

Municipal Housing Authority for the City of Yonkers

REASONABLE ACCOMMODATION POLICY AND PROCEDURES

Introduction:

This Reasonable Accommodation Policy and Procedures sets forth the policy and procedures of the Municipal Housing Authority for the City of Yonkers (“MHACY”) in connection with making reasonable accommodations for qualified program applicants, residents, Section 8 participants and MHACY employees with disabilities (hereinafter referred to as “applicants”). A copy of this policy is available from MHACY’s Human Resources Administrator and on MHACY’s website, at MHACY.org.

PART A - POLICY

Section A1. General Policy Statement

The MHACY does not permit discrimination of any kind, including discrimination against those individuals who are determined to be disabled. Accordingly, if an individual with a disability requires an accommodation, such as an accessible feature or modification to a MHACY policy, MHACY will provide such an accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial or administrative burden. In such a case MHACY may make another accommodation that would not result in a financial or administrative burden. At MHACY, the Section 504 Coordinator is the Chair of the Authority’s Reasonable Accommodation Committee, or the Chair’s designee when he/she is not available, who is responsible for processing, verifying and ultimately granting or denying a reasonable accommodation. Correspondence to the Chair should be address as follows: MHACY Reasonable Accommodation Committee Chair, 1511 Central Park Avenue, Yonkers, New York 10710.

In providing reasonable accommodations to disabled members of the MHACY community, including applicants, tenants and/or employees, the MHACY complies with the following laws:

Fair Housing Act: The federal Fair Housing Act prohibits housing providers from discriminating against persons because of their disability or the disability of anyone associated with them, and from treating disabled people less favorably than others because of their disabilities. This law also requires housing providers "to make

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reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person(s) equal opportunity to use and enjoy a dwelling." In addition, these laws require that housing providers allow tenants to make reasonable modifications to units and common spaces in a dwelling.

Section 504 of the Rehabilitation Act of 1973: Section 504 prohibits discrimination based on disability in any program or activity receiving federal financial assistance. Publically subsidized rental projects are subject to this law and usually have enhanced obligations to provide accessible housing and accommodations to persons with disabilities.

Americans with Disabilities Act: In most cases, the ADA does not apply to residential housing. Title III of the ADA covers public and common use areas at housing developments when these areas are open to the general public (such as a rental office) or when they are available for use by the general public (such as a community room that you rent to non-tenants). Title II of the ADA prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities.

24 C.F.R. Part 8: These federal regulations, entitled Non-Discrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development, applies to recipients of federal funds and implements the requirements of the Rehabilitation Act.

New York State Human Rights Law: This New York law has essentially the same protections for persons with disabilities as the federal Fair Housing Act.

In addition to those statutes, the MHACY is also subject to reasonable accommodation policies included in its Admissions and Continued Occupancy Policy ("ACOP"), its Housing Choice Voucher Administrative Plan, and its Personnel Policy Manual.

Section A2. Definitions

WHO IS DISABLED?

Under federal fair housing laws, state law, and MHACY policies, a person is considered "disabled" if he has a physical or mental impairment that substantially limits a major life activity (e.g., walking, breathing, seeing, eating, sleeping, thinking, learning, communicating, taking care of oneself, etc.) It also includes persons who are regarded as disabled, have a history of a disability, and recovering drug addicts and alcoholics (but not current users).

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WHAT IS A REASONABLE ACCOMMODATION?

People with disabilities may have special needs. In some cases, simply treating them the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, adaptation or modification to a policy, program or service, which will allow a person with a disability to use and enjoy a dwelling, including public and common use spaces. Examples of reasonable accommodations include providing rental materials in alternate formats as large print, providing a reserved accessible parking space near a tenant's apartment, or allowing a tenant to have a service animal in a "no pets" building. Fair housing laws require that a housing provider bear costs of providing an accommodation that do not amount to an undue financial and/or administrative burden.

WHAT IS A REASONABLE MODIFICATION?

A "reasonable modification" is a physical change made to a tenant's living space which is necessary to afford the disabled tenant full enjoyment of his dwelling.

WHEN IS AN ACCOMMODATION OR MODIFICATION REASONABLE?

Whether or not a requested accommodation/modification is "reasonable" depends on several factors and must be decided on a case-by-case basis. Only a household member with a disability is entitled to an accommodation. The MHACY is not entitled to specific information about the disability, but may request a letter or other objective evidence confirming that the tenant actually has a disability and that he or she needs the accommodation. The requested accommodation or modification must be necessary. There must be an identifiable relationship between the individual's disability and the requested accommodation or modification. The request should not impose an undue financial and administrative burden on the MHACY. Where a particular requested accommodation or modification is not reasonable, the MHACY may offer other alternative accommodations that are reasonable, if there are any.

