

Preventing & Addressing Sexual and Other Discriminatory Harassment in Housing
for PHA Employees

Alexandria: Hi. My name is Alexandria Lippincott. I'm a trial attorney in the Office of General Counsel's Fair Housing Division at HUD. Welcome to Preventing and Addressing Sexual and Other Discriminatory Harassment in Housing, a Fair Housing Training for Public Housing Employees. HUD's Office of Fair Housing and Equal Opportunity, Public and Indian Housing, and the Office of General Counsel's Fair Housing Office created this program for public housing agencies.

Alexandria: To begin today, we will share with you some welcoming remarks from Anna Maria Farias, the Assistant Secretary of Fair Housing and Equal Opportunity, and Dominique Blom, the General Deputy Assistant Secretary for Public and Indian Housing.

Anna Maria: Hello. My name's Anna Maria Farias, and I'm HUD's Assistant Secretary for Fair Housing and Equal Opportunity. Welcome to today's training on Preventing and Addressing Sexual Harassment in Housing. Every day we hear and read news stories about individuals who have been subjected to unwanted sexual advances and other forms of harassment. These incidents can happen to anyone, anytime, and anywhere. Here at HUD we're seeing more and more cases involving women and men who have been subjected to harassment where they live. No one should have to endure this type of treatment to keep a roof over their head. It's illegal, and we're doing something about it.

Anna Maria: Today's training is one in a series of sessions HUD is conducting to help you gain a clearer understanding of what sexual harassment is and HUD's enforcement authority when it comes to sexual harassment. You will also learn about our ongoing initiatives in this area, including a joint HUD and Justice Department task force that has been created to combat sexual harassment. Thank you again for making the commitment to learning all you can about what behavior and actions constitute illegal harassment and HUD's increased efforts to address this type of discrimination. We look forward to working with you to ensure that no one is denied the ability to feel safe and secure in the place they call home. Thank you very much.

Dominique: Hello. My name is Dominique Blom, and I'm HUD's General Deputy Assistant Secretary for Public and Indian Housing. Thank you for viewing this training about the approaches you can use to prevent and address sexual harassment. This training has been developed to provide you with information about the Fair Housing Act's protections regarding sexual harassment and other types of harassment. This video, other videos, and additional reference materials which are available on HUD Exchange, will define harassment, including sexual harassment, and will explain HUD's enforcement authority to address harassment. You are encouraged to share these training materials and videos with your peers and neighbors. Thank you for ensure that secure and safe housing is available for families in your community.

Alexandria: Thank you to Dominique Blom and Anna Maria Farias for welcoming us to today's training on Preventing and Addressing Sexual and Other Discriminatory Harassment in

Housing. This training series is a key component in the task force that the assistant secretary mentioned. The task force is a joint initiative between the Department of Justice and HUD to combat sexual harassment in housing. The two agencies will engage in public outreach, information sharing, and joint enforcement of the Fair Housing Act.

Alexandria: My colleagues who are joining me in this training today are Casey Weissman-Vermeulen, a trial attorney in HUD's Office of General Counsel, Fair Housing Enforcement Division, and Megan Whyte de Vasquez, a trial attorney in the Department of Justice's Housing and Civil Enforcement section in the Civil Rights Division. She will discuss several harassment cases that DOJ has prosecuted against public housing agencies later in the training.

Alexandria: Before we get into the training agenda, however, I have a few housekeeping details to go over. Because this is a prerecorded training, we cannot address your questions during the training. However, we have established a e-mail address, HUDQuestions@hud.gov, in order to respond to your questions later in a written document that will be posted on HUD Exchange. This e-mail address will be presented on the screen at various times during this training. We will also be posting other materials from this training, both the PowerPoint and our presentation, on the HUD Exchange. You should note, however, that if you have a concern and want to file a Fair Housing Act complaint itself, that the e-mail address is not the way to do so, and we will talk to you about where to go in order to file your complaint towards the end of the training.

Alexandria: We will also be placing the other training presentations and materials that are part of this series on HUD Exchange. We already have the presentation from our training of boards of directors and executive staff available on HUD Exchange. After this training today, we will be focused on training housing owners and managers who accept housing vouchers. The last training will be for residents and program participants who use vouchers.

Alexandria: In our training today, we will explain how sexual and other types of discriminatory harassment violate the Fair Housing Act. We will inform you, PHA employees, about your responsibilities for preventing harassment in housing programs and for correcting it when it does occur. We'll use hypothetical scenarios to learn how to recognize and respond appropriate to harassment. And we'll identify steps that you and your PHA should take to help prevent harassment and to help victims of harassment.

Alexandria: First, let's start with some legal context. The Fair Housing Act is the law that prohibits sexual harassment in housing. However, it does much more than that. The Act prohibits discrimination in housing and housing-related services and transactions because of race, color, religion, sex, national origin, familial status, and disability. It also prohibits retaliation against someone who has made a complaint about discrimination or who has otherwise exercised their Fair Housing Act rights or who has helped somebody else in the exercise of that other person's rights. While this training focuses on sexual harassment or discrimination because of sex, it's important to note that harassment because of the other six protected classes also violates the Fair Housing Act.

Alexandria: Sexual harassment can take many different forms. Sexually harassing conduct may appear as unwelcome sexual advances or request for sexual favors or other verbal or physical conduct of a sexual nature. But it can also take the form of offensive remarks or other hostile behavior because of a person's sex. Such conduct, whether it's in the form of a sexual come-on or in the form of an insult or hostility because of a person's sex, can be conveyed in a variety of ways. For example, it can come in as a statement, notes, texts, voicemails, photographs. Lots of different ways. It's important to note that harassing conduct does not require physical contact between the harasser and the victim.

