NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, D.C. 20410-0500
Via: www.regulations.gov

Thank you for the opportunity to submit recommendations on the "Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act." The National Affordable Housing Management Association (NAHMA) supports the rule's clarification and establishment of uniform standards for use in investigations of quid pro quo and hostile environment harassment allegations. NAHMA also shares the rule's purpose of ending all discrimination in housing. However, we have provided some concerns in the comments below, regarding the application of vicarious liability under this Rule. We look forward to your responses and working with you to implement a Final Rule.

NAHMA is the leading voice for affordable housing management, advocating on behalf of multifamily property managers and owners whose mission is to provide quality affordable housing. NAHMA supports legislative and regulatory policy that promotes the development and preservation of decent and safe affordable housing, is a vital resource for technical education and information and fosters strategic relations between government and industry. Founded in 1990, NAHMA's membership today includes the industry's most distinguished multifamily owners and management companies.

**Comments**

1. Page 63726, **Section III(C)(1) of Preamble re: Direct Liability**. The discussion of actions the agent "knew or should have known" about and corrected cites to case law that exclusively discusses knowing conduct only (see fn 31 and 32). It is not clear that "should have known" is the appropriate standard, despite the assertions. See also the discussion in the 3rd column about tenants' complaints to manager, which are made known to the manager. Footnote 33 does not adequately elaborate on the "should have known" standard.
   **Recommendation**: Please provide clarification or a citation on the "should have known" standard.

2. Page 63727, **Section III(C)(2) or Preamble re: Vicarious Liability**. In the 2nd column there is a statement that principals may be vicariously liable for even those actions taken outside of the scope of the employment relationship, which seems overly broad.

   Page 63728, **Section III(C)(2) or Preamble re: Vicarious Liability**, bottom of 3rd column.

Page 63729, **Section III(C)(2) or Preamble re: Vicarious Liability**, top of 1st column – The rule admits that a tenant may have limited contacts with a management company (on site manager or maintenance person given in example) yet how would an agent be said to "know" or "should have known" of the alleged harassment if only a small number of people are involved? **Recommendation**: Please provide clarification on how the “should have known” standard will be applied. As written, this is an exceedingly broad standard that could lead to all sorts of unintended consequences and false claims.

Also, the rule needs to provide clarity on the reasoning that an agent who harasses residents or applicants is necessarily aided by his or her agency relationship with the housing provider. This seems to be an assertion and it also lacks attribution.

Finally, HUD should provide technical assistance or guidance on Vicarious Liability to tenants, housing providers, and practitioners on the Final Rule to ensure all parties know their rights under the law.

3. Page 63730, **Section 100.7(b) Vicarious Liability** – it is unclear how a person can be vicariously liable "regardless of whether the person knew or should have known…"? **Recommendation**: The rule’s rejection of including affirmative defense should be reconsidered as it appears unfair and based on an assertion that housing providers are equivalent to a supervisory employer in terms of their power over applicants and/or tenants.

4. Page 63731, **Subpart H, Section 100.600(a)(2)(I)(B) Evidence of psychological or physical harm**. **Recommendation**: As written, this section is very confusing. There should be some discussion of the reasonableness standard here, particularly since the rule is stating that “no evidence of psychological or physical harm need be demonstrated to prove a hostile environment exists”, but evidence is relevant. Please provide an explanation in the Preamble.

Thank you again for the opportunity to comment.

Sincerely,

Kris Cook, CAE
Executive Director