



MEMORANDUM FOR: All Regional Administrators
All Regional Counsel

FROM: Frank Keating, General Counsel, C

Arthur J. Hill, Assistant Secretary for Housing-Federal
Housing Commissioner, E

Gordon Mansfield, Assistant Secretary for Fair Housing
and Equal Opportunity, E

SUBJECT: Housing for the Elderly and Housing for Handicapped
Persons Under Sections 221, 231, or 236 of the National
Housing Act and Section 202 of the Housing Act of 1959

The purpose of this memorandum is to set forth some guidelines, concerning housing for the elderly and housing for the handicapped, on matters which are in need of immediate clarification. A revision to Chapter 2 of the Occupancy Handbook (HUD Handbook 4350.3) is presently in Departmental clearance and it will address a much broader range of subjects.

First, the Department can preserve for the elderly under Sections 221, 231, or 236 of the National Housing Act ("NHA"), and Section 202 of the Housing Act of 1959, projects and parts of projects designed for that group. With regard to units in projects or parts of projects designed for the elderly, the owner can deny admission to the handicapped if they do not qualify as elderly. The term elderly in this memorandum refers to persons sixty-two years of age or older, or a family where the head of household or spouse is sixty-two years of age or older. The statutory basis for the position that the Department can preserve housing for the elderly can be found in the NHA and the Housing Act of 1959. See e.g., Sections 221(f), 231(a), 236(j)(5)(B), 236(j)(5)(C) of the NHA, and Section 202(a) of the Housing Act of 1959.

Second, attached to this memorandum are instructions for the owner and HUD housing field offices, which address whether projects under the NHA were designed in whole or in part for the elderly and can be permitted to operate as such. Pursuant to the instructions in the attachment, owners can consider documentation relating to project development, such as the Regulatory

Agreement, loan commitment papers, financial documents, owner's management plan, application for an insured mortgage or a direct loan, etc. In the 202 program, the Regulatory Agreement will not provide the information necessary to determine whether a project was designed for the elderly. However, other funding documentation for 202 projects, including the NOFA, the project application, and the Fund Reservation will clearly indicate whether the project was designed for the elderly. If the owner is satisfied that the project is elderly based upon the project development documentation referred to in the attachment, there is no need for it to secure HUD field office housing approval as to that determination. However, in NHA projects if the owner is uncertain as to which group or groups the project was intended to serve, it is also appropriate for the owner to consider bedroom configuration and historical data. If the owner bases its view as to whether the project was designed for the elderly on bedroom configuration and historical data, it should secure approval from the Director of Housing in the HUD field office at the time it submits its next application for a rent increase, or, at the latest, by the end of calendar year 1993. In considering bedroom configuration and historical data, both the owner's and the HUD field office's assessment must be based upon the totality of circumstances regarding the project. The provisions of the attachment are the same as the instructions in Chapter 2 of the Occupancy Handbook, presently in Departmental clearance. For purposes of the determination in the NHA projects such provisions may be used until Chapter 2 of the Occupancy Handbook is published.

Third, under the NHA and the Housing Act of 1959, units in projects or parts of projects designed for the elderly may restrict occupancy for such elderly units to persons sixty-two years of age or older, and to families, where the head of household or spouse is sixty-two years of age or older. The Fair Housing Act, as amended, prohibits discrimination based upon, among other things, familial status, unless the housing is exempt as "housing for older persons" as provided for by the Fair Housing Act. It is not, however, a violation of the Fair Housing Act, nor is an exemption to the familial status provision required, to deny admission to such elderly units (*i.e.*, units in projects or parts of projects designed for the elderly under the NHA or the Housing Act of 1959) to families with children under the age of eighteen, where neither the head of household nor spouse is sixty-two years of age or older since such families do not meet statutory and program age eligibility requirements for elderly housing under the NHA or the Housing Act of 1959. If the head of household or spouse is sixty-two years of age or older and the family is denied admission to such elderly units under the NHA or the Housing Act of 1959 because of familial status, the failure to admit the family would constitute discrimination proscribed by the Fair Housing Act, unless the housing is exempt from the applicability of the familial status provision. The

Department will not designate its elderly programs or projects under Sections 202, 221, 231, or 236 for an exemption from the familial status provision since HUD policy precludes families, which otherwise qualify for elderly housing under the NHA or the Housing Act of 1959, from being denied admission to an elderly project based on familial status.

Finally, units designed for persons with handicaps may be restricted to those persons whose handicaps require the accessibility features of the unit (e.g., units with accessibility features for the mobility impaired may be limited to persons with mobility impairments), except that where there is no current tenant or qualified applicant with handicaps requiring the accessibility features of the unit, the owner may offer the unit to another household and may incorporate into the lease agreement that the tenant will move to a non-accessible unit of the proper size within the same project when one becomes available. See 24 C.F.R. Section 8.27.

Attachment