

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Fair Housing and Equal Opportunity**

24 CFR Part 100

[Docket No. R-95-1706; FR-3502-P-06]

RIN: 2529-AA66

**Housing for Older Persons; Defining
Significant Facilities and Services;
Proposed Amendments**

AGENCY: Office of the Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue "rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section." This proposed rule would amend HUD's regulations governing "housing for older persons", to provide the definitions required by section 919.

DATES: Comments due date: May 15, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title and to the specific sections in the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 708-0836. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-0113, or 1-800-877-8399 (Federal Information Relay Service TDD). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

A. The Significant Facilities and Services Requirement

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601-19) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Specifically, section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by at least one person 55 years of age or older per unit that satisfies certain criteria. The purpose of the prohibition against discrimination on the basis of familial status and the "housing for older persons" exemption is to protect families with children from discrimination in housing without unfairly limiting housing choices for elderly persons (see 134 Cong. Rec. S 19722 (Aug. 1, 1988) statement of Senator Karnes).

The Department has implemented the housing for older persons exemption at 24 CFR part 100, subpart E. Congress mandated that, in determining whether housing qualifies as housing for persons 55 years of age or older, the Secretary develop regulations which require at least the following factors:

- (1) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and
- (2) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and
- (3) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Section 919 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992), requires the Secretary of HUD to issue a rule further defining what are "significant facilities and services especially designed to meet the physical or social needs of older persons" required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term "housing for older persons."

B. The July 7, 1994 Proposed Rule

On July 7, 1994 (59 FR 34902) the Department published for public comment a proposed rule intended to implement section 919 of the Housing

and Community Development Act of 1992. Customarily proposed rules provide for a 60-day public comment period. However, in order to ensure broad public input into the rulemaking process, the Department granted a 90-day comment period. As the October 5, 1994 public comment deadline approached it became clear to the Department that there was significant public interest in the proposed rule. On September 26, 1994 (59 FR 49035), the Department extended the comment period to November 30, 1994.

The Department also scheduled public meetings to hear from those affected by the proposed rule. Five such meetings were held across the country: Fontana, California on August 15, 1994; Tampa, Florida on August 25, 1994; Phoenix, Arizona on September 29, 1994; Washington, DC on October 6, 1994 and; Spokane, Washington on November 17, 1994. Transcribed records of these meetings were prepared and made part of the public comment docket.

The July 7, 1994 proposed rule was of great interest to many seniors. By close of business on November 30, 1994, 15,219 comments had been received. Based on the written comments received on the proposed rule, and the comments received at the five public meetings, the Department decided to make significant changes to the July 7, 1994 proposed rule.

On December 12, 1994 (59 FR 64104), the Department published a notice in the **Federal Register** announcing it would not proceed to final rulemaking on the July 7, 1994 proposed rule. Instead, as a result of the significant changes to the July 7, 1994 rule, the Department is issuing this new proposed rule, which addresses the issues raised by the commenters and solicits additional public comment.

II. Overview of Proposed Rule

Like the July 7, 1994 rule, this proposed rule would implement the rulemaking required by section 919 of the Housing and Community Development Act of 1992. Specifically, this proposed rule would revise the 55-or-over housing currently set forth in § 100.304(b)(1). A new § 100.305 would be added and would address the standards housing providers must meet in order to qualify as 55-or-over housing. A new § 100.306 would be added and would address the requirement for "significant facilities and services specifically designed to meet the physical or social needs of

older persons.”¹ A new § 100.307 would be added and would set forth the standards for housing providers choosing to self-certify their compliance with the Act's requirements. In addition to adding these three sections, the substance of existing § 100.304(b)(2) would be amended and located in new § 100.310. Existing subsection § 100.304(e) would be deleted and existing subsections §§ 100.304(c)(1) and 100.304(d) would be amended and provide the substance of new § 100.315. Existing subsection § 100.304(c)(2) would be amended and redesignated as new § 100.316.

The Department recognizes that the majority of seniors are healthy and lead active and independent lives. In developing this proposed regulation, the Department has rejected the assumption that all residents of senior housing are frail or disabled. This proposed rule does not require that a facility or service be accessible to the disabled in order to be classified as “significant” or “specifically designed to meet the physical or social needs of older persons.” Neither does this proposed regulation require that a housing provider furnish congregate dining areas, nursing services, or expensive and unwanted facilities to qualify for the housing for older persons exemption.

