

Disability -
Housing

Total Pages: 4

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

*Patel -
Analysis
Comments
10/26*

Tuesday, October 26, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: *Janet R. Forsgren*
Janet R. Forsgren (for) Assistant Director for Legislative Reference
OMB CONTACT: Bennie C. Rogers
E-Mail: Bennie_C._Rogers@omb.eop.gov
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SUBJECT: JUSTICE Statement for the Record on HR2437 Justice in Fair Housing Enforcement Act of 1999

DEADLINE: 10:00 AM Wednesday, October 27, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please review this Justice statement for the record to be given before the House Judiciary Committee on October 28, 1999.

THIS DEADLINE IS FIRM. IF WE DO NOT HEAR FROM YOU BY THE COMMENT DEADLINE, WE WILL ASSUME THAT YOU HAVE NO OBJECTION.

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OCT. 25. 1999 3:26PM OFFICE OF THE AAG

**DOJ Written Statement (to be submitted for the record)
H.R. 2437**

In 1988, Congress enacted legislation promising housing opportunities for millions of disabled Americans. Newly constructed multifamily housing would, for the first time, be required to have features that would make this housing accessible to and usable by persons with disabilities. The accessibility requirements included in the Fair Housing Amendments Act of 1988 went into effect in 1991. H.R. 2437 would exempt from these requirements almost all multifamily housing built since 1991. We oppose this effort to renege on the civil rights protections promised to people with disabilities over a decade ago.

The accessibility requirements of the Fair Housing Amendments Act were enacted with the support of civil rights groups and industry, including the National Association of Home Builders, the National Association of Realtors, and the American Institute of Architects. The Act passed with overwhelming bipartisan support in Congress.

Through its landmark 1988 legislation, Congress intended to address the "consistent failure to design and build housing having accessible features." 134 Cong. Rec. S10544-02 (Aug. 2, 1988)(Sen. Stafford). The statutory provisions adopted then were understood to be "minimal standards" that would "eliminate many of the barriers which discriminate against persons with disabilities in their attempts to obtain equal housing opportunities." H.R. Rep. No. 100-711 at 27 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2188-2189 (House Report).

The Fair Housing Act accessibility requirements for multifamily housing are very simple, basic, and reasonable. Public and common use portions of buildings, such as lobbies and laundry rooms, must be accessible and usable; entrances, doors and hallways must be level and wide enough for wheelchair users; rooms must be on an accessible route; switches and other controls must be reachable; bathrooms and kitchens must be configured to have maneuvering space for wheelchair users; and bathrooms need to have reinforcements inside walls to accommodate later installation of grab bars. 42 U.S.C. §3604(f)(3)(C). It was understood that these "modest requirements" would provide "features which do not look unusual" and which would "not add significant additional costs." (House Report at 18).

These accessibility features are fundamental to people with disabilities and their families. Failure to meet these requirements has meant, for example, that an individual with multiple sclerosis had to drag himself into the bathroom because the door was too narrow for his wheelchair. Another individual, also with multiple sclerosis, had her husband carry her in and out of the bathroom. She was unable to visit other residents because the connecting sidewalks were too narrow for her wheelchair. An elderly man who had once been able to walk with a cane but then needed to use a walker because of his deteriorating health, was unable get around his apartment without great difficulty because the doorways were too narrow. A woman had to carry her disabled son around her apartment when he visited on weekends because the doorways were too narrow for his wheelchair.

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If H.R. 2437 is enacted, hundreds of thousands of housing units built since 1991 that should have included these minimal accessible features will be exempt from enforcement. The bill provides that those requirements will not apply to any building constructed since March 13, 1991 -- the effective date of the accessibility provisions -- if it "received a building permit or other similar approval from the relevant State or local building authorities as meeting the requirements of the applicable building code." Because there are few, if any, multifamily buildings which would have been constructed without a building permit, the bill effectively immunizes from federal enforcement all noncompliant buildings constructed in the last eight years.

H. R. 2437 is not properly characterized as merely providing a "safe harbor" for "developers and owners for certain buildings built in compliance with the applicable local accessibility requirements." Testimony of Michael T. Rose for the National Association of Home Builders before the House Subcommittee on Government Programs and Oversight Committee on Small Business, July 27, 1999. The bill mentions ~~nothing~~ about having to meet the accessibility requirements of any local building code. It exempts all housing that has received a building permit or other similar approval from local building authorities, regardless of whether that local code contains any provisions mirroring the requirements of the federal Fair Housing Act, or for that matter, has any accessibility requirement at all.

