

Fair and Equal Housing For All

RRHA of Texas
Annual Convention and Trade Show
July 2017

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**Fair and Equal Housing For All
RRHA Annual Convention and
Trade Show 2017**

Becky Gligo



Online Resources

- Additional resources and references are available on the Nan McKay website
- <http://NMAreferences.com>
- Click the Fair Housing and Reasonable Accommodation link to jump directly to references, no login information required



Seminar Learning Outcomes

- Explain and apply critical fair housing laws, regulations, and guidance to assure compliance



Seminar Learning Outcomes

- Discuss fair housing best practices and common errors resulting in lawsuits
- Apply the reasonable accommodation process at all program levels including application, occupancy, and termination



Seminar Learning Outcomes

- Compare and contrast two different definitions of disabled:
 - (1) HUD's "stricter" definition of *disabled* used for eligibility, rent calculation, and PIC
 - (2) Contrasted with the Fair Housing Act's "looser" definition of disabled used for reasonable accommodation



Seminar Learning Outcomes

- List and explain the factors for compliance as well as best practices under the Violence Against Women Reauthorization Act (VAWA)



Seminar Learning Outcomes

- Discuss discrimination based on federally protected classes such as race, familial status, and national origin
- Discuss pertinent issues surrounding both sexual harassment and hate crimes



Thinking



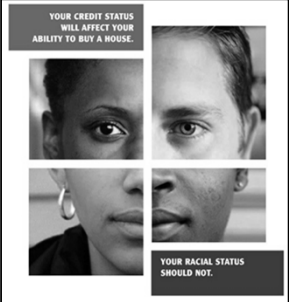
Case Study



- Mollie is an applicant in your program . She has two boys ages 5 and 9. Mollie's family will qualify for a 2 BR unit. She has a note from the doctor stating that her 5 yr old son has autism and other learning disabilities. She asks for a 3 BR unit as a reasonable accommodation for her family. Decision?



Introduction



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Learning Outcomes

- Upon completion of this chapter, you should be able to:
 - Describe fair housing resources and how to use them
 - Communicate with sensitivity awareness when working with people with disabilities
 - Discuss customer service strategies to avoid fair housing complaints

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Learning Outcomes

- Locate and apply critical fair housing resources:
 - HUD / DOJ Joint Statements on Reasonable Accommodation / Modifications
 - HUD PIH notices on reasonable accommodation, including the most recent notices
 - HUD guidance on sexual harassment and housing

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Assisted Housing as a Positive Social Force

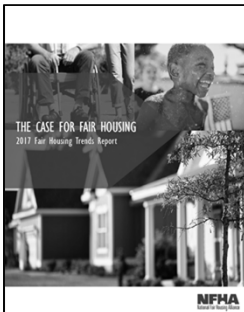


First... The Players

- 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)
- United States Department of Agriculture (USDA)
- Congress



Latest Fair Housing Report



- On May 2, 2017, the National Fair Housing Alliance issued its annual report on fair housing trends in the U.S.



Latest Fair Housing Report

- NFHA annual report on fair housing trends:
 - There were 28,181 reported complaints of housing discrimination in 2016
 - 55% involved discrimination on the basis of disability, followed by 19.6% based on racial discrimination and 8.5% based on discrimination against families with kids



Latest Fair Housing Report

- NFHA annual report:
 - 91.5% of all acts of discrimination reported in 2016 occurred during rental transactions



Latest Fair Housing Report

- Other key issues in the report's findings:
 - Fair housing rights in social media platforms
 - The need to apply fair housing laws in counteracting the recent surge in hate crimes, harassment, and housing-related hate activity, and
 - How the first round of cities and jurisdictions required to implement HUD's new Assessment of Fair Housing began the process



Latest Fair Housing Report

- The report addresses segregation today and why it matters:
 - Educational attainment
 - Health and well-being
 - Access to transportation
 - Policing and criminal justice
 - The racial wealth gap: employment, wealth building, and homeownership



Latest Fair Housing Report

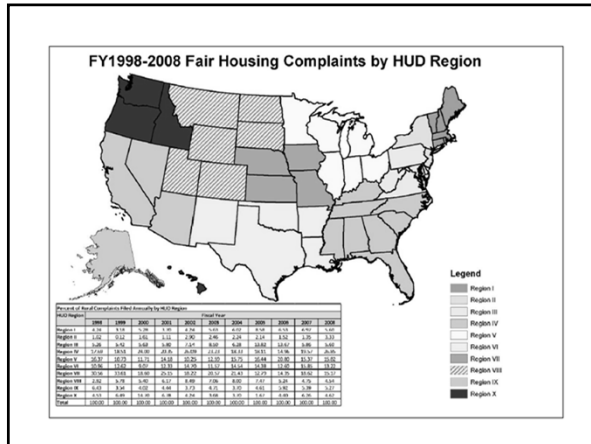
- The report concludes with a number of ways we can better tackle housing discrimination, address segregation, and work toward a more inclusive society



Disability Statistics


- HUD 2011 Fair Housing Report:
 - 44.3% of families in PH and 37.8% in HCV have a head, spouse, or cohead with a disability





Where You Live Can Determine...