Section A3. The MHACY Reasonable Accommodation Committee

In order to assure MHACY's compliance with state and federal law, the Authority has established a Reasonable Accommodation Committee ("RAC") to review all requests for accommodations on the basis of a disability, whether the request is made by an employee, by a tenant, by a Section 8 participant, or by an applicant of either public housing or the Section 8 program. Members of the Committee shall be appointed by the Authority's Executive Director. The Committee shall elect a Chair, and meet twice every month, or at such other times as is necessary to consider accommodation applications in a timely manner.

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The process for filing a request for a reasonable accommodation is as follows:

1. The applicant advises a manager at the MHACY that he/she seek a reasonable accommodation due to his/her disability, or the disability of a family member.
2. The applicant is provided by the manager with the MHACY's "Request for Reasonable Accommodation" form, and with forms required by his/her medical care provider(s). The Request Form is designed to assist MHACY and our applicants. If an applicant cannot use the Request Form, MHACY will still respond to the request for an accommodation. The applicant may also request assistance with the Request Form or the applicant may request that the Request Form be provided in an equally effective format or means of communication. Some examples of alternative equally effective forms of communication are: interpreters, printed materials, telecommunication devices for deaf persons (TTD's) or other delivered materials available to persons with hearing impairments, qualified readers, Braille materials, large print materials or other effective methods of making visually delivered materials available to individuals with visual impairments.
3. The applicant requests that his/her medical care provider(s) complete and submit to the MHACY a "Verification of Need for Housing Unit with Special Features" form, or in the event of an employee, a "Verification of Need for Reasonable Accommodation at the Workplace form". However, if a person's disability is obvious or otherwise known to the MHACY, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required.
4. The completed application, and the medical care provider(s) forms, must be forwarded to the MHACY, at 1511 Central Park Avenue, Yonkers, New York 10710, Attn: RAC.
5. Once the MHACY has received the applicant's request, and the medical verification form(s), their case is submitted to the Committee for its consideration.
6. The Committee reviews the application and the medical verification, and issues a decision (1) granting the accommodation request; (2) denying the request; or (3) holding the matter until additional information is required in order to process the request. In the event any request for a reasonable accommodation is denied, the Committee shall advise the applicant as to the basis of the denial, and afford the applicant an opportunity for an informal hearing to challenge the committee's determination. Decisions of the Committee shall be issued within thirty (30) days of receipt of all required documentation.

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7. The Committee shall maintain records of all cases considered by it, indicating the name of the applicant, the disability asserted, the accommodation requested, and the action taken.

Section A4. Amendment

This policy may be amended by a vote of the majority of the members of the committee. However, any amendment shall be consistent with all applicable laws and regulations.

PART B – PROCEDURES

Section B.1 Communicating with Applicants:

1. At the time of application, and/or at their annual re-certifications, all non-employee applicants will be informed of the MHACY's Policy and Procedures of requesting a Reasonable Accommodation. Employees are notified of the policy via MHACY's Personnel Policy Manual. A copy of the policy is also posted on MHACY's website.

2. Applicants may contact their manager or submit a Request for Reasonable Accommodation Form directly to the Human Resources Administrator.

3. MHACY is responsible for informing all potential applicants that a request may be submitted for reasonable accommodations for an individual with a disability. All applicants will be provided the Request Form when requesting a reasonable accommodation. However, an applicant may submit the request in writing, orally or use another equally effective means of communication to request the accommodation. A Reasonable Accommodation Request may also be made on behalf of an individual with disabilities. Upon receipt of the request, the Reasonable Accommodations Committee will respond to the request within twenty (20) business days (business days defined as those days of the week, excluding Saturdays, Sundays and holidays observed by the MHACY). If additional information or documentation is required, or if meeting face to face is required, notification will be made to the applicant (either in writing or by phone or other acceptable method of communication) requesting the action or documentation required and this notification will provide a submission date of the information so as not to delay the review of the request. Various forms have been developed for reasonable accommodation requests, including a third party verification form.

4. MHACY will consent to or deny the request within thirty (30) business days after receiving all needed information and documentation from the applicant or the applicant healthcare provider of choice. All decisions to grant or deny a reasonable accommodation will be communicated in writing or if required, in an alternative format in order to communicate the decision to the

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applicant. Exceptions to the thirty (30) business day period for notification of MHACY's decision on the request should be provided to the applicant in writing setting forth the reasons for the delay. Again, various forms have been developed for use by the MHACY for such notifications. Where a resident requests a transfer as and for his/her accommodation and the accommodation is granted, the resident will be offered the first available unit that addresses the accommodation granted, and in the event that unit is rejected without good cause, no additional unit will be offered.

5. MHACY will maintain copies of this policy with its Human Resources Administrator, whose office is located the MHACY's Central Office, 1511 Central Park Avenue, Yonkers, New York 10710.

B.2 Sequence for Making Decisions:

1. Is applicant a qualified "individual with a disability"?
 - a. If NO, the MHACY is not obligated to make a reasonable accommodation therefore the MHACY will deny the request.
 - b. If YES, go to step 2.
 - c. If more information is required, either write for more information using standard forms or request a meeting.

