

# Preventing and Addressing Sexual and Other Discriminatory Harassment in Housing

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Fair Housing Training  
For Public Housing  
Agency Executive Staff  
And Commissioners





- **Explains** how sexual and other types of discriminatory harassment violate the ***Fair Housing Act.***
- **Informs** PHA Executive Staff and Commissioners about their responsibilities for preventing harassment in PHA housing programs or correcting and ending it when it does occur.
- **Uses** hypothetical scenarios to learn how to recognize and properly respond to sexual harassment in housing.
- **Identifies** steps that PHAs should take to help prevent sexual harassment and help victims of harassment.

## *The Fair Housing Act:*

- **Prohibits discrimination in housing** and housing-related services and transactions *because of race, color, religion, sex, national origin, familial status, or disability.*
- **Prohibits retaliation against someone** who has made a complaint about discrimination or otherwise exercised his or her fair housing rights or who has aided someone else in doing so.





**This training focuses on SEXUAL HARASSMENT**  
*(i.e., discrimination because of sex).*

But harassment because of:

- race
- color
- religion
- national origin
- familial status
- disability

also violates the **Fair Housing Act.**

### **Sexual Harassment in housing can take many different forms:**

- It can take the form of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- It also can take the form of offensive remarks or other hostile behavior because of a person's sex.
- It can consist of oral, written, or other conduct and does not require physical contact between the harasser and victim.



- **PHA Executive Staff and Boards of Commissioners** must ensure their housing programs are free of discrimination.
- **Executive Directors and other PHA staff** execute policies, including civil rights policies, oversee daily operations, manage and train employees and contractors, and respond to evidence or complaints of discrimination.
- **Commissioners** establish policies (including civil rights policies), ensure those policies are complied with, and act if problems arise.

- **When a PHA resident** *(or housing voucher program participant)* **is sexually harassed**, the PHA may be liable under the **Fair Housing Act**.
- **PHA liability for sexual harassment** can arise in multiple ways – we'll discuss them later.



**We are going to use a hypothetical** to illustrate how PHA liability for sexual harassment can arise. As we go through each part of the hypothetical, we will discuss:

- **What happens;**
- **Why the conduct is harassment;** and
- **What went wrong** that allowed the harassment to happen.
- We'll also discuss what a PHA must do to **correct and end** the harassment, the **consequences** for inaction, and **best practices** for addressing and preventing harassment.

**Jane** lives in an apartment owned and managed by the Greenacre PHA.

She submits a maintenance request to fix a leak under her kitchen sink.



**John**, the PHA maintenance man, responds to the request.

When fixing the sink, John asks Jane if she has a boyfriend. Jane says that's none of his business. That doesn't stop John and he says she is "really hot" and that "we should hang out."



**Jane** calls the PHA office.

When no one answers, Jane leaves a voicemail for the site manager explaining that John “came on to her” and “made her uncomfortable.”

Jane doesn’t hear back from anyone at the PHA.



- John's conduct may violate the PHA's employee conduct rules, but the conduct might not constitute a **Fair Housing Act** violation **yet**.
- As we'll discuss later, that's because his conduct may not be **severe** or **pervasive** enough at this point to violate the **Fair Housing Act**.
- However, if the site manager (or other PHA employee) does nothing, John's conduct is likely to continue and get worse. And if it does, it **will** lead to a **Fair Housing Act** violation.



The site manager needs to take **effective steps** to ensure that the harassment stops immediately and does not progress. **Steps she should take include:**

- initiating an investigation into Jane's allegations;
- informing Jane of her right to file a ***Fair Housing Act*** complaint at any time; and
- encouraging Jane to report any other harassment that she experiences.

Even if she is unsure if she has been told the full story, she should **warn John that harassing conduct is prohibited.**

If the corrective action taken by the site manager does not stop the harassment, she needs to take further action.

Greenacre PHA  
Site Manager



## Best Practices

- Have written procedures for tenants and voucher program participants to make a complaint by phone, email, online, or in person.
- Hire/designate a harassment complaint coordinator.
- Document and maintain records of investigations and any corrective actions taken.

