



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Tina Brooks, Undersecretary

MRVP NOTICE 2010-02

MEMORANDUM

**TO: LOCAL HOUSING AUTHORITIES AND REGIONAL NON-PROFIT HOUSING AGENCIES
ADMINISTERING STATE RENTAL ASSISTANCE**

**FROM: MARY-ANNE MORRISON, DIRECTOR, BUREAU OF RENTAL ASSISTANCE, DIVISION OF
PUBLIC HOUSING AND RENTAL ASSISTANCE; DEBORAH GODDARD, OFFICE OF THE CHIEF
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SUBJECT: NON-DISCRIMINATION IN STATE RENTAL ASSISTANCE PROGRAMS

DATE: DECEMBER 28, 2010

The purpose of this Memorandum is to remind Local Housing Authorities ("LHAs") and Regional Non-Profit Housing Agencies administering state rental assistance to comply with pertinent non-discrimination laws and related regulations. Although LHAs and Regional Non-Profit Housing Agencies are also obligated to comply with applicable state and federal fair housing laws in their federal and other state programs, this Memorandum specifically addresses state rental assistance. To ensure compliance for all programs, LHAs and Regional Non-Profit Housing Agencies must completely review all applicable state and federal civil laws and accompanying regulations.

Statutory Framework

Federal and state civil rights laws relating to housing programs generally include, but are not limited to, the following:

- The Fair Housing Act, as amended (42 U.S.C. §§ 3601 et seq.) (federal law prohibiting discrimination in housing)
- The Americans with Disabilities Act ("ADA"), as amended (42 U.S.C. §§ 12101 et seq.) (federal law prohibiting discrimination against persons with disabilities; Title II of the ADA applies to public entities, and Title III applies to commercial facilities and public accommodations operated by private entities)
- Section 504 of the Rehabilitation Act of 1973 ("Section 504"), as amended (29 U.S.C. § 794) (federal law prohibiting discrimination against persons with disabilities by recipients¹ of federal financial assistance)

¹ "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (federal law prohibiting discrimination on the basis of race, color, and national origin by recipients of federal financial assistance)
- M.G.L. c.151B (Massachusetts law prohibiting discrimination in housing and employment)
- M.G.L. c. 272 §§ 92A, 98, and 98A (Massachusetts law prohibiting discrimination in places of public accommodation)
- M.G.L. c.111 § 199A (Massachusetts lead paint law)

Under federal law, discrimination in housing based on the following is prohibited: race; color; national origin; religion; sex; disability/handicap; and familial status. In Massachusetts, discrimination in housing is additionally prohibited based on the following: marital status; children; age; sexual orientation; military status (veteran or member of the armed services); public assistance reciprocity/housing subsidy; genetic information; and ancestry.

Discriminatory housing practices include, but are not limited to: refusing to rent, sell, negotiate, or otherwise make unavailable or deny a dwelling; steering; misrepresenting availability; discriminatory terms, conditions, or privileges or discriminatory provision of facilities or services; discriminatory statements, notices, and advertising; refusing to make reasonable accommodations and/or reasonable modifications for persons with disabilities; non-compliance with federal and state accessibility design and construction requirements; and interfering, coercing, intimidating, or threatening any person in the exercise or enjoyment of his or her fair housing rights.

As noted above, public entities and recipients of federal financial assistance as defined are also subject to additional civil rights related requirements pertaining to housing and other programs and activities that they administer. Links to further fair housing and civil rights related information can be found on DHCD's website (<http://www.mass.gov/dhcd>) under "Office of the Chief Counsel." Additional discussion on providing reasonable accommodations and reasonable modifications for persons with disabilities is provided below.

Notice of Non-Discrimination

Various statutes, regulations, and subsidy programs impose notice of non-discrimination requirements. In addition to fair housing law requirements, DHCD regulations governing LHAs at 760 CMR 4.03 for example obligate LHAs to post a notice regarding non-discrimination rights and to adopt anti-discrimination policies. The Regional Non-Profit Housing Agencies, and LHAs as applicable, are also subject to federal program non-discrimination notice requirements.

All LHAs and Regional Non-Profit Housing Agencies must ensure that in addition to conspicuously posting notices of non-discrimination² and providing information on state and federal fair housing laws to applicants and participants under the federal rental assistance and/or other programs they administer, they also similarly provide such information under the state rental assistance programs that they

extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 24 C.F.R. § 8.3. However, private owners participating in the housing choice voucher program, excepting those who receive federal financial assistance through project-based certificates/vouchers, are generally not considered recipients.

