

SECTION 811 PROJECT RENTAL ASSISTANCE PROGRAM REASONABLE ACCOMMODATION

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A few housekeeping items...

2

- All participant lines are muted.
- If time allows, there will be a Q&A session at the end of this webinar. You may submit questions in the 'Question' box throughout the webinar, or you may raise your hand during the Q&A and we will unmute your line. If we don't get to your question today, we will on the next webinar (more on that later).
- If you would like to print out the webinar slides for note-taking during this session, please find them in PDF format under the 'Handouts' drop down menu.

During The Last Training We Discussed:

3

- The legal obligation of grantees and housing providers of the PRA program to provide reasonable accommodation to applicants and residents with disabilities;
- When an accommodation is considered reasonable/unreasonable;
- Verification (permitted/not permitted);
- Examples of reasonable accommodations; and
- Common concerns raised.

Today's Agenda

4

- Review of the legal obligation of grantees and housing providers of the PRA program to provide reasonable accommodation to applicants and residents with disabilities, the definition of disability, and the limits on providing a reasonable accommodation.

Today we will discuss:

- Tenant Screening:
 - the purpose;
 - the difference between eligibility and suitability;
 - what to do when an applicant has a negative tenancy history (lease violation/eviction), bad credit or a criminal record;
 - the concept of mitigating circumstances; and
 - how reasonable accommodation impacts an owner's/agent's obligations when the negative behavior is connected to the person's disabilities.

Today's Agenda Cont'd

5

- Assistance animals:
 - Does an owner/agent have to permit assistance animals if the site has a no pets policy?;
 - What does someone have to establish to obtain an assistance animal?;
 - Can an owner/agent limit the size, type, breed of an assistance animal?; and
 - What can an owner/agent require?

Today's Agenda Cont'd

6

- Live-In Aides (LIA):
 - The definition;
 - Qualifying for a LIA; and
 - Screening LIA's: what criteria must an owner/agent screen for/can't screen for.
- Lease Violations/Evictions
 - What does an owner/agent do if a tenant has a disability and violates the lease?;
 - What if the lease violating behavior is connected to the person's disability?;
 - Does an owner/agent have to consider an accommodation if requested even if the tenant engaged in violent behavior?; and
 - What if the request is made during an eviction proceeding?

Before we begin...

Please Be Present
Today

Nothing Today is
Legal Advice. Seek
It for Situations
When Needed.

Rely on Your
Agency/Company's
Internal Fair
Housing Expertise/
Resources and HUD
Resources

Please Ask
Questions

REMINDERS

8

- ❑ Grantees and owners/agents involved in the 811 PRA program must comply with federal and state laws which prohibit discrimination against people with disabilities (as well as other protected groups).
 - ❑ The Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA).
- ❑ The refusal to make reasonable changes in rules, policies, practices, or services, or a physical change to a unit or the common area, when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, is a form of illegal discrimination.
- ❑ The Obligation Applies Throughout The Occupancy Cycle.

REMINDERS Cont'd

9

- ❑ The following is always what is considered:

Does the person have a disability that meets the civil rights definition?;

Does the person need the accommodation because of the disability? (Is there a nexus);

Does the accommodation pose a fundamental change in the program?; and

Will the accommodation result in an undue financial and administrative burden?

- ❑ A grantee or owner/ agent does not have to take any action that:

- ❑ fundamentally alters the nature of their program; or

- ❑ poses an undue financial **and** administrative burden.

REMINDER: The Definition Of Disability For Civil Rights Purposes?

10

□ A person who:

1. Has a **physical or mental impairment** that **substantially limits** one or more **major life activities**;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment

- **physical or mental impairment:** includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, alcoholism and drug addiction (vs. current use). (As a reminder, the term “mental retardation” is not generally used anymore. Instead intellectual disability is preferred).
- **substantially limits:** significant or “to a large degree”.
- **major life activity:** activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking.
- **See HUD/DOJ Guidance**

Let's Discuss Tenant Screening

11

- The purpose;
- The difference between eligibility and suitability;
- What to do when an applicant has a negative tenancy history (lease violation/eviction), bad credit or a criminal record;
- The concept of mitigating circumstances; and
- How reasonable accommodation impacts an owner's/agent's obligations when the negative behavior is connected to the person's disability.

What Is Tenant Screening?

