MEMORANDUM FOR: Robert W. Laplante, Director, Office of
Fair Housing and Equal Opportunity, OE

FROM: Marvin H. Lerman, Regional Counsel, IG

SUBJECT: Exclusion of Families with Children from HUD Assisted
Elderly Development

This responds to your January 25, 1991, request for advice
whether the owners of a HUD assisted elderly development can
reject an otherwise qualified family because of the presence of
minor children.

As you know, the Fair Housing Act prohibits discrimination
against families with children except in certain exempt
properties or programs. For purposes of this discussion, we
assume that the owners of the subject development are claiming
that their HUD assisted development is exempt from the familial
status provisions of the Act because the HUD assistance program
operated at the project is designed to benefit elderly and
handicapped tenants, e.g. Section 202 or elderly public housing.

When it enacted the Fair Housing Amendments Act, Congress
provided an exemption for any State or Federal program that the
Secretary determines is specifically designed and operated to
language of the statute specifically requires a determination by
the Secretary that the program in question is exempt under the
Fair Housing Act. Karen Osterloh, Chief Attorney, Fair Housing
Opinions Section of the Fair Housing Division in Office of
General Counsel, has informed us that the Secretary has not yet
made any such determinations for any HUD assisted programs. You
should also be aware that the various program offices in
Headquarters are currently analyzing whether the elderly/handicap
programs under their control meet the intent of the exemption.
Thus, certain HUD programs may be determined exempt under
§ 3607(b)(2)(A) in the future.

In our opinion, until the Secretary makes a determination
that the program operated by the subject development is "housing
for older persons" under § 3607(b)(2)(A), the owners may not
exclude families with children solely on the basis of the
presence of minor children. In other words, so long as all other
eligibility requirements are met by the family, the family should
be treated as any other household for purposes of eligibility and
tenancy.