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**Answers to the Most Common Questions Regarding
HUD's New Assistance Animal Notice**

On January 28, 2020, HUD issued FHEO Notice: 2020-01 regarding Assistance Animals. Prior to issuance of that Notice HUD issued *A Fact Sheet on HUD's Assistance Animals Notice*. The new Notice replaces the Notice HUD issued in 2013. This document, prepared by our law firm in question and answer form, is intended to clarify for our clients the main points in those HUD documents.¹

1. Does HUD's New Notice change the law or the obligations of housing providers?

- No, HUD's new Notice does not change the law or the obligations of housing providers with respect to reasonable accommodation requests. For that matter, the Notice should be viewed as a guidance document only, a sort of "best practice" guide for processing requests for assistance animals.

2. Do housing providers need to make changes to their current procedures and forms?

- Not necessarily. To determine whether or not an assistance animal is required, HUD recommends that housing providers first ascertain if the requested animal is a "service animal." We disagree. Instead, we recommend that our clients determine first whether the disability is observable or non-observable and then proceed with your normal process. We believe that first determining whether the animal is a service animal adds an unnecessary step, and may be confusing for many housing providers, since both service and emotional support animals can be assistance animals.

¹ This document is not intended and should not be viewed as legal advice. Instead, this should be viewed as our summary of HUD's new Assistance Animal Notice. If legal advice is needed concerning a particular situation, please contact our Firm.

3. What types of assistance animals can be requested as a reasonable accommodation?

- The Notice describes two types of assistance animals:
 - **Service Animals** – According to the Notice, HUD is limiting service animals to the ADA definition of service animals, which are **dogs and miniature horses**² that are **trained** to work or perform a task for the benefit of an individual with a disability. We believe HUD’s continual reference to the ADA is inappropriate, since the ADA does not apply to most housing providers. Therefore, we recommend that housing providers consider all types of trained animals to be “service animals.”
 - **Support animals** – A support animal is any animal that is able to perform tasks, provide assistance, **or provide therapeutic, emotional support** for an individual with a disability. This is a broader term than the term formerly used (“emotional support animal”) because it includes both trained and untrained animals.

4. What other types of animals can be “support animals?”

- **“Common support animals” include:** dogs, cats, small birds, rabbits, hamsters, gerbils, rodents, fish, turtles, or other small domesticated animals that are traditionally kept in the home for pleasure.
- **“Unique animals”:** reptiles (other than turtles, which are common support animals), barnyard animals, monkeys, and other non-domesticated animals that are not considered common household animals. This also includes goats, pigs, chickens and snakes.
- HUD states that a requestor of a unique animal as an assistance animal has a substantial burden of demonstrating a disability-related therapeutic need for the specific animal. While a request for a unique animal should not be summarily denied, a housing provider can request the resident and verifier to provide additional information concerning the need for this particular animal.

5. Does the Notice deal with requests for multiple animals?

- The Notice does not address requests for multiple support animals.

6. What does the Notice say about the reasonable accommodation process?

- As with any request for a reasonable accommodation, the first issue the housing provider must address is whether or not the resident’s disability and the disability-related need for

² The HUD Notice failed to include in its description of service animals trained miniature horses that work as guide animals. This is assumed to be an error since the ADA includes both trained dogs and miniature horses.

the assistance animal is observable or not observable. If both of these factors are observable (*e.g.*, a visually-impaired resident requests a guide dog), the housing provider must not request third-party verification of the residents' disability or his/her need for the assistance animal. If either of these criteria are not observable, the housing provider is within its rights to request verification of the non-observable criterion.

- The new Notice reminds housing providers that they should document the request and verification and can offer use of their forms. Housing providers cannot insist that their specific forms be used. Providers are required to process requests and verifications in whatever form the request is made.
- The Notice reminds housing providers that prior to refusing a request for an assistance animal, the housing provider should conduct a good faith meeting with the resident to discuss his or request and to provide the resident with the reason(s) for the provider's decision.
- The Notice suggests that housing providers notify residents of its decision within 10 days after it receives the requested verification. Remember that undue delay in responding to a reasonable accommodation request may be grounds for a complaint.

7. How does the Notice describe verifiers?

- The Notice defines a verifier as a health care professional; *e.g.*, a physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, nurse, or other professional who provides medical or mental health services to the resident.

8. What information should the verifier be able to provide about the resident?

- The verifier should have a professional relationship with the resident/applicant involving the provision of health care or disability-related services. Any information provided should be based on his or her personal knowledge of the resident (*i.e.* the knowledge used to diagnose, advise, counsel, treat, or provide health care or other disability-related services to the resident).

9. Must a housing provider accept a registration or certification from an online company that describes the animal as a "registered or certified service or emotional support animal"?

- No. The new Notice is explicit – HUD views such website certifications to be insufficient to verify the need for an assistance animal.
- In other words, residents should not rely on website registrations or certifications to justify requests for assistance animals. Instead, housing providers can insist that the resident provide proper and reliable verification.

10. Does the Notice address the boiler plate letters (often called “prescription letters”) signed by mental health professionals and purchased online by residents?

- Although the Notice does not acknowledge this process, it does make it acceptable for a housing provider to ask the resident and verifier whether the verifier has adequate professional information about the resident’s disability status and the related need for the animal to make the declarations contained in these letters.
- The Notice also permits a housing provider to inquire whether the verifier is providing professional medical or mental health services to the resident. Therefore, we believe it is a reasonable interpretation to deem this type of verification insufficient or unreliable if the only purpose of the contacts between the verifier and resident is for the purchase of the letter.
- The Notice acknowledges that there are legitimate therapists who provide mental health services via the internet or telephone. The fact that therapy sessions only occur by telephone or electronically should not be the sole basis for rejecting a verification as unreliable.

11. What does HUD’s Notice say about questions pertaining to disability?

- The Notice is confusing insofar as it references both the Fair Housing Act and ADA definitions of disability.
- While the number of disabilities is virtually limitless, as always, impairments that do not result in a substantial limitation on a major life activity do not meet the Fair Housing Act definition of a disability.

12. Does the process differ if an animal is discovered in the apartment of a resident who never previously requested an accommodation?

- No. The Notice states that a request for an assistance animal must be processed by the housing provider regardless of when the request is made, even if the animal has already been residing in the unit, or a lease termination has been initiated. The fact that the resident may have brought an unauthorized animal into his or her unit cannot be the basis of a denial.

13. What can I do if a resident lies on his or her application for a reasonable accommodation?

- The Notice states that misrepresentations made by a resident in connection with a reasonable accommodation request can be used against the resident in the same manner as any other misrepresentation under the lease agreement, as long as the lease explicitly requires that resident not make any material misrepresentations regarding their background or eligibility.

If you have questions as to how HUD's new Notice may impact your company's procedures or forms, please contact either Kathi Williams at kathi@fairhouse.net or Leslie Tucker at Leslie@fairhouse.net.