Public Housing Current Affairs

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Diana Schultz,
Portfolio Management Specialist

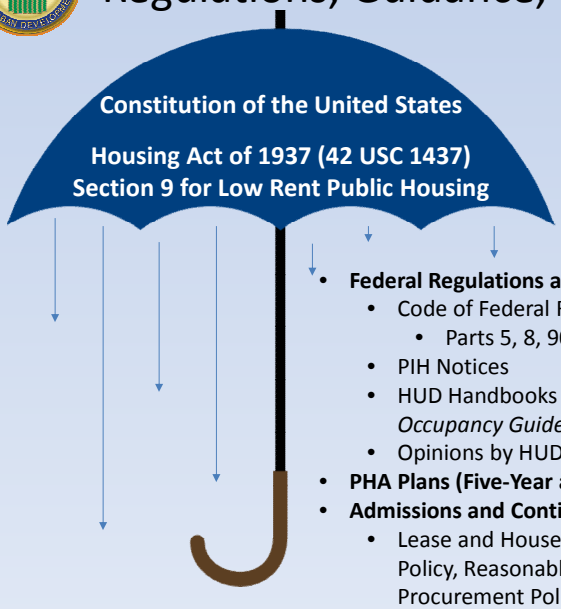
Public Housing Current Affairs

- Regulations, Guidance, PHA Policy Overview
- Hot Topics:
  - HOTMA
  - Streamlining
  - Arrest Records
  - Lead Based Paint
  - CSSR
  - Flat Rent
  - PHA Plan Templates
- Frequently Asked Questions:
  - General Occupancy
  - Equal Access
  - Repayment Agreements
  - Service Animals vs Pets
- Housekeeping:
  - Declarations of Trust
  - HUD General Depository Agreement

Regulations, Guidance, and PHA Policies

Housing Authority Policies

Regulations, Guidance, and PHA Policies



- **Federal Regulations and HUD Guidance**
  - Code of Federal Regulations – Title 24
    - Parts 5, 8, 902, 905, 908, 960, 966, etc.
  - PIH Notices
  - HUD Handbooks and Forms (i.e. *Public Housing Occupancy Guidebook or HUD Form 50058)*
  - Opinions by HUD's Office of General Counsel (OIG)
- **PHA Plans (Five-Year and Annual)**
- **Admissions and Continued Occupancy Policy (ACOP)**
  - Lease and House Rules, Tenant Selection Policy, Pet Policy, Reasonable Accommodation Policy, Procurement Policy, etc.

Mandatory vs. Discretionary Guidance

- Mandatory (must/shall be followed)
  - Statutes
  - HUD regulations
  - Current PIH Notices
  - HUD Handbooks and Forms
  - Opinions by OIG
- Discretionary (may/elect/choose to follow = optional)
  - Guidebooks
  - Expired PIH Notices
- Safe Harbor
  - When a policy is not mandatory, HUD recommends PHAs follow discretionary guidance. This is because even though it is at a PHA's option to implement, HUD has determined it to be in compliance.
  - Where a PHA implements policy outside of HUD guidance, there is no "safe harbor."

Housing Opportunity Through Modernization Act of 2016 (HOTMA, HR 3700)

Housing Opportunity Through Modernization Act of 2016 (HOTMA, HR 3700)

- What is it?
  - Most sweeping housing policy change since QWHRA of 1998.
  - Approved on July 29, 2016
- When does it go into effect?
  - HOTMA authorizes HUD to implement through regulation or a PIH Notice; however, OMB review may still be necessary!!
  - PHAs should **not** modify their ACOPs at this time.

HOTMA – Rent Policy Affordability and Minimum Rents

- Minimum Rent Threshold did *not* change. It is still a maximum of $50.
- HOTMA states HUD must certify to Congress within 6 months that Minimum Rent Hardship Exceptions are being enforced.

HOTMA – Rent Policy
Recertification of income

- Frequency of reviews
  - At admissions
  - Annually, unless a "fixed income" family
  - At request of family, at any time the income or deductions decrease 10% (or a lesser amount determined by HUD) or more in annual adjusted income
  - At any time the income or deductions increases by an amount estimated to be 10% or more in adjusted annual income (or such amount determined by HUD)
    - An interim recertification for an increase in adjusted annual income must be preceded by a decrease in income
    - If within last 3 months of recertification PHA may choose not to complete interim recertification

HOTMA – Rent Policy
Use of prior-year income

- At initial income determination, PHAs must use <u>current</u> income.
- At interim recertifications, PHAs must use <u>current</u> income.
- At annual recertifications of income, PHAs must use <u>prior year</u> income.

HOTMA – Rent Policy
Work-related deductions

- Eliminates Earned Income Disregard (EID)
  - Language in HOTMA that removes it, "(2) by striking subsections (d) and (e);" of Section 102 (a)(7)(F) of the Housing Act of 1937.
- Child care deduction is unchanged.

HOTMA – Rent Policy
Dependent standard deduction

- Deduction stays at $480 per dependent
- However, will be adjusted for inflation. Inflationary adjustments will be rounded up to the next multiple of $25.

HOTMA – Rent Policy
Elderly and persons with disabilities deduction

- Deduction increases to $525 per family. Also, will be adjusted for inflation. Inflationary adjustments will be rounded up to the next multiple of $25.
- Limits deductions to expenses exceeding 10% of annual family income.
  - HUD will enact regulations for families who due to financial hardships cannot pay rent increases required by HOTMA's deduction provisions.
  - HUD must conduct a study on the impact upon elderly and disabled families.

HOTMA – Rent Policy
Veterans' aid and attendance expenses

- Excludes from income "any expenses related to aid and attendance under section 1521 of title 38, United States Code, to veterans who are in need of regular aid and attendance"

HOTMA – Rent Policy
Income from assets

- Income from assets is still included in rent determination
- Imputed income from assets are counted on net family assets over $50,000.

HOTMA – Rent Policy
Verification of income and cross-program data sharing

- PHAs may to the extent such information is available to them, determine the family's income prior to the application of any deductions based on timely income determinations made for purposes of other means-tested Federal public assistance programs (TANF, Medicaid and SNAP/Food Stamps).
  - HUD, in consultation with other Federal agencies, must develop electronic procedures to enable PHAs to have access to benefit determinations that HUD determines to have comparable reliability

HOTMA – Rent Policy
Impact on program costs

- HUD may make adjustments to the Operating Fund Formula if the report identifies a material reduction in the net income of public housing agencies nationwide. Should any overall material reduction in public housing revenues be found, HUD must recommend legislative changes to Congress.

