



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000
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ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: ALL FHEO REGIONAL DIRECTORS
FROM: *Kim Kendrick*
Kim Kendrick, Assistant Secretary for Fair Housing
and Equal Opportunity, E
SUBJECT: Questions and Answers on Hurricanes Katrina and Rita Evacuees
In Housing for Older Persons

Just two months ago, Hurricanes Katrina and Rita devastated the Gulf Coast. The hurricanes destroyed thousands of homes in Mississippi, Alabama, Louisiana, and Texas, leaving thousands without a place to live. In the weeks since, the Department has received inquiries from certain housing providers asking whether they may house evacuees under the age of 55 from that region and continue to qualify for the Fair Housing Act's "housing for older persons" exemption.

The Fair Housing Amendments Act of 1988 (the Act), amended by the Housing for Older Persons Act of 1995 (HOPA), exempts certain communities from the Act's prohibition against familial status discrimination, provided they demonstrate their intent to provide "housing for older persons." For a community or facility to qualify for the "housing for older persons" exemption, the Act requires, among other things, that 80 percent of all occupied households be occupied by at least one person 55 years of age or older (The remaining 20 percent of units may be occupied by persons under age 55, and the housing provider may still qualify for the exemption.). The Department does not count unoccupied units and units occupied by caretakers and maintenance workers when evaluating whether an elderly housing development meets the 80 percent threshold.

The Department recognizes that managers and residents of "55 and over" communities, like other Americans, would like to make housing available to those displaced by these devastating hurricanes. Hurricanes Katrina and Rita were uncommon catastrophes. The Department interprets the Fair Housing Act's "housing for older persons" exemption as broad enough to allow "housing for older persons" developments, in the wake of these episodes, to admit evacuees under the age of 55 and not count them toward the 80 percent and 20 percent calculations, so long as the housing provider admits evacuees regardless of familial status. Providers of housing for older persons, like all housing providers, must not discriminate on the basis of race, color, religion, sex, national origin, and disability.

For purposes of evaluating the thresholds, the Department will exclude evacuee households from that calculus and treat them similarly to caretakers and maintenance workers. This interpretation of the Act's housing for older persons exemption does not provide any new substantive rights.

The attached questions and answers illustrate the application of these principles.

Attachments

**Questions and Answers on Hurricanes Katrina and Rita Evacuees
In Housing for Older Persons**

Question 1

May housing for older persons admit evacuees under the age of 55 and retain its exemption from the familial status provisions of the Fair Housing Act? If so, how will evacuees be counted for purposes of the exemption?

Answer

Housing for older persons may admit evacuees under the age of 55 and retain its exemption from the familial status provisions of the Fair Housing Act. If housing for older persons admits evacuees without regard to familial status, the Department will consider the units where younger evacuees reside to be unoccupied units, and will exclude them from the count of occupied units, 80 percent of which must be occupied by at least one person 55 or older.

Treating units occupied by evacuees as unoccupied units and excluding them from the 80 percent calculation is consistent with how other types of units are treated under the HOPA. Other units similarly excluded from the 80 percent calculation include: (1) unoccupied units; (2) units occupied by employees of the housing for older persons who are under the age of 55, and who provide substantial management and maintenance services to the housing for older persons; and (3) units occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents.

Question 2

Can housing for older persons decide that the only evacuees it will admit are those without children?

Answer

Yes, but if housing for older persons chooses to admit evacuees, but excludes evacuee families with children, the units where evacuees reside will be counted among the occupied units as other residents. Only if the housing for older persons admits evacuees without regard to familial status will the Department consider the units where younger evacuees reside to be unoccupied units.

Question 3

Is housing for older persons required to admit evacuees that are under age 55?

Answer

No. Housing for older persons may choose not to admit evacuees under age 55.

Question 4

For the purposes of the "housing for older persons" exemption, who is an evacuee?

Answer

Anyone who, at the time of Hurricanes Katrina or Rita, lived in a county or parish declared to be a disaster area and designated for individual assistance from FEMA.

