

PHA Obligations Under Disability Rights Laws

- ▶ 504 rules mandate:
 - A needs assessment of current residents, applicants for accessible units and eligible people with disabilities in the PHA's area (24 CFR§8.25)
 - A self evaluation - how well PHA is meeting these needs
 - A transition plan - how unmet needs will be met with a specific schedule for performance

PHA Obligations Under Disability Rights Laws

- ▶ Unit Accessibility (24 CFR § 8.22 & 8.23)
 - 5% of units across all properties/ unit sizes - accessible/ adaptable for wheelchair users
 - 2% of units in each property - accessible for people with vision or hearing impairments
 - If actual need/demand is greater, percentages can be raised
 - Typically these goals are achieved through substantial rehab of selected units

Dueling Definitions of Disability: Public Housing

- ▶ “Person with disabilities”
- ▶ Public housing definition (24 CFR§945.105)
 - Applies to public housing and HCV programs
 - Used for qualifying for designated housing
 - Income deductions for elderly/ disabled family (\$400) and disability expenses (care or apparatus for a disabled family member to permit an adult to work)

Dueling Definitions of Disability: Public Housing

- ▶ “Person with disabilities”, means a person:
 - Who has a disability as defined in...the Social Security Act; or
 - Who has a developmental disability...as defined by federal law; or

Dueling Definitions of Disability: Public Housing

- ▶ “Person with disabilities”, means a person:
 - Is determined to have a physical, mental or emotional impairment that
 - Is expected to be of long-continued and indefinite duration,
 - Substantially impedes his/her ability to live independently, and
 - Is of such nature that such ability could be improved by more suitable housing

Dueling Definitions of Disability: Public Housing

- ▶ “Individual with Disabilities”
- ▶ 504/ADA definition:
 - Found at 24 CFR§8.3
 - Applies to all housing programs that receive Federal assistance (including public housing and HCV)
 - Qualifies an applicant or resident for accessible unit, unit modifications and reasonable accommodations

Dueling Definitions of Disability: Section 504

- ▶ “Individual with disabilities” means a person who
 - Has a physical or mental impairment that substantially limits 1 or more major life activities; or
 - Has a record of having such an impairment; or
 - Is regarded as having such an impairment.

Dueling Definitions of Disability: Section 504

- ▶ “Individual with disabilities” means a person who
 - Does not include anyone whose current use of alcohol or drug abuse disqualifies them from participating in housing or constitutes a direct threat to the property or safety of others.

Dueling Definitions of Disability: Section 504

- ▶ “Physical or mental impairment” includes
 - Any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting ... the systems: neurological, musculoskeletal; special sense organs; respiratory & speech organs; cardiovascular; reproductive; digestive, gastro-urinary; hemic and lymphatic; skin; and endocrine

Dueling Definitions of Disability: Section 504

- ▶ “Physical or mental impairment” includes
 - Any mental or psychological disorder - mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 - Orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism

Dueling Definitions of Disability: Section 504

- ▶ “Major life activities” means functions such as
 - Caring for oneself
 - Performing manual tasks
 - Walking
 - Seeing
 - Hearing
 - Speaking
 - Breathing
 - Learning
 - Working

Dueling Definitions of Disability: Section 504

- ▶ “Has a record of such an impairment” means
 - Has a history of, or is misclassified as having a physical or mental impairment that substantially limits....

Dueling Definitions of Disability: Section 504

- ▶ “Is regarded as having an impairment” means
 - Has a physical or mental impairment that DOES NOT substantially limit; or
 - Has a physical or mental impairment that substantially limits... only as a result of the attitudes of others; or
 - Has none of the impairments, but is treated as having an impairment.

How the Definitions Overlap

- ▶ Everyone who qualifies as a “person with disability” (PH) will also qualify as an “individual with disability”(504), but
- ▶ The reverse is not true because an “individual with disability” may not actually have a disability, except in the eyes of others.
- ▶ This means everyone who gets a deduction because they have a disability qualifies for a reasonable accommodation if the requested accommodation is needed due to the disability.

Dueling Definitions of Disability

- ▶ “Qualified individual with disability” means:
 - an individual with disability who can meet essential obligations of tenancy, with or without an accommodation.

Exercise

Who is a person with a disability?

Who is an individual with disabilities?

