

New HUD Guidance Offers Housing Providers Best Practices for Assessing Reasonable Accommodation Requests for Assistance Animals

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On January 28, 2020, HUD issued FHEO Notice 2020-10: *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*, (hereinafter "*Guidance*"). The *Guidance*:

- replaces HUD's prior guidance on housing providers' obligations regarding service animals and assistance animals (FHEO-2013-01);
- applies to all housing providers covered by the Fair Housing Act ("FHA");
- does not address the requirements of other civil rights laws besides the Fair Housing Act, such as Sec. 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA), which some housing providers are also subject;
- does not govern airlines and common carriers, covered by other regulations;
- should be read with HUD's regulations prohibiting discrimination under the FHA, and the Joint Statement of HUD and DOJ, Reasonable Accommodations Under the Fair Housing Act (May 17, 2004).
- is prospective - housing providers should not reassess requests for reasonable accommodations that were granted prior to the issuance of this guidance;
- includes two sections:
 - "*Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*" (in 5 Parts); and
 - "*Guidance on Documenting an Individual's Need for Assistance Animals in Housing*"

Persons with disabilities may request reasonable accommodations under the FHA, when needed for equal opportunity to enjoy and use a dwelling. Common reasonable

accommodations include requests for exceptions to a housing providers' pet or no animal policies, to allow a person with a disability to have an assistance animal.

There are two types of assistance animals: (1) service animals, and (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities ("support animal"). Assistance animals are not pets.

Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act

Part I: Is the Animal an ADA Service

Animal? An ADA "service animal" is a 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. Other species are not service animals under the ADA.

Question 1: *Is the animal a dog?* If yes, proceed to question 2. If no, the animal is not a service animal but may be another assistance animal for which a reasonable accommodation is needed - proceed to Part II.

Question 2: *Is it readily apparent that the dog is trained to do work or perform tasks for the benefit of an individual with a disability?* It is readily apparent, for example, when a dog is observed guiding an individual who is blind; pulling a wheelchair; or providing assistance with stability or balance to an individual with an observable mobility disability. If yes, further inquiries are unnecessary and inappropriate because the

animal is a service animal. If no, proceed to question 3.

Question 3: if disability and work or task are not obvious, the housing provider may make the following two limited inquiries:

- ***“Is the animal required because of a disability?”*** If yes, then a housing provider may inquire:

- ***“What work or task has the animal been trained to perform?”*** Performing “work or tasks” means that the dog is trained to take a specific action when needed to assist the person with a disability. If the individual identifies at least one action the dog is trained to take which is helpful to the disability, other than emotional support, the dog should be considered a service animal and permitted, including in public and common use areas. Housing providers should not make further inquiries.

If the answer to either question is “no” or “none,” the animal is not a service animal but may be another type of assistance animal that needs to be accommodated: continue to Part II.

Part II: Analysis of reasonable accommodation requests under the Fair Housing Act for assistance animals other than service animals

Even if an animal does not qualify as an ADA service animal, the FHA requires housing providers to permit, as a reasonable accommodation, the use of animals that work, provide assistance, or perform tasks that benefit persons with disabilities, or provide emotional support to alleviate a symptom of effect of a disability. When an animal does not meet the definition of a service animal, as a best practice, housing providers may make the following inquiries:

Question 4: Has the individual requested a reasonable accommodation to get or keep an animal in connection with a disability?

A request for a reasonable accommodation may be oral or written. Others may make the request on behalf of the individual. The request does not need to include the words “reasonable accommodation,” “assistance animal,” or other specific words. A person with a disability may make a reasonable accommodation request at any time. A request may be made either before or after acquiring an assistance animal. A housing provider must consider a request even if made after bringing the animal into housing, or after the housing provider has initiated a termination of tenancy because of the animal.

Some requests for reasonable accommodations may involve more than one animal (e.g., a person with a disability-related need for two animals, or two people living together each with a disability-related need for a separate assistance animal).

If a request for a reasonable accommodation has been made, proceed to Part III. If not, a housing provider is not required to grant a reasonable accommodation that has not been requested.

Part III: Criteria for assessing whether to grant the requested accommodation

Question 5: Does the person have an observable disability or does the housing provider already have information giving reason to believe that the person has a disability?

Under the FHA, a disability is a physical or mental impairment that substantially limits one or more major life activities. Some impairments can be readily observed (blindness, deafness, mobility limitations, intellectual impairments (including some types of autism), neurological impairments (e.g., stroke, Parkinson’s disease, cerebral palsy, epilepsy, or brain injury), mental illness, or other diseases or conditions that affect major life activities or bodily functions). Other impairments are not observable, and a housing

provider may request information regarding the disability and disability-related need for an animal.

If a disability is observable or known, proceed to question 7 to determine if there is a connection between the person's disability and the animal. If not, continue to question 6.

Question 6: Has the person requesting an accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?

Information about disability may include:

- determination of disability from a federal, state, or local government agency;
- receipt of disability benefits or services (SSDI), Medicare or SSI for a person under age 65, veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency;
- eligibility for housing assistance or a housing voucher received because of disability; or
- information confirming disability from a health care professional – e.g., physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse.

Some impairments, in virtually all cases, will impose a substantial limitation on a major life activity resulting in a determination of a disability (deafness, blindness, intellectual disabilities, partially or completely missing limbs or mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, muscular dystrophy, multiple sclerosis, Human Immunodeficiency Virus (HIV) infection, major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia. Other conditions however may also be disabilities.

