

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR-4094-P-01]

RIN 2529-AA80

Implementation of the Housing for Older Persons Act of 1995

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Housing for Older Persons Act of 1995 (HOPA). HOPA amended the requirements for qualification under the "housing for older persons" exemption established by the Fair Housing Act. In addition, HOPA established a good faith defense against civil money damages for persons who reasonably relied in good faith on the application of the "housing for older persons" exemption even when, in fact, the housing provider did not qualify for the exemption. This rule proposes to update HUD's regulations to reflect the changes made by HOPA.

DATES: Comments on this proposed rule and the information collection requirements must be received on or before March 17, 1997.

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 additional information concerning the information collection requirements contained in this rule, please see the "Findings and Certifications" section of this preamble. A copy of any comment regarding the information collection requirements must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Director, 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. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8399.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Housing for Older Persons Act of 1995

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older that satisfies certain criteria. HUD has implemented the "housing for older persons" exemption at 24 CFR part 100, subpart E.

The Housing for Older Persons Act of 1995 (Pub. L. 104-76, approved December 28, 1995) (HOPA) replaced the original parameters of the 55-or-older exemption. Section 2 of HOPA redefined 55-or-older housing as housing:

(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 [of HUD] 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.

The most substantial change made by HOPA was the elimination of the "significant facilities and services" requirement. Section 807(b)(2)(C) of the Act originally required that 55-or-older housing provide "significant facilities and services specifically designed to meet the physical or social needs of older persons." HOPA also adds the new requirement that the housing facility or community comply with any HUD regulations on verification and occupancy.

In other respects, however, the new requirements are equivalent to the

former provisions. HOPA requires that a housing facility or community seeking to claim the 55-or-older exemption show three factors. Similar to original section 807(b)(2)(C) of the Act, HOPA requires: (1) that the housing be intended and operated for persons 55 years of age or older; (2) that at least 80 percent of the occupied units be occupied by at least one person who is 55 years of age or older; and (3) the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the 55-or-older exemption. The housing facility or community must also comply with rules issued by HUD for the verification of occupancy.

In addition, section 3 of HOPA added a new section 807(b)(5) to the Act. This new section established a good faith defense against civil money damages for persons who reasonably relied in good faith on the application of the 55-or-older exemption, even when, in fact, the housing facility or community did not qualify for the exemption. New section 807(b)(5) provides:

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

(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.

B. This Proposed Rule

On April 1, 1996 (61 FR 14378), HUD published a final rule streamlining its regulations implementing the Act.¹ The April 1, 1996 final rule, which was part of HUD's efforts to implement the President's regulatory reform initiative, removed the obsolete provisions describing the "significant facilities and services" requirement. The rule also made several other streamlining changes to HUD's regulations at subpart E of 24 CFR part 100. However, because the April 1, 1996 rule was published for effect without prior public comment, HUD postponed making the more substantial changes necessary to complete its implementation of HOPA. This rule proposes to make these regulatory amendments.

¹ A subsequent technical correction was published on April 25, 1996 (61 FR 18248).

This rule proposes to revise § 100.304, which presents an overview of the 55-or-older exemption, to more closely track the HOPA requirements. The rule also proposes to create a new § 100.305, which would update the 80 percent occupancy requirements. A new § 100.306 would describe how a facility or community may establish its intent to operate as 55-or-older housing. New § 100.307 would set forth the necessary procedures for verification of the 80 percent occupancy requirements. Finally, a new § 100.308 would implement the good faith defense against civil money damages.