- Where your kids go to school
- Who your friends are
- Your transportation choices
- Your job
- Your health care
- Where you go to religious services
- Where you shop



Where You Live Can Determine...

- What you eat
- Your role models
- Your safety
- Your political participation
- Your likelihood of incarceration
- Your lifespan




What Does “Fair Housing” Mean?

- The concept of “fair housing” dates back to the civil rights struggles of the 1960’s
 - Incorporated into civil rights leaders’ writings and speeches



What Does “Fair Housing” Mean?

- HUD enforces federal fair housing laws
 - HUD investigates complaints
 - Most frequent complaints based on disability and race



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, 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
 - More on this later



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 providers:
 - 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





What is Discrimination?

- Under the FHA, discrimination is when housing providers:
 - 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



Supreme Court Decision on Disparate Impact



Supreme Court Decision on Disparate Impact

- June 25, 2015, *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*
- Affirmed that the FHA prohibits not only acts of intentional discrimination but also practices with an unjustified discriminatory effect, regardless of intent
- Gave HUD mandate to continue to enforce the FHA to address and eliminate unfair barriers



Supreme Court Decision on Disparate Impact

- This has resulted in many HUD notices and OGC memos:
 - Affirmatively Furthering Fair Housing; Final Rule, July 16, 2015
 - Notice 2015-19 & supportive FAQs (11/2/15), and OGC guidance (4/4/16) on use of arrests and criminal records
 - OGC guidance memos on LEP (9/15/16) and nuisance ordinances (9/13/16)



Supreme Court Decision on Disparate Impact

- OGC memos provide a three-step analysis for claims of discrimination:
 - Assessing the discriminatory effect
 - Evaluating whether the challenged policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest
 - Evaluating whether there is a less discriminatory alternative



Obligation to Affirmatively Further Fair Housing



- AFFH final rule published July 16, 2015
- Provided new definitions



New Definitions under the AFFH Final Rule

- *Affirmatively furthering fair housing* means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers based on protected characteristics



New Definitions under the AFFH Final Rule

- *Meaningful actions* means significant actions that are designed and can be reasonably expected to achieve a material positive change
 - For example, increasing fair housing choice or decreasing disparities in access to opportunity



General Principles of Fair Housing

- Seven protected classes – specific classes of people protected from discrimination:
 - Race, color, religion, national origin, sex, familial status, and disability
 - Person can only file a claim under law if they are part of a protected class and the discrimination they faced was due to their class status



Test Your Knowledge

1. A landlord refuses to rent to an applicant because she's a bad housekeeper
2. A landlord refuses to rent to an applicant because the applicant has her nose pierced, many visible tattoos, and green hair

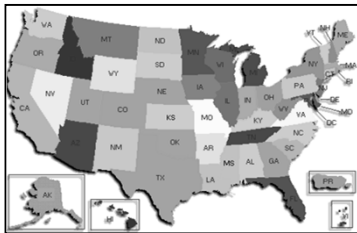


Test Your Knowledge

- 3. A landlord assigns an applicant family with children to a particular building in a multi-family development so that elderly residents, people with disabilities, and single adults are not disturbed, and the children are closer to a nearby park



Understanding the Difference Between Local, State, and Federal Law



Local, State, and Federal Law

- Federal fair housing laws
 - Fair Housing Act (42 USC § 3601-19, 24 CFR 100, Title VIII of the Civil Rights Act of 1968)
 - Title VI of the Civil Rights Act of 1964 (42 USC § 2000, 24 CFR 1)
 - Age Discrimination Act of 1975
 - Executive Orders
 - Section 504 of the Rehabilitation Act of 1973 (24 CFR 8)
 - Americans with Disabilities Act (ADA)
 - U.S. Constitution – Equal Protection (1866 Civil Rights Act, 42 USC §1981-83)
 - Supreme Court decisions/state and local courts

Local, State, and Federal Law

- Housing providers must be in compliance with federal fair housing laws and any state or local laws that have additional protections
- Generally, which law should we follow?
 - Local, state, or federal?
 - *Most protective*



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!



