

The CONN-NAHRO Connection

July 2019



From the Executive Director

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Commissioners Committee Members

Mitzy Rowe, Chair
Bristol Housing Authority

Laura Coleman, Vice-Chair
Webster Bank

Melissa Green, Co-Secretary
Bristol Housing Authority

Laura LaMar, Co-Secretary
Bristol Housing Authority

Janet Wortman
Janet Wortman, CPA



It's the most wonderful time of the year – CONVENTION TIME!

This year's Annual CONN-NAHRO convention will take place Sunday, August 25 through Wednesday, August 28 once again at Mohegan Sun Casino. Our booth spaces are almost sold out, there are sponsorship and program book ads still available, and attendee registration is open! The committee is busy planning educational sessions, updates, keynote and guest speakers, and more! See what has been scheduled to date in this issue of *CONN-NAHRO Connection*.

Spring 2019 was one of our busiest times with Small PHA training, our Annual Fair Housing training, Project Based Voucher seminar, our Annual Employee Training and Networking Day, and our June general membership meeting with guest speaker Commissioner of Department of Housing Seila Mosquera-Bruno.

July 17-18 we will hold a Capital Funds training presented by Nan McKay.

My door and email are always open! Reach out with any questions or concerns. I look forward to hearing from you and seeing you at a future CONN-NAHRO event.

Sincerely,
Jessica Olander
admin@conn-nahro.org

CMERS: CT Municipal Employees Retirement System Updated Contribution Rates

Article by Janet Wortman, CPA

CT PHA Executive Directors recently received a letter from State of CT Retirement Services Division regarding CMERS contribution rates.

The letter contains the following forecast of future employer contribution rates for general employees with Social Security (expressed as a percentage of payroll).

Year ending June 30, 2020	13.73%
Year ending June 30, 2021	15.24%
Year ending June 30, 2022	16.75%
Year ending June 30, 2023	18.26%
Year ending June 30, 2024	19.34%
Year ending June 30, 2025	18.85%

In addition, employee contribution rates are increased by 1/2 % effective July 1, 2019 and will continue to increase by 1/2% for each of the 5 fiscal years indicated above.



CT DOH Commissioner Seila Mosquera-Bruno Addresses CONN-NAHRO Membership

Article by Janet Wortman, CPA

CT Department of Housing (DOH) Commissioner Seila Mosquera-Bruno addressed CONN-NAHRO members for the first time at the June meeting. Aaron Turner, DOH Director of Government Affairs & Communications, was also on hand to field questions from the audience.

The meeting room was filled to capacity with housing professionals, eager to welcome the new commissioner and get an update on her first few months on the job.

The Commissioner outlined initiatives at DOH, among them:

- Providing housing opportunities and options throughout CT
- Continuing to reduce homelessness, especially for veterans
- Working efficiently/effectively to get affordable housing projects approved and funded (Backlog has been reduced significantly; 13 projects have been closed since March 2019.)
- Improved customer service
- Collaboration and cooperation between housing agencies
- Provide training opportunities for DOH staff in specific strategic areas such as underwriting
- Review zoning statutes, providing incentives for municipalities to comply with affordable housing requirements
- Review of public housing authority authorization and jurisdiction

In closing, the commissioner urged the membership to communicate with our peers, exploring ways that housing agencies can work together to effectively provide affordable housing for our most vulnerable residents.

Monday, August 26, 2019	session
2-3:15	DOH session
2-3:15	Fire Protocol Panel
2-3:15	Repositioning
Monday, August 26, 2019	session
3:30-4:45	HOTMA
3:30-4:45	Legal Cases w/ Tenants with Disabilities, Problem Evictions/ Death of a Tenant/Do's & Don'ts
3:30-4:45	Employee Benefits
Tuesday, August 27, 2019	session
9:00-10:15	Basic Finance
9:00-10:15	HUD Updates
9:00-10:15	UPCS
Tuesday, August 27, 2019	session
10:30-11:45	RAD/Sec 18/Vol Conversion
10:30-11:45	Medical Marijuana
10:30-11:45	Moving to Work
Tuesday, August 27, 2019	session
2:00-3:15	DOH Session
2:00-3:15	RAD for Commissioners
2:00-3:15	PBVs
Tuesday, August 27, 2019	session
3:30-4:45	Q & A
3:30-4:45	Two Year Tool Kit
3:30-4:45	Security for Your Property (drone use, ID checks, security cameras)
Wed, August 28, 2019	session
9-11:30	Board of Directors Installation
9-11:30	HUD Policy Updates
8:00 am to 4:00 pm	Rent Calculation Training

