

Fair Housing & Reasonable Accommodation Overview

HACLA

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Fair Housing & Reasonable Accommodation Overview



The Players

- Public and Indian Housing (PIH)
- Fair Housing & Equal Opportunity (FHEO)
 - Washington D.C. – Headquarters (HQ)
 - Regional & Field Offices
- Dept. of Justice (DOJ) – Office of Civil Rights
- Office of Inspector General (OIG)
- Congress



What is Discrimination?



What Does Discrimination Mean in the Fair Housing Context?

- More than simply denying someone on the basis of a protected class
- Today, discrimination under federal law is:
 - *Any difference* in treatment, exclusion of, or failure to offer equal opportunity in housing because of race, color, religion, national origin, sex, familial status, age, or disability



What Does Discrimination Mean in the Fair Housing Context?

- HUD regulations also extend certain protections regarding sexual orientation, gender identity, and marital status



Protected Classes

▪ Federal Law:

- Race
- Color
- Religion
- Sex*
- Age
- Disability
- Familial Status
- National Origin

▪ HUD regulations:

- Sexual orientation*
- Gender identity*
- Marital status



What is Discrimination?



- We will be treating people differently to be sure that we are not discriminating
- *What is the barrier to housing?*
- *Not about*



What is Discrimination?

- Under the FHA, discrimination is when housing authorities:
 - Are neutral or do nothing proactive to further fair housing opportunities in their community
 - Are passive about housing needs in their community – ex., need for accessible housing in the community is not addressed by the PHA



What is Discrimination?

- Example:
 - Under the FHA, discrimination is when PHAs:
 - Treat people with disabilities the *same* instead of giving *equal access* – *proactive steps to remove barriers*



What Does Discrimination Mean in the Fair Housing Context?

- There are three types of discrimination courts or administrative enforcement agencies (HUD) may examine:
 1. Overt
 2. Disparate treatment
 3. Disparate impact



Overt Discrimination

1. Overt discrimination
 - Intentionally inflicted
 - “No _____ here.”



Disparate Treatment

2. Disparate treatment
 - Discrimination which occurs when members of a protected class are treated in a different and less favorable manner than others

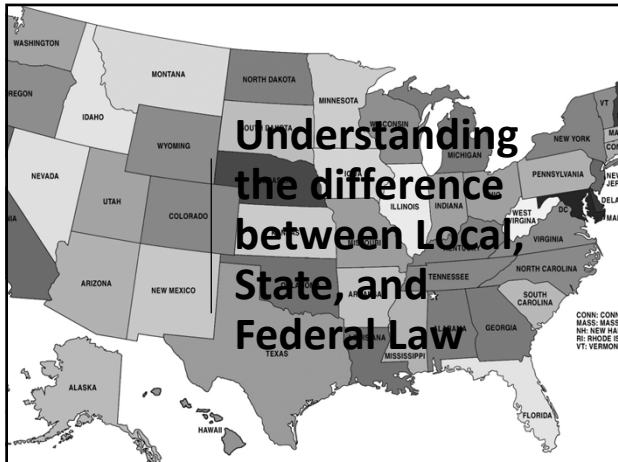


Disparate Impact

3. Disparate impact

- Innocent actions taken with no intent to discriminate can be violations of the FHA if they have side effects that adversely affect certain classes of persons
- Example: new project is good for the neighborhood but doesn't promote integration





Local, State, and Federal Law

- PHAs must be in compliance with federal fair housing laws and any state or local laws that have additional protections
- Generally, which law does the PHA follow?
 - Local, state, or federal?
 - **Most protective**



California Fair Housing Laws

- California Fair Employment and Housing Act (FEHA)
- Unruh Civil Rights Act
- Added thirteen more protected classes to the seven under federal law [Section 12005(y)]
 - Gender, gender identity, gender expression, sexual orientation, marital status, ancestry, source of income, age, medical condition, genetic information, citizenship, primary language, and immigration status



California Fair Housing Laws

- | | |
|----------------------------------|-----------------------|
| ▪ Age | ▪ Marital Status |
| ▪ Ancestry/Nat Origin | ▪ Military/Vet Status |
| ▪ Arbitrary Characteristics | ▪ Primary Language |
| ▪ Citizenship/Immigration Status | ▪ Race/Color |
| ▪ Disability | ▪ Religion |
| ▪ Familial Status | ▪ Sex/Gender |
| ▪ Gender Identity/Expression | ▪ Sexual Orientation |
| ▪ Genetic Info | ▪ Source of Income |



California Fair Housing Laws

- California Supreme Court has interpreted other “arbitrary characteristics” as protected under the Unruh Civil Rights Act
 - Includes discriminating against individuals based on personal characteristics that are unrelated to their ability to be good tenants (e.g., individuals with piercings, visible tattoos, green hair, etc.)