Google It - WHO

- Domestic violence service providers
- Fair housing councils
- Legal Aid
- Disability rights organizations
- Nonprofits/faith-based groups who work with particular immigrant communities
- Area Agency on Aging



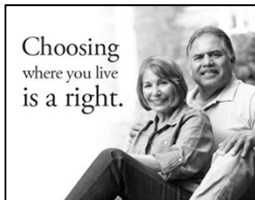
Steal, Cheat, and Use



- Has your neighbor agency contacted Legal Aid?
- Has your neighbor agency developed LEP planning (LAP)?
- Has your neighbor agency developed RA forms?



Fair Housing Complaints



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 it.

Visit www.hud.gov/fairhousing or call the HUD Hotline 1-800-669-9777 (voice) 1-800-927-9275 (TTY)



Fair Housing Complaints

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



Fair Housing Laws & Requirements



Learning Outcomes

- Upon completion of this chapter, you should be able to:
 - State which fair housing laws apply to programs through the use of fair housing regulations, notices, and memoranda
 - Discuss voluntary compliance agreements, administrative enforcement, and other enforcement efforts



Civil Rights Act of 1964 (Title VI)

- Landmark legislation



Civil Rights Act of 1964 (Title VI)

- Prohibits discrimination on the basis of race, color, and national origin for recipients of federal funding
- Prohibits intentional (overt) discrimination but individual agencies may have regulations to prohibit disparate impact discrimination



Fair Housing Act

- FHEO is arm of HUD that administers fair housing laws to ensure all Americans have *equal access* to housing
- Fair Housing Act of 1988 added protections for persons with disabilities and families with children
- Covers most kinds of housing and housing transactions



What it Covers

- Comprehensive law covering private market and federal housing \$\$
- Private and public housing providers must make reasonable accommodations for people with disabilities
 - 24 CFR 100.10



Assessing Civil Penalties

- On May 30, 2017 HUD published a FR Final Rule providing an updated list of civil penalties, effective June 29, 2017:
 - A maximum amount of \$20,111 if there are no prior discriminatory housing practices
 - A maximum of \$50,276 if there was only one within the past five years
 - A maximum of \$100,554 if there was two or more within the past seven years



Summary of the Fair Housing Act


- 24 CFR 100.5:
 - No person shall be subjected to discrimination *because of* race, color, religion, sex, handicap, familial status, or national origin
 - In the sale, rental, or advertising of dwellings
 - In the provision of brokerage services
 - In the availability of residential real estate-related transactions



Fair Housing Act Enforcement




FHA Enforcement




- Three ways the Fair Housing Act is enforced:
 - DOJ
 - Administrative enforcement
 - Private actions




FHA Enforcement DOJ




- DOJ may bring lawsuits where a “pattern or practice” of discrimination exists
- DOJ may also bring an action on behalf of an individual upon a referral from HUD
- DOJ investigates and takes aggressive action




**FHA Enforcement
“Voluntary” Compliance
Agreements**




- HUD’s action (contract) :
 - Affirmative marketing
 - Reasonable accommodation process
 - Physical accessibility
 - Transfers
 - Language services



**FHA Enforcement
VCAs**




- HUD and its FHEO offices investigations
 - HUD had 10 Secretary-initiated investigations in 2010
 - More than in the past ten years combined
 - In FY 2010, HUD awarded 141 grants of over \$40 million to groups in 37 states and the District of Columbia to conduct fair housing enforcement, education, and outreach




**“Voluntary” Compliance
Agreements**

- Tight time frames
- Excessive reporting
- Mandate working with disability groups
- VCAs are often result of FHEO audit, complaint investigation, or local enforcement effort by field office




“Voluntary” Compliance Agreements


- Most VCAs not on HUD’s Website
 - Administered by HQ or FHEO field office
- VCAs might not include complaints by tenants having to do with unfair practices
- See Web – FHEO Library




HUD Administrative Enforcement




- HUD receives complaints directly
 - Field office, online, letter, phone
 - HUD investigates and attempts to resolve informally




HUD Administrative Enforcement



1. HUD notifies the respondent (person complaint is filed against)
2. HUD investigates (interviews, documents collection, conducts onsite visits, etc.)
3. HUD attempts to conciliate (Act REQUIRES HUD to bring the parties together to attempt conciliation in every fair housing complaint)



HUD Administrative Enforcement




4. *Cause or no cause?*


- If determination of "reasonable cause," HUD is charging respondent with violating the law

5. If HUD determines cause, claimant may bring matter before an administrative law judge


- Judge may order injunctive relief, damages and/or civil penalties



HUD Administrative Enforcement





- Complainant may also bring case to court whether or not HUD finds "cause"
- Complaints filed with HUD may be turned over to a local fair housing agency
- Administrative complaints could also begin at a state or local fair housing agency



