

WORKSHOP MANUAL
FAIR HOUSING POLICY CHANGES

IMPLEMENTATION OF HUD GUIDANCE ON HARASSMENT & THE LEP RULING REGARDING DISCRIMINATION UNDER THE FAIR HOUSING ACT

Overview: HUD's final rule pertaining to implementation of HUD guidance on harassment and the LEP ruling regarding discrimination under the Fair Housing Act took effect on October 14, 2016. The major provision of this rule created liability for housing providers (including PHAs) under the Fair Housing Act, in instances of "quid pro quo harassment" or "hostile environment harassment". In addition, the rule also provided guidance pertaining to application of the methods of proof regarding disparate treatment and discriminatory effects in fair housing cases, in which adverse housing actions are based on Limited English Proficiency (LEP). In accord with related provisions, a PHA would be violating the Fair Housing Act if their policy or practice has an unjustified discriminatory effect, even if the PHA or its representative had no intention to do so. This means that policies which appear neutral on the surface, which potentially restrict access to LEP individuals might very well count as being in violation of the Fair Housing Act.

This ruling requires PHAs to update their Fair Housing Policies to reflect the guidance provided under the aforementioned final rule.

Implementation of HUD Guidance :

STEP 1 - PHA consultation with its resident advisory board(s) to assist with and make recommendations regarding preparation of an updated Fair Housing Policy.

To assist the PHA and its resident advisory board(s) in this effort, a sample Fair Housing Policy is attached hereto for guidance. This sample policy reflects the HUD required changes under the 11/14/16 ruling.

STEP 2 – PHA preparation or updating of its Fair Housing Policy.

STEP 3 – Tenant Review Notice.

HUD regulations require that the PHA post or otherwise make available for a minimum 30 day calendar period, a notice to its public housing and Section 8 residents informing them that the PHA has prepared and proposes to adopt, subject to receipt and consideration of their written comments, an amended Fair Housing Policy, and specifying that all written comments should

be submitted to the PHA's Management Office by _____ (insert a date which follows the end of the 30 day review and comment period).

STEP 4 – Prepare a Resolution for Adoption of the PHA's amended Fair Housing Policy.

The wording of such resolution should cover the adoption/approval of the amended policy, the attachment of a copy of such document to the resolution, its incorporation therein, and its being made a part thereof by reference; the incorporation of the amended policy as an attachment to the PHA's ACOP and Section 8 Administrative Plan, and its being made a part thereof by reference; and the effective date of the resolution.

STEP 5 Present Resolution to the Board of Commissioners for Adoption.

STEP 6 -Prepare and deliver a notice to all of the PHAs public housing and Section 8 residents informing them of the adoption of the amended policy, and providing them with a copy.

SAMPLE

Note: This amended policy replaces the Fair Housing Policy presently included as part of the PHA's ACOP and its Section 8 Administrative Plan.

FAIR HOUSING POLICY:

It is the policy of the _____ Housing Authority (hereinafter referred to as the "Housing Authority") to fully comply with all applicable Federal, State and local laws, rules and regulations pertaining to non-discrimination, fair housing and equal opportunity.

No person shall, on the grounds of race, color, sex, religion, creed, national or ethnic origin, age, family or marital status, handicap or disability, or sexual orientation, or other characteristic protected by law be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the programs, projects and activities administered by the Housing Authority.

To further its commitment to full compliance with the Fair Housing Act and applicable Civil Rights laws, Housing Authority management will provide Federal/State/local information to applicants/tenants of the Housing Authority regarding discrimination and any recourse available to them if they believe they may be victims of discrimination. Housing Authority management will also provide applicable discrimination complaint forms to all applicants and tenants requesting same, and assist them in completing and filing such forms with the appropriate agency(ies). In addition, the Housing Authority will provide information regarding its reasonable accommodations policy, process, and procedures to all applicants and tenants with disabilities.

All written information and advertisements published by the Housing Authority and pertaining to the subjects of non-discrimination, fair housing and equal opportunity, will contain the appropriate Equal Opportunity language and logo.

A final rule and related guidance issued by HUD on October 14, 2016 created liability for housing providers (including Public Housing and Section 8 assisted housing programs) under the Fair Housing Act, in instances of "quid pro quo harassment" or "hostile environment harassment". This rule prohibits harassment related to quid pro quo and hostile environment, and formalizes standards for evaluating claims of quid pro quo and hostile environment in the housing context. In addition, it provides specific guidance concerning how methods of proof apply with regard to disparate treatment and discriminatory effects in fair housing careers, in which adverse actions are based on limited English proficiency (LEP).

In the case of Public Housing and Section 8 assisted housing providers, **quid pro quo harassment** refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to: The rental or availability of a dwelling; the terms, conditions, or privileges of the rental, or the provisions of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate transaction. An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the

unwelcome request or demand.

In the case of Public Housing and Section 8 assisted housing providers, **hostile environment harassment** refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the rental; or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.

Whether hostile harassment exists depends upon the totality of the circumstances. Factors to be considered to determine whether hostile environment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationship of the persons involved. Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damage to which an aggrieved person may be entitled. Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person's position.

Notes:

1. Harassment can be written, verbal, or other conduct, and does not require physical contact.
2. A single incident of harassment because of race, color, religion, sex, familial status, national origin, handicap or other characteristic or trait protected by law may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidence a quid pro quo.
3. Quid pro quo and hostile environment harassment because of race, color, religion, sex, familial status, national origin or handicap may violate sections 804, 805, 806 or 818 of the Fair Housing Act, depending on the conduct. The same conduct might violate one or more of these provisions.
4. A person is directly liable for failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct a discriminatory housing practice by a third-party depends upon the extent of the control or any other legal responsibility the person may have with respect to the conduct of such third-party.
5. The affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor under Title VII of the Civil Rights Act of 1964 does not apply to cases brought pursuant to the Fair Housing Act.