## Best Practices

### **Collect this information when taking a complaint:**

- Victim name and contact information for follow up;
- Summary of what happened (tell victim to save evidence – e.g., texts, photos, voice mail, letters, notes, journals, etc.);
- Name(s) of harasser(s), witness(es), and other possible victims, if known;
- Property name and address; and
- Date(s), time(s), and location(s) of harassment.

It's a week later and the PHA has taken **no corrective action** for John's unwelcome conduct toward Jane. The situation escalates.

**John uses his master key to enter Jane's apartment at night, without knocking or invitation.** Jane is home and is startled by his entry. He tells Jane he's there to check on the sink, even though John fixed the sink a week ago and Jane had not requested further maintenance.



In the kitchen, John touches Jane on her rear end, points to a photo of Jane on the fridge and says

“Wow, you look hot in that bikini.

You should put that bikini on for me right now.”

Jane refuses and tells John he needs to leave. John leaves, saying he was “just kidding.”



## Hypothetical Part 2: The Facts

Jane calls the PHA site manager again and explains that John entered her apartment without knocking, touched her and made “inappropriate comments” about her body.

The site manager apologizes to Jane and tells her she will make sure “it doesn’t happen again.”

Jane doesn’t hear further from the site manager.



- John's conduct has clearly escalated. His latest actions and comments now violate not only the employee conduct code, but **also** the *Fair Housing Act* because they are **severe** or **pervasive**, two legal terms that we will discuss later.
- The site manager must take whatever action is necessary to ensure that John's unwelcome conduct **stops immediately** and that Jane is protected from any retaliation.
- Given the nature of John's conduct, **immediate interim action may be required** even before any investigation is finished. A simple verbal reprimand to John is **grossly inadequate** given the severity of his actions.



- The site manager **must investigate**, tell Jane of her right to file a **Fair Housing Act** complaint, and ensure that corrective action is effective in stopping John's unwelcome conduct.
- Even if Jane did not give all the details to the site manager, the site manager must investigate to understand what happened.
- Note – In your own PHA, you may have a **complaint coordinator or other designee** who would be responsible for such investigations, instead of the site manager.



## Best Practices

### **Adopt an employee code of conduct that:**

- prohibits harassment against applicants, residents, and voucher program participants;
- provides for disciplinary actions for harassment; and
- provides for discipline for employees who do not respond appropriately to harassment complaints.

## Hypothetical Part 3: The Facts

Two weeks later, Jane's hot water heater stops working and she calls in an emergency maintenance request.

Jane gets a call from John, who says he is "too busy" to fix the water heater that day but says he will find the time to fix it if they could "test out the shower together" that evening.

Jane refuses and the water heater remains broken when she gets home that evening.



The next day, Jane calls the PHA site manager to complain about the lack of hot water and that John was saying “inappropriate things” again.

The site manager tells Jane she will make sure that her water heater gets fixed by the end of the day. The site manager doesn’t inquire about or otherwise respond to Jane’s complaint about John’s inappropriate comments.

John is sent to Jane’s apartment and the water heater is repaired by the time Jane gets home.



John conditioned his repair of the water heater on Jane's agreeing to shower with him. This amounts to a violation of the **Fair Housing Act**.



**The site manager should NOT have assigned John** to make the repair in Jane's apartment, given his prior harassing conduct.

The site manager or another PHA employee must quickly investigate Jane's complaint, stop John's harassment and ensure that Jane is protected from retaliation.

- It's not enough to just make sure the water heater gets fixed – the harassment must stop.
- The site manager must **enforce** the PHA's employee standards of conduct against John.
- John's invasion of Jane's home and inappropriate touching **warrants termination.**



## Best Practices

### To protect housing voucher program participants, PHAs should:

- Educate owners that rent to voucher program participants about their *Fair Housing Act* obligations;
- Promptly investigate complaints from voucher program participants;
- **Enforce HAP contract provisions** and other rules if a voucher program owner engages in or fails to correct harassment by, e.g.:
  - Abating, suspending, or terminating the HAP contract, or prohibiting the owner's future participation in the PHA's housing programs; or
  - Asking HUD to enforce a LDP, suspension, or debarment to exclude persons/entities from HUD programs; and
- Work with voucher program participants to resolve complaints and ensure housing continuity.