Alexandria: PHAs must ensure that their housing programs are free from discrimination, and all employees are responsible for helping the PHA meet this obligation. Directors and commissioners are responsible for establishing anti-harassment policies, but PHA employees are the ones who are responsible for carrying out those policies. All employees must know what to do if they become aware of housing harassment by another employee or by one tenant against another. PHAs should foster a sense of investment and openness by its staff. Staff must be encouraged to speak up and be assured that they will be protected from retaliation when they do so.

Alexandria: PHA employees are collectively responsible for reporting, tracking, correcting, and ending harassment. But as we'll discuss later, an individual employee's responsibilities will depend on their duties. Throughout our presentation, we will discuss various best practices that employees can take to help their PHA comply with this obligation to provide housing free from harassment. Not every best practice will pertain to every employee. But because the employees must work together to protect residents and voucher-holder participants, it's important that you understand your responsibilities and the responsibilities of your colleagues.

Alexandria: Clear policies and strong oversight don't just help safeguard the well-being of public housing residents and program voucher holders, but it also protects the public housing agency itself. That's because the public housing agency may be liable under the Fair Housing Act when a resident is sexually harassed. Also, if a program participant is sexually harassed, PHA employees can also be liable. Liability for sexual harassment can arise in multiple ways, which we will talk about later in the training.

Alexandria: Now we're going to use a hypothetical scenario to illustrate how public housing liability for sexual harassment can arise. As we go through each part of the scenario, we will discuss what happens, why the conduct is harassment, and what went wrong that allowed the conduct to occur. We'll also discuss what the PHA employees must do to correct and end the harassment, the consequences for inaction, and the best practices for addressing and preventing harassment.

Alexandria: Here are the facts of the hypothetical scenario. Jane lives in an apartment owned and managed by the Greenacre Public Housing Agency. She submits a maintenance request to fix a leak under her kitchen sink. When fixing the sink leak, John asks Jane if she has a boyfriend. Jane says that it's none of his business, and he responds by saying she's "really hot" and that "we should hang out." Jane calls and leaves a voicemail for the PHA

site manager explaining that John "came on to her" and "made her uncomfortable." Jane doesn't hear back from anyone at the PHA.

Casey: We're going to stop right there and evaluate what's happened in our scenario so far. John's conduct may violate the PHA's employee conduct rules, but, as we'll discuss later, might not constitute a Fair Housing Act violation yet. However, if the site manager does nothing, John's conduct will likely get worse to the point that it does violate the Fair Housing Act.

Casey: Taking a step back, what are some best practices PHA employees should use to help ensure that complaints like Jane's don't fall through the cracks or otherwise get ignored? For starters, you should familiarize yourself with your PHA's policies and procedures for handling complaints. If you get a complaint or otherwise learn about harassment, or any other potential problem of that sort, you should alert your PHA complaint coordinator, a supervisor, or any other official at your PHA who is responsible for ensuring that complaints get handled quickly and appropriately. Of course, if that person is you, then you need to take whatever corrective action is appropriate to address the complaint and ensure that any inappropriate conduct stops.

Casey: Now, because we have people with a wide range of responsibilities participating in today's training, it's not possible to cover in detail the specific responsibilities that each PHA position entails with respect to preventing and addressing harassment in PHA programs. However, managers and non-managers ordinarily will have different roles and responsibilities. We recommend that managers work with your executive director or his or her designee to review, update, and implement anti-harassment policies that are easy for staff to follow and that effectively address problems. We also recommend that managers receive and track harassment complaints from any subordinate employee, as well as from PHA residents or program applicants. Managers also need to take corrective actions to stop harassment when it does occur, and they need to follow up with victims to ensure that any corrective action taken was effective. If it wasn't effective, managers need to take further corrective action.

Casey: Now, non-managers, it's important that you know what your PHA's anti-harassment policies and employee codes of conduct provide for. It's especially important that you report violations of policies or employee codes that you witness or learn about, or refer complaints that you receive to your supervisor or the complaint coordinator if your PHA has one.

Casey: Another best practice that we recommend is that all PHA employees be prepared to gather basic information if they get a complaint or otherwise learn about potential harassment. Even if you're not the person responsible for handling complaints, it's helpful to start gathering information as early as possible and sharing that information with the person at your PHA who is responsible for addressing complaints. The key pieces of information to be collected include: the victim's name and contact information for follow-up; a summary of what happened; the name of any harasser, any witness, any other possible victims; the property name and address; and any dates, times, and locations of the harassment. Employees should also instruct any individual who makes a

complaint to save any evidence of the harassment they might have. That includes texts, photos, voicemails, letters, notes, journals. Anything of that sort.

Alexandria: Turning back to our hypothetical now, it's a week later and the public housing agency has taken no corrective action for John's unwelcome conduct towards Jane. The situation escalates. John uses his master key to enter Jane's apartment at night without knocking and without legitimate reason. Jane is home and is startled by the entry. He tells Jane he's there to check on the sink, even though the sink was fixed a week ago and Jane has not called in any other maintenance requests.

Alexandria: In the kitchen, John touches Jane on her rear end and 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."

Alexandria: Jane calls the 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'll make sure "it doesn't happen again." Jane doesn't hear further from the site manager.

Casey: Okay. We're going to pause again and evaluate what happened in part two of our scenario. 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've become severe or pervasive, which are two legal terms that we'll discuss a little bit in more detail later.