In developing this proposed regulation, the Department desires to provide as much certainty as possible regarding the determination that housing qualifies as housing for older persons. It has sought to structure the regulations to allow both housing providers and protected classes alike to ascertain with confidence whether a community qualifies under the Act.

Proposed § 100.306 sets forth a diverse “menu” of facilities and services which a community may choose to provide. The facilities and services are listed under twelve broad categories (e.g. Social Needs, Leisure Needs, Educational Needs). In order to qualify as 55-or-over housing, the community must provide at least two facilities or services from five of the categories, for a total of at least ten facilities or services. Both facilities and services must be provided.

¹ The language of section 919 contains the word “especially”: “* * * rules defining what are ‘significant facilities and services especially designed to meet the physical or social needs of older persons’ required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term ‘housing for older person’ in such section.” (emphasis added) This proposed rule uses the word “specifically” rather than the word “especially” to comply with congressional intent and reflect the actual language of section 807(b)(2) of the Fair Housing Act.

Once a community has met the requirements of proposed § 100.306, a new § 100.307 would permit the community to self-certify that it qualifies under the Act. Absent evidence to the contrary, the Department will assume that those communities which have chosen to self-certify are in compliance with the Act's requirements.

However, the Department does not wish to provide certainty in complying with the requirements of the Act at the expense of flexibility. The Department has concluded that a flexible standard is necessary in order to reflect regional variations in services and facilities that distinguish housing for older persons from other similar housing, as well as variations determined by the geography of the site or by the differences in the nature or cost of the housing in question. The Department believes that the “menu” set forth in proposed § 100.306 is sufficiently broad to accommodate regional differences in the need for facilities and services.

In addition, the Department recognizes that housing for older persons is not limited to the affluent. Therefore, § 100.306's menu includes many facilities and services which are not costly and may be provided by volunteers. Furthermore, the proposed rule allows facilities and services to be provided away from the housing premises, so long as there is sufficient transportation to ensure that the off-premise facility or service is truly accessible to the community residents.

As is the case with other exemptions to civil rights statutes and other exemptions under the Act, the burden of demonstrating that the “older persons” exemption applies rests on the party asserting the exemption. Part of that party's burden in establishing qualification for the exemption requires affirmatively demonstrating through credible and objective evidence that the requirements for the exemption exist as of the date of an alleged violation of the Act. The Department believes that the Act imposes a strict burden upon a person claiming the exemption to provide credible and objective evidence showing that the facilities and services offered by the housing provider were designed, constructed or adapted to meet the particularized needs of older persons. In order to be considered as sufficient to qualify a housing facility for the exemption, the evidence must show that the housing in question is clearly distinguished from the bulk of other housing (except for other older persons housing) in a particular area, by the existence of those facilities and services which set the housing facility

apart as housing intended for and operated as housing for older persons. Without such evidence, the familial status prohibitions of the Act will apply. However, absent evidence to the contrary, the Department will assume that communities which have chosen to self-certify under proposed § 100.307 are in compliance with the Act's requirements.

III. Proposed Amendments

New § 100.305—Criteria

New § 100.305 proposes to establish the criteria by which a community will be determined to qualify under the “housing for older persons” exemption to the Act's requirements.

New § 100.306—Significant Facilities and Services Specifically Designed for Older Persons

New § 100.306 proposes to set forth the standards by which to ascertain whether a facility or service is “significant” or is “specifically designed to meet the physical or social needs of older persons.” New § 100.306 sets forth a “menu” of facilities and services a housing provider may choose to furnish. A housing provider which provides ten items from the menu (two items from five of the menu categories), is deemed to be in compliance with the Act's requirements.

New § 100.307—Self Certification

New § 100.307 sets forth the requirements for those communities which choose to self-certify their compliance with the Act. Absent evidence to the contrary, the Department will assume that a community that has elected to self-certify qualifies as 55-or-over housing.

New § 100.310—Impracticability

Existing § 100.304(b)(2), which would be redesignated as new § 100.310, would be revised by adding the following language as the introductory text to the current provisions contained in paragraph (b)(2):

The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively proves through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.310 if * * *

New § 100.315—80 percent occupancy

Existing § 100.304(e) would be deleted and existing §§ 100.304(c)(1) and 100.304(d) would be combined as

new § 100.315. The following language would be added to the new § 100.315:

The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively proves through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of this § 100.315 if * * *

Additionally, there is also new language further describing how a housing provider may meet the 55-or-over exemption if it does not have 80 percent of its units occupied by at least one person who is 55 and older.