The following counties are covered:

- Alabama: Baldwin, Marengo, Mobile, Pickens, Greene, Hale, Tuscaloosa, and Washington.
- Louisiana: Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana.
- Mississippi: Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo Counties.
- Texas: Angelina, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, and Walker.

Question 5

Does someone need to show proof of being an evacuee? If so, how?

Answer

The Department does not require that someone show proof of being an evacuee. In the event of an investigation of a complaint of discrimination under the Fair Housing Act, the Department will accept a self-certification or other evidence from housing for older persons that the evacuees formerly resided in one of the affected counties or parishes.

Question 6

How long can housing for older persons admit and house younger evacuees?

Answer

Housing for older persons may choose to impose a time limit on admitting and housing younger evacuees. However, the Department would encourage housing for older persons to admit and house evacuees for as long as there is a need.

Question 7

May housing for older persons impose different terms and conditions of residency on families with children who reside there?

Answer

Yes. Housing for older persons is exempt from the Fair Housing Act's prohibition against discrimination on the basis of familial status. Housing for older persons may restrict families with children from benefits of the facility or otherwise treat family households differently than senior households, including use of a swimming pool or clubhouse, as long as those actions do not violate state or local law. However, housing for older persons is not exempt from the provisions of the Fair Housing Act that prohibit discriminating against any resident or potential resident on the basis of race, color, religion, national origin, sex, or disability.

However, housing for older persons is not required to impose different terms and conditions on families with children. The Department strongly encourages housing for older persons to exercise sensitivity and compassion when deciding whether to impose different terms and conditions on families with children that reside there.

Question 8

Can housing for older persons ask an evacuee to move in order to make space for an individual 55 or older without violating the Fair Housing Act?

Answer

Yes. While the exemption from the familial status provisions of the Fair Housing Act would not prohibit housing for older persons from asking an evacuee to move, other governing authorities such as state or local landlord-tenant laws may apply. Housing for older persons is still prohibited under the Fair Housing Act from discriminating against evacuees on the basis of race, color, religion, national origin, sex, or disability.

Question 9

Can housing for older persons advertise that it is accepting evacuees under age 55 without losing its exemption?

Answer

Yes. Housing for older persons may choose to advertise through a Website, newsletter or other means that it will accept evacuees under age 55, as long as the advertisements comply with the Fair Housing Act's non-discrimination requirements and the advertisements indicate that the community is housing for older persons.

Question 10

Is housing for older persons required to advertise that it will accept evacuees under age 55?

Answer

No. A housing community or facility may choose to advertise that it will accept evacuees under age 55, but is not required to advertise.

Question 11

If more evacuees are interested in living at housing for older persons than there are vacancies, how should the housing community or facility decide which evacuees get housing?

Answer

Housing for older persons choosing to admit evacuees should apply consistent, nondiscriminatory procedures. For example, housing for older persons may choose to create a waiting list for evacuees searching for housing, if it is administered without regard to race, color, religion, sex, national origin, and disability.

Question 12

Is housing for older persons required to provide evacuees with special financial considerations in the sale or rental of its units?

Answer

No. Housing for older persons may require evacuees to meet the same qualifications for the sale or rental of units as non-evacuee tenants or owners.

Question 13

How will the Department treat a complaint filed by an evacuee against housing for older persons, alleging familial status discrimination in violation of the Fair Housing Act?

Answer

The Department will conduct a limited complaint inquiry to determine if the housing community or facility qualifies as housing for older persons. If the housing community or facility qualifies, the Department will dismiss the familial status discrimination complaint.

Question 14

How will the Department treat a complaint filed by an evacuee against housing for older persons, alleging discrimination in violation of the Fair Housing Act on another prohibited basis (i.e., race, color, religion, sex, national origin, disability)?

Answer

The Department will process complaints filed by evacuees living in housing for older persons alleging discrimination under the Fair Housing Act on the basis of race, color, religion, sex, national origin, or disability, under its customary procedures.