HOTMA – Eligibility
Income eligibility

- Establishes families are over-income if for the most recent two consecutive years they have an income of 120% or more of Area Median Income (AMI).
- Any families found to be over-income must be charged either the higher of:
  - The fair market rent for the unit,
  - The monthly subsidy (Operating Fund and Capital Fund) for the unit,
  - OR – not later than 6 months after the over-income determination terminate tenancy
- PHAs must report annually the number of over-income families residing in public housing & the number of over-income families on the waiting list

HOTMA – Eligibility
Limitation on eligibility based on assets (1)

- PHAs may establish a net family asset limit of $100,000 per year (adjusted by inflation each year)
  - EXCLUSIONS to net family asset limits include:
    - Personal property, retirement accounts, real property that that the family has no legal authority to sell, educational savings accounts, amounts received under civil actions or settlements, interest in Indian trust lands, equity in property receiving the homeownership option, Family Self-Sufficiency escrow accounts, or other exclusions established by HUD
    - Trust funds: If the trust is not revocable, or under the control of any family member as long as it continues to be held in trust (ie funeral trusts, special needs trust funds, etc)
    - Establishes that families that have a legal right to reside in and the effective legal authority to sell real property that is suitable for occupancy by the family is ineligible for assistance.

HOTMA – Eligibility
Limitation on eligibility based on assets (2)

- PHAs may establish that families that have a legal right to reside in and the effective legal authority to sell real property that is suitable for occupancy by the family is ineligible for assistance. This shall not apply to:
  - Any property for which the family is receiving assistance under the homeownership option or the assistance for rental of manufactured housing.
  - Any person who is a victim of domestic violence
  - Any family that is offering such property for sale

HOTMA – Eligibility
Limitation on eligibility based on assets (3)

- If PHAs establish in their PHA Plan, families may self-certify net family assets and homeownership:
  - A PHA may determine the net assets of a family based upon a certification by the family that the net family assets do not exceed $50,000 (as adjusted by inflation)
  - A PHA may determine based upon a certification by the family that the family does not have any current ownership interest in any real property at the time the PHA reviews the family's income.

HOTMA – Eligibility
Limitation on eligibility based on assets (4)

- For limitations on eligibility based on assets ONLY:
  - PHAs may establish limitations on eligibility based on assets.
  - PHA may also choose to set exceptions to a eligibility based on assets. The exceptions may provide for separate treatment based on family type and based on different factors such as age, disability, income, the ability of the family to find suitable alterative housing, and whether supportive services are being offered.
  - PHAs may delay for up to 6 months evictions of public housing tenants.

HOTMA – Eligibility
Limitation on eligibility based on assets (5)

- For limitations on eligibility based on assets ONLY:
  - PHAs ***may*** establish limitations on eligibility based on assets. This is not a mandatory eligibility limitation.
  - PHA may also choose to set exceptions to a eligibility based on assets. The exceptions may provide for separate treatment based on family type and based on different factors such as age, disability, income, the ability of the family to find suitable alterative housing, and whether supportive services are being offered.
  - OR PHAs may delay for up to 6 months evictions of public housing tenants.

HOTMA – Eligibility
Income and asset verification

- Requires PHAs to require families to authorize access to financial records, if needed, to verify income and assets.
- This authorization would remain in place until the earliest of:***
  - Rendering of a final adverse action
  - Cessation of the recipient's eligibility for assistance
  - The express revocation by the by the applicant or recipient
- The PHA may if an applicant or recipient refuses to provide, revokes any authorization to obtain financial records that the applicant or recipient is ineligible for benefits

***Current HUD Form 9886 expires after 15 months……..

HOTMA – Public Housing Funding Flexibility

Public Housing Operating and Capital Fund Flexibility

- Allows all PHAs to transfer up to 20 percent of operating funds appropriated for 2016 and later years to the capital fund.

HOTMA – Public Housing Funding Flexibility

Public Housing Capital Fund Replacement Reserves

- *At the option of the PHA*, allows PHAs to establish replacement reserves using capital funds, and *at the discretion of HUD,* other funding sources (including operating funds in excess of the 20% that HOTMA would allow to be transferred to the capital fund). PHAs may not hold replacement reserves beyond the amount needed to cover anticipated capital needs.
- Replacement reserves will be exempted from obligation and expenditure timeframes under the Capital Fund.

HOTMA – FUP

Family Unification Program

- FUP eligibility is extended to former foster youth up to 24 years old and other eligible youth who leave foster care within 90 days and are homeless/at risk of homelessness.
- Extends the period of eligibility to 36 months.
- Requires HUD to improve coordination between housing and child welfare agencies in administering FUP.

HOTMA – Public Housing heating guidelines

- Directs HUD to publish model guidelines for minimum heating requirements operated by PHAs.

HOTMA – Emergency Solutions Grants

- Includes as a subrecipients for the Emergency Solutions Grant PHAs or local redevelopment authorities.

PIH Notice 2016-05:
Streamlining Administrative Regulations for Program Administered by PHAs

PIH Notice 2016-05: Streamlining
Overview

- Slides will note if this is a Mandatory Change or Discretionary Change
- Slides will note if there is any impact of HOTMA on the Streamlining Rule.
- Any changes adopted from PIH Notice 2016-05 must be incorporated into the an agency's PHA Plan (this may require a Significant Amendment) and the agency's ACOP.

PIH Notice 2016-05: Streamlining
Verification of Social Security Numbers

- Mandatory Change
- Brought about by the inability of families who adopt a child or add a foster child within the six month period proceeding their admission to the program. Such children may already have an SSN assigned, but there may be circumstance that make it difficult to obtain the documentation in a timely fashion.
- Extends to applicants a 90 day period during which an applicant family may become a participant, even if the family lacks the documentation necessary to verify the SSN of a family member under 6 years old.
- An extension of 90 days must be granted at the discretion of the PHA if it determines that the applicant's failure to comply was outside the control of the applicant.

PIH Notice 2016-05: Streamlining

Definition of extremely low-income (ELI) families

- Mandatory Change
- Basically, this is a clean-up of HUD regulations at 24 CFR 5.603, 903.7, and 960.102 to include the statutory definition of ELI families.
- ELI families are those whose income does not exceed the higher of 30% of AMI or the federal poverty limit.
- ELI limits are already calculated by HUD.
- As a reminder, PHAs are required to make available not less than 40 percent of units that become available for occupancy during their fiscal year to ELI families.

PIH Notice 2016-05: Streamlining

Streamlined annual reexam for fixed income sources

- Discretionary Change
- Allows PHAs to adopt streamlined recertification for family members with a fixed source of income.
- Provision is only applicable to program *participants*, not applicants
- Fixed income includes: SSI, SSDI, federal/state/local/private pension plans, and other periodic payments from annuities, insurance policies, retirement funds, disability or death benefits, or other similar types of periodic payments.
- COLAs must be applied to fixed income sources in years third party verifications are not obtained.
- <u>Third party verification of all income amounts for all family members must be performed at least every three years.</u>

PIH Notice 2016-05: Streamlining
Earned Income Disregard***

- Mandatory Change
- Tracks EID over 24 straight months as opposed to 24 months in a 48 month period.
- This only affects new EID participants. Current participants must still be tracked over 48 months.

*****HOTMA eliminates EID; however, until HUD issues implementing documentation this provision is still in effect.**

PIH Notice 2016-05: Streamlining
Family declaration of assets under $5,000***

- Discretionary Change
- PHAs may obtain third party verification of all family assets at admissions and then again every three years thereafter.
- Each family member over 18 years old must sign the family's certification of net assets equal to or less than $5,000. The declaration must show the value of each asset and the amount income expected from each asset. The expected income is recorded on 6j of the 50058.
- When new family members are added, PHAs must obtain third party verification of that family member's assets. If the new member puts a family's net assets over $5,000, third party verification is required for all assets.

