

## Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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### **NAHMAanalysis: Pet Ownership for the Elderly and Persons with Disabilities, Final HUD Rule**

#### **Effective Date**

The new regulation<sup>1</sup> is effective as of November 26, 2008.

#### **Background**

On October 15, 2007, HUD released a proposed rule on pet ownership for the elderly and persons with disabilities and requested industry comments. The rule conforms the regulations governing requirements for pet ownership in HUD-assisted public housing and multifamily housing projects for the elderly and persons with disabilities to the requirements for animals assisting persons with disabilities in HUD’s public housing programs, other than projects for the elderly or disabled. Additionally, HUD intended to update the regulations to conform with court decisions involving emotional assistances animals and its own policies on reasonable accommodations. The proposed rule characterizes these changes as “minor revisions” to existing regulations. The changes described in the *Federal Register* would:

- Expand the functions of assistance animals to encompass pets that “assist, support, or provide service to persons with disabilities,” including emotional support;
- Exempts “assistance animals” which are necessary as a “reasonable accommodation” to a tenant’s disability from certain restrictions on pet ownership in housing for the elderly and persons with disabilities;and
- No longer require “assistance” animals to have specialized training or require the tenant to certify they have a disability the animal has been trained to assist with and

<sup>1</sup> Pet Ownership for the Elderly and Persons with Disabilities, Final Rule. [Docket No. FR–5127–F–02] RIN 2501-AD31. Rules and Regulations, Department of Housing and Urban Development. *Federal Register*: October 27, 2008 (Volume 73, Number 208), Pages 63834-63838.

the animal actually assists the person with the disability in housing properties for the elderly and disabled.

The Department stated that removing the animal training and tenant certification requirements will “likely to decrease the administrative burden on project owners to process assistance animal certifications.”

NAHMA submitted comments in opposition to the proposed rule on Dec. 13, 2007. We argued that the proposed rule unnecessarily broadens pet policies in privately-owned assisted housing. Likewise, NAHMA’s comments state the changes would hamper an owner/agent’s ability to balance the rights of elderly and disabled tenants who require service animals with the rights of other tenants to have clean, safe, and peaceful properties. Furthermore, we were concerned the proposed rule created a loophole to bypass existing restrictions on pet ownership by expanding the functions of an assistance animal.

### **Summary**

On Oct. 27, 2008, HUD issued their final ruling on pet ownership for the elderly and persons with disabilities. No substantive changes were made in the final rule.

It is customary for federal agencies to respond to public comments on the proposed rule when the final rule is released. The final pet rule disregards the majority of the industry comments and recommendations. HUD’s changes to the rule harmonize public housing and multifamily pet ownership guidelines for the elderly and disabled with HUD’s other public housing programs, expand the functions of assistance animals and remove the tenant certification. HUD’s responses to NAHMA’s major comments follow.

NAHMA commented that the proposed rule unnecessarily broadens pet policies in privately-owned assisted housing. HUD replied that they did not believe “the revision broadens the scope of service animals in housing” or would cause uncertainty over which animals would be considered “service animals.” It is important to note that HUD still permits housing providers to verify the existence of a disability and the need for a reasonable accommodation, if it is not readily apparent.

NAHMA also commented that training and certification requirements are “quite helpful in creating a careful balance to provide reasonable accommodations for tenants who need service animals, maintain the cleanliness of the property and ensure other tenants’ rights to peaceful enjoyment of the premises.” HUD responded that the removal of the requirements would improve uniformity in HUD regulations and existing law. They also argued not all animals require training to provide emotional assistance, detect seizures, or alert others if the tenant requires medical attention. Nevertheless, they responded that the rule would not exempt all animals from additional pet regulations. Persons with disabilities would still have to establish a relationship between the animal requested as a reasonable accommodation and the disability it assists or they would have to comply with property pet rules.

Finally, NAHMA strongly urged that HUD ensure owners have the ability to protect the health, safety and peaceful enjoyment rights of all tenants and to safeguard the physical and sanitary conditions on the property. HUD explained that housing providers are not required to treat an animal as a reasonable accommodation if that animal poses a direct threat to the health or safety of others. Additionally, HUD wrote that a housing provider is not required to accept a pet “if the presence of the assistance animal would (1) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (2) pose an undue financial and administrative burden; or (3) fundamentally alter the nature of the provider's operations.” For a more extensive explanation of the principles of reasonable accommodations, please find the HUD/DOJ *Joint Statement on Reasonable Accommodations* here: <http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf>.

### **Positive Aspects of the Rule**

NAHMA is pleased that HUD acknowledged the ability of housing providers to address health and safety concerns that arise with respect to assistance animals. The final rule states that the rule should not affect “any authority that project owners or PHAs may have to regulate animals that assist, support, or provide service to persons with disabilities, under federal, state, or local law.”

### **Issues of Concern to NAHMA**

NAHMA is concerned that the final rule could be abused in privately-owned assisted housing to circumvent existing pet ownership rules such as pet deposit requirements, limitations on the animal's size, and other restrictions.

We remain unconvinced that the removal of tenant certification and animal training requirements will reduce administrative burdens and not cause other problems for owners and agents. NAHMA feels that these requirements have assisted owners and agents in maintaining a balance of tenants' rights to healthy, safe, and clean environments and providing for disabled tenants' needs with service animals. We would have preferred that they were left in place.

### **NAHMA's position**

NAHMA believes that owners should have the right to establish reasonable rules for assistive animals which simultaneously:

- Meets the needs of disabled residents;
- Protects the health, safety and peaceful enjoyment rights of all tenants; and
- Safeguards the physical and sanitary conditions on the property.

Although we are disappointed by the final rule, we will seek ways to improve HUD's pet rules when opportunities arise. In the meantime, we welcome feedback from NAHMA members about their experiences implementing this new regulation.