

FACT SHEET
HOUSING FOR OLDER PERSONS ACT OF 1995

PURPOSE

The purpose of the Act was to make the law clearer and more workable for seniors...to protect seniors so that they can, if they wish to, move to housing where they are protected in their safety and their privacy.

DEFINITIONS

1. "Older person" means a person 55 years of age or older.
2. "Housing facility or community" means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions.
3. "Occupied unit" means:
 - a. A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed;
 - b. 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; or
 - c. If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

REQUIREMENTS

1. Communities may set whatever requirements they wish, as long as "at least 80%" of the OCCUPIED units are occupied by at least one person 55 years of age or older, and so long as such requirements are not inconsistent with the overall intent to be housing for older persons.
2. There is NO requirement that the remaining 20% of the OCCUPIED units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years or older. However, HUD believes that the appropriate use of the 20%, if any, is at the discretion of the community or facility and does not intend to impose more specific requirements in this area.
3. It is HUD's position that the test is whether 80% of the occupied units are, in fact, occupied by persons 55 years of age or older. This need only be documented through reliable survey, census or affidavit, or other documentation, a copy of which should be retained for record keeping purposes and which confirms that the 80% threshold is being met.
 - a. A self certification of his or her age by an individual will be adequate to meet this standard.
 - b. An affidavit from someone who knows the age of the occupant(s) and states his/her basis for the knowledge is sufficiently reliable to satisfy the statute.

c. If any individual chooses to verify by providing a driver's license, the verification requirement will be satisfied.

d. A summary of the information gathered in support of the occupancy verification should be retained for confirmation purposes. Copies of supporting information gathered in support of the occupancy verification may be retained in a separate file with limited access, created for the sole purpose of complying with HOPA, and not in general or resident files that may be widely accessible to employees or other residents. The segregated documents may be considered confidential and not generally available for public inspection. HUD, state or local fair housing enforcement agencies or the Department of Justice may review this documentation during the course of an investigation.

4. In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance through reliable surveys and affidavits.

5. HUD requires that records be updated every two years. Some objected to this "re-survey" every two years as being unduly burdensome, especially if the list is actively updated on an on-going basis. While HUD is sympathetic to those well-managed communities which actively update lists of residents, it does not feel that such communities would be unduly burdened by the update since the information required will be readily available in the files. The re-survey does not require that all supporting documents be collected again—only that the community confirm that those persons counted as occupying dwellings for purposes of meeting the 80% requirement are, in fact, still in occupancy.

6. In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, 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:

- a. The manner in which the housing facility or community is described to prospective residents;
- b. Any advertising designed to attract prospective residents;
- c. Lease provisions;
- d. Written rules, regulations, covenants, deed or other restrictions;
- e. The maintenance and consistent application of relevant procedures;
- f. Actual practices of the housing facility or community; and
- g. Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

7. Housing for older persons is exempt from the prohibition against familial status discrimination if it houses at least one person who is 55 years of age or older in at least 80% of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 years or older; therefore, any child or children under the age of 18 years may be excluded from residing in the subdivision.