FAIR HOUSING – UPDATE ON ADMINISTRATIVE AGENCY INVESTIGATIONS AND INTERPRETATIONS

Article by Tucker McWeeny, Esq.
tmcweeny@sdctlawfirm.com

There have been a few recent changes with how Fair Housing complaints are processed by the Connecticut Commission on Human Rights and Opportunities and, by extension, HUD. They appear relatively modest but may end up having a bigger impact than intended or anticipated and merit some analysis. “Criminal background” issues are increasingly linked with Fair Housing. It is not an accident that the model approaches to handling “criminal background” issues are very similar to “reasonable accommodation/modification interactive process” discussions.

With respect to reasonable accommodation/modification requests, a new term/standard is emerging for disability verifications. Whether you feel it helps eliminate barriers for disabled tenants or you feel it is CHRO/HUD solving a problem that doesn't exist, it is important to be aware of the shift.

Finally, there are two changes the CHRO Fair Housing Unit have adopted to newly filed Complaints. They removed one obligation and created another and, apparently, decided not to apply either change to both parties.

CRIMINAL BACKGROUND

It is become increasingly important to make sure that your entity has fully grasped the impact of HUD's 2016 *“Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.”* It is a mouthful but it is a pretty helpful document that walks through some specific examples.

I have been involved in Fair Housing/criminal background cases since HUD published its position statement in 2016. My experience has been that the focus of the investigation remains the process and not the outcome. Before denying an application because of a criminal background, individuals must be afforded an opportunity to provide evidence of mitigating circumstances. Hearings offered by public housing authorities on denied applications or evictions must comply with procedural due process standards.

Recently there has been controversy about efforts to make “criminal background” a formal protected class. I would argue that it is already functionally a protected class. At first glance the HUD 2016 memo seems to extend only to African-American and Hispanic communities. It specifically indicates that these two populations are incarcerated at disproportionate rates and a policy that adversely affects individuals with criminal backgrounds has a disparate impact on race and color. If the analysis advances one further step, it becomes clear that on a practical level these requirements apply to every community/protected class and not just communities of color. If African-American and Hispanic individuals must be offered an opportunity to attend a hearing and provide evidence of mitigating circumstances, then so does everybody else. Housing providers can't offer varying degrees of due process based upon the race/color of the applicant. HUD's relatively nuanced disparate impact analysis demands that African-American and Hispanic individuals be afforded an opportunity to provide evidence of mitigating circumstances before a denial. Old-fashioned “discriminatory terms and conditions” analysis demands everyone else get the exact same opportunity. We are already there – everyone has a right to provide evidence of mitigating circumstances with respect to criminal backgrounds.

CHRO removed the requirement that Complaints needed to be submitted under oath. They no longer require oaths, unless you are a Respondent. CHRO still demands that Respondents provide sworn Answers to now increasingly unsworn Complaints. CHRO still advises Respondents that they can be defaulted unless they provide sworn Answers. The accountability for Respondents survives.

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FAIR HOUSING – UPDATE ON ADMINISTRATIVE AGENCY INVESTIGATIONS AND INTERPRETATIONS

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Reasonable Accommodation Verification

It is axiomatic that a housing provider can verify whether an individual is disabled under State/Federal law if someone requests a reasonable accommodation/modification. They are also permitted to verify the nexus between the requested accommodation and the disability. At one point verification was handled mainly by doctors – older forms often specifically used the term “doctor.” Approximately a decade ago there was a conscious shift from the term “doctor” to the phrase “medical professional.” It was clearly an effort to try to remove barriers to entry and make it less burdensome for disabled individuals to request accommodations.

Recently, I have seen HUD/CHRO conciliation agreements/voluntary compliance agreements eschew the term “medical professional” and substitute the term “third-party professional.” The intent is clearly to further reduce the barriers to verifying a disability, and you should be certain that your entity is not imposing verification requirements that may no longer apply.