12

□ Tenant screening is the process used by Agencies and Owners/Managing Agents (O/As) to determine if an applicant is **eligible** and **suitable** for housing.

Eligibility: criteria used must adhere to the requirements for the 811 housing program [and any other applicable funding source(s)], as well as site specific eligibility.

- Program eligibility (811)
 - For example, income limits, sole residency, disability status....
- Project eligibility (specific site)
 - For example, occupancy standards

Suitability: Must focus solely on ability to comply with the terms of the lease; not social judgments or protected status.

- Paying rent on time;
- Not interfering with other people's quiet enjoyment;
- Maintaining a decent, safe and sanitary unit;
- Not engaging in criminal activity; and
- Complying with other reasonable rules and policies.

Is There A Document That Summarizes A Site's Eligibility and Suitability Criteria?

13

Yes!

- It is called a Tenant Selection Plan (TSP), and all sites covered by the 811 program must have one.
- This document summarizes tenant selection criteria (eligibility and suitability) and procedures for admission/rejection.

What Are HUD's Mandatory Rejection Standards For The 811 Program?

14

Eligibility:

- The family doesn't meet the eligibility requirement of the program. Examples Include:
 - Income
 - Social Security Number
 - Sole Residency
 - Signing HUD-required consent forms
 - Project eligibility, including a household member who is between the ages of 18 and 62* satisfying the applicable eligibility definition of disability

* This means at least 18 and under 62 years of age

Suitability:

- Subject to lifetime sex offender registry.
- Current illegal drug use (which includes medical marijuana).
- Reasonable cause to believe illegal use or pattern of illegal use of a drug that would interfere with other resident's quiet enjoyment.
- Reasonable cause to believe behavior from current alcohol abuse (not use) or pattern of abuse of alcohol, may interfere with other residents' quiet enjoyment.
- Eviction for drug related crimes: manufacturing or distribution (3 years).
 - **May** consider two exceptions: completion of drug rehab and circumstances leading to the eviction don't exist.

What Additional Suitability Standards Are Permitted and Generally Used?

15

- May set a **reasonable time frame** for screening and reject anyone who in that period engage in:
 - **Drug-related** criminal activity
 - **Violent** criminal activity
 - **Other criminal activity that threatens quiet enjoyment of:**
 - Residents
 - Owner, agents and staff
 - Contracted services

Important Reminder Regarding Use of Criminal History Based On HUD Guidance

- Can only use convictions; not arrests.
 - May make an adverse housing decision based on the conduct underlying an arrest if sufficient evidence other than arrest that the individual engaged in the conduct.
- Must make sure standards don't discriminate.

What Other Methods Of Screening May Be Contained In A Tenant Selection Plan (TSP)?

16

Credit History

- ❑ Focus should be on rent payment or relevant utility problems.
- ❑ Must not reject an applicant for lack of a credit history.

Rental History

- ❑ Focus must be on lease/house rule compliance vs. if the housing provider liked the resident.....

Housekeeping

- ❑ Owners may visit the applicant's current dwelling to assess housekeeping habits. Must focus on health and safety issues, proper care of appliances, plumbing, rugs, etc., and damage.
 - May establish geographic limits of conducting visits.

Are Grantees/Sites Required To Admit People With A Disability Regardless of Whether They Pose A Direct Threat, Would Cause Substantial Damage or Aren't Otherwise Qualified?

17

NO! You don't have to admit anyone who:

- ▣ Poses a **DIRECT THREAT** to others (unless the threat can be eliminated or significantly reduced by reasonable accommodation);
- ▣ Causes **SUBSTANTIAL DAMAGE** to property of others (unless the threat can be eliminated or significantly reduced by reasonable accommodation); or
- ▣ Is not **OTHERWISE QUALIFIED**.

Determination of Direct Threat

- Must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, or a recent history of overt acts) vs. assumptions/stereotypes.
- The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat.

Does a grantee/owner have to let an applicant with a disability into my program/site if the person has a negative tenancy history or criminal record?

18

- This question can't be answered with a yes/no.
- Don't assume that negative tenancy history or a criminal record is a result of a person's disability.
- The person may request a reasonable accommodation to explain negative tenancy history or a criminal record.
- If the behavior/history is unrelated to the person's disability, a grantee/owner isn't required to consider a reasonable accommodation.

