

Dear NAHMA Member,

In a [press release](#) issued today, HUD's Office of Fair Housing and Equal Opportunity (FHEO) announced a proposed rule entitled "Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act."

NAHMA plans to review this proposed rule in consultation with our Fair Housing Committee and will be submitting comments. The comment period for this proposed rule closes on December 21, 2015. We invite you to submit your own comments and recommendations for this proposed rule. In order to have adequate time to review and compile all comments, **we ask that you submit your comments by December 11, 2015**. Please forward your comments to NAHMA's Director of Government Affairs, Larry Keys, at [lkeys@nahma.org](mailto:lkeys@nahma.org).

Below is a summary of key provisions included in this proposed rule:

### **Summary of Key Provisions from the Proposed Rule**

This rule proposes to codify through regulation the principles that quid pro quo and hostile environment harassment on the basis of race, color, national origin, religion, sex, disability or familial status ("protected characteristic") violate one or more provisions of the Fair Housing Act. The proposed rule would define "quid pro quo" and "hostile environment" harassment under the Fair Housing Act, add illustrations of prohibited "quid pro quo" and "hostile environment" harassment, and address how the traditional standards for direct and vicarious liability operate in the Fair Housing Act context, including for claims of harassment.

As proposed to be defined, "**quid pro quo harassment**" occurs when a person is subjected to an unwelcome request or demand because of the person's protected characteristic and submission to the request or demand is, either explicitly or implicitly, made a condition related to the person's housing. A person's conduct may constitute quid pro quo harassment even where the victim acquiesces or submits to the unwelcome request or demand.

As proposed to be defined, "**hostile environment harassment**" occurs when, because of a protected characteristic, a person is subjected to unwelcome conduct that is sufficiently severe or pervasive such that it interferes with or deprives the victim of his or her right to use and enjoy the housing or to exercise other rights protected by the Act. The proposed rule further explains that whether a hostile environment has been created requires an assessment of the totality of the circumstances, which includes, but is not limited to, the nature of the conduct; the context in which the conduct occurred; the severity, scope, frequency, duration, and location of the incident(s); and the relationships of the persons involved. For purposes of clarity and guidance, the proposed rule would add to HUD's existing Fair Housing Act regulations examples of prohibited quid pro quo and hostile environment harassment under the Act.

The proposed rule also would describe "**direct liability**" and "**vicarious liability**" as applied to all violations under the Act, not solely harassment. The standards for both types of liability incorporated into the proposed rule follow well-established common law tort and agency principles and do not subject respondents or defendants to enhanced liability for violations of the Act. Under such standards, a person is **directly liable** for his or her own discriminatory housing practices and, in certain circumstances, is directly liable for actions taken by others, including agents, when the person knew or

should have known of the discriminatory conduct and failed to take prompt corrective action that ends it. The proposed rule would also clarify that direct liability for the actions of non-agents occurs only when a person fails to fulfill a duty to take prompt action to correct and end a non-agent's discriminatory conduct, of which the person knew or should have known.

In contrast to *direct* liability for the conduct of another, a person may be ***vicariously liable*** for the conduct of his or her agents regardless of whether the person knew of or intended the wrongful conduct or was negligent in preventing the conduct from occurring. Vicarious liability occurs when the discriminatory actions of the agent are taken within the scope of the agency relationship, or are committed outside the scope of the agency relationship but the agent was aided in the commission of such acts by the existence of the agency relationship. To clarify the distinction between these two forms of liability—direct and vicarious—without codifying specific common law liability standards, the proposed rule simply adds a provision stating that a person may be vicariously liable for the discriminatory acts of his or her agent. This provision is consistent with the holding of *Meyer v. Holley*, that traditional principles of agency law apply in fair housing cases.

To view the entire proposed rule, please [click here](#)

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