U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

DEC 29 2014

MEMORANDUM FOR: All Multifamily Regional Center Directors
All Multifamily Hub Directors
All Asset Management Division Directors
All Multifamily Program Center Directors
All Contract Administrators

FROM: Benjamin T. Metcalf, Deputy Assistant Secretary for Multifamily Housing Programs, HT

SUBJECT: Use of Marijuana in Multifamily Assisted Properties

The Controlled Substances Act (CSA), 21 U.S.C. Section 801 et. seq., categorizes marijuana as a Schedule 1 substance and therefore the manufacture, distribution, or possession of marijuana is a federal criminal offense. Because the CSA prohibits all forms of marijuana use, the use of "medical marijuana" is illegal under federal law even if it is permitted under state law. With regard to questions concerning the use of marijuana in Multifamily assisted properties in states that have decriminalized the use of marijuana, the controlling authority is Section 577 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA), P.L. 105-276 (October 21, 1998), 42 U.S.C Section 13662. Owners of federally assisted housing are required by QHWRA to deny admission to any household with a member who the owner determines is, at the time of application for admission, illegally using a controlled substance as that term is defined by the CSA. In addition, Section 577 of QHWRA states in part:

> Notwithstanding any other provision of law, a public housing agency or owner of federally assisted housing (as applicable) shall establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that **allow** the agency or owner (as applicable) to terminate the tenancy or assistance for any household with a member-
>
> (1) Who the public housing agency or owner determines is illegally using a controlled substance; or
> (2) Whose illegal use (or pattern of illegal use) of a controlled substance…is determined by the public housing agency or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(emphasis added)

Unlike the prescribed **admission** standards which prohibit admission to federally assisted housing for any household with a member who the owner determines is illegally using a controlled substance (e.g. marijuana) or the owner has reasonable cause to believe that the illegal use may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents, the **continued occupancy** standards "allow" termination by the owner. In other

words, QHWRA provides owners with the discretion to determine, on a case-by-case basis, when it is appropriate to terminate the tenancy of the household.

Since the 1990s, a number of states have legalized the use of marijuana specifically for medicinal purposes. More recently, some states have begun broadly legalizing its use for recreational purposes. Regardless of the purpose for which legalized under state law, the use of marijuana in any form is illegal under the CSA and therefore is an illegal controlled substance under Section 577 of QHWRA.

In summary, owners must deny admission to assisted housing for any household with a member determined to be illegally using a controlled substance, e.g., marijuana. Further, owners may not establish lease provisions or policies that affirmatively permit occupancy by any member of a household who uses marijuana. Owners must establish policies which allow the termination of tenancy of any household with a member who is illegally using marijuana or whose use interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. Section 577 of QHWRA affords owners the *discretion* to evict or not evict current tenants for their use of marijuana.

If you have any questions regarding this memorandum, please contact Kate Brennan at Catherine.M.Brennan@hud.gov.