Designers and builders of multifamily housing have had sufficient opportunity to learn the requirements of federal law. It is significant that the accessible housing mandate imposed by the Fair Housing Amendments Act were the last provisions of that Act to take effect. Indeed, while other portions of the statute became effective six months after enactment, in March 1989, Congress provided architects and the construction industry with an additional two years, until March 1991, to learn about their obligations regarding the accessibility provisions. Moreover, the statute itself provided a "safe-harbor" by stating that compliance with the requirements of the American National Standard for buildings providing accessibility and usability for persons with disabilities ("ANSI A117.1") would suffice to satisfy the requirements of the Act. See 42 U.S.C. § 3604(f)(4). Additional guidance and "safe harbors" followed. In June 1990, prior to the effective date of the accessibility requirements, HUD published proposed guidelines setting forth standards for compliance which were less stringent than those contained in the ANSI standard Congress had referenced. The guidelines were formally adopted, following public notice and comment, in March 1991. Both the National Association of Home Builders and the American Institute of Architects were among a coalition of organizations which commented on the guidelines. Those guidelines (including the 1990 draft), too, provided the construction industry with a "safe harbor."

The Fair Housing Amendments Act required HUD to issue regulations and to provide technical assistance to implement the accessibility requirements of the Act. Pursuant to its technical assistance mandate, HUD issued accessibility guidelines and has engaged in outreach and education efforts with regard to the accessibility requirements of the Act almost since the time of their passage by Congress.

(INCLUDE SENTENCES IN BOLD IF HUD DOES NOT ISSUE A STATEMENT) In

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addition to promulgating its accessibility regulations and guidelines, it has subsequently published a comprehensive manual detailing and illustrating the requirements of the Act and made available informational brochures and videos. It has also posted information about the accessibility requirements on its Internet website, and HUD education programs are ongoing. Other sources of information have been available as well. Moreover, the National Association of Home Builders has produced a nationwide series of seminars, under a grant from HUD, discussing the requirements of the Act

Housing providers may also look to the states for guidance. The Act provides that if a state or local jurisdiction has incorporated into its laws the accessibility requirements of federal law, compliance with such laws shall be deemed to satisfy the federal requirements. 42 U.S.C. §3604(f)(5)(A). Both HUD and this Department have undertaken efforts to encourage local jurisdictions to make known the requirements of federal law and to adopt provisions which reflect the federal mandate. For instance, in 1997, the Justice Department, HUD, and a number of state attorneys general, wrote to local permitting officials and urged them to provide notice of the design and construction provisions of the Fair Housing Act and to make available a HUD pamphlet entitled "Architects and Builders -- Are You in Compliance with the Fair Housing Act?" More recently, and consistent with the directive contained in the House Report (Report No. 106-286) accompanying the FY 2000 HUD appropriation bill (H.R. 2684), we have been assisting HUD in its review of model building codes to determine whether their accessibility provisions are consistent with HUD's guidelines for accessible housing. These codes are the International Building Code, the Standard Building Code, the Uniform Building Code, and Building Officials and Code Administrators, International, Inc.(BOCA).

[INCLUDE LANGUAGE IN BOLD IF HUD DOESN'T MAKE A STATEMENT] On October 25, 1999, HUD will publish its preliminary analysis of the codes for public comment.. A final analysis, with recommended revisions to make the codes consistent with the Guidelines, will be published in the Federal Register by the end of this year, in accordance with the directive that HUD issue such a policy statement by December 31, 1999.]

When we have found noncompliance with the accessibility requirements of the Fair Housing Act, the responsible architects and builders have not tried to justify the deficiencies based on provisions of a state or local "accessibility" law. Indeed, while we have seen buildings where both the design and construction were noncompliant, we have also seen situations where a builder simply ignored the accessible features of an architect's design plan and, conversely, where an architect failed to follow an owner's explicit instructions to provide a design that met the Fair Housing Act's accessibility requirements. Providing accessible multifamily housing has simply not been a priority for the home building industry

Our investigations have uncovered design features which obviously and fundamentally deny housing to persons with disabilities and have not involved disputes over minor deviations from the statutory mandate. For instance, we have found builders and architects who have included steps -- sometimes as many as five -- up to the front entrances of their ground floor

units; doors -- including some with an opening width to a unit bathroom of only 22 inches -- which are far too narrow for a wheelchair user to maneuver through; bathrooms built without complying with the clear statutory mandate that walls be reinforced for the later installation of grab bars; and kitchens and bathrooms which cannot be used by persons who are mobility impaired because those rooms provide insufficient space for such persons to maneuver around.

These barriers were found in buildings that were constructed after 1991 that should have been built in compliance with the accessibility requirements of the Fair Housing Act. H.R. 2437 would leave them without a federal remedy to redress the violation of their rights to equal housing opportunity. We oppose this proposed legislation.

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Justice in Fair Housing Enforcement Act of 1999
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RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Bennie C. Rogers Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: 10/26 (Date)
Cynthia Rice (Name)
DPC (Agency)
6-2846 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- X Concur
No Objection
No Comment
X See proposed edits on pages 2
Other:
FAX RETURN of 1 pages, attached to this response sheet

Handwritten note in a box: PLS fax Vol 24 return CR

**HUD Written Statement (to be submitted for the record)
HR 2437**

The Department of Housing and Urban Development has serious concerns about H.R. 2437, "The Justice in Fair Housing Enforcement Act," a bill introduced by Representative Walter Jones in the House of Representatives on July 1, 1999, and strongly opposes its enactment.