Qualified Individual with Disability

- ▶ “Essential obligations of tenancy” means to:
 - Pay rent and other charges in a timely manner
 - Care for and avoid damaging the unit and common areas
 - Use the facilities & equipment in reasonable way
 - Create no health or safety hazards and report maintenance needs

Qualified Individual with Disability

- ▶ “Essential obligations of tenancy” means to:
 - Not interfere with the rights and peaceful enjoyment of others, avoid damaging the property of others
 - Not engage in prohibited criminal activity
 - Comply with necessary and reasonable rules and program requirements of HUD and PHA
- ▶ These obligations apply to **all** residents

Qualified Individual with Disability

- ▶ Does a person have to be able to “comply with the essential obligations of tenancy” (for housing) without help?
 - No. If someone with a disability can do these things through a reasonable accommodation by PHA, the person would qualify for housing.
- ▶ A reasonable accommodation is some change in procedures that PHA can make to provide equal access to housing for a person with a disability.

Exercise

- ▶ In your handout you have two descriptions of residents with disabilities who are violating their leases.
 - What are you required to do, both to enforce the lease and to comply with disability rights rules?
 - What steps could you take that you are not taking now?
 - Will it always be possible to preserve the tenancies of residents with disabilities?

Exercise

- ▶ In your handout several situations are described. For each individual:
 - Does he/she qualify for any deductions? Which ones?
 - Does he/she qualify for a reasonable accommodation? Give examples of possible accommodations.
 - Does he/she qualify for modifications in his/her unit?

Accessibility and Adaptability Definitions

- ▶ All covered multifamily dwellings that were built for first occupancy after March 13, 1991 have to be designed and constructed in a manner that is:
 - Accessible
 - Usable
- ▶ UFAS – Uniform Federal Accessibility Standards

Accessibility and Adaptability Definitions

- ▶ “Accessibility” generally means the unit meets state, local and model building codes and federal regulations for accessibility.
 - Americans with Disabilities Act: Americans with Disability Accessibility Guidelines
 - UFAS – Uniform Federal Accessibility Standards
 - Section 504
 - International Building Code

Accessible/ Usable

Examples of Accessibility

- ▶ Accessible building entrance on an accessible route into and through the dwelling
- ▶ Accessible public and common use areas
 - Doors that allow wheelchair passage into and within all rooms
 - Accessible route into and through each covered unit

Examples of Accessibility

- ▶ Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- ▶ Reinforcements in bathroom walls so grab bars can be added when needed.
- ▶ Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

Reasonable Accommodations

- “Reasonable Accommodations” are required both by 504 and ADA rules.
- A “Reasonable Accommodation” is a change, modification or alteration of a policy, procedure, practice, facility, unit or program that provides a person with a disability the opportunity to participate in or benefit from a program, service or activity.
- Reasonable accommodations can be procedural or unit modifications.

Administrative Accommodations

- Exception to requirement that applicants or residents submit materials in writing;
- Checking with all residents at each annual recertification to determine whether unit modifications or accommodations are needed (peoples' needs change)
- Sending rent statements to the designated payer for a resident with disabilities, rather than to the resident.

Reasonable Accommodations

- ▶ Examples of reasonable accommodations:
 - Method for Admissions to inform housing management about communications needs of residents with disabilities
 - Permitting a family to have a dog or cat at a development that does not permit pets when need for an assistive animal is verified necessary for the resident's disability

Reasonable Accommodations

- ▶ “Unit modifications” are reasonable accommodations requested by a resident or applicant limited to the accessibility improvements needed to make the unit usable by that individual.
- ▶ All modifications must meet the above mentioned standards.
 - Example: If structural grab bars are requested in the bathroom, they must meet accessibility requirements

Reasonable Accommodations

- ▶ “Auxiliary Aids”: Services or equipment that enable a person with impaired sensory, manual or speaking skills to participate in and enjoy the benefits of programs receiving Federal financial assistance.

Reasonable Accommodations

- ▶ PHA (not resident) typically bears the cost of unit modifications, however;
- ▶ PHA may not be required to bear the cost OR approve the reasonable accommodations or unit modifications when:
 - The request is an undue financial and administrative burden; or
 - The request represents a fundamental alteration in the nature of PHA's service.

Reasonable Accommodations

- ▶ Example of undue financial burdens and fundamental alterations (note: there is no clear-cut test to determine what constitutes an undue burden or a fundamental change in your program)
 - As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot for trash collection. The tenant requests that the PHA send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster.