² See M.G.L. c. 151B § 7 (notice of non-discrimination under the state law); 24 C.F.R. part 110 (federal Fair Housing Act poster).

administer. The purpose of such information is also to assist voucher holders in understanding their rights should they face discrimination in the private housing market.

For reference, a notice of state fair housing rights under M.G.L. c.151B, including notice of the right to file a complaint with the Massachusetts Commission Against Discrimination (“MCAD”), is available at <http://www.mass.gov/mcad/fairhouse.pdf> . A notice of fair housing rights under the federal Fair Housing Act, including the U.S. Department of Housing and Urban Development (“HUD”) housing discrimination complaint form, is available at <http://www.hud.gov/offices/adm/hudclips/forms/files/903-1.pdf>. See also the HUD Fair Housing Act poster at <http://www.hud.gov/offices/fheo/promotingfh/928-1.pdf> .

LHAs and Regional Non-Profit Housing Agencies should also have a reasonable accommodation/reasonable modification policy for persons with disabilities that complies with applicable federal and state laws. The ADA and Section 504 and their implementing regulations pose additional requirements, including affirmative administrative requirements, and further information and helpful links relating to these laws are provided below.

Reasonable Accommodations and Reasonable Modifications for Persons with Disabilities

The following discussion on reasonable accommodations and reasonable modifications for persons with disabilities is intended to provide an overview rather than a comprehensive discussion of all pertinent obligations under federal and state laws.

The LHAs and Regional Non-Profit Housing Agencies are generally obligated to provide reasonable accommodations and reasonable modifications for persons with disabilities under their programs, services, and activities, including any housing that they provide. Private landlords and other housing providers are also required to make reasonable accommodations and reasonable modifications for persons with disabilities with respect to the housing they provide. It is important to note that obligations to provide reasonable accommodations and reasonable modifications are not limited to current participants or residents; such obligations extend to applicants and may also extend to other interested persons with disabilities. A request for a reasonable accommodation or reasonable modification is regarded as made when the person with a disability, or person acting on his/her behalf, makes it reasonably clear that the requested change to a rule, policy, practice, or service, or a physical change to a dwelling or facility, is because of the disability.³

The terms “disability” and “handicap” vary in definition depending on the statutory, regulatory, or programmatic context, but for purposes of reasonable accommodation/reasonable modification, they generally mean a physical or mental impairment that substantially limits a major life activity.⁴ Although LHAs and Regional Non-Profit Housing Agencies may inquire, in response to a request for a

³ See e.g., *Boston Housing Authority v. Emmitt Bridgewaters*, 452 Mass. 833 (2009) (citing the Joint Statement of the U.S. Department of Housing and Urban Development (HUD) and the United States Department of Justice (DOJ) “Reasonable Accommodations under the Fair Housing Act” (May 17, 2004)).

⁴ Pursuant to fair housing laws, “disability” also generally includes a “record of” a physical or mental impairment that substantially limits a major life activity, or being “regarded as” having a physical or mental impairment that substantially limits a major life activity. Please note recent changes to the ADA definition of “disability” pursuant to the ADA Amendments Act of 2008.

reasonable accommodation/reasonable modification, whether a person has a disability or whether there is a relationship or nexus between the disability and the need for the accommodation/modification, LHAs and Regional Non-Profit Housing Agencies generally may not inquire into the nature or severity of the disability unless for a purpose specifically permitted by law.⁵

The term "reasonable accommodation" as used in this Memorandum generally means a change in rules, policies, practices, or services necessary to afford a person(s) with a disability an equal opportunity to use and enjoy a dwelling or facility and/or to access government programs, activities, and services. Although statutory language varies, an accommodation is generally not reasonable and does not have to be made if it imposes an undue financial and administrative burden or requires a fundamental alteration in the nature of a program. The determination as to whether an accommodation is reasonable depends on the circumstances at the time of the request, and a request cannot be denied in anticipation that similar requests will be made by others in the future.

Some examples of reasonable accommodations in the administration of mobile housing vouchers include: extending the voucher term of a voucher holder (i.e., to allow location of a suitable unit); approving a live-in aide to reside in the unit; and waiving or rescheduling face-to-face appointments. Some examples of reasonable accommodations by owners/managers of housing include: permitting an assistance animal in a "no pets policy" building; allowing a resident the opportunity to comply with his/her lease prior to an eviction action; and granting a unit transfer. It is important to note that such accommodations are not required in instances where there is not a disability-related need for the accommodation(s).