Does An Owner/Agent have To Consider A Reasonable Accommodation To Explain Negative Tenancy Behavior or Criminal Record If They Don't Do This For All Applicants?

19

Yes! Owners/Agents are required to!!

- An applicant may request a reasonable accommodation to explain negative tenancy related behavior that would otherwise disqualify the person based on the standards in the Tenant Selection Plan (TSP).

Reminder

This only applies to the owner/agents suitability standards which the owner/agent establishes; mandatory exclusions and eligibility requirements aren't subject to consideration of reasonable accommodation. For example:

- Income eligibility
- Sole Residency
- Social Security Number
- Student Status
- Lifetime Sex Offender Registration
- Current illegal drug use

What Is The Applicant's Obligation?

20

- Request the accommodation.
- Provide documentation:
 - ▣ that the person has a disability that satisfies the civil rights definition (if it's not obvious);
 - ▣ the nexus between the disability and negative tenancy related behavior (if it's not obvious);
 - ▣ that person can now comply with the terms of the lease (something has changed or proposed plan is likely to be effective in solving the problem).
 - Applicant willing and able to follow plan.
 - If service provider is part of the plan, are the services in place?
 - If a previous plan was in place, what's different?

What Must A Grantee/Housing Provider Do If A Request Is Made?

21

- **Must consider all requests!**
- **Determine if there is a connection between negative tenancy related behavior and the person's disability.**
- **RA must:**
 - Address the Connection/nexus
 - Criminal behavior Interfering with other people's quiet enjoyment
 - Credit
 - Housekeeping
 - Resolve the Problem or significantly reduce the likelihood of it occurring.
 - Not result in a fundamental change or undue financial and administrative burden.

If yes, remember to engage in an interactive dialogue

Let's Discuss Assistance Animals

22

- Assistance animals vs. pets
- If a provider has a no-pets policy or limited policy whether they have to permit assistance animals
- Documentation
- What a housing provider can/can't require

Assistance Animals vs. Pets

23

- ❑ Service animals and companion animals are not pets.
- ❑ They are “Assistance Animals” –animals that work to meet the disability related needs of a person with a disability.

Assistance animals are *animals that are used to assist, support, or provide service to persons with disabilities. Assistance animals – often referred to as “service animals”, “assistive animals”, “support animals”, or “therapy animals” – perform many disability-related functions including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection, or rescue assistance , pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.* See HUD 4350.3 Glossary

If An Owner/Agent Has A No Pets Policy Or Limited Policy Does The Owner/Agent Have To Allow Assistance Animals?

24

Yes!

If The Person's Disability Isn't Obvious Or Otherwise Known To An Owner/Agent Can The Owner/Agent Ask For Documentation?

25

- ❑ Yes. The owner/agent can ask for documentation that the person meets the civil rights definition of disability; not the nature or severity of the disability.

If The Need For The Animal Isn't Obvious Can An Owner/Agent Ask For Documentation?

26

- Yes, the nexus between the disability and the need for the animal may be verified.

What Can An Owner/Agent Require An Applicant/ Resident To Do In Regards To An Assistance Animal?

27

- ❑ Document that the assistance animal has had required (by state/local law) vaccinations;
- ❑ Make sure the animal does not interfere with other residents' quiet enjoyment;
- ❑ Pay for damages caused by the animal;
- ❑ Pick up after the animal; and
- ❑ Provide the name of someone to care for the animal in case of an emergency (unless the person prefers the owner/agent to call animal control).

What Can't A Housing Provider Do In Regards To Assistance Animals?

28

- ❑ Require the animal to have formal training;
- ❑ Mandate type of animal;
- ❑ Institute weight/size restrictions;
- ❑ Require a security deposit for the animal (“pet deposit”); and
- ❑ Disclose to other residents why a tenant has the animal.

Do Owners/Agents Have To Allow Animals That Are Generally Thought Of As Dangerous, Such As Pit Bulls?

29

- ❑ Yes, unless the actual animal:
 - ❑ poses a direct threat to the health or safety of others that can't be reduced or eliminated by a reasonable accommodation;
 - ❑ would cause substantial physical damage to the property; or
 - ❑ the presence of the animal would pose an undue financial and administrative burden or fundamentally alter the nature of the program.

What About Assistance Animals In Re To Medical Expenses?

30

- HUD's guidance provides that costs for an assistance animal and its upkeep are a medical expense when calculating adjusted income.