Section 2 of HOPA requires that any implementing HUD regulations "include examples of the types of policies and procedures relevant to a determination of compliance with" the statute's intent requirement. Accordingly, paragraph (a) of proposed § 100.306 would list several factors which HUD considers relevant in determining whether the housing facility or community intends to operate as housing for older persons. However, 24 CFR 100.306(b) would state that the use of phrases such as "adult living", "adult community", "40 and over community", or similar statements in any written advertisement or prospectus do not create a presumption that the housing community satisfies HOPA's intent requirement. The use of such phrases does not show that the facility or community truly intends to operate as housing for older persons and are inconsistent with that intent. HUD, in order to make a valid assessment of intent, will consider the other measures taken by the facility or community to demonstrate the intent required by HOPA. Moreover, the housing facility or community may not evict families with children in order to achieve occupancy

of at least 80 percent of the occupied units by at least one person 55 years of age or older.

HUD also proposes to provide guidance to assist housing facilities and communities in applying the requirements of this proposed rule. These examples are contained in an appendix to this proposed rule. The appendix would not be codified in title 24 of the CFR. HUD may update or revise the appendix as necessary.

II. Findings and Certifications

Public Reporting Burden

(a) The information collection requirements contained in §§ 100.306 and 100.307 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

(b) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) *Title of the information collection proposal:* Proposed Rule—Implementation of the Housing for Older Persons Act of 1995.

(2) *Summary of the collection of information:* (i) Section 100.306 of this proposed rule would require that a housing facility or community seeking to qualify as 55-or-older housing publish and adhere to policies demonstrating that intent.

(ii) Section 100.307 of this proposed rule would establish two information collection requirements. First, § 100.307 would require that an occupant of 55-or-older housing provide reliable

documentation regarding the occupancy of its unit, including the identification of whether at least one occupant of the unit is 55 years of age or older. Occupants would be further required to regularly update this information. Secondly, § 100.307 would require a housing facility or community to maintain records of these occupancy surveys. The housing facility or community would be required to produce the records upon: (1) the filing of a discrimination complaint; and (2) the request of any person.

(3) *Description of the need for the information and its proposed use:* To appropriately determine whether a housing facility or community qualifies for the housing for older persons exemption, certain information is required. HUD must determine whether the housing facility or community: (1) has published and adhered to policies demonstrating its intent to operate as 55-or-older housing; and (2) can demonstrate, through reliable surveys and affidavits, that at least 80 percent of its occupied units are occupied by at least one person 55 years of age or older.

(4) *Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:* Respondents will be: (1) occupants of 55-or-older housing; and (2) providers of 55-or-older housing, such as manufactured home parks, home owners associations, and property managers. (Please see paragraph (5) below for the number of likely respondents and the proposed frequency of the response to the collection of information.)

(5) *Estimate of the total reporting and recordkeeping burden that will result from the collection of information:*

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of response	Est. avg. response time (hrs.)	Annual burden hrs.
Publication of policies demonstrating intent to operate as 55-or-older housing.	24 CFR 100.306	1,000	1	2 hrs.	2,000
Data on the age of occupants in 55-or-older housing.	24 CFR 100.307	10,000	11 hrs.	1,000
Recordkeeping	24 CFR 100.307	1,000	One time every other year.	5 hrs.	2,500,
Total Burden	5,500

(c) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(d) OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not effect the deadline for the public to comment on the proposed rule. Comments on the paperwork collection requirements contained in this rule must be submitted to those persons indicated in the ADDRESSES section of this preamble.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the Department's regulations, published in a final rule on September 27, 1996 (61 FR 50914), the policy set forth in this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule proposes to implement the requirements of HOPA by revising the parameters for "55-or-older" housing found at 24 CFR part 100, subpart E. It effects no changes in the current relationships among the Federal government, the States and their political subdivisions in connection with HUD programs.

Executive Order 12606, The Family.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule would not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. This proposed rule would update HUD's regulations governing "housing for older persons" to reflect the changes made by HOPA. No significant change in existing HUD policies or programs would result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule proposes to update HUD's regulations implementing the "housing for older persons" exemption to the Fair Housing Act. Specifically, the rule would implement the statutory amendments made by HOPA. These revisions would provide housing facilities and communities with a better understanding of what housing qualifies for the "55-or-older" exemption to the Fair Housing Act's prohibitions against discrimination on the basis of familial status. The proposed rule would not have any meaningful impact on small entities.