Casey: As the site manager should have in response to Jane's earlier voicemail in which she complained about John's conduct, the site manager has to take all actions necessary to ensure that John's unwelcome conduct stops immediately and that Jane is protected from any retaliation.

Casey: 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 the site manager is unsure if she has been told the full story, she should warn John that harassing conduct is prohibited. Alternatively, if someone else at the PHA is responsible for taking these steps, then the site manager has to report John's conduct to that person.

Casey: Now, given the nature of John's conduct, immediate interim action may be required even before any investigation is finished. That could mean, for example, taking away John's master key, temporarily reassigning John's work duties, issuing a no contact order, or implementing special oversight or monitoring pending the conclusion of any investigation by the PHA. A verbal reprimand to John at this point is grossly inadequate given the severity of his actions. In addition, the site manager or another employee designated by the PHA must investigate, tell Jane of her right to file a Fair Housing Act

complaint, and ensure that corrective action taken is effective in stopping John's unwelcome conduct.

Casey: Now, in our scenario we've identified the site manager as the person with the responsibility to investigate Jane's complaint, but I want to make clear that it doesn't have to be the site manager. That responsibility, for instance, might be given to someone else at your PHA. For instance, as already mentioned, your PHA might have a specially designated complaint coordinator who would be responsible for that type of investigation. The important thing to remember is that someone from the PHA must look into Jane's complaint and determine what action is necessary in order to properly address the problem.

Casey: So, what steps can employees take to help ensure that, unlike the site manager, they know how to appropriately respond to complaints like Jane's? As I've already mentioned, it's important for all PHA employees to be familiar with their PHA's anti-harassment policies and procedures. I want to emphasize that it's especially important to understand your PHA's employee code of conduct. Every PHA should have one, and supervisors should review that code of conduct with their staff on a recurring basis.

Casey: The code of conduct should explicitly prohibit harassment against applicants, tenants, and voucher program participants. It should provide for disciplinary actions for employees' or agents' harassment up to and including termination when necessary. The code of conduct should also encourage employees to report any inappropriate conduct that they witness or hear about, and it should provide for discipline for any employee who fails to appropriately respond to harassment complaints. That means that if you learn that a coworker is harassing a tenant you have to report it to an appropriate supervisor.

Alexandria: Let's talk about what could happen next if John's behavior is still not addressed. Two weeks later, Jane's hot water heater breaks and she calls in an emergency maintenance request. Jane gets a call from John, who says he's "too busy" to fix the water heater that day, but if she wanted to shower together that night they could check it out and see if he could fix it. Jane tells John, "No."

Alexandria: Bob, another maintenance person, overhears John make the offer to Jane. Bob knows there are no other maintenance requests waiting, and he also knows that Jane doesn't have to be home to get it fixed. He finds John's comments totally inappropriate, and the water heater remains broken when Jane gets home that evening.

Alexandria: The next day, Jane calls the site manager to complain about the lack of hot water and that John was saying "inappropriate things" again. The site manager tells Jane that 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 that evening. Bob doesn't tell anyone at the PHA about John's offer because he thinks it's none of his business.

- Casey: We're going to move on to analyzing part three of our hypothetical scenario. John conditioned his repair of the water heater on Jane's agreeing to shower with him. That amounts of a violation of the Fair Housing Act. We'll discuss the details of the legal standard that makes this a violation a bit later in the training. But right now let's talk about what the site manager should have done.
- Casey: First of all, the site manager should not have assigned John to make the repair, given his prior harassing conduct. As noted previously, the site manager or another employee assigned by the PHA should have investigated Jane's complaint, stopped John's harassment, and taken steps to ensure Jane that she'd be protected from any retaliation. Making sure her water heater got fixed isn't nearly enough; the PHA needs to stop the harassment. The PHA therefore must enforce employee standards of conduct against John. In our scenario, his invasion of Jane's home, inappropriate touching, and conditioning of repairs on Jane agreeing to shower with him all warrant termination.
- Casey: Now, we also need to evaluate Bob's response to the situation. Rather than ignoring what he overheard John say to Jane on the phone, Bob needs to alert someone else at the PHA. He should tell a supervisor and/or a complaint coordinator, if one exists, about the condition he heard John place on making the repair to Jane's water heater. Now, if John is Bob's supervisor, Bob should report the harassment to someone above John, even if that means he has to go outside of his supervisory chain. For example, he might need to contact the PHA executive director or the board of commissioners. He could also contact HUD's Fair Housing or Public Housing offices.
- Casey: Now, stepping back from the specifics of our hypothetical scenario, what are some key steps you can take if you find yourself in a situation where you actually witness harassment? The general rule is, if you see something, say something. More specifically, however, you should intervene to disrupt or stop any inappropriate conduct you witness. Now, this doesn't necessarily mean you have to directly confront someone who is engaging in inappropriate conduct, but you might seek out ways to intervene or stop the harassment in some way. You can also or should also reach out to the victim and tell him or her that you will be reporting this problem to your supervisors, and encourage the victim to cooperate with investigators from the PHA when the person gets contacted. And, of course, you should report the harassment to the appropriate official at your PHA.
- Alexandria: Returning to the scenario, the next week, Susan, the site manager's staff assistant, sees John touch Jane's rear end and then sees Jane slap John's hand away. Jane and Susan both report this incident to the site manager in separate occasions. Shortly afterwards, the site manager threatens to discipline or demote Susan for complaining about John.
- Alexandria: In addition, Jane gets a notice from the public housing agency stating that her assistance is being terminated because she violated her lease for having an unauthorized occupant living in her unit. However, Jane doesn't have anyone else living with her, and has never even had an overnight guest.