California Fair Housing Laws

- California law SB 329
 - Prohibits owners from discriminating against tenants who rely on housing assistance such as Section 8 HCV to help them pay rent
 - Changes definition of “source of income” under FEHA to include housing subsidies such as voucher assistance



California Fair Housing Laws

- Section 12180(b)(5) of the new CA fair housing regulation clarifies the prohibition of discrimination against individuals associated with an individual with a disability includes an obligation to provide reasonable accommodation due to the association
 - For example, providing an accommodation if needed by visitors due to a disability – not making such accommodations to visitors with disabilities would constitute discrimination against the tenant because of the association



Working with Legal Aid and Other Advocacy Groups

- TRUST: by developing long-term rapport with key personnel, you lay a foundation of trust and accountability with the community
 - Same mission?
 - Same low-income people you are serving
 - You can always say “no thanks!”



Outreach

- Reach out to advocates:
 - “We want your help.”
- Ask others/yourself:
 - “How can we do better?”
 - Approach your work with the nonprofit community on the *offensive* – don’t wait for a lawsuit!



Section 504

- HUD regs at 24 CFR Part 8
- Only apply to “recipients” of federal dollars (PHAs)
 - Not private landlords



Section 504

- PHAs must *affirmatively ensure* that people with disabilities given *equal opportunity* to participate in and receive housing
 - Must be provided housing or benefits as *effective* as that afforded others



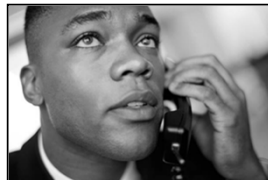
Section 504

- Obligation to administer the program in the *most integrated setting* appropriate
 - Ex., better that a person with a hearing impairment participate in the general tenant briefings with a sign language interpreter than to segregate in an individual briefing



Statutory Communication Requirements

- PHA must take “appropriate steps to ensure effective communication...”
 - 24 CFR § 8.6



The Obligation to Provide Auxiliary Aids

- Must furnish appropriate auxiliary aids where necessary to afford a person with a disability an equal opportunity to participate
 - For example: TTY, Braille
 - Not required to provide readers for personal use or study, or other devices of a personal nature



The Obligation to Provide Auxiliary Aids

- PHAs must ensure effective communication
 - May never require the applicant to provide, or pay for, his/her own sign language interpreter
 - See Notice PIH 2010-26



Obligations under California Law

- Assistance completing forms: Section 12176(c)(6) explains that HACLA must treat a request by an individual with a disability for assistance completing forms or in following procedures, or a request for an alternative method of communication during the reasonable accommodation process, as a request for an RA that must be addressed



Obligations under California Law

- Interactive process: Section 12177 clarifies that whenever a person who receives a request for a reasonable accommodation cannot immediately grant the request, that person considering the request must engage in an interactive process
 - This section also clarifies that an undue delay may constitute a denial of the RA



Obligations under California Law

- Approvals that could open the floodgates:
Section 12179(d) explains that HACLA cannot deny a request based on fear that an approval might become an undue burden if extended to multiple other individuals who might request the same accommodation



Section 504

- PHAs administering public housing will incur costs to fully comply with the law
 - Modifications to a unit for a person with a physical disability



Section 504

- In HCV, neither PHA nor private landlord is obligated to pay for modifications to a unit
 - However, PHA may use their administrative fees to assist with modifications
 - Be aware of resources in the community that could help families with costs



Section 504

- If a PHA employs fifteen (15) or more people, it must have a designated employee to coordinate compliance with Section 504 and...
- PHA must adopt grievance procedures that incorporate due process standards to provide for resolution of complaints (24 CFR § 8.53)





Choosing
where you live
is a right.