List of Subjects in 24 CFR Part 100

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

Accordingly, 24 CFR part 100 is proposed to be amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Subpart E is amended by revising § 100.304; and by adding §§ 100.305, 100.306, 100.307, and 100.308, to read as follows:

Subpart E—Housing for Older Persons

§ 100.304 55 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for

persons 55 years of age or older.

Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Sections 807(b)(2)(C) and 807(b)(5)(A) and (B) of the Fair Housing Act; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, *housing facility or community* means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

- (1) A condominium association;
- (2) A cooperative;
- (3) A property governed by a homeowners' or resident association;
- (4) A municipally zoned area;
- (5) A leased property under common private ownership; and
- (6) A mobile home park.

(c) For purposes of this subpart, *older person* means a person 55 years of age or older.

§ 100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as 55-or-older housing, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, *occupied unit* means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption for 55-or-older housing is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, *occupied by at least one person 55 years of age or older* means that on the date the exemption for 55-or-older housing is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989

need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes facilities or communities that have been unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) 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 or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units 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 older.

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

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204.

(5) There are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, 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 years of age or older; and

(ii) Meets the requirements of § 100.304, 100.305, 100.306, and 100.307.

(f) 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 that must be occupied by at least one person 55 years of age or older.

(g) Each housing facility or community may determine the age restriction for units that are not occupied by at least one person 55 years of age or older.

§ 100.306 Intent to operate as 55 or over housing.

(a) In order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that

demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) The use of phrases such as "adult living", "adult community", "40 and over community", or similar statements in any written advertisement or prospectus do not create a presumption that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there are substantial legal impediments to removing language from deed or other restrictions that may be inconsistent with the intent to provide 55-or-older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section.

(d) The fact that a unit is occupied by a family with a child under eighteen years of age, and not by a person 55 years of age or older, shall not be considered in determining whether the housing facility or community intends to operate as 55-or-older housing.

§ 100.307 Verification of occupancy.

(a) In order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of a rule finalizing the policies and procedures described in this proposed rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must

provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.

(d) The following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license;

(2) Birth certificates;

(3) Passports;

(4) Immigration card;

(5) Military identification;

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

(7) A certification in a lease, application, affidavit, or other document signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older.

(e) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(f) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

(1) Government records or documents, such as a census;

(2) Prior forms or applications; or

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge.

(g) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(h) Occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

§ 100.308 Good faith defense against civil money damages.

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified as 55-or-older housing.

(b)(1) A person claiming the good faith defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies as 55-or-older housing. The person claiming the good faith defense must demonstrate this actual knowledge through reliable evidence.

(2) For purposes of this section, an *authorized representative* of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

(c) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as 55-or-older housing. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

Dated: October 11, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

Note: This Appendix will not be codified in Title 24 of the CFR.

Appendix—Examples of Applications of HUD's Regulations Governing the 55-or-older Exemption to the Fair Housing Act

Sections

1. Purpose
2. 80 percent occupancy.
3. Intent to operate as 55-or-older housing.
4. Verification of occupancy.
5. Future revisions to this appendix.

1. Purpose.

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) (the Act) exempts “housing for older persons” from the prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older that satisfies certain criteria. HUD has implemented the “housing for older persons” exemption at 24 CFR part 100, subpart E. Specifically, §§ 100.304, 100.305, 100.306, and 100.307 set forth the requirements for housing seeking to qualify for the 55-or-older exemption. The purpose of this appendix is to provide guidance to housing facilities or communities in applying these HUD requirements.

2. 80 Percent Occupancy

Section 100.305 provides that in order for a housing facility or community to qualify as 55-or-older housing, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older. This occupancy requirement must be met at the time of any alleged violation of the Act. Paragraph (f) of § 100.305 states that 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 that must be occupied by at least one person 55 years of age or older.