2. Is the requested accommodation related to the disability?
 - a. If NO, the MHACY is not obligated to make a reasonable accommodation therefore the MHACY will deny the request.
 - b. If YES, go to step 3.
 - c. If more information is required, either write for more information using standard forms or request a meeting.

3. Is the requested accommodation reasonable? This determination will be made by following Procedure 3-Guidelines for Determining Reasonableness.
 - a. If YES, the MHACY will approve the request for reasonable accommodation. A written description of the accommodation will be prepared and included in the letter approving the request.
 - b. If NO, the MHACY will deny the request. The MHACY will submit a letter of denial for the request to the applicant.
 - c. If more information is required, either write for more information using standard forms or request a meeting.

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B.3 Guidelines for Determining Reasonableness:

1. It is presumed that the applicant is usually knowledgeable as to the appropriate type of, and methods for, providing reasonable accommodations. However, MHACY is required to evaluate the requested method and may require the individual with a disability to provide further information to demonstrate the need for the requested accommodation. Additionally, MHACY may meet with the individual(s) to discuss the reasonable accommodation in an informal, interactive dialogue and may offer alternatives to the requested accommodation, and/or determine alternative methods for providing the requested accommodation.
2. Requests for reasonable accommodations will be considered on a case by case basis. Decisions regarding reasonable accommodations will be made in compliance with all applicable accessibility laws and requirements. Additionally, in those circumstances where MHACY deems that a proposed reasonable accommodation would fundamentally alter the service, program or activity, or would result in undue financial and administrative burdens, MHACY has the burden of proving such a result(s).
3. The responsibility for the decision that a proposed reasonable accommodation would result in such alteration or burdens shall rest with the Chair of the Reasonable Accommodations Committee or his/her designee after considering all resources available for use in the funding and operation of the service, program or activity, and must be accompanied by written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, MHACY shall propose any other action that will not result in or require an alteration or burden.
4. Live-in Aides: In some cases, an individual with a disability may require a live-in aide. In accordance with the provisions of the MHACY policies, MHACY may permit a live-in aide to reside in the dwelling unit to assist an individual with a disability. A live-in aide means a person who (a) is determined by MHACY to be essential to the care and well-being of a family member with a disability; (b) is not obligated to support the family member; and (c) would not be living in the unit except to provide the supportive services. A live-in aide would not be required to share a bedroom with another member of the household [see 24 CFR 966.4(d)(3)]. Prior to MHACY granting permission for a live-in aide, the live-in aide candidate must submit to a criminal background check in accordance with MHACY's policies and procedures. Additionally, medical verification or third party verification of the need for a live-in aide is required, and the following factors will be considered by the MHACY in determining whether to approve a live-in aide:

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- a. whether the addition of a new occupant would create a situation of overcrowding in the dwelling unit, thereby requiring a transfer to another dwelling unit;
 - b. the availability of an appropriate dwelling unit; and/or
 - c. MHACY's obligation to make reasonable accommodation for persons with disabilities.

5. Verification: The MHACY may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the reasonable accommodation they are requesting. The MHACY may not require applicants to provide access to confidential medical records in order to verify the disability, nor may the MHACY require specific details as to the disability. The MHACY may require documentation of the manifestation of the disability that causes a need for a specific accommodation or accessible unit. The MHACY may not ask what the specific disability is.

6. If any accommodation request is for an service animal, MHACY will consider the following: (1) Does the person seeking to use and live with the animal have a disability? and (2) Does the person making the request have a disability-related need for an service animal? The animal need not be individually trained or certified if the applicant can establish the nexus between the disability and the need for the assistance animal. In evaluating each request for a service animal MHACY shall comply with the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. See HUD's FHEO-2013-01 Notice issued April 25, 2013.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors
of Public and Indian Housing (PIH); Housing;
Community Planning and Development (CPD), Fair
Housing and Equal Opportunity; and Regional Counsel;
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**
Issued: April 25, 2013
Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations¹ for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHAct, Section 504, and/or the ADA².

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

² Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

3. **Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities³ with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals⁴ in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.⁵ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

³ Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

⁴ Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

⁵ For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).

- (1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

If the answer to question (1) **or** (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.⁶

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

⁶ A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant’s dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider’s practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.⁷

Section II: The ADA Definition of "Service Animal"

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."⁸ Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses⁹), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

⁷ Ibid.

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

⁹ 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁰ A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.¹¹

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."¹²

¹⁰ 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).

¹¹ For more information on ADA requirements relating to service animals, visit DOJ's website at www.ada.gov.

¹² 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, “an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a ‘reasonable accommodation’ that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat.”¹³ In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may “nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct.”¹⁴ While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for “service animal,” the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁵

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider’s responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion

The definition of “service animal” contained in ADA regulations does not limit housing providers’ obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

¹³ 75 Fed. Reg. at 56194, 56268.

¹⁴ 75 Fed. Reg. at 56166, 56240.

¹⁵ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.



John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity