104TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 104–91

HOUSING FOR OLDER PERSONS ACT OF 1995

MARCH 28, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CANADY, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 660]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 660) to amend the Fair Housing Act to modify the exemption from certain familial status discrimination prohibitions granted to housing for older persons, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

99–006

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.

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

"(C) that meets the following requirements:

"(i) The housing is in a facility or community intended and operated for the occupancy of at least 80 percent of the occupied units by at least one person 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 clause (i), whether or not such policies and procedures are set forth in the governing documents of such facility or community.

"(iii) The housing facility or community complies with rules made by the Secretary for the verification of occupancy. Such rules shall allow for that verification by reliable surveys and affidavits and shall 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:

"(5) GOOD FAITH RELIANCE.—(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 engaged in the business of residential real estate transactions may 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 certified to such person, in writing and on oath or affirmation, that the facility or community complies with the requirements for such exemption.".

PURPOSE AND SUMMARY

H.R. 660, introduced by Congressman Clay Shaw of Florida, removes the "significant facilities and services" requirement for housing for older persons from the Fair Housing Act, 42 U.S.C. 3601–3631. In 1988, when Congress amended the Fair Housing Act to prohibit discrimination against families with children, it specifically exempted certain housing for older persons in order to protect the rights of the elderly to live in age-restricted housing. Generally, housing for older persons where 80% of the units have at least one person 55 years of age or older are exempt if they have or provide "significant facilities and services." Unfortunately this exemption has been narrowly construed and does not offer the protection to the elderly intended by Congress in passing the 1988 amendments. Consequently, legislation is necessary to establish a workable and fair exemption to protect senior citizens who wish to live in retirement communities.

H.R. 660 sets forth an objective standard for determining whether a facility or community qualifies for the exemption. Under the bill, if a community can show that eighty percent of its units have one or more occupants aged 55 or older, and meets certain other requirements, it passes the "housing for older persons" test. In addition, the bill would exempt real estate agents and condo board members who acted in "good faith" from liability for monetary damages in suits stemming from the seniors-only provision.

BACKGROUND AND NEED FOR THE LEGISLATION

In general, the Fair Housing Act makes it unlawful to discriminate based on race, color, religion, sex, familial status, handicap or national origin in the sale or rental of a covered dwelling or to threaten, intimidate, coerce or interfere with an individual's exercise or enjoyment of a right secured under the Act. The prohibition on discrimination based on "familial status" was added through the 1988 amendments to the Fair Housing Act, Pub. L. No. 100–430.

Under 42 U.S.C. 3602(k) familial status is defined as:

> One or more individuals (who have not attained the age of 18 years) being domiciled with; (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

In passing the Fair Housing Amendments of 1988 and protecting families with children against discrimination, Congress specifically recognized the particular needs of older people to live among their peers in age-restricted communities. The Fair Housing Act exempts "housing for older persons" from the prohibition on familial status, 42 U.S.C. 3607(b)(1). "Housing for older persons" is defined as housing that is occupied by persons 62 years of age or older or housing that is intended for occupancy by persons 55 years of age or older where there are "significant facilities and services specifically designed to meet the physical or social needs of older persons."

The "significant facilities and services" provision has been a source of controversy since the law took effect in 1989. Seniors' communities throughout the country have been faced with lawsuits challenging their qualifications under this provision. The lack of clear guidelines have made it difficult for senior's communities to qualify for the exemption. In addition, seniors with low or fixed incomes are often unable to afford to pay the fees or rents necessary to defray the costs for such additional services or facilities.

The Housing and Community Development Act of 1992 required HUD to issue a revised rule defining the term "significant facilities and services."[1] On July 7, 1994, HUD issued proposed rules to define the meaning of these terms. Unfortunately, the proposed rules were also a source of controversy because, as drafted, they would have imposed expensive and unnecessary burdens on seniors-only housing.[2] On November 30, 1994 Assistant Secretary Achtenberg announced that HUD was withdrawing the proposed regulations for "seniors-only" housing.

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[1] Pub. L. No. 102–550, Title IX, Section 919, October 28, 1992, 106 Stat. 3883, provided that: "The Secretary of Housing and Urban Development shall, not later than 180 days after the date of enactment of this Act make 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."

[2] The proposed rules were criticized for requiring housing providers to furnish costly alterations, modifications and accommodations for elderly, disabled persons. The proposed regulations assumed that older persons would have "mobility, visual and hearing impairments" and required housing providers to furnish "significant facilities and services" for individuals with those impairments, even if the older persons in the community seeking the exemption were healthy and had no need for such services.

On March 14, 1995, HUD published a new proposed rule to define significant facilities and services. The new proposed rule will establish a broad checklist of potential services and facilities and allow communities to "self-certify" that they are eligible for the exemption. Assistant Secretary Achtenberg has acknowledged, however, that in crafting these regulations, she was constrained by certain judicial decisions, like, for example, the opinion of the Ninth Circuit Court of Appeals in *U.S.* v. *City of Hayward*, 36 F.3d. 832 (1994). In *Hayward*, the court found that providers of housing seeking an exemption for older persons did not qualify for the exemption even though it furnished services and facilities including:

> [A] swimming pool, sauna, shuffle board, laundry room and a reading room. There is a clubhouse where coffee is always available, the residents play cards and bingo and meet to socialize, the resident's club and ladies club meet and where potluck dinners and holiday celebrations are held. [C]ounty health officials come to the park monthly to check blood pressure and perform glaucoma checks and annually provide for a more detailed physical. Health authorities also come to administer flue shots. City bus service is available at the entrance to the Park and taxi service is available to one's door. Doctors' offices and a hospital are located within a one mile radius of the Park. Educational and other recreational opportunities are provided in the local community. *Hayward*, 36 F.3d 832, at 837.

The Court found that the Park did not qualify for the 55 and older exemption because many of the facilities and services were not "specifically tailored to seniors' needs." Non-seniors-only housing, the court reasoned, could provide similar amenities for its residents. See also, *Park Place Home Brokers* v. *P–K Mobile Home Park*, 773 F.Supp. 46 (N.D. Ohio 1992) and *United States* v. *Keck*, WL 357064 (W.D. Wash. 1990).

Even if HUD does issue its new proposed regulations, two issues will continue to be a source of confusion for seniors communities seeking to qualify under the "significant facilities and services" exemption. First, are the services and facilities "specifically designed to meet the physical or social needs of older persons" or are they simply the types of services which any landlord might provide? It is difficult, if not impossible for a senior community to show that its clubhouse, pool, or exercise room and the other facilities and service they may provide are distinguishable from those same activities in a housing complex which allows children or non-elderly adults. The second issue which will remain is whether the services and facilities rise to the level of being "significant" either in terms of their overall number or in terms of the use they receive from the members of the elderly community.

The Legal Counsel for the Elderly Office of the American Association of Retired Persons (AARP) has actively monitored administrative actions and judicial decisions enforcing the seniors-only provision of the Fair Housing Act. AARP reported that it was:

> Unable to find any successful defense of a claim of exemption for housing for older persons among cases receiving judicial review. When coupled with widespread anecdotal

> evidence of rather arbitrary decisions by fair housing investigators, the conclusion is inescapable that implementation of the law has not been consistent with the flexibility intended by Congress. Indeed, widespread dissatisfaction with the statute's enforcement threatens the very viability of the important new protections provided in the Act. Letter of the AARP to Chairman Canady, March 14, 1995.

H.R. 660 will allow seniors the opportunity to take advantage of the exemption for seniors-only housing without imposing burdensome and costly requirements.