**The next week, the site manager sees Jane holding hands with Jane's boyfriend.**

The site manager says "I don't want your boyfriend living with you. You're the only one on the lease."

Jane tells the site manager that she's the only one living in her apartment and that her boyfriend is only visiting.

Shortly afterward, Jane gets a notice from the PHA stating that her assistance is being terminated because she had "unauthorized guests residing in her apartment."

However, the PHA allows visitors and does not terminate the assistance of other women whose boyfriends visit.



- It appears the site manager is terminating Jane's assistance because Jane complained about John's conduct.
- **This is retaliation, and it's illegal.** Under the *Fair Housing Act*, it's illegal to retaliate against a person for complaining about discrimination.
- PHAs should have a process for receiving complaints from residents and a way to monitor employees to make sure complaints are handled appropriately, including taking proper corrective actions.



- **What** is sexual harassment under the *Fair Housing Act*?
- **Who** is liable for sexual harassment?
- **Additional best practices** that PHAs can adopt to prevent and/or stop sexual or other forms of discriminatory harassment.

### Hostile Environment Harassment:

- **Unwelcome conduct** because of sex that is **sufficiently severe or pervasive** as to **interfere with** a person's ability to obtain, maintain, or use and enjoy housing or housing-related services.
- Can be created by a **single incident, if severe.**
- Violates the ***Fair Housing Act***, even if there is no termination of assistance, increase in rent, withholding of repairs, or similar act.

Thinking back to our hypothetical scenario,  
**did John create a *hostile environment* for Jane?**

The answer is **YES**.

His conduct created a hostile environment.



**John's conduct created a hostile environment because it was:**

- Unwelcome
- Severe or pervasive (or both), and
- Interfered with Jane's enjoyment of her home because
  - He repeatedly asked to spend time with Jane, even after she showed she was not interested
  - He entered Jane's apartment with a key without knocking and without a legitimate reason.
  - He made comments about her body and asked Jane to put on a bikini.
  - He touched Jane without permission.

Some of John's conduct by itself was severe enough to create a hostile housing environment, e.g., John's unwelcome entry into Jane's apartment without a legitimate reason, and touching Jane's buttocks without her permission.



### Quid Pro Quo Harassment:

- Making a person's **submission to an unwelcome request** to engage in sexual conduct a **condition of** any aspect of obtaining or maintaining **housing or housing-related services, or**
- Subjecting a person to an **adverse housing action** (such as an increase in rent or an eviction) because that person **refused to submit** to such a request.
- Can be explicit or implied.
- A single quid pro quo act violates the ***Fair Housing Act.***

### Did John commit *quid pro quo* harassment?

The answer is **YES**.

John committed quid pro quo harassment when:

- He refused to fix Jane's water heater unless she agreed to "test the shower out" with him.
- Even if Jane had agreed to participate in unwelcome conduct - to shower with him in order to get her water heater fixed—it's still sexual harassment.





- **BOTH hostile environment** and **quid pro quo** harassment violate the Fair Housing Act.
- **EITHER** type can lead to liability for the PHA.

Yes, John would be liable.

John violated the *Fair Housing Act* in two different ways:

- He created a *hostile housing environment* for Jane.
- He also engaged in *quid pro quo* harassment.



### What about the PHA Site Manager?

Would she be liable under the *Fair Housing Act*?

**YES!** PHA site managers (and other PHA officials) are liable for sexual harassment when:

- They engage in harassment themselves; or
- They fail to take action(s) within their power to stop harassment by other PHA employees or agents—such as, subordinates or contractors—tenants, or HCV/PBV landlords, and property managers that they knew or should have known about.
- If they retaliate against someone who complains about harassment.



### What about the PHA Site Manager? Would she be liable?

- In our scenario, the site manager obviously didn't engage in harassment herself. But she knew of John's harassment and did little or nothing to stop or correct it.
- As John's supervisor she could have, for example: given John a warning when Jane first complained, or suspended him or taken other action to address and stop his harassing conduct.
- She's also liable because it appears that she terminated Jane's assistance in retaliation for Jane's complaints.



