings.

A popular form letter expressed the same sentiment: "As a senior retired person, I urge you to implement the above rule without change."

A Florida man wrote:

> I was pleased to receive a copy of the proposed new regulations which redefine the rules concerning significant facilities and services for older persons. It is indeed...an example of responsiveness to public concern and creative problem solving! Congratulations. It proves that Washington Bureaucrats do listen and can provide rules and regulations that make sense and are not just a legal maze of what has been called government "gooble-de-gook."

And a homeowner's association wrote:

> ...[W]e are happy to say that (the new rule) appears to meet our needs in providing a Community for Older Persons. This is a much fairer and better proposal than the one submitted in July 1994....Please provide us a copy of the final rules when adopted so that we can take the necessary steps to self certify as a community for older persons. On behalf of the 184 households in our community, I would like to thank your office for fairly and honestly addressing the needs of our residents.

Community leaders and other residents of the city of Hemet, California sent a large homemade Thank-you note to HUD last year, after a visit to their city by HUD officials who were in the Hemet area to conduct a public meeting on HUD's proposed rule. The card says, "HUD: Thanks for listening." It is signed inside by senior residents of this city, with many of them writing personal notes of appreciation for HUD's willingness to write a rule which is simple and easy to understand, reflects the reality of their lives, promotes the interdependence of seniors and the real sense of community, and provides certainty, through a self-certification process, so seniors can feel secure that their community, is indeed, a senior community.

HUD's rule has been sent to the Federal Register for publication. It is designed to provide a realistic yardstick to determine whether a housing development offers significant features which benefit older residents and which set it apart from ordinary, unrestricted housing. It is not a mandate, but a measurement. HUD believes that such an approach is supported by legislative history; the House Report for the 1988 Fair Housing Amendments Act indicates that the Judiciary Committee understood "that most existing and restricted retirement-type communities provide such facilities and services and would meet the test for exemption". It is this spirit which HUD has attempted to capture in its proposed regulation.

The new rule provides clarity and relative certainty to housing providers, residents and prospective occupants. Housing providers use an easy-to-understand checklist to self-certify that their housing development meets the test for housing for older persons. In the event that their status as housing for older persons is challenged, the housing provider would merely need to show that its certification was accurate at the time of the alleged violation. (Previously, the determination of whether the services and facilities provided were significant enough to merit the exemption was made on a case-by-case basis, often by an administrative law judge or by the federal courts.)

The rule contains a "menu" of 114 facilities and services in eleven categories. The list was culled from the amenities actually provided by a variety of senior housing developments across the country -- large and small, affluent and less well-off, manufactured housing communities, condominiums, and single family communities. Both resident associations and traditional housing providers were polled. In order to qualify as senior housing, a development must provide a minimum of ten items (2 from each of 5 categories).

The menu reflects the many comments received to the first proposed rule describing the special activities which seniors felt were unique to their particular housing. It does not assume that people living in housing for older persons are frail, disabled or require nursing home care. It does not require congregate dining or on-site medical services. Instead, it offers maximum flexibility, including the ability to identify a truly unique facility and service not already listed in the menu, to qualify for the 55 and older exemption.

The facilities and services may be provided on or off the premises of the housing. They may be provided by staff, volunteers (including residents and neighbors), or by third parties, such as civic groups or existing organizations in the community. The housing provider signs a "self-certification" of which facilities and services are offered, which is then posted at the housing development. This provides clear notice both to prospective residents and to the public that the housing is intended to be housing for older persons and that it offers sufficient facilities and services to qualify for the 55 and older exemption.

It is the aggregate of at least 10 facilities and services which makes them "significant" within the meaning of the Act, and which sets the housing apart as being uniquely senior housing. Senior housing may have some services, or some facilities, which are like those in non-senior housing. But the Department heard over and over that there is a special spirit in true senior housing, a spirit which is not found in the all-adult communities; it is a combination of care-taking for each other, the special kinds of activities and functions which are attractive to seniors, and the community feeling which bring seniors together. HUD believes that its regulation captures the essence of that spirit in a fashion consistent with the Act, and in a fashion which is quantifiable and objective, to give seniors the certainty which they have demanded.

Despite the attention drawn to the housing for older persons exemption, HUD has received very few complaints of familial status discrimination against communities claiming the exemption. With approximately 10,000 complaints received by HUD annually, only 56 of HUD's open cases involve the 55 and older exemption. Of those cases, almost half (26) were brought by current residents of the property, generally residents who have added children to their family since the amendments became effective or residents who claim that their ability to sell or rent their own housing has been impaired because the housing development falsely claims to be exempt.