New § 100.316—Intent to Provide Housing for Older Persons

Existing § 100.304(c)(2), which would be redesignated as new § 100.316, would be revised by adding the following language as the introductory text to new § 100.316:

The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively proves through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.316 if * * *

With respect to the use of age verification procedures, while the Department does not require the use of any particular type of age verification, nor does it require the use of age verification procedures at all, if such procedures are utilized, they must be reliable and consistently utilized.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

B. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on

Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that the proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule would implement section 919 of the Housing and Community Development Act of 1992, which requires the Secretary of HUD to further define the term "significant facilities and services specifically designed to meet the physical or social needs of older persons." The Department anticipates that the proposed rule will have an impact on some small housing providers. However, the number of small housing providers affected is not considered to be so great as to constitute a significant economic impact on a substantial number of small entities.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family-formation, maintenance, and general well-being, and, thus is not subject to review under the Order.

E. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities among the various levels of government. The Fair Housing Act, and section 919 of the Housing and Community Development Act of 1992 direct HUD to provide further guidance on the meaning of significant facilities and services so that States, local governments, and housing providers will have a better understanding of what housing is exempt from the Fair Housing Act's prohibition against discrimination on the basis of familial status.

F. Regulatory Agenda

This proposed rule was listed as sequence 1860 in the Department's Semiannual Regulatory Agenda, published on November 14, 1994 (59 FR 57632, 57637) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100, subpart E, would be amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for part 100 be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3600-3620.

Subpart E—Housing for Older Persons

2. In subpart E, § 100.304 would be revised, and new §§ 100.305, 100.306, 100.307, 100.310, 100.315 and 100.316 would be added, to read as follows:

§ 100.304 55 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that, at the time of an alleged violation of the Act, the housing satisfies the requirements of:

(1) Sections 100.304, 100.305, 100.306, 100.315 and 100.316; or

(2) Sections 100.310, 100.315 and 100.316.

(b) With reference to complaints filed pursuant to the Act, this means that the person or entity claiming the exemption must affirmatively prove by a preponderance of evidence as of the date of the alleged violation of the Act that the housing meets the requirements of paragraph (a) of this section.

(c) For purposes of this part, "older persons" means persons 55 years of age or older.

(d) For purposes of this part, "housing provider" means:

(1) The owner or manager of a housing facility; or

(2) The owner or manager of the common and public use areas of a housing facility, where the dwelling units are individually owned.

(3) The term "housing provider" may include any person or entity which operates a housing facility, including but not limited to homeowner's associations or resident associations.

(e) For purposes of this part, "occupied by" means one or more persons over the age of 55 actually occupying a unit at the time of an alleged violation of the Act and for at least 60 days in the preceding 365 day period.

(f) With reference to self-certifications of compliance with the provisions of this part, the housing provider claiming the exemption for 55 and older housing may demonstrate publicly, by the posting of one of the notices described in § 100.307, compliance with the provisions of this part.

§ 100.305 Criteria.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, pursuant to this part.

(b) The housing shall have significant facilities and services specifically designed to meet the physical or social needs of older persons as described in § 100.306.

(c) At least 80 percent of the units in the housing shall be occupied by at least one person who is at least 55 years of age or older as described in § 100.315.

(d) The housing provider shall publish and adhere to policies and procedures which demonstrate an intent by the housing provider to provide housing for older persons as described in § 100.316. The publication of policies and procedures describing an intent to provide housing as "adult housing" shall not suffice for this purpose.

§ 100.306 Significant facilities and services specifically designed for older persons.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, *provided that* the person or entity asserting the exemption affirmatively demonstrates through credible and objective evidence that facilities and services specifically designed to meet the needs of older persons are "significant". Significant facilities and services which are specifically designed for older persons are those which actually or predictably benefit the health, safety, social, educational or leisure needs of older persons.

(b) The facilities and services provided by a housing provider are significant and specifically designed to meet the housing needs of older persons when the housing provider meets the criteria found in paragraphs (c), (d), and (e) of this section and complies with the

criteria found in paragraph (f) of this section.

(c) A housing provider provides significant facilities and services if it makes available, directly or indirectly, at least 2 facilities or services of the facilities described in paragraph (d) of this section, in paragraph (d)(10) of this section (category 10) or in paragraph (d)(11) of this section (category 11).