Would the PHA be liable for John's harassment? **YES.**

- PHAs are liable for harassment and retaliation committed by employees/agents, *even if they don't know about it*. This applies to employees or agents that administer **any** program, including voucher programs, and **any** agent, including contractors.
- PHAs are also liable for **failing to take action or actions within their power to stop harassment** by their employees/agents or voucher program landlords and property managers that they knew or should have known about.
- In our scenario, **the PHA is liable for both of these reasons**. Both John and the site manager are employees/agents of the PHA and engaged in harassment and retaliation in violation of the Act. Additionally, the PHA knew, through its site manager, of John's harassment and allowed it to continue without attempting to correct or end it.

- Liability can be imposed through **HUD's administrative enforcement process**. If Jane were to file a fair housing complaint with HUD, HUD would then investigate the case and could file a lawsuit on behalf of the complainant before an administrative law judge. The ALJ can render a judgment that imposes liability and awards any appropriate monetary and other relief to Jane.
- Another way that PHAs and their employees may be held liable is through **lawsuits brought by the Department of Justice in federal court**. Such lawsuits often originate from HUD investigations, but also are brought by DOJ based on its own authority to investigate possible *Fair Housing Act* violations.

## Another Hypothetical Scenario

Bill lives in public housing and is Black.

For weeks, Bill's neighbor curses at him. The neighbor uses racial slurs, tells Bill that Blacks shouldn't be allowed to live there, spits at him, and repeatedly tells Bill to "go back to Africa."

Bill complains to the site manager who does nothing.



- Unlike with harassment by employees or agents, **PHAs cannot be liable for tenant-on-tenant harassment if they did not know or have reason to know about it.**
- When addressing tenant-on-tenant harassment, the PHA must ensure that its corrective action doesn't adversely impact the harassed tenant.
- Regardless of whether the PHA is liable for failing to take corrective action, the harassing tenant would be liable for his or her own discriminatory conduct.



## Best Practices

### **Enforce lease provisions and other rules.**

- Issue oral and written warnings and notices of lease or rule violations.
- Terminate assistance and/or evict a harassing tenant if necessary.
- Do not take adverse action or retaliate against the harassed tenant.

## Other Forms of Discriminatory Harassment

- Harassment of a resident due to disability **violates the Fair Housing Act.**
- **A PHA could be liable** for not taking corrective action in response to a tenant complaint of harassment due to disability.
- **A PHA will also be liable** if its staff did the harassing.



**PHAs and PHA officials** may be required to pay damages to victims for:

- **Psychological** harm;
- **Physical** harm;
- **Economic** harm.



- Victim's family members may be entitled to damage payments.

- Civil penalties up to **\$102,600 for a first violation.**
- Widespread harassment may result **in settlements of *millions of dollars.***

