



## LHA Reasonable Accommodation and Reasonable Modification FAQs

Note: This document is intended to provide general guidance and is not a substitute for legal advice or a summary of all pertinent fair housing laws. It is unlawful for LHAs to refuse to make reasonable accommodations in rules, policies, practices, and services, or reasonable modifications to facilities when such accommodations or modifications may be necessary to afford a person with a disability an equal opportunity to use and enjoy the dwelling or to fully access and use the LHA's programs and services. Generally, the accommodation/modification is not reasonable if it would pose an undue financial and administrative burden or fundamentally alter the nature of the program. LHAs are to determine appropriate responses to reasonable accommodation or reasonable modification requests on a case-by-case basis in consideration of circumstances at the time of the request. LHAs that deny a particular accommodation/modification request must still engage in an interactive process with the requester to determine possible alternative reasonable accommodations/modifications.

1. *How does the LHA verify that a person has a disability and a disability-related need for a reasonable accommodation or reasonable modification?*

Sometimes the disability and disability-related need for the accommodation or modification will be apparent or obvious, in which case verification should not be requested. Similarly, additional information or documentation should not be requested to verify a disability if the LHA otherwise knows that the person has disability (for example, the person has reported receipt of Social Security Disability Insurance ("SDDI")). Once the LHA has established that the person has a disability, it should then seek only the information that is necessary to evaluate whether the reasonable accommodation or modification is needed because of a disability in order for the person to have an equal opportunity to use and enjoy the dwelling or fully access the LHA's programs and service. DHCD has created an example of a verification form for purposes of reasonable accommodations/reasonable modifications, available at <http://www.mass.gov/Ehed/docs/dhcd/ph/publichousingapplications/verificationofdisability.doc> . However, LHAs *cannot* deny a reasonable accommodation/reasonable modification request on the basis that the 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. For additional reference, see e.g., the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "Reasonable Accommodations under the Fair Housing Act," at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf> .

2. *If a person with a disability needs an accommodation so that he/she is not required to submit his/her application in-person as our LHA ordinarily requires, must the LHA grant it?*

Yes. A person who has difficulty submitting an application in-person because of his/her disability will not likely have an equal opportunity to access the housing program if the

LHA does not make the accommodation. Furthermore, the LHA application policies or materials that require in-person application submission should indicate that reasonable accommodations are available for persons with disabilities. As persons with disabilities who are unable to submit their applications in-person may also be adversely affected in terms of their place on the wait list, LHAs should not use the date/time of application submission to determine wait list order when opening wait lists and ordering new applicants. Instead, LHAs should allow a minimum time period, not less than 10 business days, for applicants to submit their applications. At the close of such time period, LHAs should determine which applicants fall under the applicable priority and preference categories as required under DHCD regulations.<sup>1</sup> If there is more than one applicant with the same ranking based on priority and preference status (including no preference) in accordance with the regulations, then LHAs should conduct a random drawing for those applicants to determine the order amongst them. LHAs may propose an alternative procedure, but any procedure used must satisfy the LHA's civil rights obligations, including ensuring that wait list and tenant selection policies and procedures provide persons with disabilities equal access to LHA programs, and must otherwise comply with applicable DHCD regulations.

3. *Can allowing a person with a disability to obtain or keep an animal in his/her unit be a reasonable accommodation? If the LHA grants the accommodation, must the LHA waive its pet deposit requirement?*

Yes, to both questions. Requests for permission to obtain or keep an animal in the unit to accommodate a disability must be considered by LHAs for all state-aided public housing developments, including family developments. Such animals are commonly referred to as "assistance animals," and reasonable accommodations for such animals in the housing context are not limited by the definition of "service animal" contained within the Department of Justice's revised ADA regulations.<sup>2</sup> Emotional support/therapy animals as well as trained service animals are examples of assistance animals. The LHA must waive pet deposits for assistance animals. Note that LHAs are not to deny reasonable accommodation requests based on the weight or breed of the animal, as the LHA must consider the disability-related need for the animal and the reasonableness of the request for the animal based upon an individualized assessment on a case-by-case basis in accordance with fair housing law.<sup>3</sup>

4. *Can a request for an assigned parking space that is closer to the unit of a person with mobility impairments be a reasonable accommodation if the LHA already has a parking policy in place?*

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<sup>1</sup> See 760 CMR 5.09 and 760 CMR 5.10(3).

<sup>2</sup> LHAs must comply with all applicable fair housing laws such as the federal Fair Housing Act, Section 504 of the Rehabilitation Act, M.G.L. c.151B and applicable regulations and guidance in addition to the ADA. See HUD Notice FHEO-2013-01, "Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs."

<sup>3</sup> Ibid.