(d) Facilities and services which may be considered for purposes of qualifying for the 55 and older housing exemption are the following:

(1) Category #1 (Social Needs)

Social and Recreational Services provided on a regular, organized basis

- softball, golf, shuffleboard tournaments, or similar team activity
- bridge club, card games, chess, checkers
- exercise classes—low-impact, stretching, tai-chi, swim-therapy
- bingo
- fellowship meetings
- musical theater group
- dances, square dancing, polka, ballroom dancing
- monthly or weekly potluck dinners, breakfasts, luncheons, coffees
- coordinated holiday parties for residents
- Lions club, clubs or classes for sewing, needlepoint, art, gardening, music, books, golf, bowling, photography, travel, etc.
- cooking classes
- crafts classes: ceramics, macrame, woodworking, jewelry, quilting, painting
- field trips—bowling, sightseeing, concerts, plays, hiking, shopping outlets
- fashion shows
- on-site movies or other theatrical events
- liaison/coordination with activities at community-wide senior centers and activities
- emergency meal service for residents who are ill or in need
- organized travel opportunities

(2) Category #2 (Educational Needs)

Continuing education activities

- at least monthly presentations on subjects such as health care, nutrition, stress management, medicare, insurance, social security, tax preparation, vacation planning, gardening, crime prevention
- consumer protection education
- regularly offered CPR classes
- regularly offered language study classes
- regularly offered videotapes on health care
- courses available at local educational institutions

(3) Category #3 (Educational Needs)

Information and counseling services

- providing new residents with package of information about local services of interest to seniors
- bulletin board for exchange of information or services
- printed resident directory provided to each resident
- bus schedules

- free cable TV programs information to residents internal or external support groups for residents
- seminars on the aging process, estate planning, dealing with death or other issues affecting older persons
- on-site legal services
- informational sessions on fire safety, mental health issues, political and environmental issues
- seminars on governmental benefits programs

(4) Category #4 (Physical Needs)

Homemaker services

- employees assist with housework or yardwork
- organized committee of residents to perform light household tasks or yard work for those who cannot do them themselves
- referrals to housecleaning services
- bill-paying services
- pet care/pet therapy services
- minor home repair service
- tool loan service

(5) Category #5 (Safety Needs)

Outside maintenance/health and safety services

- on-staff medical personnel with first aid/CPR training
- on-staff repair, maintenance and painting services
- meals on wheels
- lawn care and grass cutting, shrubbery and tree trimming
- snow shoveling and plowing
- referrals to doctors or other health care professionals
- regular system to contact residents who are house-bound to make sure they are o.k.
- referrals for transportation
- referrals to income tax preparer
- referrals to repair and maintenance services
- security guards/patrols, organizing neighborhood or block watch
- organizing committee of residents to do household repairs and yard work for those who cannot do them themselves
- exterior lighting—alarm systems monitoring
- vacation house watch
- limited access to property by controlled access gate or similar system

(6) Category #6 (Health Needs)

Emergency and preventative health care programs

- meetings about nutrition, back care, breast cancer/self-examination/mammogram, prostate cancer screening, vision care, or other health care topics (see continuing education)
- monthly blood pressure checks
- annual flu vaccine shots available
- periodic vision or hearing tests
- staff or volunteers pick up food from social services for mobility impaired seniors
- organizing committees of residents to do errands for people who become ill and/or to stay with sick persons while their spouses do errands

- emergency telephone network, staff or volunteers monitor people who have serious medical problems
- doctor/medical facilities located within two miles of facility
- health care equipment pool for resident use

(7) Category #7 (Social/Health Needs)

Congregate dining

- available congregate dining for at least one meal each day
- sit-down service
- special menus for dietary needs
- activities conducted in conjunction with congregate dining

(8) Category #8 (Transportation)

Transportation to facilitate access to social services

- transportation provided to doctors' offices, shopping, religious services, outside social or recreational activities
- public bus stop or train station within walking distance
- organized system to provide transportation for residents who cannot drive
- sign-up board for shared transportation needs
- shared ride services to social events, functions, medical care, shopping

(9) Category #9 (Social Needs)

Services to encourage and assist residents to use available facilities and services