Example: A community or facility contains 63 occupied units. Eighty percent of 63 units equals 50.4. Under § 100.305(d), 51 units would require occupancy by at least one person 55 years of age or older.

Section 100.305 also sets forth the other requirements a housing facility or community must follow in calculating occupancy. The following examples illustrate these requirements:

Example 1

Buena Vista is a condominium association of 120 units. On September 13, 1988, twenty (20) of the occupied units are not occupied by at least one person 55 years of age or older.

On April 1, 1996, Buena Vista declares itself to be 55-or-older housing. On that date:

- (1) The twenty (20) persons described above are still residing at Buena Vista;
- (2) Ten (10) units of the total 120 units are unoccupied;
- (3) One (1) of the units is occupied by the association's maintenance supervisor; and
- (4) Two (2) units are occupied by live-in health aides who provide reasonable accommodations to residents with disabilities.

How many of the occupied units must be occupied by at least one person 55 years of age or older in order for Buena Vista to qualify as 55-or-older housing?

Under § 100.305(e), Buena Vista would calculate its compliance with the 80 percent occupancy requirement by subtracting the following units from the total 120 units:

- (1) The 20 units not occupied by at least one person 55 years of age or older on September 13, 1988 (See § 100.305(e)(1));
- (2) The ten (10) unoccupied units (See § 100.305(e)(2));
- (3) The one (1) unit occupied by the maintenance person (See § 100.305(e)(3)); and
- (4) The two (2) units occupied by the health aides (See § 100.305(e)(4)).

Subtracting these 33 units from the total of 120 units leaves 87 units. At least 80 percent of these 87 units must be occupied by at least one person 55 years of age or older. Eighty percent of 87 equals 69.6. Due to § 100.305(d), 70 units must be occupied by at least one person 55 years of age or older.

Example 2

Topaz House is a cooperative of 100 units. On January 20, 1996, Topaz House

announces its intent to be 55-or-older housing and publishes policies and procedures sufficient to satisfy § 100.306. On that date, of the 100 total units:

(1) Sixty (60) of the occupied units are occupied by at least one person 55 years of age or older;

(2) Thirty (30) of the occupied units do not have occupants 55 years of age or older; and

(3) Ten (10) units are unoccupied.

Since 60 out of the 90 occupied units are occupied by at least one person 55 years of age or older, the Topaz House only has 67 percent of its occupied units occupied by at least one person 55 years of age or older. Under § 100.305(e)(5), Topaz House may still qualify for the 55-or-older exemption if it:

(1) 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 years of age or older; and

(2) Meets the requirements of §§ 100.304, 100.305, 100.306, and 100.307.

There is no requirement that Topaz House take any action concerning the residents under 55 years of age who are occupying units on the date the building declares its intent to be 55-or-older housing.

Example 3

Snowbird City is a mobile home community in Texas with 100 units. Snowbird City complies with all other requirements of 55-or-older housing, but is uncertain of its compliance with the 80 percent occupancy rule.

Fifty out of the 100 units are occupied year round. Of these fifty units, 12 units are not occupied by at least one person 55 years of age or older. Of the remaining 50 units, 5 are unoccupied and offered for sale, and the remaining 45 are occupied by at least one person 55 years of age or older each winter on a routine and reoccurring basis.

If a complaint of familial status discrimination is filed in December, the community meets the 80 percent occupancy requirement because 83 out of the 95 occupied units (87 percent), are occupied by at least one person 55 years of age or older. If the complaint is filed in July, Snowbird City still meets the requirement. Under § 100.305(b), a temporarily vacant unit is considered occupied by a person 55 years of age or older if:

(1) The primary occupant has resided in the unit during the past year; and

(2) The occupant intends to return on a periodic basis.

Example 4

The King Philip Senior Community is a newly renovated building originally built in 1952. It has been vacant for over one year while extensive renovations were completed. The building contains 200 units. The King Philip Senior Community is intended to be operated as a 55-or-older community.

