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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5605-N-02]

Notice of Proposed Information

Collection: Comment Request

Implementation of the Housing for Older Persons Act of 1995 (HOPA)

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement established under the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. HUD is soliciting public comments on the subject proposal.

DATES: Comment Due Date: **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection requirement. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to: Deborah T. Ambers, Enforcement Division, Office of Enforcement, Department of Housing and Urban Development, 451 7th Street, SW; Room 5208, Washington, DC 20410-2000, or the toll-free number for the Federal Information Relay Service at: 1-(800) 877-8399.

FOR FURTHER INFORMATION CONTACT: Lynn Grosso, Director, Office of Enforcement, Department of Housing and Urban Development, 451 7th Street, SW, Room 5226;

Washington, DC 20410-2000; telephone (202) 402-5361 (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: HUD is submitting this proposed information collection requirement to the OMB for review, as required under the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35, as amended].

This notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of HUD's program functions; (2) Evaluate the accuracy of HUD's assessment of the paperwork burden that may result from the proposed information collection; (3) Enhance the quality, utility and clarity of the information which must be collected; and (4) Minimize the burden of the information collection on responders, including the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Implementation of the Housing for Older Persons Act of 1995 (HOPA).

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529-0046.

Description of the need for the information and proposed use: The Fair Housing Act [42 U.S.C.3601 et seq.], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on *familial status* (individuals living in households with one or more children under 18 years of age). However, under §3607(b)(2) of the Act, Congress exempted three (3) categories of "*housing for older persons*" from liability for familial

status discrimination: (1) housing provided under any State or Federal program which the Secretary of HUD determines is “*specifically designed and operated to assist elderly persons (as defined in the State or Federal program)*”; (2) housing “*intended for, and solely occupied by persons 62 years of age or older*”; and (3) housing “*intended and operated for occupancy by at least one person 55 years of age or older per unit* [‘55 or older’ housing]”. In December 1995, Congress passed the Housing for Older Persons Act of 1995 (HOPA) [Public Law 104-76, 109 STAT. 787] as an amendment to the Fair Housing Act. The HOPA modified the “55 or older” housing exemption provided under §3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer “*significant facilities and services specifically designed to meet the physical or social needs of older persons.*” In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1) *at least 80 percent of the occupied units* in the community or facility must be occupied by at least one person who is 55 years of age or older; (2) the housing provider must publish and adhere to policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with “*rules issued by the Secretary for verification of occupancy, which shall . . . provide for [age] verification by reliable surveys and affidavits.*”

The HOPA did not significantly increase the record-keeping burden for the “55 or older” housing exemption. It describes in greater detail the documentary evidence which HUD will consider when determining, in the course of a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the “55 or older” housing exemption as of the date of the alleged Fair Housing Act violation.

The HOPA information collection requirements are necessary to demonstrate a housing provider's eligibility to claim the "55 or older" housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental or occupancy of dwelling units situated in qualified senior housing facilities or communities. The HOPA's requirement that a housing provider must demonstrate the intent to operate a "55 or older" housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a "55 or older" housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA's '80 percent' occupancy requirement, and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions, and should require minimal preparation time. Further, a senior housing provider's operating rules, policies and procedures are not privileged or confidential in nature, because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units actually occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information

would be protected from disclosure unless the housing provider claims the “55 or older” housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD under the Fair Housing Act. HUD’s Office of Fair Housing and Equal Opportunity will only require a housing provider to disclose such confidential information to HUD if and when HUD investigates a jurisdictional familial status discrimination complaint filed against the housing provider under the Fair Housing Act, and if and when the housing provider claims the “55 or older” housing exemption as an affirmative defense to the complaint.

Agency form number(s), if applicable: None.

Members of affected public: The HOPA requires that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older must routinely collect and update reliable age verification information necessary to meet the eligibility criteria for the HOPA exemption. The record keeping requirements are the responsibility of the housing provider that seeks to qualify for the HOPA exemption.

Estimation of the total numbers of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: The HOPA information collection requirements are the responsibility of the individual housing facility or community that claims eligibility for the HOPA’s “55 or older” housing exemption. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a means of certifying that their housing communities or facilities qualify for the exemption. Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities

would seek to qualify for the HOPA exemption. HUD has estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10) transactions per community. HUD concluded that the publication of policies and procedures is likely to be a one-time event and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours.

Status of the proposed information collection: Reinstatement, **without change**, of a previously approved collection for which approval has expired.

AUTHORITY: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Date: **December 20, 2012**

**Sara K. Pratt, Deputy Assistant Secretary for
Enforcement and Programs**