H.R. 2437 exempts from the accessibility requirements of the 1988 Fair Housing Act Amendments ("FHAct") any building that (1) was designed for first occupancy during the period beginning March 13, 1991 and ending on the date of enactment of this bill; and (2) received a building permit or other similar approval from the relevant State or local building authorities as meeting the requirements of the applicable building code.

Enactment of the bill would remove from the law provisions which require handicap accessible design and construction for new multi-family buildings built for first occupancy after March 13, 1991. As a result, architects, developers and others who failed to design and construct multifamily properties in full compliance with the FHAct would be given amnesty for actions Congress declared unlawful more than a decade ago based on the issuance of a local building permit.

The bill's reliance on state and local building permits to protect the rights of disabled persons is misplaced. Most states and localities do not have building codes that require the features of accessible design in the FHAct. The intent of the FHAct was to encourage, but not require, state and local governments to include the FHAct's accessibility provisions in their building permit process.

On January 23, 1989, the Department published regulations implementing the FHAct. Both the FHAct and the regulations reference the ANSI A117.1 standards. On August 2, 1989, HUD published a Federal Register notice of its intention to publish Fair Housing Accessibility Guidelines and solicited early comment from the industry and other interested parties. After publication of proposed Guidelines on June 15, 1990, the Department considered more than 560 public comments, including those from affected industry partners, before publication of the final Fair Housing Accessibility Guidelines on March 16, 1991. To provide further guidance, on June 28, 1994, the Department published a Supplemental Notice to the Guidelines in question-and-answer format, and published a design manual in August, 1996, which further explained and illustrated the 1991 Guidelines. Minor revisions to this manual were made in April, 1998. The requirements under the law have not changed since its passage in 1988, and the Department has never departed from the Fair Housing Accessibility Guidelines published on March 6, 1991.

The Department conducted vigorous education and outreach efforts which included planning or participating in more than 150 public seminars. In 1997, HUD also provided an education and outreach grant to the National Association of Homebuilders Research Center and Access Living under the Fair Housing Initiatives Program for seminars on accessibility. The Department also worked with the National Conference of States on Building Codes and Standards to ensure broad dissemination of information about the FHAct.

During 1992 and 1993, the Department provided technical assistance to the model building code organizations in their effort to draft code language that would be consistent with the Act's accessibility requirements and the Guidelines. HUD is also a member of the ANSI A117 Committee and contributed to the development of the 1992 and 1998 ANSI standards. Several of the model building codes have been revised to incorporate accessible design, and the Department will provide a report to Congress on our review of four of these codes by the end of this year. We have asked for public comment on the Department's study comparing the four codes and the Fair Housing Act requirements. A public meeting on the study is scheduled for November 10, 1999.

people with disabilities

As a new century nears and as this decade ends, we do not need legislation which rolls back civil rights protections achieved by ~~disabled persons~~ in the *prior* decade. A "phase-in" of those rights to the next century is not appropriate. A cooperative effort among all parties to address mutual concerns through outreach and education, rather than through the unnecessary restructuring of an historic civil rights statute, is a better way to approach accessibility issues. The Department is already engaged in this effort, and has committed additional funds to training and technical assistance programs which will involve the building industry, code officials, architects and civil-rights organizations.

We welcome continued cooperation with the building industry and others as we seek non-legislative approaches to providing more accessible housing for people with disabilities.

Bill Summary & Status for the 106th Congress

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H.R.2437**SPONSOR:** Rep Jones, Walter B., Jr (introduced 07/01/99)

A bill to provide an exception from the enforcement of an accessibility construction requirement of the Fair Housing Act for certain buildings constructed in compliance with a local building code.

All Bill Summary & Status Info (except Bill Text)Titles

Status:

- Detailed Legislative Status
- Floor/Executive Actions
- Congressional Record Page References

Committees:

- Referral, Reporting, Origin, Subcommittees
- Other Committee Information

Amendments

SubjectsCosponsors (None)SummaryText of Legislation

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Justice in Fair Housing Enforcement Act of 1999 (Introduced in the House)

HR 2437 IH

106th CONGRESS

1st Session

H. R. 2437

To provide an exception from the enforcement of an accessibility construction requirement of the Fair Housing Act for certain buildings constructed in compliance with a local building code.

IN THE HOUSE OF REPRESENTATIVES

July 1, 1999

Mr. JONES of North Carolina introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide an exception from the enforcement of an accessibility construction requirement of the Fair Housing Act for certain buildings constructed in compliance with a local building code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Justice in Fair Housing Enforcement Act of 1999'.

SEC. 2. EXCEPTION FROM ENFORCEMENT OF CONSTRUCTION REQUIREMENT.

The requirement of section 804(f)(3)(C) of the Fair Housing Act (42 U.S.C. 3604(f)(3)(C)) shall not apply with respect to any building that--

(1) was designed for first occupancy during the period beginning March 13, 1991 and ending on the date of the enactment of this Act; and

(2) received a building permit or other similar approval from the relevant State or local building authorities as meeting the requirements of the applicable building code.