CHRO Complaint Processing – Complainant Affidavit

In the past both Fair Housing Complaints and Fair Housing Answers had to be submitted in affidavit form and sworn under oath. Complaints without oaths were not accepted. Answers without oaths were not accepted and Respondents were advised that they could be defaulted unless the Answer was submitted under oath.

The oath requirement helped keep everyone honest. It afforded an immediate and effective penalty against the party making misrepresentations to the Commission. It created immediate and lasting accountability. Parties lied to the Commission at their peril as they exposed themselves to subsequent impeachment.

CHRO removed the requirement that Complaints needed to be submitted under oath. They no longer require oaths, unless you are a Respondent. CHRO still demands that Respondents provide sworn Answers to now increasingly unsworn Complaints. CHRO still advises Respondents that they can be defaulted unless they provide sworn Answers. The accountability for Respondents survives.

CHRO Complaints – Complainant Prior Complaints

CHRO has surprisingly created a tool that may prove very helpful to Respondents. When individuals file CHRO Complaints they are required to provide the Commission with a form called “Information Regarding Complaints Previously Filed with the Connecticut Commission on Human Rights and Opportunities.” While the title isn’t particularly creative this could produce some helpful information.

There is no question that the CHRO Fair Housing Unit already has access to all relevant information about former CHRO Housing complaints filed by a Complainant. CHRO doesn’t get a benefit from a Complainant providing them with information that they already have. The only one benefiting from this new obligation is Respondents/Housing providers.

It is not presented to Complainants as optional, it specifically includes the following, “I understand that my failure to disclose this information may lead to a delay in the processing or a dismissal of my complaint for failure to cooperate.” It appears that there may now be forms located within CHRO investigative files that detail every prior Fair Housing complaint filed by a particular individual. That could be very helpful information in some circumstances.

Housing & Legislative Committee

Article by Joseph D'Ascoli



At each Legislative Session there are any number of bills that may relate to the policies and procedures of public housing. The Housing & Legislative Committee reviews these bills and provides information and suggestions for action to CONN-NAHRO members when warranted. To help us with our legislative advocacy efforts, please contact Jessica Olander.

First and foremost, it is sad to say that we have lost a great friend and colleague who has chosen to leave Rome Smith & Lutz. Charles Rothenberger has accepted a position as the lead Climate & Energy attorney at CT Fund for the Environment/Save the Sound. It has been a great pleasure working with Charles on a regular basis. Best of Luck to him on his new career path.

The Housing & Legislative Committee will be working with Joe Riter as Charles's replacement. Joe has been with Rome Smith & Lutz for the past five years and is a Quinnipiac law school graduate. He is looking forward to joining the CONN-NAHRO team. I would like to Welcome Joe aboard to the team.

This year there has been changes to the helm. The Housing & Legislative Committee has elected a new Chairman, Representative Brendon McGee, and the new Housing Commissioner is Seila Mosquera-Bruno. I would say thus far it has been a pleasure meeting with both of them and we look forward to working with them closely in the near future.

I am pleased to provide the CONN-NAHRO membership with an update to the 2019 Connecticut General Assembly Legislation End of Session Report that adjourned the regular session on June 5, 2019. I also would like to extend my gratitude to all and to the Housing & Legislative Committee that stepped up to the plate and provided testimony in writing and with an oral presentation at the LOB Office. Thank you so very much. I couldn't do this without your support.

A list of all the bills that have passed or that died on the floor was distributed electronically to all executive directors. If you did not receive a copy, please contact our Executive Director Jessica Olander.

Finally, I just want to thank the Committee and the rest of the membership and wish everyone a happy summer. See you at the Annual Conference.

Review of the Federal Hatch Act

Article by Attorney Salvatore V. Vitrano

Vitrano, Preleski & Wynne, LLC — Attorneys at Law, Bristol, CT

Enacted in 1939, the Hatch Act bars federal employees from participating in political activity while on duty, in the workplace or in an official capacity. The law also includes some state and local government employees who work in connection with federally funded programs.