Casey: We're going to stop again and discuss what happened in the last part of our hypothetical scenario. It appears the PHA is terminating Jane's assistance because Jane and Susan complained about John's behavior. Retaliation against a person because he or she complained about being sexually harassed is illegal under the Fair Housing Act. The site manager's threat to discipline or demote Susan for reporting John's behavior also constitutes illegal retaliation in violation of the Fair Housing Act. The Fair Housing Act provides protection from retaliation to any person who assists another in the exercise of Fair Housing rights. Here, Susan is attempting to assist Jane by reporting John's harassment to the site manager.

Casey: Now, while our hypothetical is focused on steps that public housing agencies should take to address harassment of public housing tenants, it's important to emphasize that PHAs should take similar steps to protect voucher program participants from harassment. These steps should include educating voucher program landlords about their Fair Housing Act obligations, promptly investigating complaints from voucher program participants just as with public housing tenants. That also, just to point out, includes complaints not only against PHA staff but also complaints against voucher program landlords. If an owner engages in or fails to correct harassment of a voucher program participant, PHAs should enforce the provisions of the housing assistance payments contract and any other rules that prohibit discriminatory conduct.

Casey: Actions that a PHA could take include: warning the owner and directing him or her to take corrective action; abating, suspending, terminating the HAP contract, or prohibiting the owner's future participation in the PHA's housing programs; or, asking HUD to enforce a limited denial of participation suspension or debarment. PHAs should also work with the voucher program participant to resolve any complaint and ensure housing continuity. That might include offering a transfer voucher or helping to locate other project-based voucher housing. The most important thing to remember is that voucher program participants have the same rights as PHA tenants to make and file harassment complaints.

Alexandria: Let's keep the scenario with Jane, John, and Greenacre Public Housing Agency in mind as we discuss what is sexual harassment under the Fair Housing Act, who is liable for sexual harassment, and additional best practices that a PHA can adopt to prevent and/or stop sexual harassment and other forms of discriminatory harassment.

Alexandria: Sexual harassment is typically described in two ways. One is known as hostile environment harassment, which is unwelcome conduct because of sex that is sufficiently severe or pervasive as to interfere with a person's ability to obtain, maintain, use, and enjoy housing or housing-related services. A single incident of harassment, if severe, can create a hostile environment in violation of the Fair Housing Act. Hostile environment harassment violates the Fair Housing Act even if the PHA or landlord does not terminate assistance or evict the victim, increase the victim's rent, withhold repairs, or take any similar acts.

Alexandria: Thinking back to our hypothetical scenario, did John create a hostile environment for Jane? The answer is yes. His conduct did create a hostile environment.

Alexandria: His hostile environment was created because his behavior was unwelcome, it was severe or pervasive, or in this case it was both, and it interfered with Jane's enjoyment of her home because he repeatedly asked to spend time with Jane even though she made it clear she was not interested. He entered Jane's apartment with a key without knocking or legitimate reason to be there. He made comments about her body and asked Jane to put on a bikini. And he touched her without permission. Some of John's conduct by itself would be severe enough to qualify as hostile hostile environment harassment, specifically when he entered Jane's apartment without knocking and without legitimate reason.

Alexandria: Another type of sexual harassment that violates the Fair Housing Act is known as quid pro quo harassment. Quid pro quo, or this for that harassment, occurs when a person is made to submit to an unwelcome request to engage in sexual conduct as a condition of obtaining or maintaining housing or housing-related services. A quid pro quo can also occur when a person suffers an adverse housing action, such as an eviction or an increase in rent, because the person has refused to submit to the condition. A quid pro quo can be implicit or implied. An example of an implicit quid pro quo involves, for example, a leasing agent implying that an apartment will become available sooner if the applicant will talk about her sex life.

Alexandria: Quid pro quo harassment does not need to be severe or pervasive. A single quid pro quo violates the Fair Housing Act. It's important to note that even if a victim acquiesces to the condition or the unwelcome request, it is still a quid pro quo and it is still illegal. For example, it's not uncommon for a tenant to agree to have sex with a housing owner in return for waiving unpaid rent or other fees. Applicants as well as residents can be victims of sexual harassment. For example, a PHA employee may tell an applicant that she'll move up the waiting list and receive a voucher faster if she agrees to have sex with him.

Alexandria: Other examples of quid pro quo sexual harassment from real cases include failing to make maintenance repairs, not returning security deposits, failing to approve applications, and threatening eviction unless a tenant or applicant answers questions about her sex life, provides nude pictures, or agrees to have sex with the person.

Alexandria: Thinking back to our hypothetical, did John create a quid pro quo? 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 engage in this unwelcome conduct, i.e., to shower with him, it's still sexual harassment and it is illegal.

Alexandria: By the way, it doesn't matter which type of harassment, hostile environment or quid pro quo, that which John committed in his interactions with Jane, because both types violate the Fair Housing Act and either type can lead to liability for the public housing agency. I also want to note that even though our hypothetical scenario featured a woman as a victim of harassment, men can also be victims of harassment.

