



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers

FROM: Theodore Toon, Director, Multifamily Development, HUD

SUBJECT: Age Restrictions in FHA Insured Housing

Purpose:

There are inconsistencies and conflicts between various programs, policies, controlling authority, and in HUD's implementation of issues related to seniors and age-restricted multifamily housing. These issues have been raised by lenders, owners, HFAs, members of Congress, and HUD staff around the country. A Mortgagee Letter and companion Housing Notice are currently in clearance to clarify FHA and MAP Guide policy on these issues. Until the guidance is issued, however, we can effectuate the planned policy through the use of MAP Guide waivers, where appropriate. This memorandum outlines the policy positions, and provides the basis for waiver requests to be made to Headquarters.

The objective is consistent and coherent policy that adheres to the applicable laws and regulations, fully complies with the Fair Housing Act, is fair and reasonable to implement for stakeholders, promotes affordability, and that Multifamily can effectively administer. After publication of the Mortgagee Letter and Housing Notice, these policies will be incorporated in the next version of the MAP Guide, and into Asset Management guidance.

Background:

Age Restrictions and Occupancy requirements: HUD policy regarding age restrictions has been driven by the various statutory, regulatory, and administrative references, which generally fall into the following categories:

- Elderly projects which require all Head of Households to be 62 years or older, but cannot discriminate against non-elderly family members, including children. *[Most common FHA program standard.]*
- Elderly projects which require all residents to be 62 or older.
- Elderly and disabled projects *[Section 231 new construction / substantial rehabilitation program, which require not less than 50% elderly and/or disabled.]*
- Assisted projects developed prior to 1992 which allow both Elderly and Handicapped.
- Tax Credit and Tax Exempt Bond programs generally use the 55+ (80% of residents) standard and may be able to transition to FHA standards over time, assuming local zoning is permissive. In some cases these projects have been combined with Section 8 contracts or other HUD assistance, but may or may not conform to the FHA definition.
- Risk Share programs. Regulations give flexibility as to which Fair Housing exemption (55+ or other) to use in age restricted projects, but the Handbook goes to the FHA definition.

FHA/MAP Guide Policy on Age Restrictions:

1. Market-rate properties. FHA Multifamily Insurance will continue its longstanding policy of insuring age-restricted properties only if they are serving head of household 62 years or older, and which do not discriminate against nonelderly family members including children. This policy will apply to all market rate properties.
2. Affordable Properties. For affordable properties, FHA will exercise greater flexibility:
 - FHA will grandfather affordable properties with current age restrictions and allow age-restriction regimes that may not be conforming to the otherwise applicable FHA policy, whether the age restrictions are imposed by HUD, LIHTC, state, local, zoning, or affordable programs, as long as these properties meet both the relevant elderly use restrictions imposed by the applicable program, and comply with the Fair Housing Act. Properties may conform with the Fair Housing Act by not discriminating based on any protected class (including race, color, religion, national origin, familial status, disability, or sex), or if they exclude families with children under 18, by meeting a housing for older persons exemption to the Fair Housing Act (such as the 55+ exemption).
 - Assisted, age-restricted properties that serve a mix of elderly and non-elderly disabled residents pursuant to a HUD regulatory agreement or other HUD requirement will be permitted to continue to serve their targeted populations, regardless of the type of mortgage insurance or direct loan or grant financing previously used.
 - Affordable properties are defined as projects with Project based Section 8, LIHTC (new, or existing with at least 15 year remaining on the affordability use agreement), Section 202 refinancings, or "older assisted" FHA mortgage insurance programs such as Section 236 or 221(d)(3) BMIR.

Waivers:

Waiver requests on a HUD-2 must be submitted to Headquarters for approval. Please send to Tom Goade (Thomas.L.Goade@hud.gov) and David Wilderman (David.B.Wilderman@hud.gov) in the Development- Technical Support Division. The waiver request must include:

- Description of project affordability (how does it qualify as affordable?)
- Description of Age restriction currently in place, including:
 - Duration of the affordability restriction
 - Age limitation on the current restrictions
- The Borrowers certification that the project is in compliance with the application age restriction exemption under Fair Housing Law.
- The Field Office's recommendation.

Please contact me (Ted Toon) at (202) 402-8386 if you have any questions about this memorandum.