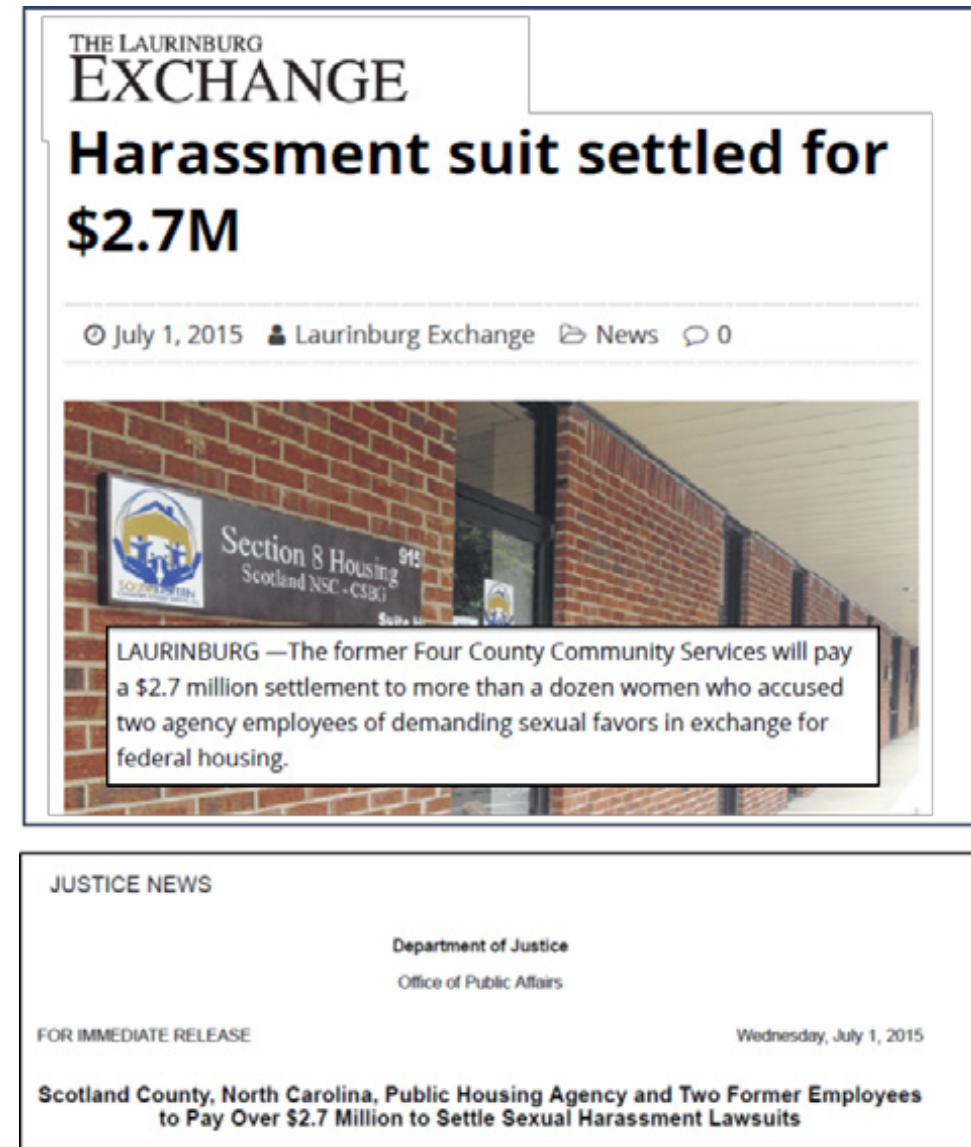
Recent enforcement actions by the  
**U.S. Department of Justice Civil Rights Division**



### *United States v. Wesley, Pender and Southeastern Community and Family Services, Inc. (SCFS)*

Federal District Court • North Carolina • Filed 2014

- **SCFS** – Administers HCV Program in Scotland County, NC
- **\$2.7** million settlement
- **86 women** compensated
- **The complaint can be found at:**  
<https://www.justice.gov/sites/default/files/crt/legacy/2014/12/10/wesleycomp.pdf>
- **The settlement can be found at:**  
<https://www.justice.gov/sites/default/files/crt/legacy/2015/07/06/scfssettle.pdf>



### *United States v. Kansas City, Kansas Housing Authority (KCKHA)*

Federal District Court • Kansas • Filed 2016

- **KCKHA** – Public Housing Authority in Kansas City, KS
- **\$360,000** in damages for victims of sexual harassment
- **14 women** compensated
- **The complaint can be found at:**  
<https://www.justice.gov/crt/file/896361/download>
- **The settlement can be found at:**  
<https://www.justice.gov/Settlement%20Agreement%20United%20States%20v.%20Kansas%20City%2C%20Kansas%20Housing%20Authority%20%28D.%20Kan.%29/download>



LOCAL

KCK housing authority, former employees to pay  
\$360,000 for sexual harassment

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The Kansas City, Kan., Housing Authority and three former employees will pay more than \$300,000 to settle sexual harassment claims.

The Department of Justice on Friday announced the settlement of a suit that had been filed by the federal government in 2015.



- **Money** does not rectify all harms done.
- **Impact** can be far-reaching.