Housing discrimination is wrong


Discrimination because of race, color, religion or national origin is illegal. The only way to stop it is for you to report

visit www.hud.gov/fairhousing or call the HUD
1-800-669-9777 (voice) 1-800-927-9277



A public notice campaign from the U.S. Department of Housing and Urban Development. For more information, visit www.hud.gov/fairhousing. National origin, sex, family status or disability are not covered.

**Fair Housing
Complaints**



Fair Housing Complaints

- How will the PHA handle complaints from applicants or participants who believe they have been subject to discrimination?
 - Make the complaint process well known
 - Remedy complaints in a timely manner
 - Provide discrimination complaint form
 - Be eager to learn from complaints



Fair Housing Complaints

- Can be filed with HUD, state/local human rights commission, state/federal court
 - HUD has a duty to investigate and respond within 100 days
- Actions can be brought against a PHA by an individual, HUD, or DOJ



Fair Housing Complaints

- California Department of Fair Employment and Housing (DFEH)
 - <https://www.dfeh.ca.gov/>
 - Handles employment and housing discrimination complaints
 - Step by step procedures for filing the complaint on the website





PHA Compliance with HUD Regulations and Fair Housing Laws



Notice of Nondiscrimination and Record Keeping

- Record keeping
 - HUD requires PHAs to maintain records on applicants and participants for at least three years regarding racial, ethnic, gender, and disability status
 - This data is captured in your 50058 PIC reporting
 - FHEO may compare such data to census data of the PHA's community to be sure that the PHA is reaching all low-income individuals



Notice of Nondiscrimination and Record Keeping

- Every PHA must have a posted policy on non-discrimination
 - Where is yours?
- Get your free posters at http://portal.hud.gov/hudportal/documents/hudoc?id=Fair_Housing_Poster_Eng.pdf



- HUD requires PHAs to maintain records on applicants and participants for at least _____ regarding racial, ethnic, gender, and disability status.

- 20 years
- 3 years
- 120 days
- Forever





HUD's Definition of a Person with a Disability

1. 24 CFR 5.403:

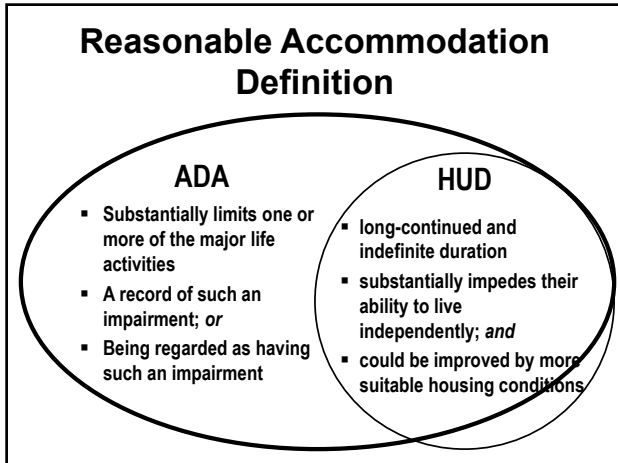
- (A) Person meets the Social Security Administration definition of a person with disabilities as defined in 42 U.S.C. 423; *or*
- (B) Person has a physical, mental or emotional impairment that:
 - is expected to be of long-continued and indefinite duration;
 - substantially impedes their ability to live independently; *and*
 - is of such a nature that the ability to live independently could be improved by more suitable housing conditions; *or*
- (C) Person has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000: "A severe, chronic disability that..."

Reasonable Accommodation Definition

2. The term "disability" means:

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; *or*
- Being regarded as having such an impairment
- ADA/FHA/Section 504





That Substantially Limits One or More Major Life Activities

- Includes practically any condition, disease, illness, disfigurement, or disorder
- Substantially limits one of more major life activities:
 - Caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, bending, standing, eating, lifting, concentrating, thinking...

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Remember

The graphic is a square with a light gray background. At the top, it says 'Some disabilities look like this'. Below this text are three black icons: a person with a cane, a person in a wheelchair, and a person with a white cane. Below these icons, it says 'Some look like this'. At the bottom is a single black icon of a person standing.