*****HOTMA increases the net family assets to $50,000; however, until HUD issues implementing documentation this provision is still in effect.**

PIH Notice 2016-05: Streamlining
Utility reimbursements

- Discretionary Change
- Permits PHAs to make utility reimbursement payments quarterly rather than monthly if the payment due to the family is equal to or less than $45.
- If adopted, PHAs must permit a family to make a hardship exemption.
- If adopted, families must be notified whether payments are quarterly and of their ability to request a hardship exemption.

PIH Notice 2016-05: Streamlining
Public housing rents for mixed families

- Mandatory Change
- Changes methodology for calculating rent for mixed income families. PHAs must use established flat rents applicable to units.
  - Step 1. Determine total TTP.
  - Step 2. Family rent is equal to applicable flat rent for unit size.
  - Step 3. Subtract TTP from family maximum rent.
  - Step 4. Divide the family maximum rent by number of persons in family to determine maximum subsidy per family member who has citizenship or eligible immigration status. This is the maximum member subsidy.
  - Step 5. Multiple the maximum member subsidy by the number of eligible family members. This is the eligible subsidy.
  - Step 6. The mixed family TTP is the maximum rent minus the amount of eligible subsidy.
  - Step 7. Subtract any applicable UA from the mixed family TTP. This is the mixed family tenant rent.

PIH Notice 2016-05: Streamlining
Grievance procedures (1)

- Discretionary Change
- Eliminates many provisions and allows PHAs establish local requirements.
  - Redefines hearing officer to include a single hearing officer or panel.
  - Eliminates specific procedures that a complainant must take to obtain a hearing.
  - Eliminates requirements on how to select hearing officer in the dwelling lease; lease must be revised accordingly.
  - Eliminates requirements regarding how a grievance must be submitted in the informal settlement process.
  - Eliminates a requirements that a hearing will only be scheduled after a complainant has adequately requesting a hearing, completed an informal settlement process and paid rent due into escrow, if necessary.
  - Eliminates the requirement that a hearing be conducted informally.
  - Eliminates the requirement that a PHA must make available for inspection a previous hearing officer decision for complainants.

PIH Notice 2016-05: Streamlining
Grievance procedures (2)

- Requires written notification with time, date, place, and procedures that must be delivered to complainant and appropriate official.
- Requires PHAs to create a log of hearing officer decisions and make the log available to the hearing officer, complainants, and their representatives. At a minimum, the log must include:
  - The date of the hearing decision
  - The general reason for the grievance hearing (failure to pay rent, community services and self-sufficiency non-compliance, etc) and whether the decision was in the favor of the complainant for the PHA.

PIH Notice 2015-19:

Guidance for PHAs and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

PIH Notice 2015-19: Exclusion of Arrest Records

Background

- *Office of General Counsel Guidance on Application of Fair Housing Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions*, April 4, 2016
  - Where to find the OGC guidance: http://bit.ly/1T81FSu

PIH Notice 2015-19: Exclusion of Arrest Records

Background

- The Fair Housing Act prohibits both intentional housing discrimination and housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics. Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics. While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act….

PIH Notice 2015-19: Exclusion of Arrest Records

Background

- …..Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and **take into consideration such factors as the type of the crime and the length of the time since conviction**. Where a policy or practice excludes individuals with only certain types of convictions, a housing provider will still bear the burden of proving that any discriminatory effect caused by such policy or practice is justified. Such a determination must be made on a case-by-case basis.

  Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics violates the Act.

PIH Notice 2015-19: Exclusion of Arrest Records

Current regulations at 24 CFR 960.202

(a) Selection policies, generally. (1) The PHA shall establish and adopt written policies for admission of tenants.

(iii) Precluding admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

PIH Notice 2015-19: Exclusion of Arrest Records

Current regulations at 24 CFR 960.203 - Excerpts

(a) The tenant selection criteria to be established and information to be considered **shall be reasonably related** to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member.

(c) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

(2) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences ***which may adversely affect the health, safety or welfare of other tenants; and***

PIH Notice 2015-19: Exclusion of Arrest Records

Current regulations at 24 CFR 960.203 - Excerpts

(3) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. (See §960.204.) With respect to criminal activity described in §960.204:

(i) The PHA may require an applicant to ***exclude a household member*** in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in §960.204 **(Denial of admission for criminal activity or drug abuse by household members)** that warrants denial.

(ii) The PHA may, where a statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, choose to continue that prohibition for a longer period of time.

PIH Notice 2015-19: Exclusion of Arrest Records

Current regulations at 24 CFR 960 – Considerations

- 24 CFR 960.203 (4)(d)(2) Consideration of rehabilitation

(i) In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA ***may*** consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA ***may*** require the applicant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

PIH Notice 2015-19: Exclusion of Arrest Records

Current regulations at 24 CFR 960 – Further considerations

- 24 CFR 960.204 Denial of admissions or drug-related criminal activity
  - Required denial of admission for the following:
  - Persons evicted for drug-related criminal activity for three years, except the PHA *may* admit the evicted household member –if– they have completed a supervised drug rehabilitation program or the circumstances leading to the eviction no longer exist (the criminal member has passed away or is imprisoned).
  - Persons "currently engaged in" illegal use of a drug
  - Persons convicted of methamphetamine production
  - Persons subject to a lifetime registration requirement under a State sex offender registration program
  - Persons that abuse or show a pattern of abuse of alcohol

PIH Notice 2015-19: Exclusion of Arrest Records

Summary

- In short, tenant selection policies for criminal activity or drug-related criminal activity should be based on:
  - A rational nexus (relationship) between the activity and if precluding admission of the applicant/termination of the participant based on the activity reasonably may be expected to have a detrimental effect on the residents or the project environment
  - On the conduct underlying the arrest, not the arrest itself, preponderance of evidence, or conviction
  - Consideration of the type of crime and the length of time since conviction

PIH Notice 2011-44:

Guidance on EPAs's Lead Based Paint Renovation, Repair, and Painting Rule, HUD's Lead Safe Housing Rule (LSHR), and the EPA-HUD Lead Disclosure Rule (LDR)

(and EPA's Renovation, Repair, and Painting Program (RRP))

PIH Notice 2011: LSHR and LDR

Background

- The reemergence of the lead safety as a topic came about after the drinking water crisis in Flint, Michigan. In March of 2016 Congress held hearings on Safe Drinking Water Act and lead contamination in the water supply.
  - A directive of Congress from these hearing was for HUD to follow up on the LSHR and LDR.

PIH Notice 2011-44: LSHR, LDR, and RRP
Summary

- LSHR, LDR, and RRP applies to federally assisted and private housing built before 1978, with certain exceptions. It requires owners to inform tenants about the hazard of lead based paint and make a disclosure of the presence of any known lead-based paint or lead-based paint hazards in the unit, common areas, or exterior areas. Or the owner must indicate they have no knowledge.