- volunteer or staff activity planner
- lifeguards, swimming or water aerobics instructors
- dance or exercise instructors
- crafts instructors
- newsletters, newspapers or flyers informing residents of activities, trips, clubs, etc.
- monthly calendar of events
- resident council or committees to encourage participation in activities

(10) Category #10 (Leisure Needs)

Social and Recreational Facilities

- clubhouse, communal kitchen, or communal dining area
- library with large print books or subscriptions to publications targeted to older persons
- swimming pool, sauna or whirlpool
- recreation or game room, arts and crafts room, community room or meeting room
- television room for communal use
- exercise equipment
- ping pong, pool tables, shuffleboard courts, horseshoe pits or bocce ball (with functional equipment)
- golf course
- stage, piano and dance floor
- picnic area, picnic tables, barbecue grills
- woodworking shop
- restaurant for resident use
- bank
- lawyer's office
- travel agency
- convenience store
- barber shop
- dry cleaners
- hair salon
- lapidary

- kiln
- fishing pond

(11) Category #11 (Health/Safety Needs)

Accessible physical environment

- accessible clubhouse
- at least one accessible bathroom facility in public and common use areas
- ramps (curbs or drainage ditches are cut to allow wheelchair/walker access)
- ramped sidewalks in public and common use areas; stairs at a minimum
- benches in public and common use areas
- assigned and designated parking spaces, including handicapped parking
- accessible swimming pool (i.e., ramped entrance to pool area)
- accessible management office
- accessible dining area or activity area
- vans, buses available with wheelchair lifts or easy access for persons with mobility difficulties
- lift to assist in swimming pool use

(12) Category #12 (Social, Leisure, Health, Safety or Educational Needs)

Other

- Any facility or service which is not listed above but which is designed to meet the health, safety, social or leisure needs of persons who are 55 and older and which is actually available to and used by residents of the property.

(e) A housing provider provides significant facilities and services if the facilities and services are provided on the premises by paid staff, resident volunteers, or by agencies, entities or persons other than the housing provider. A housing provider provides significant facilities and services if the facilities or services are provided off the premises by paid staff, resident volunteers, or by agencies, entities or persons other than the housing provider on the premises of the housing or off the premises, *provided that* if facilities or services are made available off the premises, the housing provider, through paid staff, resident volunteers, or by agencies, entities or persons other than the housing provider, shall make available transportation services or coordination of information and transportation resources which ensure that residents are aware of and have ready access to such facilities or services.

(f) In determining whether a housing provider provides significant facilities and services, the Department will evaluate each facility or service that meets the requirements of § 100.305 by the following criteria to determine whether the facilities in the aggregate and the services in the aggregate are "significant":

(1) The extent to which a facility or service can accommodate the older population of the housing facility. The

capacity of each facility or service specifically designed to meet the physical or social needs of older persons depends upon but is not limited to such factors as:

(i) The size of the facility in relationship to the scope of the service offered;

(ii) The length of time during which the facility or service is made available or the service is offered;

(iii) The frequency with which the facility or service is made available or the service is offered; and

(iv) Whether the facility or service is offered only at one location or there are a number of locations at which the facility is made available or at which the service is offered.

(2) The extent to which the facility or service will be of benefit to older persons, given the climate and physical setting of the housing facility.

(3) The extent to which the facility or service is actually usable by and regularly available to residents on a day-to-day basis.

§ 100.307 Self-Certification.

(a) A housing provider may indicate, by display of a notice complying with this part, its intent to provide housing for older persons in substantially the same form as that attached as Appendix 1 to this part.

(b) Such a notice shall be provided by the Department, and shall include, at a minimum, a certification of compliance with § 100.315 and an indication of the housing provider's intent to provide, and its certification that it does in fact provide, facilities and services which comply with § 100.306.

(c) Such a notice shall be signed by one or more housing providers, with authority to sign.

(d) Such a notice shall be signed under penalty of perjury of the laws of the United States.

(e) Such a notice shall be posted in every public or common area where housing transactions are conducted.

(f) A copy of a current self-certification shall be considered by the Department to be sufficient evidence of compliance with the Act to allow the publication of advertisements, notices or the making of other statements as evidencing the operation of the property in question as housing for older persons and as excluding families with children as described in section 807(b)(2) of the Act, but not as conclusive evidence of eligibility for the housing for older persons exemption.

§ 100.310 Impracticability.

(a) The provisions regarding familial status in this part shall not apply to

housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively demonstrates through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or §§ 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.310 if it is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons.