FHA Enforcement Private Actions

- Private actions can also be brought in local, state, or federal court
- Families don't need to file a complaint with HUD, or anybody else first

DOJ Cases Based on Testing

- *U.S. v. Adams* (W.D. Ark.). The complaint alleges a pattern or practice of discrimination and a denial of rights to a group of persons on the basis of familial status by the owners and management of an apartment complex in Fort Smith, Arkansas



DOJ Cases Based on Testing

- *U.S. v. C.F. Enterprises LLC, et al.* (S.D. Fla.) Prop mgr, acting under direction of the president and sole shareholder, falsely told African-Americans that no apartments were available. Offered to waive the application fee or other costs for white applicants, and told white testers that a selling point of the apts was the absence of African-American tenants.



DOJ Cases Based on Testing

- *U.S. v. Bolt* (S.D. Ga.)
- Refused to rent an apt to a visually impaired individual who uses a guide dog

Consent Decree
\$35,000 compensation
\$20,000 civil penalties



**Seattle Office for Civil Rights
Testing**

- In disability tests, 36% found discrimination by leasing agents:
 - Refusal to accommodate service animals
 - Asked for a pet deposit
 - Quoted weight limit
 - Did not tell disabled tester about an available unit

Charges filed



Section 504

- HUD regs at 24 CFR Part 8
- Only apply to "recipients" of federal dollars
 - Not private landlords



Section 504

- Housing Providers 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



Section 504

- Agencies 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
 - Be aware of resources in the community that could help families with costs



Section 504

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



Duties of 504 Coordinator




Role of 504 Coordinator

- Reasonable accommodation for persons with disabilities:
 - Applicants for employment
 - Employees
 - Applicants for housing
 - Tenants



Role of 504 Coordinator

- Confidentiality
- Monitoring
 - Protocols for receiving requests – who does what, timelines, tracking, hearings
 - Review - the “decider” with “grey area” RA
 - Tracking and monitoring RA
 - Dissemination of new regulations & guidance
 - Training staff



Americans with Disabilities Act




- Signed into law 1990
 - 28 CFR Part 35
- Applies to *public entities* and state and local governments
- Did not add many obligations that Agencies did not already have



Fair Housing Executive Orders and Regulatory Requirements

- We'll cover these later:
 - LEP
 - Equal Access
 - Violence Against Women Act (VAWA 2013)



Compliance with HUD Regulations and Fair Housing Laws



Learning Outcomes

- Upon completion of this chapter, you will be able to:
 - Discuss fair housing best practices and common errors resulting in lawsuits
 - Identify the forms and processes used by HUD to investigate fair housing complaints



Notice of Nondiscrimination and Record Keeping

- Record keeping
 - Maintain records on applicants and participants for at least three years regarding racial, ethnic, gender, and disability status
 - FHEO may compare such data to census data of the community to be sure that you are reaching all low-income individuals



Notice of Nondiscrimination and Record Keeping

- 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

Assessment of Fair Housing (AFH)

- Required by the Affirmatively Furthering Fair Housing Final Rule, published July 16, 2015

AFH

- Replaces the former Analysis of Impediments (AI) with a new Assessment of Fair Housing (AFH)
 - With data mapping tool populated by HUD
 - Will be effective with a future notice
- Encourages regional approaches

AFH

- All policies and plans must certify to affirmatively further fair housing, and all need to “talk to each other”
 - Applicants and families informed of rights and how to file complaints
 - Part of regional housing solutions
 - Proactive
 - Maintains records



Marketing

- Are you conducting outreach to all populations?
 - You can use the AFFH data mapping tool to find the populations in your jurisdiction
 - Do these align with your waiting list(s)?
 - Do these align with your resident population?



Promoting Access



Promoting Access

- Executive Order 13217 (issued 6/18/01)
 - “New Freedom Initiative”
 - Purpose: “de-institutionalize” persons with disabilities
 - Purpose: to improve community integration



The Olmstead Decision

- Supreme Court upheld the mandate to serve people with disabilities in the most integrated setting
- “Money Follows the Person” – dollars will fund the person in housing and supportive services




Actions


- Ways to partner with jurisdiction:
 - WL preference for persons with disabilities ready to exit institutions
 - Dedicate non-elderly disabled vouchers
 - Leverage Section 811 project rental assistance (PRA) funds within public housing
 - Enhance outreach
 - Seek service-based resources



HUD Civil Rights Monitoring Audits

- Effort by PIH and FHEO to increase oversight of fair housing
 - Attachments A & B
- Use these documents before FHEO visits!