PIH Notice 2011-44: LSHR, LDR, and RRP
Requirements

LSHR

- PHAs must identify and accumulate all LBP records pertaining to their properties and keep a record
- PHAs must make such LBP available for inspection by tenants

LDR

- Provide each tenant with a copy of the EPA's "Protect Your Family from Lead in Your Home"
- Have PHA management/delegate of management and tenant sign a LBP Disclosure Form

RRP

- Contractors and maintenance/rehab staff from PHAs that perform renovation, repair, and painting projects that disturb paint in facilities built before 1978 must be certified as renovators and must follow specific work practices to prevent lead contamination

PIH Notice 2015-12:

Administering the Community Service and Self-Sufficiency (CSSR) Requirement

PIH Notice 2015-12: CSSR

Background, Applicability, and Policy Requirements

- Implemented by QHWRA of 1998
- Applies only to the Low Rent Public Housing Program
- CSSR mandates each non-exempt adult complete 96 hours of CSSR activities by each annual certification.
- For exempt individuals "engaging in work activities," HUD encourages 30 hours per week as a minimum. PHAs may set their own minimum.
- PHAs must set policies for CSSR in their ACOPs (24 CFR 960.605(a)) to include:
  - The PHA responsibility to administer CSSR
  - Eligible and non-eligible activities
  - Exemptions from the CSSR requirement
  - Compliance review standards
- PIH Notice 2015-12 goes into depth about the types of community service and self-sufficiency activities and partnerships that can be included in an ACOP.

PIH Notice 2015-12: CSSR

Exempt Residents

PHAs must within their ACOPs state when an individual is exempt and the documentation needed. Exempt residents include:

A. 62 years or older

B. 1. Blind or disabled, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. Section 416(i)(1); Section 1382c), and who certify that, because of this disability, they are unable to comply with the CSSR provisions, or 2. is a primary caretaker of such individual;

C. Engaged in work activities (see Notice PIH 2003-17 (HA)). The person must be involved in a "work activities" contained in Section 407(d) of the Social Security Act (42 U.S.C. Section 607(d))

D. Able to meet requirements under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. Section 601 et seq.) or under any other State welfare program or W2

E. A family member is receiving assistance, benefits, or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. Section 601 et seq.), or under any other welfare program of the State in which the PHA is located, or is a compliant recipient of W2

PIH Notice 2015-12: CSSR

Public housing resident CSSR documentation

- At lease execution or reexamination after the effective date of the ACOP CSSR policy adoption, all adult members of the household must:
  - A. Provide documentation, if applicable, that they qualify for an exemption; (Documentation provided by the tenant will be used by the PHA to determine whether the tenant is exempt from the CSSR) and,
  - B. Sign a certification (examples provided in Attachments A and B) that they have received and read the policy and understand that if they are not exempt, failure to comply with the community service requirement will result in nonrenewal of their lease, per 24 CFR 966.4(l)(2)(iii)(D).
- Should a resident become a non-exempt person, it their responsibility to report this to the POHA. When an exempt person becomes non-exempt, it is also their responsibility to report it to the PHA.
- If a resident disputes the PHAs determination of exemption or non-exemption of CSSR requirements, the PHA's grievance procedure applies.

***PIH Notice 2016-06 provides additional information and will be covered in a few slides.

PIH Notice 2015-12: CSSR
Non-compliance with CSSR

- PHAs may not evict a family due to non-CSSR compliance. If a PHA finds a tenant is non-compliant, it must provide written notification to the tenant that includes:
  - A brief description of the finding of non-compliance with CSSR.
  - A statement that the PHA will not renew the lease at the end of the current 12-month lease term unless the tenant enters into a written work-out agreement with the PHA or the family provides written assurance that is satisfactory to the PHA explaining that the tenant or other noncompliant resident no longer resides in the unit. Such written work-out agreement must include the means through which a noncompliant family member will comply with the CSSR requirement.
- The tenant may request a grievance hearing on the PHA determination, in accordance with 24 CFR Part 966, subpart B, and the tenant may exercise any available judicial remedy to seek timely redress for the PHA's nonrenewal of the lease because of such determination.

PIH Notice 2015-12: CSSR
PHA enforcement documentation

- If a non-compliant resident refuses to sign a written work-out agreement, or fail to comply with the work-out agreement, PHAs initiate termination of tenancy proceedings at the end of the current 12 month lease. The PHA will provide the following procedural safeguards:
  A. Adequate notice to the tenant of the grounds for terminating the tenancy and for non-renewal of the lease;
  B. Right of the tenant to be represented by counsel;
  C. Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have; and,
  D. A decision on the merits.

PIH Notice 2015-12: CSSR
50058 Coding

- The Instruction Booklet for Form HUD 50058 contains information on coding CSSR status. At the time of program admission, enter either 3 or 4. At each annual re-examination, enter code 1, 2, or 4. See below:
  - 1 - PHA determines resident is not exempt and is in compliance with CSSR
  - 2 - PHA determines resident is not exempt and not complying with CSSR
  - 3 - PHA is in the process of verifying CSSR compliance
  - 4 - PHA determines resident is exempt
  - 5 - Do not use this code for "not applicable"

PIH Notice 2015-12: CSSR
Monitoring

- HUD has been posting quarterly CSSR reports. These reports are available for a limited time.
- REAC has been sending emails out when the CSSR reports are posted at the following link: http://bit.ly/2cQz6pZ
- The report contains tenants with work or welfare income. It does not exclude tenants with disabilities.
- PHAs are encouraged to monitor their CSSR submissions using this report. The report may repeat tenant information from quarter to quarter. It is not necessary to re-check those tenants if their status had been previously verified. PHAs should check the report for new tenants each quarter to verify accuracy of 50058 reporting.

PIH Notice 2016-06:

Administering the Self-Certification Flexibility when Verifying Community Service and Self-Sufficiency (CSSR) Compliance

PIH Notice 2016-06: CSSR

Background/Applicability

- In the March 8, 2016 Federal Register, HUD published programmatic streamlining that allows PHAs to elect to have non-exempt residents self-certify completion of the 96 hours of CSSR activities over the previous 12 month period.
- It also amended 24 CFR 960.604 to state if a PHA permits resident self-certification, it must notify residents of this ability.

PIH Notice 2016-06: CSSR

Streamlined public housing resident CSSR documentation

- PHAs may elect to have non-exempt residents self-certify completion of the 96 hours of CSSR activities over the previous 12 month period.
- The PHA must develop a form that includes:
  - a statement that the resident has completed the number of hours listed and this statement is subject to penalties of perjury;
  - the number of hours and type of activity (community service or self-sufficiency) that the resident completed;
  - the name of the organization or person for which the activity was completed; the address of the organization or person;
  - the phone number of the organization or person; and
  - a contact person in the organization or the person for which the activity was completed.