- Casey: Now that we've established that John committed both hostile environment and quid pro quo harassment, we can turn to the question of liability resulting from his conduct. We'll look at liability not only for John, but also the site manager and the PHA itself.
- Casey: Let's start with the most straightforward question, would John be liable? Yes. Of course. PHA employees are liable for their own discriminatory conduct. John committed sexual harassment that violated the Fair Housing Act and he is therefore liable for his own harassing conduct. It doesn't matter that he's not an owner or manager of the property.
- Casey: Now, 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 actions within their power to stop harassment by other individuals that they knew or should have known about. Those other individuals could be other PHA employees or agents, such as subordinates or contractors. They could also be PHA tenants or voucher program landlords and property managers. PHA site managers are also liable if they retaliate against someone who complains about harassment.
- Casey: Now, 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. Her failure to take any of these steps make her liable under the Fair Housing Act. But her failure to take corrective action isn't the only reason why she's liable. She's also liable because it appears that she terminated Jane's assistance in retaliation for Jane's complaints and she retaliated against Susan for reporting John's conduct towards Jane.
- Casey: Now, what about John's coworker, Bob? Would Bob be liable? No. True, he knew about John's harassing conduct, but he did not act as an accomplice to John's harassment or harass Jane himself. Additionally, he isn't John's supervisor. Bob's position as a maintenance staff at the PHA doesn't provide him with the authority to correct or end the harassment of a coworker. However, Bob may have violated the PHA's code of employee conduct by failing to report the harassment that he witnessed.
- Casey: Finally, let's consider whether the PHA would be liable? Yes. PHAs are liable for harassment or retaliation committed by employees or agents, even if they don't know about it. This applies to employees or agents that administer any PHA program, including voucher programs, and any agent, including contractors. Here the PHA is liable because both John, who harassed Jane, and the site manager, who retaliated against both Jane and Susan, are employees of the PHA. Now, in addition, PHAs are also liable for failing to take actions within their power to stop harassment by their employees or agents, landlords, or property managers that they knew or should have known about. Here again the PHA is liable because it knew, through its site manager and Susan, oh John's harassment and allowed it to continue without attempting to correct or end it.

Casey: Now, having covered the reasons why John, the site manager, and the PHA would be liable under the Fair Housing Act, I want to briefly discuss how that liability might be imposed. One way that liability can be imposed is through HUD's administrative enforcement process. If Jane were to file a Fair Housing Act 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, the complainant.

Casey: Another way that PHAs and their employees may be held liable is through lawsuits brought by the Department of Justice in federal court. Those lawsuits often originate from HUD's investigations, but they're also brought by DOJ based on its own authority to investigate possible Fair Housing Act violations. You'll hear a bit more about DOJ's enforcement role a little later in the presentation.

Alexandria: As we mentioned in the introduction to this presentation, sexual harassment is only one form of harassment that violates the Fair Housing Act. The Fair Housing Act is violated when harassment is because of any of the seven protected classes under the Act. We have a new scenario for you.

Alexandria: Meet Bill. Bill is black, lives in public housing, and for weeks Bill's neighbor has used racial slurs, has told Bill that blacks shouldn't be allowed to live there, spits on him, and repeatedly tells Bill to "go back to Africa." Bill complains to the site manager, who does nothing.

Alexandria: In this scenario, Bill is experiencing tenant-on-tenant harassment, which also violates the Fair Housing Act. In this scenario, obviously one tenant is racially harassing another. Public housing agencies and their employees are liable for failing to take actions within their power to stop one tenant from harassing another because of race, sex, disability, or any other protected class under the Fair Housing Act if they knew or should have known about the harassment. Unlike harassment by agents or employees, a PHA cannot be liable for tenant-on-tenant harassment if they did not know or have reason to know about the harassment. What does "knew" or "should have known" mean? It means that a PHA had information that would lead a reasonable person to conclude that harassment was occurring. That information can be gathered from the harassed tenant, him or herself, from a witness to the harassment, or from police visits to the property, news reports, among other ways. The PHA must take action to correct and end the harassment if it knew or should have known about it. But, remember, a public housing agency's corrective action must not adversely impact the tenant who has been harassed. For instance, the public housing agency can offer to move the harassed tenant. But if the harassed tenant does not want to move, the public housing agency may not force the tenant to move. Of course, the neighbor who was harassing Bill will be liable for his own discriminatory conduct. A little later in the presentation, Megan is going to touch on a couple of cases that HUD charged and DOJ prosecuted against public housing agencies for failing to correct and end tenant-on-tenant harassment.

Alexandria: Now that you understand that tenant-on-tenant harassment can create liability for your PHA, what best practices can a PHA implement to help prevent and stop it? PHAs

already have a pretty powerful tool at their disposal for ending tenant-on-tenant harassment. That's the lease. PHAs can enforce lease provisions and other rules that prohibit tenant conduct that threaten the health, safety, and peaceful enjoyment of others. Tenant-on-tenant harassment is an example of conduct that interferes with health, safety, and quiet enjoyment of other tenants. PHAs can take action to stop and correct such harassment by issuing verbal and written warnings and notices of lease and rule violations, or by terminating assistance and/or evicting the harassing tenant if necessary. However, as previously mentioned, a PHA must be careful to avoid taking adverse action against the harassed tenant when correcting and ending the harassment. Of course, a PHA may not retaliate against the harassed tenant for having complained about the harassment.

Casey: There are various other forms of harassment that violate the Fair Housing Act. For example, persons with disabilities are often targets of harassment that violates the Act. Such harassment might include mocking a person for the person's disability, obstructing access for a person with physical limitations, or telling a person that they don't belong in housing because of their disability. As with any other type of discriminatory tenant-on-tenant harassment, a PHA can be liable under the Fair Housing Act if it fails to take appropriate corrective action in response to a complaint from a tenant with a disability that another tenant was harassing him because of his disability. Of course, a PHA will also be liable if its staff did the harassing.