ATTACHMENT A
1
OMB Approval No 577-0251
Exp. (05/31/2010)

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information collected will be used to evaluate PHAs' compliance with the Fair Housing laws. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

U.S. Department of Housing and Urban Development
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY (FHEO)
AND
OFFICE OF PUBLIC AND INDIAN HOUSING (PIH)

GUIDANCE FOR THE ON-SITE LIMITED MONITORING REVIEW OF CIVIL RIGHTS-RELATED PROGRAM REQUIREMENTS (CRRPR) FOR LOW-RENT PUBLIC HOUSING (LR) PROGRAM AND HOUSING CHOICE VOUCHER (HCV) PROGRAM






OMB Approval No 577-0251
Exp. (05/31/2010)
ATTACHMENT B
1

Public reporting burden for this collection of information is estimated to average 2 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information collected during the onsite comprehensive reviews of Public Housing Agencies (PHAs) will be used by HUD to evaluate the PHAs' compliance with civil rights and fair housing laws and regulations (Regulatory Authorities: 24 CFR 1.600; 24 CFR 8.55; 24 CFR 12.5). The information is subject to the confidentiality requirements of the HUD Reform Legislation. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

U.S. Department of Housing and Urban Development
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY (FHEO)
AND
OFFICE OF PUBLIC AND INDIAN HOUSING (PIH)

ON-SITE LIMITED MONITORING REVIEW – SECTION 504



Persons with Disabilities



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**Reasonable Accommodation
Definition**

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

mma

**Physical, Mental, or Emotional
Impairment**

- Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting the following systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, endocrine (includes bowel, bladder, and reproductive functions)
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities

mma

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 one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, bending, standing, eating, lifting, concentrating, thinking...



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




Substantially Limits

- What about "sensitivities"?
 - Chemical sensitivity? Allergy to cigarette smoke? Allergies to food?
 - Respiratory or neurological functions may be impacted so severely that requirements to be a disability are satisfied *OR*
 - Sensitivity may not rise to the level to constitute a disability



Substantially Limits


- What about “sensitivities”?
 - HUD issued Smoke-Free final rule 12-5-2016
 - Applies to all PH except units in mixed-finance



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 because of myths, fears, and stereotypes associated with disabilities



Regarded As...



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




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.
 - Decision is: nexus?




Nexus

- Yan uses a wheelchair. Parking spaces were recently reassigned and her space is much further from her unit. She requests an accessible parking space.
 - 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.
 - 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.

▪ Decision: nexus?



Nexus

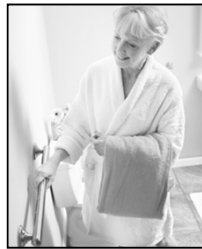
- Yan has a mental health disability. She has requested that she move to a unit that has recently opened up down the hall where it is quieter and there are less people coming and going outside of her unit.

▪ Decision nexus?



What is a Reasonable Accommodation?

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



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



To Verify or Not to Verify? HUD DOJ Joint Statement



- May verify disability and nexus
- But NOT verify if "obvious or otherwise known"




Requests

- 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



What you *Can* Ask

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




What you *Can* Ask

- May verify business-related “need to know”
 - Definition for designated housing, qualification for allowances
 - Request for an accommodation
 - Appeal of denial or hearing for termination – mitigating circumstances or reasonable accommodation




What You 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


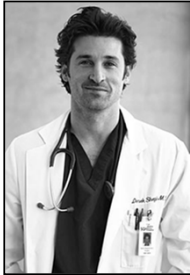


May NOT Request

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




Doctor Sends the Medical Reports...Now What?



May Not Request

- If you receive confidential information about a person's specific diagnosis, treatment, or information regarding the nature/severity of the disability, 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



Cannot 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



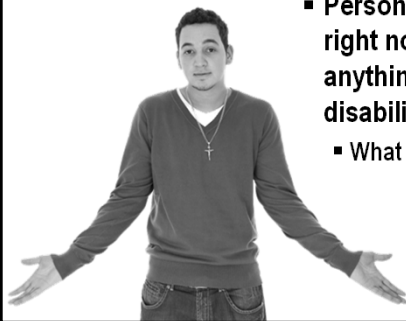
Cannot Ask



- 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?



Cannot Ask



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



Ability to Live Independently

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



Ability to Live Independently

- 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



Ability to Live independently

- Emily is a person who uses a wheelchair due to her disability. She is eligible for housing and is first on the waiting list. However, the only unit available at this time is on the 14th floor of an elevator building. You are concerned.



Ability to Live Independently

- During a fire, how will Emily be safe and be able to leave the building if the elevators are non-operational?
- Staff skips Emily's name for this unit but will be sure to offer her the first available unit on one of the lower floors.
- A "reasonable" decision?



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?