Reasonable Accommodations

- ▶ If the PHA can show that the request is a financial and administrative burden, the PHA must offer an alternative reasonable accommodation
 - Example: Making a home visit for a recertification appointment if a tenant can't come into the office
 - Example: Making physical changes to a unit that are NOT an undue financial and administrative burden

Animal Accommodations

- ▶ “Assistance Animal”: An animal needed by a person with disabilities that work, assist, or perform tasks or provide emotional support that alleviates symptoms or effects of a disability.
 - Does NOT require specific training or certification
 - NOT a pet and EXEMPT from PHA standard pet policy UNLESS
 - PHA can prove assistance animal prevents other residents from enjoying their premises in a safe and peaceful manner

Animal Accommodations

- ▶ No clear legal distinction between the terms “assistance animal”, “support animal”, “emotional animal” or “companion animal”.
- ▶ PHAs should focus on three things:
 - Signed documentation from a qualified medical provider certifying that the tenant is an individual with disabilities
 - A nexus between the disability and the reasonable accommodation
 - Requested accommodation is necessary per the medical provider

Animal Accommodations

- ▶ A request for an assistance animal can be denied when the animal:
 - Poses a direct threat to health/safety of others
 - Result in substantial physical damage to property of others UNLESS the threat can be eliminated/ significantly reduced by a reasonable accommodation
 - Pose an undue financial and administrative burden
 - Fundamentally alter the nature of a provider's operations.

PHA's Specific Obligations

- ▶ Reasonable Accommodations Log - specifies how to:
 - Receive and log RA requests
 - Collect data on each request
 - Respond to requests
 - Track the timing and actions on each request
 - Follow up and document all actions.

PHA's Specific Obligations

- ▶ Effective Communications Policy - specifies how to:
 - Ensure that all written material is clear and understandable
 - Include contact information
 - Make materials available to people with disabilities in alternative formats
 - Require alternative format statement

PHA's Specific Obligations

- ▶ Translation rules - specifies how to:
 - Notify people that information is important and should be translated
 - Decide when materials should be translated by PHA into other languages than English

Complaints and Grievances

- ▶ Individuals with disabilities whose requests are denied have other recourse:
 - All resident complaints about denied requests for reasonable accommodations must be reviewed.
 - Everyone may file a complaint with HUD's office of Fair Housing and Equal Opportunity.

Affirmatively Furthering Fair Housing

- ▶ The Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, handicap, familial status, and national origin.
- ▶ HUD promotes integration through conditioning the grant of federal funding on a PHA's certification to affirmatively further fair housing.

Affirmatively Furthering Fair Housing

- ▶ Prior to the July 20, 2015 AFFH rule, PHAs were not required to conduct a separate analysis related to AFFH.
- ▶ The new AFFH Rule defines the requirements that PHAs must meet to satisfy the obligation to AFFH.

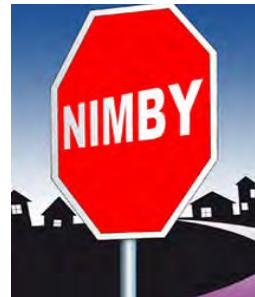
Affirmatively Furthering Fair Housing

- ▶ PHA must carry out program operations in a manner that helps applicants, tenants and HCV participants to make the broadest possible range of housing choices, including:
 - Range of locations of public housing
 - Accessible housing at all locations
 - Mobility counseling for voucher holders
 - Recruiting landlords from underserved neighborhoods

HUD AFFH Rule

Summary of Major Provisions

- ▶ Replaces the Analysis of Impediments (AI) with a more effective and standardized Assessment of Fair Housing (AFH) through which program participants identify and evaluate fair housing issues, and factors contributing to fair housing issues (contributing factors).



HUD AFFH Rule

Summary of Major Provisions

- ▶ Incorporate, explicitly, fair housing planning into existing planning processes, the consolidated plan and PHA Plan, which, in turn, incorporate fair housing priorities and goals more effectively into housing, and community development decision making.



HUD AFFH Rule

Summary of Major Provisions

- ▶ Encourage and facilitate regional approaches to address fair housing issues, including collaboration across jurisdictions and PHAs.



HUD AFFH Rule

Summary of Major Provisions

- ▶ Provide an opportunity for the public, including individuals historically excluded because of characteristics protected by the Fair Housing Act, to provide input about fair housing issues, goals, priorities, and the most appropriate uses of HUD funds and other investments, through a requirement to conduct community participation as an integral part of the new assessment of fair housing process.

Links to Websites

- ▶ HUD: www.HUD.gov
- ▶ UFAS:
[http://www.access-board.gov/ufas/ufas-html/
ufas.htm#3.1](http://www.access-board.gov/ufas/ufas-html/ufas.htm#3.1)
- ▶ Federal laws and regs: www.GPO.gov
- ▶ The Americans with Disabilities Act: www.ADA.gov
- ▶ Nondiscrimination in employment based on disability: www.eeoc.gov
- ▶ The ANSI standards: www.ANSI.org
- ▶ Spinal cord injuries: www.pva.org

QUESTIONS?

