



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

November 9, 2012

An Open Letter to Housing Providers:

I am writing to inform you of interpretations of the Fair Housing Act by the U.S. Department of Housing and Urban Development which lend support to multifamily housing providers who wish to help families who have been affected by Hurricane Sandy. HUD has recently issued guidance which affords communities who have designated themselves housing for older persons the flexibility to open up vacant units to evacuees of Hurricane Sandy under the age of 55, without jeopardizing a community's qualification for certain legal exemptions under the Fair Housing Act.

The Fair Housing Act, which was amended by the Housing for Older Persons Act of 1995, exempts certain communities from the Act's prohibition against familial status discrimination, provided they meet three key requirements in the law as "housing for older persons." Under HUD's new guidance, a private provider of housing for older persons anywhere in the country may make units available to evacuees under the age of 55 and continue to qualify for the Fair Housing Act's familial status exemption, as long as the vacant units are made available to evacuees without restriction on the basis of familial status. The attached Questions and Answers provide details to guide communities in exercising this flexibility.

I appreciate the interest your network has shown during this and other devastating events to extend help to those in dire need of housing. I hope this guidance alleviates any fair housing concerns and encourages communities to open up available housing to families affected by Hurricane Sandy.

Sincerely,


John Trasviña
Assistant Secretary for Fair Housing
and Equal Opportunity

Questions and Answers on Hurricane Sandy 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% 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% calculation is consistent with how other types of units are treated under the HOPA. Other units similarly excluded from the 80% 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 Hurricane Sandy, lived in a county declared to be a disaster area and

designated for individual assistance from FEMA.

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.

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 wait list for evacuees searching for housing, if it is administered without regard to race, color, religion, sex, national origin, and disability. As explained in Question 2, 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 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.