Case Study: Wait List

- Charles was not taking his depression medication. He is on the wait list. You send him a purge letter. He does not respond because he is so depressed that he is not opening any of his mail. You take him off the WL after the time expires to contact your office...



Application and Admission Case Study

If an applicant family demonstrates that it failed to respond to a request for information due to disability, you must decide whether to reinstate the family on the waiting list as a reasonable accommodation.



Reasonable Accommodations



Learning Outcomes

- By the end of this chapter, you should be able to:
 - Apply the reasonable accommodation process at all program levels including application, occupancy, and termination
 - Discuss best-practice policies and procedures for documentation, verification, confidentiality, and reporting expectations for the reasonable accommodation process



Introduction

- 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



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..."



Obligation to Notify

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



Procedural Guidelines for Considering Requests

- Have written procedures:
 - Verification process – how many times? How long do you 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

- Never offer an accommodation until one is specifically requested
 - The requester does not need to use the 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?



The Request Begins a Process

- Sometimes the need for accommodation presents itself through a complaint or noncompliance with family obligations
 - This is a signal that should begin the process
 - "What can we do to help?"



Request Triggers a Process

- Process may involve fluid negotiations on a case-by-case basis
- May offer alternative options
- Document from the beginning



Art of the Reasonable Accommodation Conversation

- The first answer to an accommodation request is never "NO." Period.
- If you refuse a request because it isn't reasonable, discuss with the requester whether there is an alternative
 - If alternative would meet the disability-related needs, must grant it

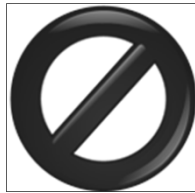


Treat Each Case Individually

- 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

- 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...
 - It imposes undue administrative and financial burdens *or*
 - The request fundamentally alters the nature of housing provider's work *or*
 - Even with an accommodation, there is a direct threat




Consideration of Reasonableness of Request

- Determination of undue burden made on case-by-case basis, looking at factors such as:
 - Overall size of the program with respect to the number of employees, type of facilities, and size of budget
 - Type of operation including composition and structure of workforce
 - The nature and cost of accommodation 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

- 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)



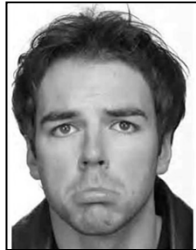
Serious or Repeated Lease Violations

- 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
- James X




Accommodating Participants and Tenants

- Home visits
- Hoarding



Live-In Aides



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Live-In Aides and OIG Audits

- Who is a live-in aide?
 - A live-in aide is a person who (24 CFR §5.403):
 1. Is determined to be essential to the care and well-being of the persons;
 2. Is not obligated for the support of the persons;
 3. Would not be living in the unit except to provide the necessary supportive services

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Live-In Aides and OIG Audits

- Occasional, intermittent, multiple, or rotating care givers do not meet definition of live-in aide
- Live-in-aides must *reside* with a family for the family unit size to be adjusted

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Live-In Aides and OIG Audits

- If a family qualifies for a live-in aide, should grant the family an additional room
 - The aide does not become a permanent member of the household
 - No claim to stay if the tenant dies or otherwise leaves the subsidized unit
 - The aide's income is not counted in rent



Live-In Aides and OIG Audits

- "Helper" or a live-in aide?
 - Helpers – come and go during the day and are guests or employees of participant
 - *A daily in-home worker is not equally effective as a reasonable alternative accommodation because...?*



Live-In Aides and OIG Audits

- A participant requires 24 hour care
- He has 2-3 caregivers that rotate shifts to assist him rather than just 1 live-in aide
- May we give him the 2 bedrooms because someone has to be there with him 24 hours per day?



Live-in Aides and Relatives

- Relatives not automatically disqualified from being live-in aides
- Children: may the live-in aide bring them?
 - Familial status discrimination
 - If children are involved, what size unit do we then offer – how many bedrooms?



Live-In Aide Screening

- May refuse to approve a particular person as a live-in aide, or may withdraw approval if:
 1. The person commits fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
 2. The person commits drug-related criminal activity or violent criminal activity; or
 3. The person owes rent or other amounts to the housing provider



Additional Bedroom for Medical Equipment



Medical Equipment, Exercise Equipment, and...?