Casey: Now, having covered when sexual and other types of harassment violate the Fair Housing Act and who's liable for it, let's now discuss what the consequences of Fair Housing Act liability can be. With liability comes damages. Through settlement or court order, PHAs and PHA employees who violate the Act can be required to pay damages to harassment victims, which are wide-ranging and can include psychological harm, including humiliation, anger, anxiety, post-traumatic stress disorder, depression, and any other types of emotional distress. It can also include physical harm, including injuries from physically harassing conduct such as grabbing or hitting, as well as the physical effects of psychological harm. And, of course, damages also include economic harm, which includes the loss of housing assistance, moving costs, and higher rent at a new home.

Casey: A PHA might also have to pay for damages caused to others who witness the harassment or lost housing as a result of it. For example, this could include awards to family members, such as spouses, minor children or grandchildren that live in the household.

Casey: Finally, a PHA or PHA employees may also be required to pay civil penalties in cases brought by HUD and the Department of Justice. In certain cases, the Department of Justice can seek nearly \$103,000 in civil penalties for a first-time violation. Where harassment is widespread, PHAs have been required to pay settlements or judgments totaling in the millions of dollars. You'll hear about one such case brought by the Department of Justice in just a moment. But before I turn things over to Megan, I wanted to note that none of these damages or fines are permitted to be paid with federal funds. While PHAs might be able to cover the costs of the damage awards and

settlements through insurance, insurance coverage may be difficult to obtain or more expensive if harassment is not appropriately addressed. The best approach is, of course, always prevention. To perhaps underscore that point, I'll now turn things over to Megan, who's going to discuss some recent enforcement actions by the Department of Justice.

Megan: The Department of Justice can get involved in cases in two different ways. One of them is what we call election cases. They start with an individual Fair Housing Act complaint filed with HUD. Separately, we can also bring what's called pattern or practice cases. Even when there has been no HUD complaint, we can bring cases if there is a pattern or practice of sexual harassment in housing or of other discrimination in housing. Generally, this means that there are multiple victims and a pattern that is repeated over time. Generally, we find that sexual harassment cases are pattern or practice cases, as well. It is very rare that there is only one incident or only one victim in cases of this type.

Megan: DOJ can bring pattern or practice cases even when the harassment happened in the past. We can still look into harassment even if it happened a very long time ago, and we can still recover damages for people. In addition to damages or money and civil penalties, we can also get injunctive relief, or specific orders for defendants to do or not do certain things. There is also a compliance aspect to many of our settlements and court orders. There are a number of reporting requirements over a period of years. These are the types of things that we can get in a jury trial as well as in settlement. I thought it would be useful to explain how the Department of Justice's involvement can make a difference in the context of actual sexual harassment cases that we have brought against public housing authorities.

Megan: The first one I'll discuss was against Southeastern Community and Family Services. SCFS ran the Section 8 Housing Choice Voucher Program in Scotland County, North Carolina. The harassers in that case were two employees of the housing authority. The Section 8 housing coordinator was alleged to be a harasser, as was the Section 8 housing inspector. To give you a sense of what the women in this case went through, I'm going to read a bit of a declaration from one woman.

Megan: She said, "I applied for a Section 8 voucher. During the time of my application, I went into the Section 8 coordinator's office. He told me that he gets favors from other girls and he gives favors. I asked what he meant, and he said that if I gave him oral sex I would get a voucher. He asked me to wear a short skirt with no panties or bra the next time I came into his office. He also said he wanted me to strip down in his office so he could see all of my tattoos. The coordinator called me and asked me to come back into the office the next day. I agreed to do what he wanted me to do in order to get a voucher."

Megan: "While I was sitting down, he rubbed on my thighs. He also fondled my breasts. He grabbed me and turned me to face him. He kissed me and lifted my skirt and fondled me. I pushed him away. His door was locked, so I was really scared. He then brought me into the housing inspector's office. The inspector said he could help me out if he came to my house. He wanted to know if he and the coordinator could do a threesome with

me. I told him I'm not that kind of person, that I was homeless, had two small girls, and that I needed a voucher."

Megan: "The coordinator called me back into his office on two more occasions within the next two weeks. I went into his office and he shut and locked the door behind me. He groped my body, held my hands, and rubbed my legs. He told me that I would not get a voucher unless I had sex with him. He kept saying it was an okay thing to do because so many other women were doing it. The coordinator told me that if I didn't want to give him oral sex, he would give me oral sex while he masturbated. I kept telling him I was uncomfortable, but he was very persistent. I got a letter from the domestic violence shelter to increase the points toward my voucher, but the coordinator said it didn't matter. He said I needed to do these favors for him in order to get the voucher."

Megan: "After I got a voucher, the two men showed up at my house. I was so terrified that I would hide in my closet with my daughters. They came to my house approximately two to four times a month for six to eight months. I couldn't put up with their visits any longer, so I moved. I left my voucher because it wasn't worth it to me. I didn't feel safe. I had just gotten away from a domestic violence situation in which a man would beat and rape me, and now these two were demanding sex from me. I didn't feel safe anywhere. It was hard giving up my voucher because it meant I was giving up my home."

Megan: The Department of Justice filed a lawsuit against both men and against the housing authority. The lawsuit alleged that the two men sexually harassed residents and applicants while exercising their authority as employees of the housing authority, and the housing authority failed to take reasonable preventive or corrective measures. The Department of Justice's lawsuit was consolidated with a private lawsuit brought by 15 women, and together the lawsuits were resolved in settlement for 2.7 million dollars. The Department of Justice compensated 71 additional victims, some of whom were harassed years earlier and could no longer have brought their own lawsuits.