Let's Discuss Live-In Aides (LIAs)

31

- What are LIAs?
- When does a housing provider have to permit a LIA?
- HUD guidance on LIAs, including screening

What Is A Live In Aide (LIA)?

32

- ❑ In accordance with HUD guidance: someone **who resides with** one or more elderly persons, near elderly persons, or persons with disabilities, and who:
 - ❑ Is determined to be essential to the care and well-being of the persons;
 - ❑ Is not obligated for the support of the persons; and
 - ❑ Would not be living in the unit except to provide the necessary supportive services.

- ❑ A personal Care Attendant (PCA) may perform the same services but doesn't live with the resident.

Does An Owner/Agent Need To Permit A Live-In Aide (LIA)?

33

- ❑ Yes, if the person needs a LIA as a result of their disability, and it doesn't result in an undue financial and administrative burden or fundamental change in the program.

Note: Agreeing to allow a person to have a LIA is unlikely to pose an undue financial and administrative burden or a fundamental change. **However, allowing a specific person to live in a unit may be denied because permitting the person to be a household member would pose a fundamental change, such as if the LIA failed required screening criteria.**

What Does HUD Guidance Address In Regards To Live-In Aides (LIAs)?

34

- ❑ Verification of the need for a LIA and approval as a reasonable accommodation.
- ❑ Must count the Live-In Aide as a member of the household when determining unit size, but not count income.
 - ❑ Remember, you may need to make an accommodation regarding your site's occupancy standards.
- ❑ LIA in regards to Allowable Medical Expenses.
- ❑ Stipulates a family member can be a LIA.
- ❑ Stipulates A LIA can't qualify as a remaining household member.

What Does HUD Guidance Address In Re To Live-In Aides (LIAs)?

35

- ❑ **Requires** screening of Live-in Aides for drug abuse and other criminal activity, including State lifetime registration as a sex offender, by applying the same criteria established for screening other applicants.
- ❑ Permits owner to apply established applicant screening criteria to live-in aides, except may not screen for ability to pay rent (including credit).
- ❑ Requires Existing Tenant Search.
- ❑ Must disclose and provide verification of Social Security Number.
- ❑ Resident is responsible for the behavior of a LIA.

Important

You aren't violating Fair Housing if you deny a particular LIA to become a household member because the person failed legitimate criminal/landlord screening criteria contained in your Tenant Selection Plan (TSP).

Let's Discuss Lease Violations

36

- Should an owner/agent address lease violations committed by a person with a disability?
- Does a housing provider have to consider a request for an accommodation during an eviction procedure?

Should An Owner/Agent Hold Residents With Disabilities To A Lesser Standard In Regards To Lease Compliance?

37

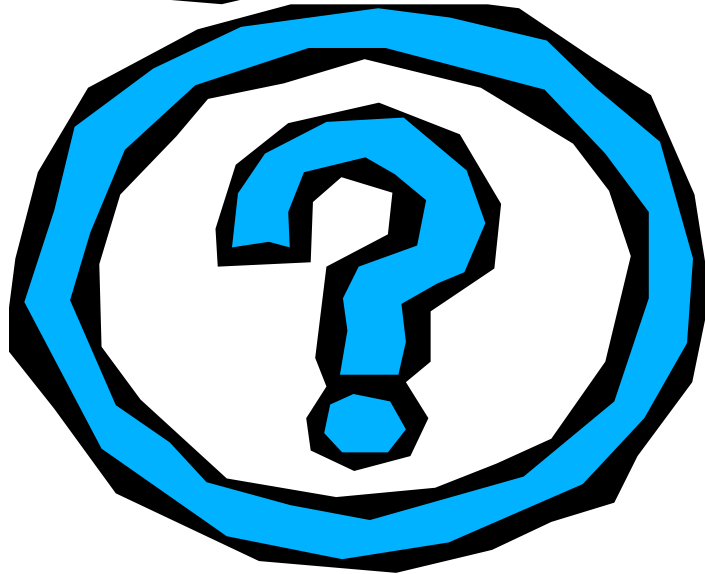
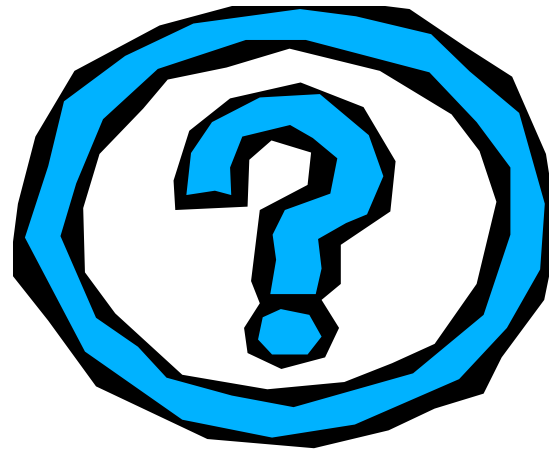
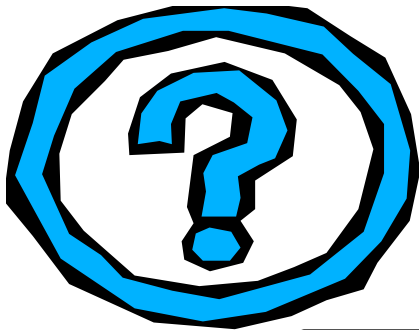
- **NO!**
- If any resident is violating the lease, and Owner/Agent must address the lease violating behavior.