Substantially Limits

- Temporary impairments
 - Resolved on a case-by-case basis
 - Consideration of duration of the impairment and the extent to which it limits major life activity
 - Knowledgeable professional verification:
 - “a professional competent to render the opinion and knowledgeable about the person’s situation”



Record of Impairment

- A record of such an impairment...
 - Person who has a history of an impairment that substantially limited a major life activity
 - E.g., someone who has recovered from an impairment (such as a mental illness)
 - Includes persons who have been misclassified as having an impairment



Regarded as Having an Impairment

- Perception
 - Person is treated as if he has an impairment
 - Remember, we presume competence!
 - A person is denied services or benefits by a PHA because of myths, fears, and stereotypes associated with disabilities



Limitations Specifically Excluded from Disability Protection

- People currently engaging in illegal use of controlled substances
- Sex offenders, by nature of their status
- When alcohol use interferes with the rights of others
- A person with a disability that poses a direct threat or substantial risk of harm to others



Summary: Disability Definitions

- Your verification forms must reflect two different definitions
 - *Meaning: different verification forms necessary for reasonable accommodation versus disability status for HUD 5.403 for program eligibility, mainstream vouchers, rent calc deductions, community service*
 - HUD 5.403 harder to meet





Reasonable Accommodations



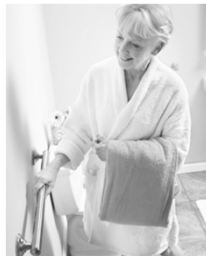
What is a Reasonable Accommodation?

- A change, exception, or adjustment to a rule, policy, practice, or service
- Necessary for a person with a disability to have an equal opportunity



What is a Reasonable Accommodation?

- Reasonable accommodations eliminate barriers preventing people with disabilities from fully participating in everyday aspects of life – including housing opportunities



Summary: RA Process

- Notify *all* applicants and participants of their RA rights
- Receive request from (or on behalf of) applicant/participant
- Verify disability (if necessary)
- Verify nexus (if necessary)
- Determine if request is “reasonable”
- Approve or deny



To Verify or Not to Verify? HUD DOJ Joint Statement



- PHA may verify disability and nexus
- But NOT verify if “obvious or otherwise known”

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What a PHA May Request

- Can’t limit verification to only doctors
- Could be “professional competent to render the opinion and knowledgeable about the person’s situation”
 - Acupuncturist? Social worker? Therapist?
 - “Licensed professional?” or “Within the scope of professional competence?”
- Fraud clause

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California “Third Party Verification”

- California “third party verification” is more protective than the HUD definition of “knowledgeable professional”
- CA regulation clarifies that depending on the individual’s circumstances, info establishing the person has a disability or confirming disability-related need for the requested accommodation may be provided by “any reliable third party”

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California “Third Party Verification”

- “Any reliable third party” includes medical and non-medical professionals, caretakers, In-Home Supportive Services workers, or others in a caregiving relationship *including relatives*



California “Third Party Verification”

- Section 12178(g) states “Any other reliable third party who is in a position to know about the individual’s disability...This could include a relative caring for a child with a disability, a relative caring for an elderly family member with dementia, or others in a caregiving relationship with a person with a disability”



What the PHA Can Ask

- PHA may require documentation of manifestation of disability that causes need for a specific accommodation
- Applicant/tenant/participant must give PHA consent to contact third-party professional



Requirement to Keep Information Confidential

- Legal Aid calls to talk about Mr. Jones' denial of a reasonable accommodation...
 - Do you have a release to talk?
 - Scope of the release?



What the PHA Can Ask

- PHA may verify business-related "need to know"
 - HUD definition for designated housing, qualification for allowances
 - Request for an accommodation
 - Appeal of denial or hearing for termination – mitigating circumstances or reasonable accommodation



What the PHA Can Ask

- All landlords need well-run, financially viable housing meeting tenant needs
- Screening criteria for *basic obligations of tenancy*:
 - (1) Paying the rent;
 - (2) Basic housekeeping requirements;
 - (3) Not interfering with the quiet enjoyment of other residents; and
 - (4) Complying with other rules that are designed to promote health and safety or harmonious living



What the PHA May *NOT* Request

- Again, if the person's disability or need for the requested accommodation is obvious, readily apparent, or otherwise known to the PHA, the PHA may not request additional information
- Inappropriate and unnecessary to receive actual medical records



What PHA May *NOT* Request

- If the PHA receives confidential information about a person's specific diagnosis, treatment, or information regarding the nature/severity of the disability, the PHA should dispose of it
- In place of specific information, note in file that a disability has been verified, date received, and name and address of knowledgeable professional
- PIH Notice 2010-26