PIH Notice 2016-06: CSSR

PHA ACOP CSSR Policy

- PHAs must update their ACOP CSSR Policies prior to accepting CSSR self-certifications from residents
- PHAs must continue to accept third-party verifications of CSSR for residents under lease at the time of the policy amendment for that lease cycle.
- Subsequent lease cycles after the adopted policy change, the PHA may accept self-certification.
- For active work-out plans with tenants, self-certifications may not be accepted until the PHA has verified through a third party that the tenant has completed the required hours.

PIH Notice 2016-06: CSSR

Sampling and Monitoring Self-Certification of CSSR

- A PHA that elects to adopt resident self-certification of CSSR it must validate a sample of certifications with third parties the resident reported.
- It must be statistically valid, random sample from a "universe" of residents that submitted self-certifications.
- The universe should **not** include:
  - Residents that are under the age of 18 years or 62 years or older;
  - Residents that are exempt;
  - Residents for which a PHA receives third party verification of completion with CSSR; and
  - Residents that did not complete the required CSSR.
- Required universe and sample sizes are included in Attachment C of PIH Notice 2016-06.
- PHAs should review certifications received during the previous 12 months.
- The third party verifications should include the name of the organization or person, a signature from a the third-party staff person, and that staff person's contact information.

PIH Notice 2015-03:

Changes to Flat Rent Requirements – 2015 FY Appropriations Act

PIH Notice 2015-03: Flat Rent
FY 2015 Appropriations Act Changes

- The FY2014 Appropriations Act established flat rents at no less than 80% of the applicable Fair Market Rent (FMR). Where flat rents increased a family's rent by more than 35%, then the new flat rent was to be phased in.
- The FY2015 Appropriations Act amended the flat rent requirements to require that flat rents must be set at:
  - No less than 80% of the applicable FMR
  - The discretion of the Secretary, such other applicable FMR established by the Secretary that the Secretary determines more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used for purposes of the applicable FMR
- PHAs may apply for an exception waiver for a flat rent amount that is lower than the options outlined above. The Secretary may grant it if HUD determines the FMR for the market area does not reflect the market value of the property and the proposed lower flat rent amount is based on a market analysis of the applicable market.

PIH Notice 2015-03: Flat Rent
Smaller Geographical Area FMRs (SAFMR)

- PHAs may use SAFMRs, which HUD publishes annually at: http://bit.ly/29DDjg2
- If HUD does not publish and SAFMR for an area, HUD will permit PHAs to use the unadjusted rent (the FRM established directly by the American Community Survey by the US Census Bureau).
- PHAs are not permitted to establish SAFMRs different than these options.
- For areas where HUD has not determined an SAFMR or an unadjusted rent, PHAs must set rents at no less than 80% of FMR or apply for an exception flat rent.

PIH Notice 2015-03: Flat Rent

FMRs and Utility Payments

- FMRs are gross rent estimates that cover the rent plus the cost of all necessary utilities regardless of who actually pays the utilities.
- PHAs should consider who is responsible for direct payments of utilities, and adjust the flat rent accordingly.
  - If a PHA pays the utilities, no adjustment is necessary.
  - If a tenant pays the utilities, the PHA must adjust the rent downward using a utility allowance.

PIH Notice 2015-13: Flat Rent

Flat Rent Policies – How to Comply on an Annual Basis

- In order to comply with the flat rent requirements annually, PHAs must no later than 90 days after the issuance of FMRs or SAFMRs:
  1) Compare the current flat rent amount to the applicable FMR and SAFMR/unadjusted rent:

     a) If the flat rent is at least 80% of the lower of the FMR or SAFMR/unadjusted rent, the PHA is in compliance. No further steps are necessary;

     b) If the flat rent is less than 80% of the lower of the FMR and SAFMR, the PHA must set flat rents at no less than 80% of the lower of the FMR or SAFMR/unadjusted rent, subject to the utilities adjustment, or the PHA may request an exception flat rent
  2) Update the flat rent policies in the ACOP as necessary;
  3) At all new admissions, permit the family to choose between the flat rent amount and the income-based rent; and
  4) For current public housing residents, offer the updated flat rent amount at the next annual rent option, and permit the family to choose between the flat rent amount and the income-based rent.

PIH Notice 2015-13: Flat Rent

Flat Rent Increase Phase-In Requirements

- The FY 2015 Appropriations Act provides PHAs flexibility to establish flat rents at lower amounts eliminating the three year phase for ALL flat rent increases.
- PHAs can phase-in rents on a case-by-case basis for families whose rent does increase by 35% or more.
- PHAs that began phase-in of flat rents do not need to take any immediate action to update the flat rents for such families, but at the next annual rent option, the following applies:
  1) Compare the updated flat rent amount applicable to the unit to the rent that was being paid by the family immediately prior to the annual rent option;
     a. If the new flat rent amount would not increase a family's rental payment by more than 35%, the family may choose to pay either the updated flat rent amount or the previously calculated income-based rent;
     b. If the PHA determines that the updated flat rent amount would increase a household's rental payment by more than 35%, the family may choose to pay the phased-in flat rent amount resulting from the flat rent impact analysis or the previously calculated income-based rent.

PIH Notice 2015-13: Flat Rent

Conducting Annual Rent Options – Flat Rent or IBR

- PHAs must annually give families the option of flat or income-based rent (IBR), but must not give families the option more than once a year unless the family has chosen the flat rent and experiences a financial hardship.
- PHAs must provide the following information to tenants:
  - The PHAs' policy on switching the type of rent due to financial hardship
  - The dollar amount of the IBR
- For families that choose flat rents, PHAs do not have to conduct reexaminations annually. PHAs must conduct reexaminations at least every three years. HOWEVER, PHAs must still offer the annual flat rent or IBR options to these families.

PIH Notice 2015-13: Flat Rent

First full examination

1) Conduct a full examination of family income and composition at the first annual rent option (Year 1);
2) Inform the family of the flat rent amount and the rent amount determined by the examination of family income and composition;
3) Inform the family of the PHA's policies on switching rent types due to financial hardship; and
4) Apply the family's rent decision at the next lease renewal.

PIH Notice 2015-13: Flat Rent

Second and third year annual rent option

1) PHAs may, but are not required, to conduct a full examination of family income and composition for the second and third annual rent options. If a PHA chooses not to conduct an examination of family income for these annual rent options, PHAs must use the income information from the examination of family income and composition from the first annual rent option;
2) HAs must inform the family of the updated flat rent amount, and the rent amount determined by the most recent examination of family income and composition;
3) PHAs must inform the family of the PHA's policies on switching rent types due to financial hardship; and
4) PHAs must apply the family's rent decision at the next lease renewal.

PIH Notice 2015-13: Flat Rent

Second and third year annual rent option

1) PHAs may, but are not required, to conduct a full examination of family income and composition for the second and third annual rent options. If a PHA chooses not to conduct an examination of family income for these annual rent options, PHAs must use the income information from the examination of family income and composition from the first annual rent option;
2) HAs must inform the family of the updated flat rent amount, and the rent amount determined by the most recent examination of family income and composition;
3) PHAs must inform the family of the PHA's policies on switching rent types due to financial hardship; and
4) PHAs must apply the family's rent decision at the next lease renewal.