Additional Bedroom for Medical Equipment

- Participant may have to show that all living and sleeping rooms in the current unit are insufficient to meet the requestor's need
- No other equally effective way to remove "the barrier"



Additional Bedroom for Medical Equipment

- If a third party initially verifies the medical necessity for an extra bedroom, the housing agency should require annually:
 - A certification that the disability still exists and the accommodation is still necessary
 - Inspectors review use of the room



Service and Assistance Animals



Service and Assistance Animals

- FHEO Notice 2013-01
 - Published April 25, 2013
 - Makes distinction between service animal and assistance animals



Service Animals – FHEO 2013-01

- Service animals are trained dogs under the ADA
 - Apply to public accommodations



Service and Assistance Animals

- Pet policies do not apply to service animals or assistance animals
- An animal is a service animal, an assistance animal, or a pet



Service Animals in Public Housing

- Must first evaluate if animal is a service animal (a dog)
 - Only two questions under ADA:
 - Whether the dog is a service animal required because of a disability?
 - If yes, what work or tasks has the animal been trained to perform?



Service Animals

- FHEO Notice 2013-01, under ADA:
 - 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

- FHEO Notice 2013-01, under ADA:
 - 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
 - Animal permitted to accompany to all areas



Service Animals and Assistance Animals

- FHEO Notice 2013-01
 - Apply ADA test first for service animal – if animal meets test for service animal, just say YES
 - If not, go to the reasonable accommodation process under FHA and 504 – assistance animals



Assistance Animals

- May include animals other than dogs
- Reasonable accommodation process:
 - Is request by or on behalf of person with disability
 - Is there a disability-related need (nexus)?
 - Is it reasonable? ...



Assistance Animals

- Reasonable accommodation process:
 - Does the *specific animal* pose a direct threat or would it cause substantial physical damage to property?
 - Breed, size, weight limits don't apply
- Same verification guidelines as with any RA



Assistance Animals

- Have the authority to regulate assistance animals under applicable federal, state, and local law
 - Cannot refuse just because the animal is not professionally trained
- All lease provisions apply
- May require proof that all animals have had their shots



Service and Assistance Animals

- Really, the Rottweiler?
 - Objective evidence that this animal:
 - Poses a direct threat to the health or safety of others that cannot be reduced or eliminated
 - Animal will cause physical damage
 - Local animal codes



Summary

1. Does animal meet ADA test for service animal?
 - Is the dog required because of a disability?
 - If yes, what work or tasks has the animal been trained to perform?
2. If meets the ADA test, approve
3. If not, go to reasonable accommodation - assistance animal



Case Study

- Unusual pets



Service Rooster?



**Reasonable Accommodation
Steps - Summary**

1. Inform applicants, residents, participants
2. Request made by or on behalf of person with disabilities
3. Establish nexus, or relationship, between limitation posed by disability and the need for the accommodation
4. Determine if reasonable
5. If not reasonable, must explore and offer any reasonable alternative



**Fair Housing Issues in
Assisted Housing**



Learning Outcomes

- By the end of this chapter, you will be able to:
 - Apply legal mandates under VAWA



**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
- Despite its title, VAWA applies regardless of sex, gender, or sexual orientation



Final Rule for VAWA 2013

- Nov 16, 2016, effective Dec 16, 2016
- Implements VAWA 2013
- Changes involve notification, documentation, and emergency transfer plan requirements
- Clarifies documentation requirements



Final Rule for VAWA 2016

- VAWA 2013:
 - Protections include victims of sexual assault
 - Replaced the term “immediate family member” with “affiliated individual”
 - Spouse, parent, brother, sister, or child of the victim, or an individual to whom the individual is in loco parentis, or any individual, tenant, or lawful occupant living in the unit



Final Rule for VAWA 2013

- New Notice of Occupancy Rights (HUD-5380) and certification form (HUD-5382) must be provided during first 12 months after effective date (December 16, 2016), 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

- Must establish an emergency transfer plan (ETP) for victims
- No later than June 14, 2017
- Based on HUD’s model emergency transfer plan




OGC Memo on Nuisance Ordinances

- Office of General Counsel Guidance on Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, issued 9/13/16




OGC Memo on Nuisance Ordinances

- Nuisance ordinances penalize landlords of high crime or “nuisance” properties
 - Often measured by number of police calls and use of emergency services
- Landlords subject to sanctions including forfeiture and incarceration
 - May be required to evict “nuisance” tenants




OGC Memo on Nuisance Ordinances

- Such nuisance and crime-free ordinances may lead to discrimination
 - May have a disparate impact on protected classes
- VAWA victims are especially vulnerable
 - Subject to eviction if they call police or ambulance





OGC Memo on Nuisance Ordinances

- Local governments are prohibited from enforcing ordinances which penalize individuals for use of emergency services or for being victims of domestic violence or other crimes




Denial of Admission

- VAWA prohibits housing providers 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, can deny admission
- Must include VAWA Notice of Occupancy Rights and form HUD-5382, in denial letters



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

- In the event of lease bifurcation must provide a reasonable period of time for remaining tenants who weren't already eligible to establish eligibility for the same or another program, or find other housing
 - 30 days to establish eligibility