- **Mission Failure** – harassment undermines the PHA's mission of providing safe, decent, affordable housing.
- **Operations Risk** – lawsuits can lead to HUD sanctions.
- **Asset Management** – resident fear of harassment and/or retaliation can lead to other property management issues.

Tom, who is gay, uses a Housing Choice Voucher to rent an apartment.

After Tom moves in, Tom's landlord learns that Tom is gay and issues him a notice of eviction.

Tom



Landlord



- Tom's landlord can't do this.
- HUD's ***Equal Access Rule*** prohibits landlords who accept HCVs and have a HAP contract from refusing to provide housing (or evicting a tenant) because of a person's actual or perceived sexual orientation, gender identity or marital status.
- The ***Equal Access Rule*** applies to all PIH programs and to all PHAs regardless of their size. The ***Equal Access Rule*** also applies to the public housing and PBV programs.



## Best Practices

- **Review and update** policies and protocols.
- **Conduct** outreach to residents/voucher program participants about harassment.
- **Educate** residents/voucher program participants about their rights and where and how to report harassment.

## Best Practices

- Develop and publicize **anti-harassment policies**.
- When developing policies, **get input** from tenants, program participants, and other stakeholders.
- **Require all staff** to be trained to prevent harassment.

### A **Fair Housing Act** complaint can be filed:

- With HUD **online** at—  
[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint);
- With HUD **by phone**: 800.669.9777;  
Federal (Relay Service/TTY: 800.877.8339);
- With a **state or local fair housing agency**—  
[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP/agencies](https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP/agencies);

In addition to filing a complaint, a person may wish to notify the **Department of Justice, Civil Rights Division**, which has authority for patterns or practices of discrimination:  
1-844-380-6178; [fairhousing@usdoj.gov](mailto:fairhousing@usdoj.gov);  
<https://www.justice.gov/crt/sexual-harassment-housing-initiative-how-report>.

### For **Equal Access Rule** complaints, PHAs should:

- Instruct residents to contact their **local HUD office**, which can be found at:  
[https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/localoffices](https://www.hud.gov/program_offices/field_policy_mgt/localoffices).
- Direct residents to the following **website** for more information: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](https://www.hud.gov/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination)

### Fair Housing Act and its Regulations, Equal Access Regulations

- **Fair Housing Act**, 42 U.S.C. §§ 3601 – 3619 (“the Act”), 24 C.F.R. parts 100, 103, 180.
- **Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act**, 81 Fed. Reg. 63054 (Sept. 14, 2016), final rule (“Harassment Rule”)
  - Available at <https://www.gpo.gov/fdsys/pkg/FR-2016-09-14/pdf/2016-21868.pdf>
  - Codified at 24 C.F.R. § 100.600
- **Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity**, 77 Fed. Reg. 5662 (Feb. 3, 2012), as amended by **Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs**, 81 Fed. Reg. 64763 (Sept. 21, 2016), and **Equal Access to Housing in HUD’s Native American and Native Hawaiian Programs – Regardless of Sexual Orientation or Gender Identity**, 81 Fed. Reg. 80989 (Nov. 17, 2016) (“Equal Access Rule”)
  - Available at: <https://www.gpo.gov/fdsys/pkg/FR-2012-02-03/pdf/2012-2343.pdf>; <https://www.gpo.gov/fdsys/pkg/FR-2016-09-21/pdf/2016-22589.pdf>; and <https://www.gpo.gov/fdsys/pkg/FR-2016-11-17/pdf/2016-27196.pdf>
  - Codified at 24 C.F.R. §§ 5.105(a)(2), 5.106

### PIH Regulations and Notice

- **PIH Regulations:**
  - 24 C.F.R. § 966 - Public Housing Lease and Grievance Procedure;
  - 24 C.F.R. § 982 - Section 8 Tenant Based Assistance: HCV Program
  - 24 C.F.R. § 983 – Project Based Voucher (PBV) Program
- **PIH Notice 2014-20 (HA):**

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

  - Available at <https://www.hud.gov/sites/documents/PIH2014-20.PDF>