PIH Notice 2015-13: Flat Rent

Third year full reexamination

- For the purpose of conducting the rent option meeting for a family that has paid the flat rent for the previous three years, and for which the PHA has not conducted a reexamination of family income and composition in the last three years, the PHA must complete a full re-examination of family income and composition in order to update the income-based rent amount.

PIH Notice 2015-13: Flat Rent

Reminder

- PHAs are reminded that the flat rent amount a family pays is **not** locked in for the three year period. The PHA must revise the flat rent amount from year to year based on changes to the FMR. Families currently paying the flat rent amount must be offered the choice between the updated flat rent amount, and the previously calculated IBR.

PIH Notice 2015-18:

Availability of New and Revised PHA Five-Year and Annual Plan Templates and Other Forms

PIH Notice 2015-13: PHA Plan

Summary

- Effective: July 1, 2016
- Announces the availability of new PHA Annual and 5-Year PHA Plan templates:
  - HUD-50075-5Y (Five Year Plan)
  - HUD-50075-HCV (HCV Only PHA Plan)
  - HUD-50075-HP (High Performer PHA Plan)
  - HUD-50075-SM (Small PHA Plan)
  - HUD-50075-ST (Standard and Troubled PHA Plan)
- Announces the availability of new/revised certifications forms:
  - HUD-50077-CRT-SM (Small PHA)
  - HUD-50077-ST-HCV-HP (HCV and High Performer)
  - HUD 50077-SL (State and Local PHA Plans Consistency with ConPlan)
  - HUD 50077-CR (Civil Rights Certification)
- Provides clarity on categories of PHAs and the corresponding PHA Plan and Five Year PHA Plan submission requirements
- Incorporates RAD and VAWA requirements into Section 5

PIH Notice 2015-13: Flat Rent

Frequency of Submittals

PHA Plan Submission Requirements by PHA Type	
HUD Form	**Frequency of Submission**
All PHAs	
HUD 50075-5Y	Once every 5 PHA Fiscal Years
Standard PHAs and Troubled PHAs	
HUD 50075-ST	Annually
HUD 50077-ST-HCV-HP	Annually
HUD 50077-SL	Annually
RAB Comments	Annually
Challenged Elements	Annually
Small PHAs	
HUD 50075-SM	Annually
HUD 50077-CRT-SM	Annually
HUD 50077-SL	Annually
RAB Comments	Annually
Challenged Elements	Annually
High Performer PHAs	
HUD 50075-HP	Annually
HUD 50077-ST-HCV-HP	Annually
HUD 50077-SL	Annually
RAB Comments	Annually
Challenged Elements	Annually
HCV-Only PHAs	
HUD 50075-HCV	Annually
HUD 50077-ST-HCV-HP	Annually
HUD 50077-SL	Annually
RAB Comments	Annually
Challenged Elements	Annually
Qualified PHAs	
HUD 50077-CR	Annually
HUD 50077-SL	Once every 5 PHA Fiscal Years

PIH Notice 2015-13: PHA Plan

Certification and Other Submission Requirements

- Civil Rights Certification: Forms HUD-5007-ST-HCV-HP, Form HUD 50077-SM, Form HUD 50077-CR
- Certification of Consistency with the ConPlan including the Analysis of Impediments to Fair Housing Choice: HUD 50077-SL
- Rental Assistance Demonstration: Meet the requirements of PIH Notice 2012-32, Revision 2
- VAWA: Integrated into the various PHA Plan templates, separate report not needed
- RAB Comments: Must submit a separate attachment if any comments received as per 24 CFR 903.13
- Challenged Elements: Must submit a separate attachment if any element of the PHA Plan/Five Year Plan are challenge including description, source of the challenge, and the PHA's response.

PIH Notice 2015-13: PHA Plan

Forms Removed from PHA Plan Submissions

- Form HUD-50075.1, Capital Fund Program Annual Statement/Performance and Evaluation Report (PHAs receiving CFP grants only)
- Form HUD-50075.2, Capital Fund Program Five-Year Action Plan (PHAs receiving CFP grants only)
- Form HUD-50070, Certification for a Drug-Free Workplace
- Form HUD-50071, Certification of Payments to Influence Federal Transactions
- Form SF-LLL, Disclosure of Lobbying Activities 6. Form SF-LLL-A, Disclosure of Lobbying Activities Continuation Sheet
- PHAs must submit a statement of capital improvements needed. PHAs can reference the HUD Form 50075.2 by including the following language in the Capital Improvements section of the appropriate Annual or Streamlined PHA Plan Template: "See HUD Form 50075.2 approved by HUD on XX/XX/XXXX."

Wisconsin Notice 2015-01: General Occupancy

Wisconsin Notice 2015-01: General Occupancy

Overview

- Housing Opportunity Extension Act of 1996 – repealed and replaced 24 CFR 945 with new regulations for the Designation of Public Housing Projects for elderly families only, disabled families only, and mixed population (elderly and disabled families). See PIH Notice 1997-12 and 24 CFR 945.
  - Designated Housing Plans required HUD approval.
- PHAs are allowed to adopt local preferences or ranking preferences for their waiting lists. These preferences must be based on housing needs and must be included in a PHA's ACOP. (24 CFR 960.206)
- All units in PIC were marked "General Occupancy" on March 12, 1997 unless a HUD-approved Designated Housing Plan was on file.

Wisconsin Notice 2015-01: General Occupancy

Local preference examples

- Income targeting preference to ELI applicants
- Residency preference
- Preference for elderly, displaced, homeless, or a person with disabilities
- Preference for persons with disabilities
- Preference for victims of domestic violence
- Preferences for homeless persons
- Preferences for veterans
- Former federal preferences such as substandard housing, involuntary displacement, excessive cost burden, etc.
- Displacement preference
- Preference for working families (See also PIH Notice 2011-33)
- Limitation on preferences: A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

PIH Notice 2014-20:

Program Eligibility Regardless of Sexual Orientation, Gender Identity, or Marital Status as Required by HUD's Equal Access Rule

PIH Notice 2014-20: Equal Access

Overview

- HUD published a final rule entitled, "Equal Access to Housing in HUD Program Regardless of Sexual Orientation or Gender Identity" (*Federal Register Volume 77, Number 23, February 23, 2012)*
- It amended HUD program requirements at 24 CFR 5.105(a)(2),
  - (b) No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, or any other recipient or sub-recipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted or HUD-insured housing for purposes of determining eligibility or otherwise making such housing available.

PIH Notice 2014-20: Equal Access

Terms and definitions

- PHAs must update terms and definitions in their ACOPs and related policies to include the definitions at the below citations:
  - Sexual orientation (24 CFR 5.100)
  - Gender identity (24 CFR 5.100)
  - Family, disabled family, elderly family and near elderly family (24 CFR 5.403)
  - The term "family" includes, but is not limited to the following, **regardless of actual or perceived sexual orientation, gender identity, or marital status**:

    (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person or any other single person; or

    (2) A group of persons residing together and such group includes, but is not limited to: (i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family); (ii) An elderly family; (iii) A near-elderly family; (iv) A disabled family; (v) A displaced family; and (vi) the remaining member of a tenant family.