(b) In order to satisfy the requirements of § 100.310 the housing provider must affirmatively demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of § 100.310:

(1) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.

(2) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

(3) The geographical or other physical limitations inherent in the property which makes the provisions of facilities or services impracticable.

(4) The income range of the residents of the housing facility.

(5) The demand for housing for older persons in the relevant geographic area.

(6) The vacancy rate of the housing facility.

(7) The certification of 90 percent of the residents of the housing facility that a particular category of facility or service is not necessary or desired. Such certification shall be maintained as part of the official records of the housing facility, be made available for public inspection, and updated by

certifications from new residents of the housing facility.

(8) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of § 100.310.

§ 100.315 80 percent occupancy.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity demonstrates through credible and objective evidence that housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or §§ 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.315 if at least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with § 100.315 until 25 percent of the units in the facility are occupied.

(b) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or over.

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(4) There are insufficient units occupied by at least one person 55 years of age or over to meet the 80 percent requirement, but the housing provider, at the time the exemption is asserted:

(i) Reserves all unoccupied units for occupancy by at least one person 55

years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 and older; and

(ii) Meets the requirements of:

(A) Sections 100.305, 100.306, 100.307, and 100.316; or

(B) Sections 100.310, 100.315, and 100.316.

(iii) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units which must be occupied by at least one person who is 55 or older.

§ 100.316 Intent to provide housing for older persons.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity proves that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or §§ 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.316 if the owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the housing provider to provide housing for persons 55 years of age or older.

(b) The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of § 100.316:

(1) The manner in which the housing facility is described to prospective residents.

(2) The nature of any advertising designed to attract prospective residents.

(3) Age verification procedures.

(4) Lease provisions.

(5) Written rules and regulations.

(6) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(7) The public posting of the self-certification described in this part.

3. Appendix 1 is added to part 100 to read as follows:

Appendix 1 to Part 100—Housing For Older Persons—Self-Certification

U.S. Department of Housing and Urban Development

Housing for Older Persons — Self-Certification

The Undersigned hereby certifies that

intends to meet the criteria set forth in the Federal Fair Housing Act in order to qualify as housing for older persons.

This housing facility provides the following facilities and/or services:

Category #1 (Social Needs)

Social and Recreational Services provided on a regular, organized basis

- softball, golf, shuffleboard tournaments, or similar team activities
- bridge club, card games, chess, checkers
- exercise classes - low-impact, stretching, t'ai-chi, swim-therapy
- bingo
- fellowship meetings
- musical theater group
- dances, square dancing, polka, ballroom dancing
- monthly or weekly potluck dinners, breakfasts, luncheons, coffees
- coordinated holiday parties for residents
- Lions club, clubs or classes for sewing, needlepoint, art, gardening, music, books, golf, bowling, photography, travel, etc.
- cooking classes
- crafts classes: ceramics, macrame, woodworking, jewelry, quilting, painting
- field trips - bowling, sightseeing, concerts, plays, hiking, shopping outlets
- fashion shows
- on-site movies or other theatrical events
- liaison/coordination with activities at community-wide senior centers and activities
- emergency meal service for residents who are ill or in need
- organized travel opportunities

Category #2 (Educational Needs)

Continuing education activities

- at least monthly presentations on subjects such as health care, nutrition, stress management, medicare, insurance, social security, tax preparation, vacation planning, gardening, crime prevention
- consumer protection education
- regularly offered CPR classes
- regularly offered language study classes
- regularly offered videotapes on health care
- courses available at local educational institutions

Category #3 (Educational Needs)

Information and counseling services

- providing new residents with package of information about local services of interest to seniors
- bulletin board for exchange of information or services
- printed resident directory provided to each resident
- bus schedules
- free cable TV programs information to residents
- internal or external support groups for residents
- seminars on the aging process, estate planning, dealing with death or other issues affecting older persons
- on-site legal services
- informational sessions on fire safety, mental health issues,

- political and environmental issues
- seminars on governmental benefits programs

Category #4 (Physical Needs)

Homemaker services

- employees assist with housework or yardwork
- organized committee of residents to perform light household tasks or yard work for those who cannot do them themselves
- referrals to housecleaning services
- bill-paying services
- pet care/pet therapy services
- minor home repair service
- tool loan service

Category #5 (Safety Needs)

