

Legal Opinion: GCH-0098

Index: 2.800

Subject: Non-Elderly Single Persons in Elderly Housing

May 25, 1994

NOTE TO: Ulysses B. Brinkley

FROM: Michael Reardon

SUBJECT: Singles Rule

This responds to your cc mail request for advice as to whether the 1990 and 1992 amendments to section 3(b) of the USH Act removing previous statutory limitations on the eligibility of single persons who are not elderly, disabled or displaced in section 8 projects had the effect of making such persons eligible for admission to section 202/8 projects.

Attached is a November 23, 1987, memorandum from Judith Y. Brachman, former Assistant Secretary for FH&EO, and Thomas T. Demery, former Assistant Housing Commissioner, to Region II describing the three-tier process for determining whether applicants are eligible for admission to section 202 projects receiving section 8 assistance. In the various contexts under which it was necessary to consider both sets of statutory requirements, the most restrictive requirement was applied in order that neither statute would be violated. Thus, applicants for admission had to be either elderly or disabled (section 202) and low-income (section 8).

The direct loan program under section 202 of the Housing Act of 1959 was replaced by a capital advance program for the elderly and a separate program for the disabled (sections 801 and 811 of NAHA) with project rental assistance that was no longer under section 8. Thus changes affecting section 8 would no longer have applicability to the section 202 and 811 programs. The remaining question is, therefore, whether removal of the statutory restriction on admission of single persons under USH Act programs would apply to section 202/8 projects. It may first be noted that earlier partial removal of bars to the admissions of singles, first to 15 percent and then to 30 percent under specified conditions was not considered applicable to section 202/8 projects. The regulatory implementation for section 8 projects (24 CFR 812.3(c)(2); 24 CFR 912.3(c)(2)) listed parts 880, 881, 883, and 886 but excluded part 885.

The final question is, then, whether Title VI of the 1992 Act when considered in its entirety made singles who are neither elderly nor disabled eligible for admission to section 202 projects. We note first that the change for section 8 and public housing projects merely removed the bar to the last excluded class; for section 202, the change would have the effect of making singles eligible when families whose head or spouse was neither elderly nor disabled would not be eligible.

Insofar as the respective statutes are concerned, it does not appear that the 1992 Act amended section 202, which continued to be limited, for

section 202/8 projects, to the elderly and disabled, and to the elderly for the capital advance projects. The question arises under section 683 of the 1992 Act because both section 202/8 and section 202 capital advance projects are included on the list of "Federally assisted housing." The House Bill H.R. 5334 and Committee Report (H.R. Rep. 102-760, p. 41), excluded "the section 202 housing program under the 1959 Act prior to the enactment of NAHA as covered federally assisted housing." Further, section 657 of the 1992 Act expressly provides that certain federally assisted projects designed for occupancy by elderly families (including housing assisted under section 202 before enactment of NAHA) may continue to restrict occupancy to elderly families. For the foregoing reasons, we believe it is clear that the 1992 Act amendments did not make singles who are neither elderly nor disabled eligible for admission to section 202/8 projects. For capital advance projects, changes to the USH Act would not be applicable.

Attachment