What the PHA May *NOT* Ask

- Do you have a disability? A family member?
 - *Unless necessary to determine qualification for program or type of housing*
- Nature or extent of disability (What kind of depression? How long have you had it?)
- Any question requiring waiver or disclosure of medical condition or history



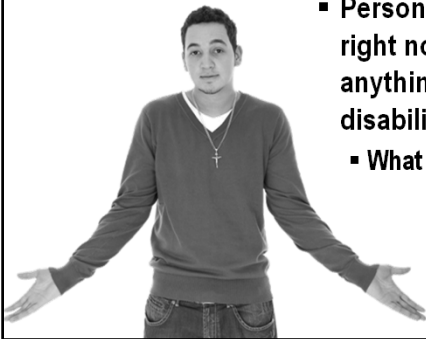
What the PHA May *NOT* Ask



- What's wrong with you?
- How long have you had that?
- Is it serious?
- Who gave it to you?
- Will it always look like that?



What the PHA May *NOT* Ask



- Person always has right not to say anything about disability?
 - What about fraud?



Ability to Live Independently

- PHA can't require that applicant or tenant be able to live independently



Ability to Live Independently

- PHA can require family to be lease-compliant
 - Don't have to throw common-sense health and safety concerns out the window
 - Emergency contacts/disaster planning/mandatory reporting requirements



Nexus

- For a person to be granted a reasonable accommodation, there must be more than just a disability
 - There must exist a barrier to the person's housing
- Document the relationship ("nexus") between the disability and the barrier to housing



Nexus

- In order for a person to be granted a reasonable accommodation, there must be more than just a disability
 - There must exist a barrier to the person's housing
- Document the relationship between the disability and the barrier to housing



Nexus

- Maria receives SSDI. She requests that she receive an exception payment standard so that she can rent a particular unit in the city.
- PHA decision is: nexus?



Nexus

- Momadou uses a wheelchair. He relies on his brother to help him with transportation. Momadou requests an extension of his initial voucher time since his brother can only take him to visit units on the weekends, and he's having a hard time finding an accessible unit.
- PHA decision is nexus?



Nexus

- Carl is deaf and lives in assisted housing. He requests a live-in aide and an extra bedroom so that the live-in aide may have his own room as a reasonable accommodation.
- PHA decision: nexus?



**Pop
Question**

- A PHA may decide to limit verification of a disability-related need for an accommodation to physicians only.
 - True
 - False

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**Pop
Question**

- The ADA definition of “disabled” for purposes of reasonable accommodation is _____ than the HUD definition of “disabled”.
 - Broader
 - Stricter
 - Identical

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**Pop
Question**

- “Nexus” means a connection between the barriers posed by the disability and how the accommodation would remove or alleviate the barriers.
 - True
 - False

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Pop Question

- The PHA must always verify that the person is disabled under ADA and that there is a nexus.
 - True
 - False

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Reasonable Accommodations

- Three most important words in the reasonable accommodation process: *document, document, and document*
- From moment applicant or occupant requests an accommodation...
 - A paper trail must be created documenting dates, times, conversations, and paperwork

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PHA Obligation to Notify

- Must inform applicants and participants of right to request a reasonable accommodation
 - Forms, letters, posters, signs
 - Which forms? Which letters? All? Some?
 - “If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, contact...”

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PHA Obligation to Notify

- PHA creates or adopts standardized forms
 - Ask the same questions of everyone
 - NOTE: *PHA must still give consideration to requests for reasonable accommodation if requester makes the request orally or doesn't use PHA's preferred forms or procedures*



Procedural Guidelines for Considering Requests

- PHA should have written procedures:
 - Verification process – how many times? How long does PHA wait for return verification? Who follows up with knowledgeable professional?
 - What forms or standard letters are used?
 - Time periods for decision and implementation
 - Right of appeal



Applicant or Tenant Must Request a Specific Accommodation

- PHA should never offer an accommodation until one is specifically requested
 - The requester does not need to use the PHA's preferred forms or procedures; can request orally
- Treating people differently because of a perceived disability is discrimination



The Request Begins a Process

1. Was an accommodation requested?
2. Is this a person with a disability?
3. Nexus between disability and the specific request?
4. Is the request reasonable?