What Is An Owner/Agent Required To Do If During An Eviction A Resident Requests A Reasonable Accommodation?

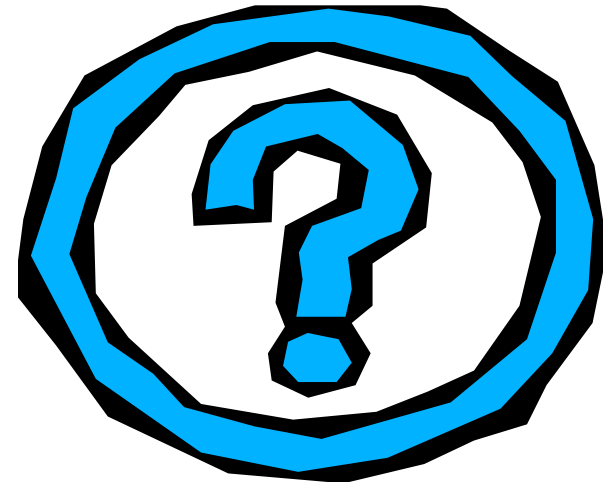
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- A person with a disability may request a reasonable accommodation at any point during the occupancy cycle, even during an eviction.
- An Owner/Agent **must** consider the request: **No behavior is so egregious that you may refuse to consider an accommodation.**
 - Determine:
 - Does the person have a disability;
 - Is there a nexus between the person's disability and the negative tenancy related behavior; and
 - Does the requested accommodation pose a fundamental change in the program or an undue financial and administrative burden?

If yes, remember to engage in an interactive dialogue



QUESTIONS ???



Resources/Helpful HUD Guidance For Today's Webinar

40

- Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO-2013-01, April 25, 2013
https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF
- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, April 4, 2016
https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF
- Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, November 2, 2015, <https://www.hud.gov/sites/documents/PIH2015-19.PDF>
- FAQs: Excluding the Use of Arrest Records in Housing Decisions, https://www.hud.gov/sites/documents/FAQ_EXCLUDE_ARREST_RECORDS.PDF
- Use of Marijuana in Multifamily Assisted Properties, December, 2014, <https://www.hud.gov/sites/documents/USEOFMARIJINMFASSISTPROPTY.PDF>

Resources/Helpful HUD Guidance For Today's Webinar

41

- Medical Use of Marijuana and Reasonable Accommodation in Public and Assisted Housing, January, 2011, <http://www.fairhousingnc.org/wp-content/uploads/2015/01/HUD-Kanovsky-Memo-re-Medical-Marijuana-and-RA-in-Public-Assisted-Housing-1-20-2011.pdf>
- Occupancy Requirements of Subsidized Multifamily Housing Programs (4350.3), (especially Chapter 4, WAITING LIST AND TENANT SELECTION, updated in 2013, https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3
- MassHousing's, A Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities, Originally produced under the Department of Housing and Urban Development's Fair Housing Initiatives Program (FHIP), updated in July, 2015, [file:///C:/Users/Owner/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/RA_Handbook%20\(1\).pdf](file:///C:/Users/Owner/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/RA_Handbook%20(1).pdf)