

Non-Prohibition of Children in Public Housing Mixed Population Projects

From Code of Federal Regulations Part 945:

945.105 Definitions.

Disabled family means a family whose head or spouse or sole member is a person with disabilities. The term “disabled family” may include two or more persons with disabilities living together, and one or more persons with disabilities living with one or more persons who are determined to be essential to the care or well-being of the person or persons with disabilities. A disabled family may include persons with disabilities who are elderly.

Elderly family means a family whose head, spouse, or sole member is an elderly person. The term “elderly family” includes an elderly person, two or more elderly persons living together, and one or more elderly persons living with one or more persons who are determined to be essential to the care or well-being of the elderly person or persons. An elderly family may include elderly persons with disabilities and other family members who are not elderly.

From the proposed rule, 1/7/94:

Since the designation process, however, provides for elderly-only housing and disabled-only housing, there is the possibility that the designation process authorized by section 622 of the 1992 Act would limit the availability of housing for (1) disabled families (if a PHA designates elderly family-only housing), (2) elderly families (if a PHA designates disabled family-only housing) or (3) families with children (if a PHA designates disabled families and/or elderly family-only housing), and thus adversely impact the maintenance and well-being of these families. **(Although it should be noted that PHAs would be required to admit eligible elderly families with children to designated projects for elderly families, and admit eligible disabled families with children to projects designated for disabled families.)** The proposed rule, however, would provide certain protections for all family types, including the protection provided by HUD’s review and approval of a PHA’s housing allocation plan. The purpose of this review is to ensure that the availability of public housing, and other housing resources available to the PHA, is not reduced for any of these families, especially non-elderly disabled families. Thus, the impact on family maintenance and well being that may result from the designation process, as proposed to be implemented by the Department through this rule, would not be significant within the meaning of the order.

And the final rule, 4/13/94:

“Elderly family” is defined to clarify that an elderly family may include one or more elderly persons with disabilities, and members of the family who are not elderly.

Comment: One commenter stated that the age distinction for “near-elderly person” is too low and should be raised to 55. Two commenters stated that the definition of “disabled families” should include an age restriction, such as 55 or 50 years of age. Another commenter stated that the definition of “elderly family” should exclude any child under the age of 55.

Response: The statute defines all of these terms (“near-elderly person,” “disabled family” and “elderly family”) and the Department is without authority to adopt the recommendations made by these commenters.

Section 621 defines “near-elderly person” as a person who is at least 50 years of age, but below the age of 62.

The statute does not provide for an age restriction in the definition of “disabled family” nor does it exclude as an “elderly family” a family with children who are neither elderly or near-elderly. In fact in the final rule, the definition of “disabled family” rule clarifies that this term includes persons and other members of the family who may be elderly, near-elderly, or who are neither elderly, or near-elderly. The definition of “elderly family” clarifies that this term includes persons and other members of the family who may be persons with disabilities or who are neither elderly nor near-elderly.