

Congress of the United States

Washington, DC 20515

October 20, 2006

The Honorable Alphonso Jackson
U.S. Department of Housing and Urban Affairs
451 Seventh Street, SW
Washington, DC 20410

Dear Secretary Jackson,

We are writing to respectfully urge you to amend the Department of Housing and Urban Development's (HUD) definition of a "person with disabilities" in 24 C.F.R. 5.403, for the purposes of federal public housing programs, to include veterans who receive "improved disability pensions" from the Department of Veterans Affairs (VA) pursuant to 38 U.S.C. 1521.

Section 1521 of title 38, United States Code, authorizes payment of improved pensions to veterans who served during a period of war, meet certain other service requirements and are permanently and totally disabled as defined by 38 U.S.C. 1502. We believe that the VA statutory definition of "permanently and totally disabled," is consistent with HUD's regulatory definition of "persons with disabilities." Individuals receiving social security disability benefits are exempt from the requirement; however, disabled veterans are subject to a superfluous re-evaluation in order to receive the same exemption. We believe the dual certification is an unnecessary burden upon persons who dedicated their time and lives to serve this country.

In 2003, VA Secretary Anthony Principi wrote to HUD Secretary Mel Martinez urging the department to issue a regulation that would exempt disabled veterans from the community service requirement. In addition, the VA General Counsel took the same view and encouraged HUD to include disabled veterans in the exemption. Enclosed is a copy of Secretary Martinez's response to Secretary Pincipi and the VA General Counsel letter to HUD.

We hope that you act favorably upon our request and work with us to reduce any unfair burden placed upon our disabled veterans.

Sincerely,


Julia Carson
Member of Congress


Lane Evans
Member of Congress


Barney Frank
Member of Congress


Charles B. Rangel
Member of Congress


Steve Israel
Member of Congress

Mary L. Ackerman
Mary L. Ackerman

Carolyn McCarthy
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Corrine Brown
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U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410-0001

DEPT OF VETERANS AFFAIRS
OFFICE OF THE SECRETARY

THE SECRETARY

June 10, 2003

The Honorable Anthony J. Principi
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420-0001

Dear Secretary Principi: 

Thank you for your letter of April 24, 2003, regarding Representatives Lane Evans and Steve Israel's request that the Department of Housing and Urban Development amend 24 CFR § 5.403 to change the definition of a "person with disabilities" for public housing and the Housing Choice Voucher program under the U.S. Housing Act of 1937, as amended. The Representatives specifically requested that the regulatory definition under the U.S. Housing Act, be changed to include veterans who receive Improved Pension from the Department of Veterans Affairs (VA).

Section 3(b)(3)(E) of the U.S. Housing Act defines the term "person with disabilities" as a person who:

"(i) has a disability as defined in section 223 of the Social Security Act,

"(ii) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which (I) is expected to be of long-continued and indefinite duration, (II) substantially impedes his or her ability to live independently and (III) is of such a nature that such ability could be improved by more suitable housing conditions, or

"(iii) has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

"Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

Notwithstanding any provision of the law, no individual shall be

considered a person with disabilities, for purposes of eligibility for low-income housing under this title, solely on the basis of any drug or alcohol dependence.”

Veterans considered disabled at age 65 with no medical eligibility requirements, and therefore, eligible for Improved Pension Benefits cannot also be considered disabled under the U.S. Housing Act. To be considered disabled under the U.S. Housing Act, the statutory criteria at section 3(b)(3)(E) of the U.S. Housing Act as referenced above must be met.

According to the Department’s legal staff, the VA definition of a “person with disabilities” allowing for an automatic presumption of disability at age 65 is inconsistent with the statutory definition of a “person with disabilities” in section 3(b)(3)(E) of the U.S. Housing Act. Therefore, absent a statutory change, such a regulatory revision appears infeasible.

Thank you for consulting me regarding this important matter.

Sincerely,



Mel Martinez



DEPARTMENT OF VETERANS AFFAIRS

Office of the General Counsel

Washington DC 20420

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In Reply Refer To:

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Mr. William C. White
Deputy General Counsel for Litigation and Enforcement
U. S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Dear Mr. White:

I am writing to provide further information regarding recent correspondence between the Honorable Anthony J. Principi, Secretary of Veterans Affairs, and the Honorable Mel Martinez, Secretary of Housing and Urban Development (HUD) regarding the definition of "person with disabilities" set forth in 24 C.F.R. § 5.403 for purposes of certain housing programs administered by your Department.

On April 24, 2003, Secretary Principi wrote to Secretary Martinez concerning a request from Congressmen Lane Evans and Steve Israel regarding amendment of HUD regulations to define a "person with disabilities" to include veterans who are receiving improved pension from the Department of Veterans Affairs (VA). The Secretary's letter explained the requirements for improved pension, including the requirement that a veteran must be permanently and totally disabled. The Secretary's letter also stated that veterans age 65 or older need not establish permanent and total disability to be eligible for improved pension. I understand that this statement regarding veterans age 65 and older was the basis for HUD's conclusion that the regulatory definition of "person with disabilities" could not be amended to include veterans receiving improved pension because such an amendment would be inconsistent with the statutory requirement that a person have a disability.

Section 1521 of title 38, United States Code, authorizes payment of improved pension to veterans who served during a period of war, meet certain other service requirements, and are permanently and totally disabled as defined by 38 U.S.C. § 1502. Section 1513 of title 38, United States Code, provides:

- (a) The Secretary shall pay to each veteran of a period of war who is 65 years of age or older and who meets the service requirements of section 1521 of this title (as prescribed in subsection (j) of that section) pension at the rates prescribed by 1521 of this title and under the conditions (other than the permanent and total disability

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Mr. William C. White

requirement) applicable to pension paid under that section.

(b) If a veteran is eligible for pension under both this section and section 1521 of this title, pension shall be paid to the veteran only under section 1521 of this title.

We believe that the definition of "person with disabilities" in HUD regulations could, consistent with the governing statute, be amended to include only veterans receiving improved pension pursuant to 38 U.S.C. § 1521 because, in order to be eligible for pension pursuant to section 1521, a veteran must be permanently and totally disabled. Such an amendment would exclude those veterans receiving pension based solely upon their age pursuant to 38 U.S.C. § 1513.

I hope that HUD will consider anew an amendment to its regulations to include veterans receiving pension pursuant to 38 U.S.C. § 1521 in light of this clarification regarding the relevant veterans benefit statutes.

If you have any questions concerning this matter or need further information, please do not hesitate to contact me at (202) 273-6315.

Sincerely,



Renée L. Szybala
Assistant General Counsel

cc: Mary Ellen McCarthy