PIH Notice 2014-20: Equal Access
Prohibited and Permissible Inquiries

- PHAs are prohibited from inquiring about an applicant's actual or perceived sexual orientation, gender identity or marital status.
  - This does not prohibit an individual from voluntarily self-identifying these characteristics.
- PHAs may still inquire about an applicant's or participant's sex in order to determine the number of bedrooms for which a household may be based on the PHA's written occupancy standards.
- PHAs must collect and report on a program participant's sex through HUD 50058 and submit the data to IMS/PIC.

PIH Notice 2014-20: Equal Access
Complaints to PHAs

- If a PHA receives a complaint from a participant or applicant alleging a violation of the Equal Access Rule, the PHA must determine if a program violation occurred and implement corrective action(s). PHAs may seek assistance from the Field Office.
- In all cases the PHA must advise the family to file a fair housing complaint if they feel they have been discriminated against under the FHA.
- PHAs must also follow their internal policies for responding to complaints. PHAs must provide written notice of receipt of the complaint to those to have violated the rule and that the complainant be informed such notice was made. PHAs after an investigation must provide the complainant and the alleged with findings of the investigation and either a corrective action plan or explanation as to why corrective action is not warranted. The PHA must keep all records of complaints, investigations, notices, and corrective actions consistent with its records retention policy.

PIH Notice 2015-02:

Extension of PIH Notice 2010-19: Administrative Guidance for Effective and Mandated Use of the EIV System

Highlights:

-EIV Printout Retention

-Repayment Agreements

PIH Notice 2015-02: Effective EIV Usage

Overview

- PIH Notice 2010-19, extended by PIH Notice 2015-02, covers a myriad of topics including, but not limited to:
  - Mandating EIV usage for tenant employment and income information during reexaminations; reducing administrative and improper subsidy payments
  - Establishes a Verification Hierarchy
  - Provides guidance on what types of verification to maintain in tenant files
  - Sets requirements for repayment agreements due to under-reporting or failure to report income.

PIH Notice 2015-02: Effective EIV Usage

EIV Printout Retention

- To comply with PIH Notice 2010-19, PHA by printing and maintaining an EIV Income Report or EIV Individual Control Number (ICN) page in the tenant file.
- PHA's record retention policy will determine the length of time it should maintain the EIV printouts in a tenant file.
- PHAs are authorized to maintain EIV Income Report in the tenant file the duration of tenancy and no longer than three years from EOP date.
- PHAs must by 24 CFR 908.101 keep at a minimum the last three years of HUD Form 50058, and supporting documents for all annual and interim reexaminations.
- All records are to be maintained a period of at least three years from the effective date of the action.

PIH Notice 2015-02: Effective EIV Usage

Tenant Repayment Agreements

- Tenants must reimburse PHAs if they were charged less rent than required by HUD's rent formula due to the tenant's underreporting or failure to report income.
- The tenant must reimburse the difference between the tenant rent that should have been paid and the tenant rent that was charged.
- If a tenant refuses to enter into a repayment agreement or fails to make payments under an existing or new repayment agreement, the PHA **must** terminate the family's tenancy or assistance or both. HUD does **not** authorize any PHA-sponsored amnesty or debt forgiveness programs.

PIH Notice 2015-02: Effective EIV Usage

Tenant Repayment Agreement Format

- Repayment agreements must be in writing, dated, and signed by both the tenant, include the total retroactive amount owed, amount of lump sum payment made at the time of execution, if applicable, and the monthly payment amount. It must contain at a minimum the following provisions:
  a) Reference to the paragraphs in the Public Housing lease or Section 8 information packet whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance, or both.
  b) The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the PHA.
  c) The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
  d) Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.

PIH Notice 2015-02: Effective EIV Usage

Retroactive rent determinations

- PHAs must determine retroactive rent determinations as far back as the PHA has documentation of family reported income.
- Monthly retroactive rent payments plus the amount of the rent the tenant pays at the time of the repayment agreement is executed should be affordable and not exceed 40% of the family's monthly adjusted income.
- PHAs may establish thresholds and policies for agreements in addition to HUD required procedures. They must at a minimum follow the repayment agreements in PIH Notice 2010-19.

FHEO Notice 2013-01:

Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-funded Programs

FHEO Notice 2013-01: Service and Assistance Animals Summary

- Explains the obligations of housing providers, including PHAs, with respect to animals that provide assistance to persons with disabilities under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968 – 42 USC 3601) and Section 504 of the Rehabilitation Act of 1973 (29 USC 701)
  - The FHAct prohibits discrimination of disability and apply regardless of Federal financial assistance. Section 504 applies specifically to a prohibition of disability discrimination to all recipients of HUD financial assistance (ie PHAs).
- States persons with disabilities may request a reasonable accommodation to a PHA's "no pets" policy for any assistance animal including an emotional support animal

FHEO Notice 2013-01: Service and Assistance Animals
Defining Assistance Animals

- An assistance animal is ***not*** a pet.
  - It is animal that works, provides assistance, or performs talks for the benefit of a person with a disability, -or- provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.
  - Examples include: guiding individuals with vision impairments, altering individuals with deaf or with auditory impairments, protection or rescue assistance, pulling a wheelchair, fetching items, alerting to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.
  - The service and/or assistance animal does ***not*** need to be individually trained or certified.

FHEO Notice 2013-01: Service and Assistance Animals
Evaluating Reasonable Accommodation Requests for Assistance Animal(s)

- After receiving a reasonable accommodation request, the housing provider must consider the following:
  - (1) Does the person seeking to use and live with the animal have a disability (ie a physical or mental impairment that substantially limits one or more major life activities)?
  - (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of the person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

FHEO Notice 2013-01: Service and Assistance Animals

Evaluating Reasonable Accommodation Requests for Assistance Animal(s)

- Denial of the reasonable accommodation:
  - If the answer to (1) and (2) on slide 103 is "no," then the FHAct and Section 504 do not require a modification to a provider's "no pets" policy, and the reasonable accommodation request may be denied.

FHEO Notice 2013-01: Service and Assistance Animals

Evaluating Reasonable Accommodation Requests for Assistance Animal(s)

- Denial of the reasonable accommodation:
  - OR – If the specific assistance animal poses a direct threat to the health or safety of other that cannot be reduced or eliminated by another reasonable accommodation.
  - OR – If the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation
- Policies can ***not*** restrict assistance animals by breed, size, or weight limitations.
- Assistance animals must be assessed on an individual basis that relies on the specific animal's actual conduct ***not*** on:
  - Mere speculation or fear about the types of harm or damage an animal may cause
  - Evidence about harm or damage other animals have caused.

FHEO Notice 2013-01: Service and Assistance Animals

Evaluating Reasonable Accommodation Requests for Assistance Animal(s)

- PHAs may not deny the reasonable accommodation on:
  - Uncertainty about whether or not the person seeking the reasonable accommodation has a disability or disability –related need for the assistance animal.

