



U.S. Department of Housing and Urban Development  
Hartford Office, Region I  
330 Main Street  
Hartford, Connecticut 06106-1866

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MEMORANDUM FOR: Robert W. Laplante, Director, Office of  
Fair Housing and Equal Opportunity, 1E

*Marvin H. Lerman*  
FROM: Marvin H. Lerman, Regional Counsel, 1G

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 assist elderly persons. See 42 U.S.C. § 3607(b)(2)(A). The 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.