Under § 100.305(d), newly constructed housing need not comply with the 80 percent occupancy requirement until 25 percent of the total units are occupied. For purposes of § 100.305(d), newly constructed housing includes housing that has been unoccupied for at least 90 days due to renovation or

rehabilitation. Accordingly, the King Philip Senior Community need not comply with the 80 percent occupancy requirement until 50 out of its 200 units (25 percent) are occupied. Subsequent to occupancy of the 50th unit, however, the building will have to satisfy the 80 percent occupancy rule in order to qualify as 55-or-older housing.

3. Intent To Operate as 55-or-Older Housing

Section 100.306 provides that in order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. Section 100.306 also details the factors HUD will utilize to determine whether a housing facility or community has met this intent requirement. The following are examples of housing facilities and communities which satisfy the intent requirement described in § 100.306:

Example 1

A mobile home park which takes the following actions satisfies the intent requirement:

- (1) Posts a sign indicating that the park is 55-or-older housing;
- (2) Includes lease provisions stating that the park intends to operate as 55-or-older housing; and
- (3) Has provided local realtors with copies of the lease provisions.

Example 2

An area zoned by a unit of local government as "senior housing" satisfies the intent requirement if:

- (1) Zoning maps containing the "senior housing" designation are available to the public;
- (2) Literature distributed by the area describes it as "senior housing";
- (3) The "senior housing" designation is recorded in accordance with local property recording statutes; and
- (4) Zoning requirements include the 55-or-older requirement or a similar provision.

Example 3

A condominium association satisfies the intent requirement if it has:

- (1) Adopted, through its rules and regulations, restrictions on the occupancy of units consistent with HUD's regulations governing 55-or-older housing at 24 CFR part 100, subpart E;
- (2) Has distributed copies of the rules to all occupants; and
- (3) Has notified local realtors of the restrictions.

The following is an example of a housing facility which has failed to satisfy the intent requirement described in § 100.306:

Example 4

A homeowners association has failed to meet the intent requirement if it has Covenants, Conditions and Restrictions which refer to an "adult community," has posted a sign stating "A 40 and over community" and has restricted visiting children to a maximum of two weeks, but contains no similar restriction for visiting adults.

4. Verification of Occupancy

Section 100.307 provides that in order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a complaint alleging a violation of the Act, verification of compliance with § 100.305 through reliable surveys and affidavits. Paragraph (d)(7) of § 100.307 includes self-certifications in a list of documents considered reliable documentation of the age of occupants. The self-certification may be included in a lease or other document, and must be signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older. The following examples provide acceptable self-certification provisions:

Example 1

All new leases, new purchase agreements, or new applications contain a provision directly above the signatory line for lessees,

asserting that at least one occupant of the dwelling will be 55 years of age or older. In addition, the community surveys all current residents for their occupancy status in compliance with the 55-or-older requirements.

Example 2. Sample certification

I, (name), am over the age of 18 and a member of the household that resides at (housing facility or community), (unit number or designation). I hereby certify that I have personal knowledge of the ages of the occupants of this household and that at least one occupant is 55 years of age or older.

Paragraph (e) of § 100.307 requires that the housing facility or community establish appropriate policies to require that all occupants comply with the age verification procedures. The following examples illustrate acceptable policies:

Example 1

A condominium association establishes a rule that the board of directors must approve all new occupants. One criteria for approval is that new occupants of each unit inform the condominium association whether at least one person occupying the unit is 55 years of age or older.

Example 2

A homeowners association amends its Covenants, Conditions and Restrictions, and records them at the appropriate government recording office. The amendments require applicants to state whether at least one occupant is 55 years of age or older.

Example 3

The owner of a mobile home park where the residents own the coach but rent the land requires a statement of whether at least one occupant is 55 years of age or older before any sublease or new rental.

5. Future Revisions to This Appendix

HUD may update or revise this appendix as necessary.

[FR Doc. 97-840 Filed 1-13-97; 8:45 am]

BILLING CODE 4210-28-P