HEARINGS AND SUBCOMMITTEE CONSIDERATION

The Subcommittee on Civil and Constitutional Rights held two oversight hearings on Fair Housing Issues on September 28 and 30, 1994. Testimony on the issue of the requirement of "significant facilities and services" for the exemption for housing for older persons was received from Representative Clay Shaw; the Hon. Roberta Achtenberg, Assistant Secretary, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development; Lori Van Arsdale, Councilmember, City of Hemet, California and William Williams, president, Federation of Mobile Home Owners of Florida, Inc. Additional materials were submitted from Representative Al McCandless, Hank Schmitz, a resident of Hemet, California, Sheila S. Dey, General Counsel, Western Mobile Home Parkowners Association; Robert H. Elrod, President, National Association of Realtors; the Hon. Kay Ceniceros, Chairman, Riverside County Board of Supervisors and Jim Morales, Esq. On March 15, 1995, the Subcommittee on the Constitution met in open session and ordered reported the bill H.R. 660 by a voice vote, a quorum being present.

COMMITTEE CONSIDERATION

On March 22, 1995, the Committee met in open session and ordered reported the bill H.R. 660 with an amendment, by a recorded vote of 26–6, a quorum being present.

VOTES OF THE COMMITTEE

The Committee considered the following with recorded votes:

1. Mr. Conyers offered an amendment to strike section 3 which creates a defense against the imposition of money damages for compliance where a person has relied in good faith on the application of the exemption relating to housing for older persons. Mr.

Conyers' amendment was defeated by a rollcall vote of 7–22, with 1 member voting present.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Nadler	Mr. Moorhead
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. Gekas
Mr. Becerra	Mr. Coble
Mr. Serrano	Mr. Smith (TX)
Ms. Jackson Lee	Mr. Gallegly
	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Boucher
	Mr. Bryant (TX)
	Mr. Reed
	Ms. Lofgren

Present: Mr. Frank

2. Ms. Jackson Lee offered an amendment to require housing providers who wish to qualify for the exemption for housing for older persons under the Act to demonstrate intent to provide such housing by setting forth the appropriate policies and procedures in the facility or community's governing documents. Ms. Jackson Lee's amendment was defeated by a rollcall vote of 8–24.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Nadler	Mr. Sensenbrenner
Mr. Scott	Mr. Gekas
Mr. Watt	Mr. Coble
Mr. Becerra	Mr. Smith (TX)
Mr. Serrano	Mr. Gallegly
Ms. Jackson Lee	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Frank
	Mr. Schumer
	Mr. Berman
	Mr. Boucher
	Mr. Bryant (TX)
	Mr. Reed
	Ms. Lofgren

3. Motion to report H.R. 660 favorably, as amended, to the House. The motion was agreed to by a rollcall vote of 26–6.

AYES	NAYS
Mr. Hyde	Mr. Berman
Mr. Moorhead	Mr. Bryant (TX)
Mr. Sensenbrenner	Mr. Scott
Mr. McCollum	Mr. Watt
Mr. Gekas	Mr. Becerra
Mr. Coble	Mr. Serrano
Mr. Smith (TX)	
Mr. Gallegly	
Mr. Canady	
Mr. Inglis	
Mr. Goodlatte	
Mr. Buyer	
Mr. Bono	
Mr. Heineman	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Conyers	
Mrs. Schroeder	
Mr. Frank	
Mr. Schumer	
Mr. Boucher	
Mr. Reed	
Ms. Lofgren	
Ms. Jackson Lee	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 660, the following estimate and comparison prepared

by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 27, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 660, the Housing for Older Persons Act of 1995, as ordered reported by the House Committee on the Judiciary on March 22, 1995. CBO estimates that enacting this legislation would result in no significant cost to the federal government or to state and local governments. Because enactment of H.R. 660 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

Under the Fair Housing Act, it is unlawful to discriminate based on family status in the sale or rental of a dwelling. However, current law affords an exemption for "housing for older person" (age-restricted communities), generally defined as housing that includes significant facilities and services specifically designed to meet the physical or social needs of older persons. H.R. 660 would define this exemption to apply to housing where at least 80 percent of the units are occupied by at least one person 55 years of age or older. In addition, the bill would exempt real estate agents or other persons who acted in good faith from liability for monetary damages in suits stemming from the seniors-only provision.