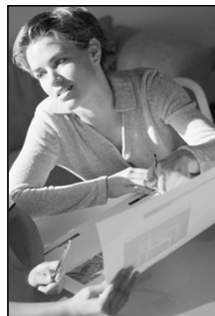
Art of the Reasonable Accommodation Conversation

- The first answer to an accommodation request is never “NO. End of discussion.”
- If PHA refuses a request because it isn’t reasonable, PHA should discuss with the requester whether there is an alternative
 - If alternative would meet the disability-related needs, PHA must grant it



Treat Each Case Individually

- Treat each case on individual merits
- Requestor’s chosen accommodation should be carefully considered
- *Not a legit reason for denial:* floodgates will open (they will all want it)





Consideration of Reasonableness of Request



Consideration of Reasonableness of Request

- PHA can deny a request for a reasonable accommodation if...
 1. It wasn't made by or on behalf of person with disabilities
 2. There is no disability-related need (nexus) for accommodation
 3. The request is not reasonable



Consideration of Reasonableness of Request

- Request is not reasonable if...
 - Will result in an undue administrative and financial burden to PHA or
 - Would fundamentally alter the nature of PHA work or
 - Even with an accommodation, there is a direct threat



Consideration of Reasonableness of Request

- Undue financial and administrative burden
 - Determination made on case-by-case basis, looking at factors such as:
 - Overall size of the PHA's program
 - Type of operation including composition and structure of workforce
 - The nature and cost of what is needed
 - Availability of alternative accommodations



Consideration of Reasonableness of Request

- Fundamental alteration...
 - Essential program requirements need not be waived
 - Does request require a substantial change in primary purpose or benefit of a program...
 - Removal of load bearing structure?
 - Person requesting housekeeping services?
 - Can't pay rent?



Direct Threats

- Could deny/terminate if:
- Even with an accommodation, there is a "direct threat" to the health or safety of others or would...
 - Result in substantial physical damage to the property of others
 - *Unless the threat can be eliminated or significantly reduced by RA*



Direct Threats

- Cannot deny or terminate assistance based on fear, speculation, or stereotype about a particular disability
 - Individualized assessment based on objective evidence



Direct Threats

- The assessment should consider:
 1. The nature, duration, severity of the risk;
 2. The probability that injury will actually occur; and
 3. Whether there are any reasonable accommodations that will eliminate the threat

(May request documentation of how the circumstances have changed)



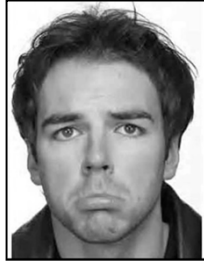
Serious or Repeated Lease Violations

- Person claims that their inability to meet the lease provisions was a result of their disability:
 - Third party verification may be requested that their behavior (caused by disability) and the lease violation are connected
 - Participant shows that a RA will allow them to meet the lease next time, and therefore they should be recertified to move



Serious or Repeated Lease Violations

- Housing provider may ask for “satisfactory assurances” that a tenant will have different behaviors if given another opportunity



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Assistance Animals


Assistance Animals

- FHEO Notice 2020-01
 - Published January 28, 2020
 - Makes distinction between service animal and support animals under the umbrella term “assistance animals”




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Assistance Animals vs Pets	
<ul style="list-style-type: none"> ▪ Assistance Animals <ul style="list-style-type: none"> ▪ Needed due to disability ▪ Service <ul style="list-style-type: none"> ▪ Dogs/miniature horses trained to perform a disability-related task ▪ Support <ul style="list-style-type: none"> ▪ Animals related to disability but either <ul style="list-style-type: none"> ▪ Not a dog/horse or ▪ Not trained for specific task 	<ul style="list-style-type: none"> ▪ Pets <ul style="list-style-type: none"> ▪ Animals we have because we like them



Service Animals – California Law
<ul style="list-style-type: none"> ▪ Service animals are any animals trained to perform a task, including but not limited to: <ul style="list-style-type: none"> ▪ Guide dogs or other animals trained to guide a blind individual (Civil Code 54.1) ▪ Signal dogs or other animals trained to alert a deaf or hard-of-hearing individual to sounds (Civil Code 54.1) ▪ Service dogs or other animals individually trained to the requirements of an individual with a disability (Civil Code 54.1) ▪ Miniature horses meeting the requirements of 28 CFR 35.136(i) ▪ Service animals in training as defined under Civil Code 54.1(c) and 54.2(b)

Assistance Animals
<ul style="list-style-type: none"> ▪ Pet policies do not apply to service animals or support animals ▪ An animal is an assistance animal, or a pet ▪ If it is an assistance animal, it is either a service animal or a support animal



Service Animals

- PHA must first evaluate if animal is a service animal
- Only two questions under ADA:
 - Whether the dog (or other animal in CA) is required because of a disability?
 - If yes, and not readily apparent, has the dog (or other animal in CA) been trained to perform work or tasks?



