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OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY
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MEMORANDUM FOR: All FHEO HUB Directors
All FHEO Program Center Directors
All FHEO Local Site Directors
All Grantees, Fair Housing Initiatives Program
All Grantees, Fair Housing Assistance Program

Eva M. Plaza
FROM: Eva M. Plaza, Assistant Secretary for Fair Housing and Equal Opportunity, E

SUBJECT: The Fair Housing Act and Lead-Based Paint

This memorandum transmits two documents which discuss the interaction of lead-based paint and Fair Housing Act requirements. It also provides further guidance on how the relationship between these two issues affect administration of the Section 8 tenant-based program. Fair Housing and Equal Opportunity (FHEO) staff, Fair Housing Initiatives Program (FHIP) grantees, and Fair Housing Assistance Program (FHAP) agencies are strongly encouraged to use this information to educate the public, conduct testing, and enforce the Fair Housing Act prohibited bases of familial status and disability in the context of lead-based paint.

A recent survey of FHEO Hubs concerning activities of the FHIPs and FHAPs in their jurisdictions showed that some were very involved in issues regarding the interaction of familial status and lead-based paint, particularly on the East Coast. Most, however, were not. We are, therefore, attaching two policy/guidance documents which have previously been made available about the interaction between the Fair Housing Act and lead-based paint requirements. The first is a "Memorandum" sent to all FHEO offices on August 1, 1997 (attached). It contains Questions and Answers regarding the interaction of these two sets of requirements for all housing in the country. The second is Section III D. 7 of the Preamble of the Final Rule on "Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance," published in the Federal Register on September 15, 1999 (attached). This Preamble section explains how the requirements of the Fair Housing Act and Title II of the Americans with Disabilities Act impact on lead-based paint issues, particularly as applied to HUD-assisted housing.

Additional fair housing requirements are incorporated throughout the Lead-Based Paint regulation, and it is recommended that you become knowledgeable about them. We particularly want you to be aware of the Fair Housing Act/lead-based paint requirements for rental units with Section 8 tenant-based vouchers. In housing occupied by a Section 8

certificate or voucher holder, a lead-based paint inspection is generally not required for the Housing Quality Standards (HQS) inspections. However, the new lead-based paint regulation contains requirements for when a Public Housing Agency (PHA) must conduct an inspection for lead-based paint or lead-based paint hazards (e.g., when a child occupying the unit is found to have elevated blood lead levels). At such times, if a PHA becomes aware of lead paint hazards in the unit, the unit will automatically be in violation of HQS until the lead hazard is treated. A unit in violation of HQS may not be occupied by any tenant receiving Section 8 assistance regardless of familial status.

If there are any questions, please contact Ivy L. Davis, Director, Office of Programs. Her telephone number is (202) 708-2288, extension 7028.

Attachments



August 1, 1997

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: Directors, Fair Housing Enforcement Centers
Directors, Program Operations and Compliance
Centers

FROM: *Susan M. Forward*
Susan M. Forward, Deputy Assistant Secretary for
Enforcement and Investigations, EE

SUBJECT: Requirements Concerning Lead-Based Paint and the Fair
Housing Act

This document clarifies the interaction between lead-based paint hazard control activities and the requirements of the Fair Housing Act.

Children under the age of six are particularly vulnerable to lead poisoning both because they are more likely to ingest lead in housing situations and because ingested lead can adversely affect the development of children's brains, central nervous systems, and other organ systems. The importance of this issue has raised questions concerning lead-based paint and the requirements of the Fair Housing Act.

Question: May a housing provider affirmatively market units where lead-based paint hazards have been controlled to families with children?

Answer: Yes. Affirmatively marketing units where lead-based paint hazards have been controlled to families with children is consistent with fair housing laws and with the need to protect the public welfare. A housing provider may verbally or through advertisements advise the public or potential applicants for housing that such units are available, or that families with children are welcomed for such units. In addition, a housing provider may recommend a unit where lead-based paint hazards have been controlled to families with children under the age of six, or inform the family of the availability of a waiting list for units where lead-based paint hazards have been controlled.

Question: May a housing provider exclude families with children from units where lead-based paint hazards have not been controlled?

Answer: If a unit which has not undergone lead hazard control treatments is available and the family chooses to live in the