Megan: It also placed a lot of requirements on the housing authority and on the individual defendants themselves. The individuals were prohibited from participating in any voucher programs moving forward, it prohibited them from managing any residential rental properties in any capacity, and it said if they ever own any residential rental properties in the future they are not allowed to enter the properties, and those properties have to be managed by an independent manager who is approved by the United States.

Megan: For the housing authority, they had to hire an independent manager to run the voucher program, and that independent manager needed to be approved by the United States. That manager was the only person who could make hiring decisions for the voucher program. The housing authority had to train its staff, give certain information to all voucher program applicants and participants, and do a number of other things. It limited the housing authority's access to its own units, including limiting when its employees and agents could enter those units, required five days' written notice to enter for inspections, and it required that female housing authority staff be involved in any inspections. It required the housing authority to publish and pay for notices in local

newspapers to try to find additional victims, and it required the housing authority to provide regular reports to the United States for a period of six years.

Megan: I'm going to describe another sexual harassment case that we brought against a housing authority recently. This is the Kansas City, Kansas Housing Authority. KCKHA operates that city's public housing. The Department of Justice learned that three housing employees were sexually harassing public housing residents and applicants. There was a hearing officer. He gave housing to people who were appealing their denials, and he dismissed fines and fees that resident owed to the housing authority if he could show them his genitals, show them pornography, or ask them sexual questions. There was a property manager who asked tenants for sex in exchange for getting into public housing or for getting a housing transfer. There was the director of housing management, who evicted residents who rejected his sexual advances.

Megan: The Department of Justice filed a lawsuit against the housing authority and against the individuals. That lawsuit was settled for \$360,000 and 14 women were compensated. The settlement also placed a lot of requirements on the individuals and on the housing authority. It included requirements similar to the ones I described earlier, but others as well.

Megan: In this case, one individual defendant was prohibited from ever managing residential rental property again. The other two defendants were not prohibited from managing residential rental properties, but if they were in a situation to do so in the future they would have to give a copy of the settlement agreement to their employers, have the employer sign a written acknowledgement that they had received and read the settlement agreement, and then they had to give the employers' signed acknowledgement back to the United States. The individuals would have to report to the United States any future sexual harassment complaints made against them. They are not allowed to contact or communicate with any of the victims from that lawsuit, and they cannot enter any units owned or operated by the housing authority.

Megan: In addition, the housing authority was prohibited from employing any of the individual defendants in the future, and it required the housing authority to establish a new procedure for appeals hearings. That procedure had to be approved by the United States, someone independent would have to conduct all appeals hearings. The housing authority would have to maintain detailed written records of all proceedings, and the director will have to review records monthly to make sure proper procedures are being followed. The housing authority would have to tell applicants or residents prior to hearings that they can have an advocate of their choice attend their hearing. These cases highlight the importance of having a strong complaint system. Residents and applicants need a process for when housing authority staff are the harassers, and they need to know what that process is. The complaint system also needs to encompass when the harassers are not housing authority staff, but the harassment occurs in publicly assisted housing. For example, sometimes housing authority staff learn about harassment of voucher holders by private landlords, property managers, or maintenance workers. Housing authority staff need to know what to do when they learn

about sexual harassment in publicly assisted housing, and the supervisors need to act on those complaints.

Megan: We had one case in which a number of voucher holders had complained to their caseworker about sexual harassment by a property manager. It was a private housing situation. The caseworkers recognized that the harassment was widespread, and they wanted to do something about it. They went to their supervisor, who was the head of the Section 8 program at their housing authority, and they reported it. The supervisor essentially told them that there was nothing the housing authority could do, and that was the end of it. They didn't discuss reporting it to HUD. They didn't discuss informing tenants that the tenants could report to HUD. They didn't discuss the possibility of transfer of vouchers, or any other options.

Megan: This case ultimately came to the Department of Justice because those housing authority caseworkers happened to be at a training with a local HUD official, and they pulled him aside after the training and they told him about it. HUD then began investigating, and eventually the Department of Justice filed a lawsuit.

Megan: Housing authorities can also be held liable when they don't adequately protect tenants from harassment by neighbors, as described earlier. The Department of Justice has also brought cases in these types of situations. In 1999, the Department of Justice filed a lawsuit against the Boston Housing Authority. There were two predominantly white public housing developments that had been subject to a desegregation order with HUD a decade earlier. That lawsuit alleged pervasive and violent harassment of public housing tenants by other tenants as well as by visitors on the basis of race and national origin. There was racist graffiti, which the housing authority left up for months. They were racial slurs. It was racially-motivated violence, including children being beaten, BB pellets fired through windows, rocks, urine, and eggs thrown at windows or at tenants, intimidation, and other crimes against property.

Megan: The lawsuit alleged that there was a systematic failure by the housing authority to protect tenants from harassment. It alleged that the housing authority knew of the pervasive harassment, including the identities of some of the harassers, but it failed to adequately document, investigate, or otherwise respond to or address the problem.

Megan: The settlement in that case included the housing authority paying \$1,000,000 to victims, plus \$500,000 for attorneys' fees. The housing authority had to adopt a civil rights protection plan. It had to enforce a policy of zero tolerance for civil rights violations. It had to implement policies related to graffiti removal, transfer requests, and local tenant organizations. It had to increase police patrols and increase efforts to recruit a diverse pool of applicants for the police force. It had to hire new staff members for its office of civil rights and public safety department, and a number of other things.