Further examples of reasonable accommodations by housing providers, as well as a discussion of verifying disability and the disability-related need for a reasonable accommodation, are discussed in the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "Reasonable Accommodations under the Fair Housing Act," available at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.⁶

The term "reasonable modification," sometimes used under the umbrella of "reasonable accommodation" terminology, generally means a physical alteration, such as to a dwelling unit, building, common use or public area, etc., necessary to afford equal opportunity for use and enjoyment by a person with a disability and/or to provide access government programs, activities, and services. Pursuant to M.G.L. c. 151B, reasonable modifications in publicly assisted housing,⁷ multiple dwelling housing consisting of 10 or more units, and contiguously located housing of 10 or more units, are to be made at the expense of the owner or other person having the right of ownership.⁸ Some examples of reasonable modifications include door widening, ramping a front entrance, installing raised numbers which may be read by a person with a sight impairment, etc., when there is a disability-

⁵ See HUD's Fair Housing Act regulations regarding disability inquiries at 24 C.F.R. § 100.202(c).

⁶ July 25, 2008 updated version at http://www.justice.gov/crt/housing/jointstatement_ra.php.

⁷ Note that residence by a mobile voucher holder does not mean the housing is publicly assisted unless the housing otherwise qualifies as "publicly assisted housing" pursuant to M.G.L. c.151B. See M.G.L. c.151B section 1 for the definition of "publicly assisted housing" and other terms.

⁸ See M.G.L. c.151B section 4, paragraph 7A. Note that section 4, paragraph 7A provides that ten percent shall be the maximum number of units for which an owner or other person having the right of ownership shall be required to pay for a modification in order to make units fully accessible to persons using a wheelchair.

related need for such modifications. Modifications that would pose an undue hardship are generally considered unreasonable.

Title II of the Americans with Disabilities Act (“ADA”), as amended,⁹ applicable to LHAs, and Section 504 of the Rehabilitation Act of 1973,¹⁰ applicable to recipients and subrecipients of federal financial assistance such as the Regional Non-Profit Housing Agencies and some LHAs, also impose additional obligations pertaining to program access for persons with disabilities. Notably, *each* service, program or activity must be operated so that the service, program or activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities.¹¹ Such an obligation to provide program access, including through accessible facilities or other methods, generally extends to federal *and* non-federal programs administered by LHAs and the Regional Non-Profit Housing Agencies.¹² Exceptions apply when a public entity or recipient of federal financial assistance can demonstrate that a proposed action would result in a fundamental alteration in the nature of the service, program, or activity or would result in undue financial and administrative burdens.”¹³

Additional Information and Materials

For further information on Massachusetts anti-discrimination laws enforced by MCAD, see MCAD’s website at <http://www.mass.gov/mcad> .

For further information on the federal Fair Housing Act, see the HUD Office of Fair Housing/Equal Opportunity website at <http://www.hud.gov/offices/fheo/aboutfheo/aboutfheo.cfm> .

LHAs and Regional Non-Profit Housing Agencies must also ensure non-discrimination in their programs, activities, and services in compliance with the ADA and Section 504 as applicable, including by complying with administrative and other requirements not discussed in this Memorandum.¹⁴ The Title II Technical Assistance Manual and additional ADA technical assistance materials are available at <http://www.ada.gov> . Said ADA website includes information on 2010 ADA updates, including revised ADA regulations implementing Title II and Title III of the ADA. HUD also offers Section 504 technical assistance materials, available at <http://www.hud.gov/offices/fheo/disabilities/sect504.cfm> .

Additionally, if you have any questions or concerns, please feel free to contact DHCD at (617) 573-1100.

⁹ 42 U.S.C. §§ 12101 *et seq.* See the ADA Amendments Act of 2008. See also implementing regulations at 28 C.F.R. part 35. See also <http://www.ada.gov> for the revised ADA regulations implementing Title II and Title III of the ADA.

¹⁰ 29 U.S.C. § 794. See also implementing regulations at 24 C.F.R. part 8.

¹¹ See 28 C.F.R. § 35.150(a); 24 C.F.R. § 8.24(a).

¹² For purposes of Section 504, “program or activity” means all of the operations of the recipient of federal financial assistance as defined under Section 504 and its implementing regulations. The Section 8 program is an example of federal financial assistance. See *supra* note 1 for definition of “recipient.”

¹³ See 28 C.F.R. § 35.150(a)(3) (existing facilities); 24 C.F.R. § 8.24(a)(2) (existing housing programs). New construction and alterations of facilities/housing are subject to separate requirements under Section 504 and ADA implementing regulations and accessibility standards.

¹⁴ See 28 C.F.R. part 35 and 24 C.F.R. part 8.