Final Rule for VAWA 2013

- VAWA doesn't limit 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



Notification and Certifications

- Notice of Occupancy Rights is the official HUD informing notice
 - 8 pages
 - LEP requirements apply
- Again, must provide this and HUD-5380 at admission and with any notice of denial or termination



Certifications

- As specified in the new final rule, if documentation is requested, 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



Certifications

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



**Certifications – Notice
PIH 2017-02 (HA)**

- Issued 1/19/17, VAWA self-petitioner verification procedures
- Since financial assistance is prohibited to ineligible noncitizens, but assistance must not be denied while verifying immigration status,
 - VAWA self-petitioners can indicate they are in "satisfactory immigration status"...



**Certifications – Notice
PIH 2017-02 (HA)**

- *Satisfactory immigration status* – status which does not make the individual ineligible for financial assistance
- Noncitizen victim must have been battered or subjected to extreme cruelty by their spouse or parent, who is a US citizen or legal permanent resident (LPR)



**Certifications – Notice
PIH 2017-02 (HA)**

- Receipt of self-petition (INS forms I-360, I-130, or 797) prohibits housing provider from requesting additional verification information
- Notice describes a 3-step procedure for verification
- After verifying status, make a final determination as to the self-petitioner's eligibility for assistance



Form HUD-5382

- Although HUD published a new HUD-50066 with the VAWA 2013 final rule they have since replaced it with Form HUD-5382
 - Make sure you are using the new form




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




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



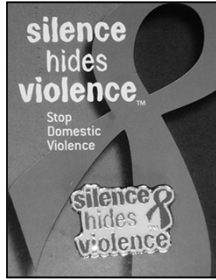
Confidentiality

- Information provided:
 - 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



Form HUD-5382

- Form of self-certification
- Replaces HUD-50066



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
- USDA issued a partner notice




Notice PIH 2017-08

- The notice:
 - Clarifies that as a reasonable accommodation, a tenant/participant can request VAWA protections if live-in aide is a victim




Notice PIH 2017-08

- The notice:
 - Recommends documenting in a confidential manner when verbal statement or other evidence is accepted
 - Provides various clarifications and considerations with respect to requesting third-party documentation in cases where information conflicts




Notice PIH 2017-08

- The notice:
 - Clarifies may not conduct further “fact finding” to verify the “validity” of victim status, although if you already has or receives reliable conflicting information, they may require additional third-party documentation



Notice PIH 2017-08

- The notice:
 - Offers guidance and best practices for proper communication with victims, specifically in avoiding inadvertent disclosure of information and keeping the victim safe



Notice PIH 2017-08

- The notice:
 - Clarifies that when the perpetrator is a VASH participant, the victim must still be able to be eligible for assistance
 - Encourages partnerships with victim service providers



Notice PIH 2017-08

- The notice:
 - Reiterates that in lease bifurcations for mixed families where the eligible individual was the perpetrator, assistance is limited to 30 days if the remaining family member has not submitted documentation of eligible immigration status or pending appeal of immigration status



Notice PIH 2017-08

- The notice:
 - Provides considerations for reducing an "actual and imminent" threat
 - Provides guidance on establishing a discretionary waiting list preference for victims



VAWA Scenario 1

- What if both partners in an assisted family point fingers...who do you support?
- Domestic abuse situations are not always black and white



VAWA Scenario 2

- "He's been living with me; I did not tell – He threatened to harm me and my kids if I told – Now he has stolen money out of my account and I can't pay my rent...but I am a victim of domestic violence."



VAWA Scenario 3

- Is there a limit to the number of times that we can assist a victim?
- What if the same victim goes from one abusive relationship to another?
- Do we still have to assist him/her?



Answer

“CONFIDENTIALITY— All information provided to *any* agency, owner, or manager, including the fact that an individual is a victim of abuse, shall be retained in confidence by such agency, and shall neither be entered into any shared database, nor provided to any related housing agency, assisted housing provider, tribally designated housing entity, owner, or manager...”



Discriminatory Effects and Disparate Treatment



Discriminatory Effects and Disparate Treatment

- HUD’s OGC published “Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records...”
 - The guidance clarifies that discriminatory effects and disparate treatment apply in FHA cases in which a housing provider justifies an “adverse housing action” based on the individual’s criminal history



Discriminatory Effects and Disparate Treatment

- Disproportionate incarceration rates for African Americans and Hispanics create a disparate impact, so the FHA applies



Discriminatory Effects and Disparate Treatment

- OCG doesn't prohibit the consideration of criminal information, but must ensure policies don't create a disparate adverse impact – policy must distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not



Thank you for attending!

- Hope to see you again!