



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Gregory Bialecki, Secretary, EOHEd

Public Housing Notice: 2011-13

MEMORANDUM

TO: LOCAL HOUSING AUTHORITIES
FROM: LIZBETH HEYER, ASSOCIATE DIRECTOR, DIVISION OF PUBLIC HOUSING AND RENTAL ASSISTANCE; DEBORAH J. GODDARD, CHIEF COUNSEL, OFFICE OF THE CHIEF COUNSEL
SUBJECT: ADDITIONAL INFORMATION AND RESOURCES REGARDING REASONABLE ACCOMMODATIONS/MODIFICATIONS AND ACCESS FOR PERSONS WITH DISABILITIES
DATE: SEPTEMBER 16, 2011

This Memorandum updates and expands on Public Housing Notice 2009-11 to provide additional information and resources and notice of new and modified forms on matters relating to reasonable accommodations/reasonable modifications and access for persons with disabilities in state-aided public housing.

As you are aware, LHAs are prohibited from discriminating against persons with disabilities¹ and have affirmative obligations to provide equal opportunities for persons with disabilities in LHA housing and other programs, services, and activities. As noted in Public Housing Notice 2009-11, to ensure compliance, LHAs must completely review all applicable state and federal civil rights laws and implementing rules and regulations pertaining to non-discrimination and access for persons with disabilities, including Chapter 151B of the Massachusetts General Laws, the federal Fair Housing Act, as amended, the Americans with Disabilities Act (“ADA”), as amended, and Section 504 of the Rehabilitation Act of 1973, as amended (“Section 504”). Links to the full texts of these laws can be found on DHCD’s website under Office of the Chief Counsel. Additional resources for understanding these laws and implementing rules and regulations are provided below.

Reasonable Accommodation/Reasonable Modification Resources

As an informational resource and follow-up to DHCD’s trainings on reasonable accommodations and reasonable modifications last year, DHCD is offering Frequently Asked Questions (“FAQs”) responses on topics relating to assistance animals, hoarding, unit transfers, evictions, and other disability related matters. The LHA Reasonable Accommodation and Reasonable Modification FAQs are available at <http://www.mass.gov/dhcd> (search under “fair housing and civil rights information”).

¹ Pursuant to fair housing laws, persons with disabilities generally includes individuals with a physical or mental impairment that substantially limits one or more major life activities, individuals who are regarded as having such an impairment, and individuals with a record of such an impairment.

With respect to funding resources, as you are aware, DHCD now requires that each LHA dedicate at least 1% of their Formula Funding award for reasonable accommodations, reasonable modifications or other accessibility improvements. Funding from DHCD's Compliance Reserve will also generally be available for projects involving reasonable modifications to units, common areas and sites in response to a specific request by, or on behalf of, a resident or anticipated resident with a disability. LHAs requesting funds for reasonable modifications will need to first spend the aforementioned 1% set-aside to be eligible for funding. To receive funding from the Compliance Reserve, LHAs will be required to dedicate operating reserves in excess of 70% of their Full Reserve to the compliance project. LHAs with restricted reserves may be required to reprogram those funds to the modification project, depending on the urgency of the work for which they were originally intended and the LHA's reserve level. To initiate other accessibility projects, LHAs may use other resources such as Community Development Block Grant ("CDBG") or Community Preservation Act ("CPA") funds, or their own Formula Funding if they have sufficient resources. LHAs should plan for these needs as part of their Self-Evaluation/Transition Plan.

Additional Information and Forms

Self-Evaluation/Transition Plan Guidance

LHAs must comply with ADA/Section 504 requirements that LHA services, programs and activities be operated so that the service, program or activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. As both the ADA and Section 504 regulations require LHAs to perform self-evaluations of their programs and services as a component of achieving program access, and as DHCD recognized that further guidance on this subject matter would be helpful to LHAs, DHCD sought consultant group Kessler McGuinness & Associates ("KMA") to prepare a guide that would assist LHAs in evaluating and responding to access barriers. This "ADA/504 Self Evaluation and Transition Plan Guide," is available at <http://www.mass.gov/dhcd> (search under "fair housing and civil rights information"). LHAs must read the Guide, which includes a summary of key federal regulations and requirements, as well as steps in the self-evaluation and compliance processes and links to additional resources for further research and guidance.

LHAs should also review additional ADA technical assistance materials available at <http://www.ada.gov> . Said ADA website includes information on ADA updates, including revised DOJ regulations implementing Title II of the ADA and the 2010 ADA Standards for Accessible Design. HUD offers Section 504 technical assistance materials, which are available at <http://www.hud.gov/offices/fheo/disabilities/sect504.cfm> . DHCD is also updating certain facility related components of our Capital Planning System ("CPS") software based on additions to the Facilities Condition Assessment Form flagging barriers and barrier removals relating to physical accessibility.

Verification of Disability by Physician or Other Professional for Reasonable Accommodation/Modification Request Form:

DHCD created this form as an example of a disability verification form for purposes of reasonable accommodations/reasonable modifications. However, LHAs *cannot* deny a reasonable accommodation/reasonable modification request on the basis that verification is not made through this particular form, or any other particular form. If verification such as a letter from a service provider or other reliable information is provided, including credible statements by the individual with the disability, then it must be considered by the LHA. See the abovementioned LHA Reasonable Accommodation and Reasonable Modification FAQs for further discussion.

Verification of Handicapped Status for State-Aided Elderly/Handicapped Housing Form:

DHCD has modified the Verification of Handicapped Status for State-Aided Elderly/Handicapped Housing form, as it has come to our attention that a clearer form, including clarification regarding eligibility of persons who have a history of alcohol or substance abuse *in addition to* another disability, would be helpful to those completing or reviewing the form, including service providers, applicants, and LHA staff. Therefore, a key modification to this form is the addition of a clarifying note that is consistent with current eligibility requirements under Chapter 121B and DHCD regulations at 760 CMR 5. The note states that an applicant that has a history of alcohol or substance abuse may still be eligible for Elderly/Handicapped Housing if the applicant has one or more qualifying physical or mental impairments in addition to the history of alcohol or substance abuse and is otherwise eligible and qualified for such housing.

By providing this additional clarification, our goal is to eliminate instances in which an applicant is unsuccessful in obtaining an Elderly/Handicapped Housing opportunity because of his/her history of alcohol or substance abuse. However, please note that *current illegal* users of controlled substances are still not qualified pursuant to DHCD regulations at 760 CMR 5.08 (1)(k).² Please also note that if an applicant, or person acting on behalf of the applicant, provides other documentation that demonstrates the applicant's eligibility for Elderly/Handicapped housing, it must be considered by the LHA.

Please find the forms referenced above at <http://www.mass.gov/dhcd> by searching under "Public Housing Applications & Documentation."

We hope that these materials provide you with additional resources to assist the important work you do in providing safe, decent, and equal opportunity housing. If you have any questions or concerns, please feel free to contact us.

² Pursuant to 760 CMR 5.08(1)(k), an applicant and the applicant household shall be disqualified for public housing if the applicant or a household member is a current illegal user of one or more controlled substances as defined in M.G.L. c. 94C, §1. A person's illegal use of a controlled substance within the preceding 12 months shall create a presumption that such person is a current illegal user of a controlled substance, but the presumption may be overcome by a convincing showing that the person has permanently ceased all illegal use of controlled substances. This disqualification of current illegal users of controlled substances shall not apply to applicants for housing provided through a treatment program for illegal users of controlled substances.