Megan: More recently, the Department of Justice filed a lawsuit against the Wheeling Housing Authority because of racial harassment by tenants in public housing. That lawsuit alleged that a white family was harassing a black family. The harassment included verbal abuse, racial slurs, threats, assaults, and attempted assaults, and it alleged that the

housing authority knew or should have known about the harassment because the black tenant had made several complaints to the housing authority and because the housing authority had cameras that they were supposedly reviewing, so they would have seen the interactions on those cameras.

Megan: As part of the settlement, the housing authority had to train its staff and establish formal complaint mechanisms similar to the ones I described earlier. In addition, it required the housing authority to regularly contact the local police department to collect any reports of police visits to the property, and the housing authority had to review video footage from its surveillance cameras throughout the property for any dates of reported police visits.

Megan: As a final thought, harassment is not just illegal when it's incredibly severe, like the examples that I've described. The Fair Housing Act also prohibits harassment that is far less shocking. So long as the harassment constitutes quid pro quo or is severe or pervasive enough to create a hostile environment, it is illegal.

Casey: Thanks, Megan. As I hope that the victim declaration in the SCFC case that Megan read from helped to illustrate, the costs of violating the Fair Housing Act are not limited to financial settlements. The harm caused to victims by harassment is really never fully remedied by settlements or judgements. Monetary damages are at best an imperfect attempt to make victims feel whole again, but many harms can't be fixed by money. The impact of harassment can have ripple effects that extend into every facet of a victim's life, including his or her work, relationships, and self-image. The bottom line is that harassment can totally upend victims' lives. For PHAs too the consequences of harassment can extend beyond what's required by a settlement agreement or a court judgment. Any time harassment occurs, it undermines the PHA's mission to provide safe, decent, and affordable housing. But this is particularly true when lawsuits divert resources from the important day-to-day work of running a PHA. Apart from monetary penalties and additional monitoring or oversight of the type that Megan discussed, harassment lawsuits can also lead to HUD sanctions that impair PHA operations. That can include reduction of payments under the annual contributions contract with HUD, placement on the troubled property list, and/or issuance of a limited denial of participation, suspension, or debarment of directors, commissioners, staff, or the PHA itself.

Casey: Additionally, a housing environment permeated with fear of harassment or retaliation for reporting it is one where tenants are less likely to report maintenance issues or other problems. If those issues go unaddressed, it could lead to deterioration of PHA property or other asset management problems.

Alexandria: Before we turn to some final best practice recommendations, let's consider one final scenario involving Tom, who is gay, and using a Housing Choice Voucher. After Tom moves into his apartment, Tom's landlord learns that Tom is gay and he issues him a notice of eviction. Tom's landlord can't do that. HUD's Equal Access Rule prohibits landlords who accept Housing Choice Vouchers and have a HAP contract from refusing to provide housing or from evicting an existing 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 at HUD and all PHAs, regardless of size. While we've used a Housing Choice Voucher as the example in our hypothetical, the Equal Access Rule also applies to public housing and to project based vouchers.

Casey: Now that we've covered what sexual and other discriminatory harassment is, who's liable for it, and what the consequences of liability are, we want to recommend a few more best practices for PHA employees to act proactively to help stop harassment before it starts.

Casey: First, PHA employees should talk with their PHA leadership about any shortcomings in existing policies and protocols for handling harassment complaints. Employees should also talk to residents and program participants to find out if they are experiencing or have heard about others who are experiencing harassment. Often, non-executive-level employees are in the best position to interact with residents or program participants in an informal way to find out about potential problems in PHA programs. Additionally, PHA employees should tell residents or program participants about their fair housing rights and where to report harassment. At a minimum, PHA applications and tenant packages should inform tenants about how they can report harassment to the PHA as well as how they can file a Fair Housing Act or Equal Access complaint.

Casey: What else can you do to help stop harassment before it starts? You should make sure that your PHA posts and distributes policy statements in all appropriate languages, making clear that sexual and other discriminatory harassment will not be tolerated, that complaints are encouraged and will be taken seriously, and that victims, employees, and witnesses who report harassment will be protected from retaliation. Additionally, you can attend fair housing trainings that emphasize preventing harassment on a recurring basis and ensure that your PHA provides all its employees with time and access to such training.

Casey: Lastly, as previously mentioned, PHAs should inform tenants and program participants about how they can file complaints. We want to end by providing you with information on the different ways to file a Fair Housing Act or Equal Access complaint with HUD, or to let DOJ know about harassment that is or has occurred.

Casey: With regards to Fair Housing Act complaints, they can be filed with HUD through HUD's website at www.HUD.gov or by phone at 1-800-669-9777. Complaints can also be filed with a state or local fair housing agency, and a list of those agencies can also be found on HUD's website. In addition to filing a complaint, victims of harassment can also contact the Department of Justice by e-mailing FairHousing@doj.gov or by calling 1-844-380-6178.

Casey: Finally, with regards to Equal Access Rule complaints, residents and program participants should be instructed to contact their local HUD office if they're having a problem.

Casey: That concludes our presentation. As Alexandria mentioned at the beginning of the training, we invite you to submit question to HUDQuestions@hud.gov. We will be collecting questions through the end of this training initiative that runs through the end of the summer, and we'll be providing written answers that will be posted to the HUD Exchange. Now, we can't promise that we'll answer every question, but we will certainly be responding to the most frequently asked questions and we'll do our best to answer as many questions as possible. We hope you've enjoyed the training, and we thank you for watching.