Housing providers may not require a health care professional to use a specific form,

to provide notarized statements, to make statements under penalty of perjury, or to provide a diagnosis or other detailed information about a person's physical or mental impairments.

Some websites sell certificates, registrations, and licensing documents for assistance animals to people who answer questions or participate in a short interview and pay a fee. Such documentation is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal. In contrast, many legitimate, licensed health care professionals deliver services remotely, and via the internet. A note from a health care professional that confirms a person's disability and/or need for an animal when the provider has personal knowledge of the individual is a form of reliable documentation.

To assist persons requesting accommodations to understand what information a housing provider is seeking, the housing provider is encouraged to direct the requester to the *Guidance on Documenting an Individual's Need for Assistance Animals in Housing*.

If information verifying disability has been provided, proceed to question 7. If not, the housing provider is not required to grant the accommodation but may not deny the accommodation on the grounds that the person requesting the accommodation has not provided this information until the requester has been provided a reasonable opportunity to do so. A housing provider is not permitted to require any independent evaluation or diagnosis be obtained, or for the housing provider to engage in its own direct evaluation.

Question 7: Has the person requesting the accommodation provided information that reasonably supports that the animal does work, performs tasks, provides assistance, and

/ or provides therapeutic emotional support with respect to a disability?

A connection between the disability and the need for an assistance animal must be provided. For non-observable disabilities and animals that provide emotional support, a housing provider may ask for information that is consistent with that identified in the *Guidance on Documenting an Individual's Need for Assistance Animals in Housing* in order to conduct an individualized assessment of whether it must provide the accommodation. Information confirming disability-related need for an assistance animal may include information from a licensed health care professional – e.g., physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse – general to the condition but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal. The lack of such documentation may be reasonable grounds for denying a requested accommodation.

If information that supports that the animal is needed for a disability has been provided, proceed to Part IV. If not, the housing provider is not required to grant the accommodation unless this information is provided but may not deny the accommodation on the grounds that the person requesting the accommodation has not provided this information until the requester has been provided a reasonable opportunity to do so.

Part IV: Type of Animal

Question 8. Is the animal commonly kept in households (a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal traditionally kept in the home for pleasure rather than for commercial purposes)? If the animal is a common household animal, the reasonable accommodation request should be granted.

Reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not common household animals. If an individual requests to keep a unique animal not commonly kept in households, the requestor has the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or specific type of animal.

Reasonable accommodations may be necessary when the need for a unique animal involves unique circumstances, for example,

- the animal is trained to do work or perform tasks that cannot be performed by a dog;
- information from a health care professional confirms that: allergies prevent the person from using a dog; or without the animal, the symptoms or effects of the person's disability will be significantly increased; or
- the individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained.

As a best practice, a housing provider should make a determination promptly, generally within 10 days of receiving disability-need verifying documentation.

Part V: General Considerations

- The FHA does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. A housing provider may refuse a reasonable accommodation for an assistance animal if the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal (e.g., keeping the animal in a secure enclosure).
- A housing provider may not charge a fee for processing a reasonable accommodation request.

- Pet rules do not apply to service animals and support animals. Housing providers may not limit the breed or size of a dog used as a service animal or support animal.
- A housing provider may not charge a deposit, fee, or surcharge for an assistance animal. A housing provider may charge a tenant for damage an assistance animal causes if it is the provider's usual practice to charge for damage caused by tenants.
- A person with a disability is responsible for arranging for feeding, maintaining, providing veterinary care, and controlling his or her assistance animal.
- Before denying a reasonable accommodation request, the housing provider is encouraged to engage in a good-faith dialogue with the requestor (an "interactive process").
- If a reasonable accommodation request is denied because it would impose a fundamental alteration to the nature of the provider's operations or impose an undue financial and administrative burden, the housing provider should engage in the interactive process to discuss whether an alternative accommodation would meet the individual's disability-related needs.

Guidance on Documenting an Individual's Need for Assistance Animals in Housing

The second portion of the FHEO Notice provides best practices for documenting an individual's need for assistance animals in housing. It can help individuals with disabilities explain to their health care professionals understand what information may be needed to support an accommodation request when the disability or disability-related need for an accommodation is not readily observable or known by the housing provider.

As best practices, the HUD Guidance recommends that documentation verification need for an assistance animal include:

- patient's name;

- whether the health care professional has a professional relationship with the patient / client involving the provision of health care or disability-related services;
- the type of animal(s) for which the reasonable accommodation is sought;
- whether the patient has a physical or mental impairment;
- whether the impairment(s) substantially limit at least one major life activity or major bodily function;
- whether the patient needs the animal(s) (because it does work, provides assistance, or performs at least one task that benefits the patient because of his or her disability, or because it provides therapeutic emotional support to alleviate a symptom or effect of the disability);
- if the animal is not an animal traditionally kept in the home for pleasure rather than for commercial purposes, it may be helpful to provide the following information:
 - date of the last consultation with the patient,
 - any unique circumstances justifying the need for the particular animal (if already owned or identified by the individual) or particular type of animal(s), and
 - whether the health care professional has reliable information about this specific animal or whether they specifically recommended this type of animal; and
- signature and date on any documentation provided, with contact and any professional licensing information.

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