FHEO Notice 2013-01: Service and Assistance Animals

Evaluating Reasonable Accommodation Requests for Assistance Animal(s)

- Approval of the reasonable accommodation:
  - If the answer to (1) and (2) on slide 103 is "yes," then the FHAct and Section 504 require the PHA to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would place an undue financial and administrative burden or would fundamentally alter the essential nature of the PHA's services.
    - For a discussion on undue financial and administrative burdens and fundamental alterations of the PHA's services, please read the *Joint Statement of The Department of Housing and Urban Development and the Department of Justice Reasonable Accommodations Under the Fair Housing Act* published on May 17, 2004. You may find it by following this link: http://bit.ly/1nkGLgBV

FHEO Notice 2013-01: Service and Assistance Animals

Documenting Reasonable Accommodation Requests for Assistance Animal(s)

- To make a decision on the reasonable accommodation:
  - PHAs may ask individuals who have disabilities that are not readily apparent or known to the provider to submit documentation of a disability and their disability-related need for an assistance animal.
  - If the disability is readily known or apparent but the disability-related need the assistance animal is not, the PHA may ask the individual to provide documentation of the disability-related need for an assistance animal (ie emotional support animal). Documentation could come from a physician, psychiatrist, social worker, or other person who is familiar with the disability. It is sufficient if it establishes the person has a disability and the animal will provide some type of disability related assistance or emotional support.
  - If the disability or disability related need for an assistance animal is readily apparent or known to the provider.

FHEO Notice 2013-01: Service and Assistance Animals

General Reasonable Accommodations Standards

- As with <u>all</u> reasonable accommodation requests, PHAs may not ask an applicant or tenant to provide access to medical records or medical providers or provide access to detailed or extension information or documentation of a person's physical or mental impairments.
- Determinations of whether a person has disability related need for a reasonable accommodation should be done as an individualized assessment (ie on a case-by-case basis).
- PHAs may not unreasonably deny or condition payment of a fee or deposit or other terms and conditions applied to applicants or residents.
- Responses on reasonable accommodation requests should not be unreasonable delayed.

FHEO Notice 2013-01: Service and Assistance Animals

Service Animals under the American with Disabilities Act

- Nuance – PHAs may have separate obligations under the ADA for service animals
- Service animals under the ADA are narrowly defined, as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability including a physical, sensory, psychiatric, intellectual, or other mental disability.
  - Animals that provide emotional support, well-being, comfort, or companionship do not constitute work under this definition
- PHAs must not be handle service animals as a reasonable accommodation request. The animal need only meet the definition of "service animal" is to be allowed into the covered facility.

FHEO Notice 2013-01: Service and Assistance Animals

Evaluating Service Animals under the ADA

- PHAs in making a determination if an animal is a service animal shall not ask about the nature or extent of a person's disability, but may make two inquiries:
  - Is this a service animal that is required because of a disability?
  - What work or tasks has the animal been trained to perform?
- These two inquiries may ***not*** be made if it readily apparent that the animal is trained to do work or perform tasks for an individual with a disability.
- PHAs may not require documentation, such as proof that the animal has been certified, trained or licensed as a service animal.

FHEO Notice 2013-01: Service and Assistance Animals

Evaluating Service Animals under the ADA

- Service animals must be allowed to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go. Animals may not be denied access to a covered facility unless:
  - (1) the animal is out of control and its handler does not take effective action to control it
  - (2) the animal is not housebroken
  - (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable accommodation to other policies, practices, and procedures.
    - A determination that a service animal poses a direct threat to the health or safety of others must be based on an individualized assessment of the specific animal's actual conduct – not on fears, stereotypes or generalizations.

FHEO Notice 2013-01: Service and Assistance Animals

Applying the ADA, FHAct, and Section 504 Concurrently

- The ADA service animal test should be applied first. This is because it is a narrow line of questioning that assesses if the animal is a service animal that is required because of disability and if so what work or tasks the animal has been trained to perform.
- If the animal does not meet the service animal test, then the housing authority may evaluate the request as a reasonable accommodation to their "no pets" policy.
- PHAs may ***not*** use the ADA definition of service animal as a justification to reduce their FHAct and Section 502 obligations (ie limiting animals to only dogs or not allowing emotional support/companion animals).

PIH Notice 2011-61:

Extension—Guidance on requirement for PHAs to record current Declaration of Trusts (DOTs) against all public housing property and guidance on adding and removing public housing units and other property from the Annual Contributions Contract (ACC)

PIH Notice 2011-61: Declarations of Trust

Summary

- On February 26, 2016, HUD OIG audited PHA's compliance with DOT requirements
- PHAs are required to ensure a current DOT is recorded against any property that has been acquired, developed, maintained, or assisted with funds from the US Housing Act of 1937.
- HUD has found that DOTs recorded against properties are <u>not recorded</u> against many properties or that the original DOT <u>expired</u>.

PIH Notice 2011-61: Declarations of Trust

Declaration of Trust

- DOTs are legal instruments that grant HUD an interest in the public housing property. It provides notice that the property must be operated in accordance with public housing requirements including not to convey or encumber the property unless allowed by federal law and/or HUD.
- Form of DOT:
  - HUD 52190-A for Development Grant Projects
  - HUD 52190-B for Public Housing Modernization Grants
  - Mixed Finance Developments: Declaration of Restrictive Covenants
- DOTs must be recorded with legal descriptions of the property

PIH Notice 2011-61: Declarations of Trust

Release of DOT

- DOTs do not automatically terminate or expire from public records when HUD approves a property or unit from the ACC.
- If a PHA receives SAC approval for disposition, the PHA must work with the Field Office to release the DOT.
  - (1) PHA receives approval from the SAC to dispose of public housing property (under Section 18 of Act);
  - (2) PHA requests HUD field office release the DOT on the property approved for disposition;
  - (3) HUD field counsel verifies that (a) all of the property for which the PHA is requesting a DOT release has been approved by the SAC for disposition and (b) all contingencies in the HUD approval letter have been satisfied
  - (4) HUD field counsel recommends a partial or full release of the DOT;
  - (5) The HUD Public Housing official in the field office with the delegated authority releases the DOT; and
  - (6) PHA records the release in the applicable county land records.

Annual Contributions Contract: General Depository Agreements

ACC: General Depository Agreement HUD Form 51999

- Section 9 of the ACC: PHAs shall deposit and invest all funds and investment securities received by or hold for the account of the PHA in connection the development, operation and improvement of the projects under an ACC with HUD in accordance with the terms of the General Depository Agreement(s). The GDA shall be in the form prescribed by HUD and must be executed by the PHA and depository. Immediately upon the execution any GDA, the PHA shall furnish to HUD such executed or conformed copies thereof as HUD may require. A GDA shall not be terminated except after 30 days notice to HUD.
- PIH Notice 1996-33 established that the HUD Form 51999 shall be executed between the HA and depository, whose deposits are insured by the FDIC or NCUSIF. Copies of the HUD From 51999 were to be sent to the HUD Field Office.

Lead the Way Training

- Lead the Way Training is for PHA board members/commissioners, PHA EDs and staff, HUD employees, too! You can find it here: http://bit.ly/29VvPoc