Service Animals

- FHEO Notice 2020-01, under ADA:
 - PHA may not require proof that animal is certified, trained, or licensed
 - Even if disability and work or tasks performed by service animal aren't readily apparent
 - No inquiries when readily apparent



Service Animals and Support Animals – California Law

- Note that since California law is more protective for the individual with disabilities the following applies:
 - Apply California service animal definition first, along with the ADA test, and if it meets the test, just say YES
 - If not, go to the reasonable accommodation process under FHA and 504 for support animal



Support Animals

- HUD: May include untrained dogs and/or animals other than dogs
- CA Law: Animals that provide emotional, cognitive, or other similar support to an individual with a disability
 - Does not need to be trained or certified
 - Also known as comfort or emotional support animals



Service & Support Animals

- FHEO Notice 2020-01:
 - Animal may not be denied unless:
 - Animal is out of control, handler can't or won't control it
 - Animal isn't housebroken
 - Animal poses a direct threat
 - PHA may require proof that all animals have had their shots



- What is reasonable for one participant must be considered reasonable for another.
 - True
 - False



Pop Question

- The steps of reasonable accommodation – inform of rights; hear request; acknowledge request; negotiate; verify; check “reasonable”; accept or deny request – are always sequential.
 - True
 - False

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Pop Question

- A person with disabilities requesting an accommodation must always use the PHA’s forms and follow the PHA’s written process.
 - True
 - False

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Fair Housing Issues in Assisted Housing

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**The Violence Against Women
Reauthorization Act
(VAWA)**



**The Violence Against Women
Reauthorization Act (VAWA)**

- To reduce domestic violence, dating violence, sexual assault, and stalking
- To prevent homelessness of the victims of such acts
- To protect victims who reside in PH and HCV
- Despite its title, VAWA applies regardless of sex, gender, or sexual orientation



Forms of VAWA Documentation

- Notice of Occupancy Rights (HUD-5380) and certification form (HUD-5382) must be provided at admission, and along with any notice of denial or termination/eviction
- Notice must be made available in multiple languages per LEP requirement



Final Rule for VAWA 2013

- PHAs must establish an emergency transfer plan (ETP) for victims as part of their ACOP or admin plan
- Based on HUD's model emergency transfer plan



Denial of Admission

- VAWA prohibits PHAs from denying admission to otherwise qualified applicants simply because they are, or have been, victims



Denial of Admission

- When an applicant appears unsuitable due to bad credit, poor landlord references, or a history of evictions or crime, the PHA can deny admission
- PHAs must include VAWA Notice of Occupancy Rights (5380) and form HUD-5382 with all notices of denial



Terminations

- VAWA states that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking:
 - Will not be construed as a serious or repeated violation of the lease by the victim
 - Will not be good cause for terminating the tenancy or occupancy rights of the victim



Final Rule for VAWA 2013

- For mixed families where the eligible person is the perpetrator, PHA must provide any remaining tenant(s) that were not already eligible (noncitizens rule) a period of 30 calendar days to establish eligibility in the same or another housing program, or find alternative housing



Final Rule for VAWA 2013

- VAWA doesn't limit PHA's authority to terminate tenancy or assistance when there is an actual and imminent threat to other tenants, employees, or others providing services to the property



Moves

- Prior to VAWA, a PHA was prohibited from providing portability to a family that moved out of its assisted unit in violation of the lease
 - VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of a victim
 - Under new rule, other portability exceptions may apply in some cases



Certifications

- As specified in the final rule, if the PHA requests documentation, the applicant or tenant may submit one of the following:
 - A signed HUD-5382
 - A document signed by a “professional” and signed by the applicant or tenant that specifies that the professional believes the occurrence is grounds for VAWA protections