The intent of H.R. 660 is to clarify the meaning of "housing for older persons." This issue has been a source of housing discrimination lawsuits for a number of years, involving both the Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD). It is possible that H.R. 660 could lead to a reduction in these lawsuits and thus lower the caseload of DOJ and HUD. Based on information from these agencies, however, we do not expect that enacting the bill would have a significant effect on the costs incurred by DOJ or HUD.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

STATEMENT REQUIRED BY PUB. L. NO. 104–1

Pursuant to Pub. L. No. 104–1, the provisions of this bill are not applicable to the legislative branch because this bill applies to housing, for older persons.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the rules of the House of Representatives, the Committee estimates that H.R. 660 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1 sets forth the short title for the legislation, the "Housing for Older Persons Act of 1995."

Section 2 amends subparagraph (C) of section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2)). This section deletes the "significant facilities and services" requirement for housing for older persons intended and operated for occupancy by at least one person 55 years of age or older per unit. The major inquiry that H.R. 660 requires in order to determine whether a facility or community qualifies for housing for older persons is whether, in fact, the community is comprised of elderly individuals. The housing provider can demonstrate its intent to provide housing for persons 55 years of age or older, even if it allows persons under age 55 to continue to occupy dwelling units or move into the housing facility and occupy dwelling units, as long as the housing facility maintains the 80% occupancy threshold.

Subsection (C)(i) retains the exemption for housing that is "intended and operated for the occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older", but does not require a showing of the existence of "significant facilities and services." Subsection (C)(ii) requires the housing facility or community to publish and adhere to "policies and procedures" demonstrating the intent to provide housing for occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older per unit. This subsection specifically states that such policies and procedures need not be set forth in the governing documents of such facility or community.

Subsection (C)(iii) requires the housing facility or community to comply with rules made by the Secretary of Housing and Urban Development for the verification of occupancy. The rules issued by the Secretary must allow for verification by reliable surveys and affidavits and "shall include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii)." In addition, this section specifically allows such surveys and affidavits to be admissible in administrative and judicial proceedings for the purposes of such verification.

Section 3 creates a defense against the imposition of money damages for compliance where a person has relied in good faith on the application of the exemption relating to housing for older persons. The Committee adopted, by a voice vote, an amendment by Mr. Frank to allow a person engaged in the business of residential real estate to make a showing of "good faith" reliance on the application of the exemption if that person has no actual knowledge that the facility or community is not eligible for the exemption and the facility or community has certified to such person, in writing and on oath or affirmation, that it complies with the requirements for such exemption.

This section allows an individual to raise a defense which will prevent the imposition of money damages where he or she relies, in good faith, on the existence of an exemption for "housing for older persons" and it is later found that the exemption did not apply. This section will preclude an award of money damages, but does not shield a person from injunctive relief. This exemption is

necessary with respect to real estate agents because they are in a position of having to rely on the information given to them by the facility or community claiming the exemption. Because the exemption contemplates a fact-intensive showing that the community meets the age and occupancy requirements, it is not practical to require real estate agents to conduct this inquiry each time they seek to list a home, apartment or condo for sale or lease. If a real estate agent has "actual knowledge" that the facility or community is eligible for the exemption, the good faith exemption shall not apply.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 15, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

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 antidiscrimination 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.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as re-

ported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 807 OF THE FAIR HOUSING ACT

EXEMPTION

SEC. 807. (a) * * *

(b)(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

(2) As used in this section, ''housing for older persons'' means housing—

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

[(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

[(i) 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 and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

[(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

[(iii) 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.]

(C) that meets the following requirements:

(i) The housing is in a facility or community intended and operated for the occupancy of at least 80 percent of the occupied units by at least one person 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 clause (i), whether or not such policies and procedures are set forth in the governing documents of such facility or community.

(iii) The housing facility or community complies with rules made by the Secretary for the verification of occupancy. Such rules shall allow for that verification by reliable surveys and affidavits and shall 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.

* * * * * * *

(5) GOOD FAITH RELIANCE.—(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 engaged in the business of residential real estate transactions may 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 certified to such person, in writing and on oath or affirmation, that the facility or community complies with the requirements for such exemption.

○