The Hatch Act was enacted as a result of growing concerns over the political activities in which people in positions of power were engaging. As far back as 1801, President Thomas Jefferson was so concerned about this issue that he issued an Executive Order which established that federal workers were prohibited from influencing others in who they would vote for, and from taking part in "electioneering" or campaigning. President Theodore Roosevelt issued Executive Order 642 in 1907. This order prohibited certain government employees from using their positions to skew elections or engaging in political management and campaigning. This Executive Order 642 was an important moment in Hatch Act history because it was the first instance of federal employees having their First Amendment rights to political speech limited.

In 1939, Sen. Carl Hatch, D-N.V., introduced the act after learning that New Deal-era government programs, specifically the Works Progress Administration, were using federal funds overtly to support Democratic Party candidates in the 1938 elections.

The Supreme Court has twice considered challenges to the Hatch Act and has twice upheld its constitutionality. The Court applied a balancing test between the presumptively valid interests of the government in regulating its employees with the individual's interests in free speech. In *United Public Workers of America v. Mitchell* (1947), the Court balanced the rights of individuals to free speech with the "elemental need for order." In upholding the enforcement of the law, the Court deferred to Congress's judgment regarding the amount of political neutrality necessary for federal employees.

The Court again reviewed the Hatch Act as amended in *United States Civil Service Commission v. National Association of Letter Carriers* (1973). In this case the Court overturned a lower appellate court decision and upheld the constitutionality of the Hatch Act's ban on federal employees' ability to take an active part in certain political activity.

The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants, thus certain employees of public housing authorities. Usually, employment with a state or local agency constitutes the principal employment of the employee in question. When an employee holds two or more jobs, principal employment is generally deemed to be that job which accounts for the most work time and the more earned income.

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Review of the Federal Hatch Act

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Be aware, state and local employees subject to political activity laws continue to be covered while on annual Hatch Act provisions do not apply to individuals who exercise no functions in connection with federally financed activities, institutions, establishments or agencies.

Political Dos and Don'ts for State and Local Employees

An individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants:

- ◆ May be a candidate for public office in a nonpartisan election
- ◆ May campaign for and hold elective office in political clubs and organizations
- ◆ May actively campaign for candidates for public office in partisan and nonpartisan elections
- ◆ May contribute money to political organizations or attend political fundraising functions
- ◆ May participate in any activity not specifically prohibited by law or regulation
- ◆ May not be a candidate for public office in a partisan election
- ◆ May not use official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office
- ◆ May not directly or indirectly coerce contributions from subordinates in support of a political party or candidate
- ◆ May not engage in political activities while either on the job or on federal property

An election is partisan if any candidate for an elective public office is running as a representative of a political party whose presidential candidate received electoral votes in the preceding presidential election.

CAUTION: An employee's conduct is also subject to the laws of the state and the regulations of the employing agency. Prohibitions of the Hatch Act are not affected by state or local laws.

This is intended to be simply a summary of the laws, regulations and policies governing the political activities of certain employees of state and local governments. Its intent is to provide a basic overview of permissible and prohibited political activities. Employees should not rely on the opinions of friends or co-workers when they have questions with regard to a specific political activity. Ignorance of the law does not excuse an employee's violation of the Hatch Act. Reliance on incorrect or unofficial information also does not excuse a violation. Employees with additional questions may obtain an advisory opinion by telephoning the Office of the Special Counsel or by submitting their questions, in writing, to the following address: Office of the Special Counsel, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, DC 20419. Telephone: (202) 653-7188.

Calendar of Events



July 2019

YARDGOATS BASEBALL

JULY 26

Game time 7:05 pm

Hartford, CT

\$10 per ticket

September 2019

Uniform Physical Condition Standards (UPCS) Certification

SEPTEMBER 9-11

Holyoke, MA

August 2019

ANNUAL CONN NAHRO CONVENTION **AUGUST 25-28**

Mohegan Sun Casino

Uncasville, CT

September 2019

John J. Kelly Annual Golf Tournament

“Save the Date” SEPTEMBER 26

Chippanee Golf Club

6 Marsh Road, Bristol, CT

October 2019

Next edition of the CONN/NAHRO Connection

Need articles by OCTOBER 10