Typical complainants in cases falling into this category include the following: The owner of a mobile home had her daughter and granddaughter move in with her after the daughter's divorce. The mobile home park sought to evict the entire family.

In another case, a long time resident sought to sell her mobile home, and filed a complaint which states that the park won't let her market to a family with children and she is unable to sell it without the larger market which would include families with children. She claims the housing does not have significant facilities and services and is not entitled to the exemption.

Other cases have been filed by families with children, private fair housing groups, and, in one case, by a broker who claimed that his right to show and sell a property to any qualified buyer has been abridged because the property is improperly claiming the older persons exemption.

Many of HUD's open cases involve claims that the property does not have 80% of its units occupied by persons who are 55 and older; those cases may or may not involve the facilities and services part of the exemption, but if the property does not maintain the 80% requirement, the facilities and services issue is not dispositive of the case.

HUD is carefully assessing any case which would stand or fall based on the significant services and facilities requirement. During the past six months, HUD has considered four significant facilities cases. We found no reasonable cause to believe that the Fair Housing Act had been violated in two cases where the exemption was claimed. That is, HUD found that the property had significant facilities and services, as well as meeting the other portions of the exemption. In two other cases during the same time frame, HUD found reasonable cause to believe that the Act had been violated in a 55-plus situation; in both cases, the housing did not meet the requirement that 80% of the units be occupied by at least one person who is 55 or older.

In closing, when Congress passed the Fair Housing Amendments Act in 1988, it gave deference to both the rights of families with children and to the concerns of seniors seeking to maintain the unique quality of their retirement housing. HUD believes that the new regulation appropriately balances those interests in a way which is clear and objective, yet flexible enough to work anywhere in the country.

Thank you for your attention.

Srs only housing regulations

Office of Fair Housing and Equal Oppty
708-4252/4211, Marty Rouse

more and more difficult for families w/children to get hsg, thus there needs to be a reason to ban fams w/kids, and have srs only housing

currently, to have srs only hsg: 1) 62 yrs or older; 2) 80% 55 or older and meet 3 reqts, including must have sigt facilities and services. HUD has prepared rule to define sf&s. Hill propsoing to eliminate the sf&s reqt.

Admin opposes getting rid of sf&s reqt ; support new regul; impacts most pple in manufact'd hsg/mobile homes--final rule any day -- pop with srs.

DISABS AND SRS HSG--to get fed funding for hsg, need to incdlue pple w/disabs; option of allowing them to move into srs hsg (mixed pops) hsg accessible--includes recovering alcs or da's (but anyone can be kicked out if abusing; thus, category of pple protected, but not abuse)

for more info, call Jim Park, office of Housing (Retsinas) 708-3000

Sarah Pruett
Div. Office of Investigations
619-8041

12/21 Cheryl Fox

HUD: their regs better
self-certification process
10/17 boxes
- unecessary bec solves ~~bill~~ prob already solved

- good faith reliance exception
- requires HUD new regs on establishing age

The White House
Office of Presidential Letters and Messages

THE WHITE HOUSE
WASHINGTON

Facsimile from Seth Masket
Voice: (202) 456-5514; FAX: (202) 456-2806

No. of Pages (including cover): 1 Date: 8/11/95

To: Molly Brostrom

Voice: 6-5561 Fax: 6-7028

Comments: Please let me know whom I should forward this to. Thanks.

Mr. Hale

STATE REPRESENTATIVE
1st DISTRICT
IAN ELLIOT

State of
Washington
House of
Representatives

EDUCATION
VICE CHAIRMAN

NATURAL RESOURCES

TRANSPORTATION

July 28, 1995

President Bill Clinton
The White House
Washington D.C. 20500

The Honorable Bill Clinton,

I have been requested by a constituent to inform you of a situation which is causing difficulty for a growing segment of our population.

Mobil Home parks traditionally have been able to exist as "family" parks, "senior" parks and so forth. Now due to federal regulations these mobile home parks are being required to drop their criteria for residency. This is creating a problem for our Senior Citizens who wish to retire to a community where they may enjoy the quiet and solitude that a "senior" community can provide.

Another area of concern is the rise in rental space fees for these retired individuals. These citizens retire with a set or fixed income and experience increases which they are unable to control. For example, this individual moved into her space in 1973 with a fee of $75.00 per month and now her rental rate has gone up to $310.00 per month in 1995.