Certifications

- A *professional* can be an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional
- Federal, state, tribal, territorial, or police or court records also acceptable
- A statement or other evidence provided by the tenant may be accepted at the PHA's discretion



Certifications

- Individuals requesting protection cannot be required to provide third-party documentation
 - Although PHA may require third-party if there is conflicting information



Emergency Transfer Plan

- ETP must provide for immediate transfer to a safe unit if one is available and client would not have to apply
- Policies must describe priority of VAWA transfers in relation to other transfers
- Must describe policies for emergency transfers of HCV participants



Emergency Transfer Plan

- ETP must include policies for transfers when a safe unit is not immediately available
 - Whether client would or would not have to apply
- ETP must be made available on request or publicly available



Emergency Transfer Plan

- Victims of sexual assault qualify for emergency transfers if:
 - They reasonably believe there is a threat of imminent harm, or
 - The sexual assault occurred on the premises within 90 days before transfer request



Confidentiality

- Information provided to PHA or HCV owner or manager:
 - Shall be retained in confidence
 - Shall not be entered into a shared database or provided to any related entity
 - Unless individual consents or requests
 - Unless required for use in eviction/termination proceedings
 - Unless otherwise required by law



Notice PIH 2017-08

- Issued May 19, 2017
- Provides detailed guidance for implementing requirements in the Final Rule for VAWA 2013
- Offers useful examples and scenarios, and provides clarifications on certain aspects of the rule



Notice PIH 2017-08

- Clarifies that PHAs and owners may not conduct further “fact finding” to verify the “validity” of victim status, although if PHA or owner already has or receives reliable conflicting information, they may require additional third-party documentation





**Discrimination Affecting
Limited English Proficient (LEP)
Persons**



Who is a Limited English Proficient Individual?

- Generally, a person *self-identifies* as LEP in order for the PHA to provide assistance
- A person can be LEP only “part-time”
 - “Limited” English proficiency could depend on circumstances
- U.S citizenship does not determine whether a person is LEP



Who is a Limited English Proficient Individual?

Q: May recipients rely upon family members or friends of the LEP person as interpreters?

A: Generally, recipients should not rely on family members, friends of the LEP person, or other informal interpreters

- Communication cost burdens are on PHA
- “Please bring an interpreter...” (no good!)



Language Services

- Oral interpretation
 - PHA must offer competent oral interpretation, free of charge, upon request
 - Language line!



Into What Languages Should Documents Be Translated?

- Many important documents are now available in the *forms library* of HUD’s Client Information and Policy System (HUDCLIPS)
- 10 languages
 - Arabic, Cambodian, Chinese, Creole, French, Hmong, Korean, Russian, Spanish, Vietnamese
 - <http://www.hud.gov/offices/adm/hudclips>



Forms Translated by HUD

- HUD-9886, Authorization for the Release of Information
- HUD-52517, Request for Tenancy Approval
- HUD-52641, Housing Assistance Payments (HAP) Contract
- HUD-52641-A, Tenancy Addendum
- HUD-52646, Voucher
- HUD-52649, Statement of Homeowner Obligations
- HUD-52650, Family Self-Sufficiency (FSS) Program Contract
- HUD-52652, FSS Program Escrow Account Credit Worksheet
- HUD-5382, Certification of Domestic Violence, Dating Violence, or Stalking





Familial Status Issues



Familial Status

- The Fair Housing Act makes it unlawful for a housing provider to refuse to rent to families because they have children, or impose different terms or conditions on families with children



Familial Status

- Ex: a single mother and her son are not permitted to rent a one-bedroom apartment by a building manager. The manager, however, permits two adults to rent a one-bedroom apartment. This apartment's occupancy policies or practices violate the familial status provisions of the FHA



Familial Status Public Housing

- It is familial status discrimination to forbid children from residing in a designated elderly, disabled or mixed-family development



Pop Question

- A PHA may limit how many times a participant or tenant is awarded rights under VAWA due to a succession of abusive relationships.
 - True
 - False



Pop Question

- The following are protected under VAWA.
 - a. Women only
 - b. Women and children only
 - c. Men, women, and children
 - d. Up to PHA policy
 - e. Children only

Summary

- What have we learned?
 - Did you learn anything that helped you?
 - Any surprises?
 - What will you do differently in your job?



Thank you for attending!