Outside maintenance/health and safety services

- on-staff medical personnel with first aid/CPR training
- on-staff repair, maintenance and painting services
- meals on wheels
- lawn care and grass cutting, shrubbery and tree trimming
- snow shoveling and plowing
- referrals to doctors or other health care professionals
- regular system to contact residents who are house-bound to make sure they are o.k.
- referrals for transportation
- referrals to income tax preparer
- referrals to repair and maintenance services
- security guards/patrols, organizing neighborhood or block watch
- organizing committee of residents to do household repairs and yard work for those who cannot do them themselves
- exterior lighting - alarm systems monitoring
- vacation house watch
- limited access to property by controlled access gate or similar system

Category #6 (Health Needs)

Emergency and preventative health care programs

- meetings about nutrition, back care, breast cancer/self-examination/mammogram, prostate cancer screening, vision care, or other health care topics (see continuing education)
- monthly blood pressure checks
- annual flu vaccine shots available
- periodic vision or hearing tests
- staff or volunteers pick up food from social services for mobility impaired seniors
- organizing committees of residents to do errands for people who become ill and/or to stay with sick persons while their spouses do errands
- emergency telephone network, staff or volunteers monitor people who have serious medical problems
- doctor/medical facilities located within two miles of facility
- health care equipment pool for resident use



This housing facility has determined to provide and does in fact provide at least 10 of the following services and facilities by offering at least 2 facilities or services in at least 5 of the following categories, including specifically at least two facilities from category 10 or category 11 (and requires that at least 80% of its units be occupied by at least one person who is 55 years of age or older). As housing for older persons, we claim an exemption from the provisions of the Fair Housing Act regarding discrimination based on familial status -- that is, the presence of persons under the age of 18.

Category #7 (Social/Health Needs)

Congregate dining

- available congregating dining for at least one meal each day
- sit-down service
- special menus for dietary needs
- activities conducted in conjunction with congregating dining

Category #8 (Transportation)

Transportation to facilitate access to social services

- transportation provided to doctors' offices, shopping, religious services, outside social or recreational activities
- public bus stop or train station within walking distance
- organized system to provide transportation for residents who cannot drive
- sign-up board for shared transportation needs
- shared ride services to social events, functions, medical care, shopping

Category #9 (Social Needs)

Services to encourage and assist residents to use available facilities and services

- volunteer or staff activity planner
- lifeguards, swimming or water aerobics instructors
- dance or exercise instructors
- crafts instructors
- newsletters, newspapers or flyers informing residents of activities, trips, clubs, etc.
- monthly calendar of events
- resident council or committees to encourage participation in activities

Category #10 (Leisure Needs)

Social and Recreational Facilities

- clubhouse, communal kitchen, or communal dining area
- library with large print books or subscriptions to publications targeted to older persons
- swimming pool, sauna or whirlpool
- recreation or game room, arts and crafts room, community room or meeting room
- television room for communal use
- exercise equipment
- ping pong, pool tables, shuffleboard courts, horseshoe pits or bocce ball (with functional equipment)
- golf course
- stage, piano and dance floor
- picnic area, picnic tables, barbecue grills
- woodworking shop
- restaurant for resident use
- bank
- lawyer's office
- travel agency
- convenience store

- barber shop
- dry cleaners
- hair salon
- lapidary
- kiln
- fishing pond

Category #11 (Health/Safety Needs)

Accessible physical environment

- accessible clubhouse
- at least one accessible bathroom facility in public and common use areas
- ramps (curbs or drainage ditches are cut to allow wheelchair/walker access)
- ramped sidewalks in public and common use areas; stairs at a minimum
- benches in public and common use areas
- assigned and designated parking spaces, including hand-capped parking
- accessible swimming pool (i.e., ramped entrance to pool area)
- accessible management office
- accessible dining area or activity area
- vans, buses available with wheelchair lifts or easy access for persons with mobility difficulties
- lift to assist in swimming pool use

Category #12 (Social, Leisure, Health, Safety or Educational Needs)

Other

- Any facility or service which is not listed above but which is designed to meet the health, safety, social or leisure needs of persons who are 55 and older and which is actually available to and used by residents of the property. (Describe)

SIGNED UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES OF AMERICA:

signature

Authorized representative of

Dated: February 8, 1995.

Roberta Achtenberg,

*Assistant Secretary for Fair Housing and
Equal Opportunity.*

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