Thank you for taking the time to consider these matters.

Sincerely,

Ian Elliot

Ian Elliot
State Representative
First District

cc: Representative Rick White
Senator Slade Gorton
Senator Patty Murray
Governor Mike Lowry
Ms. Ross

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FACSIMILE TRANSMITTAL SHEET

The Office of Fair Housing and Equal Opportunity

From: CHERYL FOX

Office Number: (202) 708-4252 EXT. 119

Fax Number: (202) 708-4483

Number of pages 3 (including cover page)

To: Molly Brostrom

Company Name: Democratic Policy Committee

Office Number:

Fax Number: 456-7028

REMARKS: HUD letter on H.R. 660

If you do not receive all pages, please call:

(202) 708-4252

U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0500

OFFICE OF GENERAL COUNSEL

12/21/95

Honorable Alice M. Rivlin
Director
Office of Management and Budget
Washington, DC 20503

Dear Dr. Rivlin:

This letter sets forth HUD's views on the enrolled enactment of H.R. 660, the "Housing for Older Persons Act of 1995." This is the first bill to amend the Fair Housing Act since passage of the Fair Housing Amendments Act in 1988. The bill simplifies a definition of housing for older persons, reducing the fear of litigation for certain communities that cater to an over-55 population. For the reasons discussed below and set forth in the recommendation of the Department of Justice, HUD has many reservations about this bill, but nevertheless recommends that the President approve it.

H.R. 660 broadens an exception to the Fair Housing Act's prohibition of discrimination against families with children. In general, the Act makes it illegal to deny housing, or to discriminate in housing, based on "familial status." This provision currently contains an exception for elderly communities. Communities can meet the exception in one of three ways: (1) as federally subsidized housing for the elderly; (2) as housing exclusively for persons over 62; or (3) as housing for persons 55 and older that provides "significant facilities and services specifically designed to meet the physical and social needs of older persons." H.R. 660 eliminates the significant facilities requirement, effectively collapsing the second and third exceptions so that any housing primarily serving persons over 55 qualifies as housing for older persons. The bill also creates a good faith reliance defense to liability under the Act.

H.R. 660 is a response to senior citizens, the real estate industry, and the manufactured housing management industry who have criticized the Fair Housing Act requirement for significant facilities as too vague. Critics say that the only way to gauge whether facilities are "significant," and thus provide a basis for a housing provider legally to exclude children, is to be sued under the Fair Housing Act and have a judge decide. The Administration has argued that while the criticism is legitimate, HUD has already solved the problem by issuing a new set of regulations which are clear, flexible, and easy to apply.

The Administration has consistently opposed H.R. 660. HUD, OMB, and the Department of Justice have issued statements indicating that the bill is ill-advised, that it could result in shortages of housing for families with children, and that it is unnecessary. Additionally, both HUD and DOJ have voiced concern that the "good faith" reliance defense to monetary damages sets a very bad precedent.

No federal civil rights laws, including the Fair Housing Act, currently contain a good faith defense. This provision may allow willful lawbreakers to avoid the consequences of their acts by claiming "good faith" reliance and may leave the victims of discrimination without an adequate remedy.

The bill's requirement that HUD promulgate rules concerning verification of occupancy is also problematic. Our current rule only requires that, in fact, 80% of the units are occupied by persons 55 and older. This legislation requires that HUD by regulation determine how to verify the age of occupants.

Finally, the bill will create problems that would not have existed if the final rule was left in place. Unlike the HUD rule, the bill permits for no transition for housing that is not currently for seniors to become a senior community. More importantly, the bill modifies the Fair Housing Act in a manner that will likely require States and localities participating in the FHAP program to amend their fair housing laws in order to maintain their "substantially equivalent" status. This is an unnecessary burden on these numerous jurisdictions.

Nevertheless, the bill enjoys broad bipartisan support and has encountered little organized resistance. It is supported by advocates for the elderly, as well as by the real estate industry. It is seen as eliminating the need for even HUD's streamlined and reasonable approach to the significant facilities requirement. For this reason, I believe that a veto is unwarranted and that the President should approve the bill.

The Department will continue to vigorously enforce the Fair Housing Act's prohibition on all types of discrimination, including discrimination against families with children. Thank you for the opportunity to comment upon the enrolled bill.

Sincerely,

Nelson Diaz

Nelson A. Díaz
General Counsel