



U.S. Department of Housing and Urban Development
Boston Regional Office, Region I
Boston Federal Building, 3rd Floor
10 Causeway Street
Boston, MA 02222-1092

HIM 102
#8(b)

APR 21 1987

James McCreight, Esq.
Greater Boston Legal Services
68 Essex Street
Boston, MA 02111

SUBJECT: Interpretation of HUD occupancy policies in Section
202/Section 8 development

Dear Mr. McCreight:

This letter is in response to your inquiry of February 13, 1987. In that inquiry, you stated that your client, Mary Smith, a tenant of Mason Place, intends to pursue permanent guardianship of her new born grandson. The grandson currently lives at the Smiths, and Mary Smith reported this to State Street Development Management Corporation during the recertification process. According to your letter, State Street seeks to prohibit the continued residence of the grandson.

Setting aside any questions relative to the lease or the particular facts of this case, your inquiry essentially requires an interpretation of HUD occupancy policies in Section 202/Section 8 developments such as Mason Place. You wish to know if an "elderly family" may include a minor child. Enclosed please find a copy of a memorandum recently distributed to the Department's Regional Offices. The memorandum, dated January 16, 1987, is from the Office of HUD Program Compliance to the Jacksonville Office of Fair Housing and Equal Opportunity. It addresses application to a Section 202 development by a qualified person whose household includes a child. While your inquiry concerns addition of a child to a current household, the memorandum would imply that management may not reject, nor terminate, solely on the inclusion of a child in the household.


This memorandum is based upon the relevant statutes and regulations. The statutory definition of "elderly family" under 12 U.S.C. 1701q(d)(4) does not preclude the inclusion of children; "The term "elderly...families" means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over...." HUD regulations

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at 24 C.F.R. 885.5 set forth the same definition of elderly family, and nowhere indicates that the inclusion of children destroys the "elderly family" unit. Therefore, addition of a child to the elderly family will not render the family ineligible under 12 U.S.C. 1701q(d)(4) or HUD regulations.

Further HUD's Section 202 Handbook, HB 4571.1 REV-2., at Chapter 8 §14(f) specifically prohibits discrimination based on age. It does not, however, instruct project managers or HUD Loan Representatives in the event that a child is added to the family unit. HUD's general occupancy Handbook, HB 4350.3 CHG-2., specifically exempts from coverage Section 202 projects, with or without Section 8 assistance, at page 2. To the extent that HB 4350.3 CHG-2. is illustrative, however, it indicates that State Street Management would be under an obligation to offer an appropriately sized unit. See Chapter 2, §10.

Please note that several issues are still outstanding, including the availability of an appropriately sized unit and the possibility of a waiting list. Further, we have not considered the possible interaction of state law. We have confined our analysis to the central question, whether an "elderly family" may include a minor child. Pursuant to regulation and statute, yes, an elderly family may include a minor child.

Sincerely,


Marvin H. Lerman
Regional Counsel

cc:
State Street Development
Management Corporation