Yes. LHAs should consider when deciding what particular policy to adopt whether a policy, i.e., one based upon a seniority system, may have the effect of denying persons in need of spaces closer to their units because of a disability an equal opportunity to enjoy the housing and the program. However, as a reasonable accommodation involves a change to a rule, policy or practice for a person with a disability, an individual request for an assigned parking space to accommodate a disability must still be considered on a case-by-case basis regardless of whether the LHA has a first-come-first-serve, assigned parking, or other policy that is generally applicable to all residents.

5. *Can hoarding behaviors indicate that a person has a disability and is in need of a reasonable accommodation?*

Yes. Hoarding behaviors such as excessive clutter may indicate that a person has a disability such as a mental disorder, although verification that the person has a disability may be appropriate. If a tenant is having difficulty complying with the lease due to excessive hoarding or is limited in his/her ability to keep the unit in a sanitary condition, it is appropriate for the LHA to suggest resources or services that may be of assistance to the tenant. Furthermore, the LHA may also have to reasonably accommodate the tenant by allowing him/her the opportunity to comply with his/her lease, including time to seek treatment or assistance to mitigate the hoarding, prior to serving a Notice to Quit or filing an eviction action. For further information about hoarding and related resources such as the Greater Boston Hoarding Network, see, e.g., <http://www.mbhp.org> under “hoarding and sanitation initiative.”

6. *Can the LHA limit unit transfers as a reasonable accommodation only for those who require a unit of a different size or location based upon a physical disability?*

No. An LHA cannot implement a policy or practice of only permitting persons with disabilities that have a physical impairment to transfer to another unit as a reasonable accommodation<sup>4</sup> or as a transfer for other administrative or good cause reasons. Households may also have disability-related needs for a unit transfer based upon mental disabilities, including mental health disabilities, and LHAs must consider such needs. For example, a household with children may need to transfer to a larger unit in order to have a separate bedroom for a child who has behavioral problems due to his/her disability.

7. *Does the LHA have an obligation to reasonably accommodate a tenant with a disability prior to terminating the lease or filing an eviction action? What if the reasonable accommodation request is made after the LHA has already terminated the lease or filed an eviction action?*

Yes. The LHA must evaluate and respond to the reasonable accommodation request, including proposing alternative reasonable accommodations if the request is not reasonable, prior to terminating the lease or filing an eviction action. An eviction action must not be used as a means for resolving the accommodation request. An eviction action must also not substitute the LHA’s obligation to make an individualized determination in response to a reasonable accommodation request, including when the request is for the opportunity to

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<sup>4</sup> Note that a transfer as a reasonable accommodation is a valid Transfer for Administrative Reasons under 760 CMR 4.

achieve lease compliance. Similarly, the LHA still has an obligation to consider reasonable accommodation requests even after it has served a Notice to Quit or commenced an eviction action. LHAs must consider reasonable accommodation(s) to enable a person with a disability an opportunity to achieve lease compliance when there is a nexus between the disability and the non-compliance. An accommodation for continued occupancy is *not* reasonable and not required if it would pose a direct threat to the health and safety of other individuals or result in substantial physical damage to the property of others.<sup>5</sup> However, the LHA must conduct an individualized assessment to determine whether there is a “direct threat” of significant risk and whether changes to policies, practices, or procedures will sufficiently mitigate the risk.<sup>6</sup>

8. *How can the LHA provide notification of non-discrimination rights and the right to file a complaint?*

In addition to various fair housing law requirements, DHCD regulations governing LHAs at 760 CMR 4.03 obligate LHAs to post a notice regarding non-discrimination rights, including the right to file a complaint with the Massachusetts Commission Against Discrimination (“MCAD”). 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 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://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_discrimination](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination) . See also the required Fair Housing Act poster at <http://www.hud.gov/offices/fheo/promotingfh/928-1.pdf> . Additionally, DHCD regulations at 760 CMR 4.03 require LHAs to adopt and enforce appropriate anti-discrimination policies which meet the requirements of applicable law, including, a policy against sexual and other discriminatory harassment and a policy for reasonable accommodation on account of disability. See also DHCD forms, which may be amended from time to time, at <http://www.mass.gov> under search term “public housing applications & documentation.”

9. *What funding should I consider if I receive a reasonable modification request for alterations to a unit?*

DHCD will continue to make LHAs aware of potential DHCD funding in response to reasonable modification requests. As explained in further detail in PH Notice 2011-13, funding from DHCD’s Compliance Reserve may 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.

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<sup>5</sup> 42 U.S.C. § 3604(f)(9).

<sup>6</sup> See e.g., 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); *Boston Housing Authority v. Emmitt Bridgewater*, 452 Mass. 833 (2009) (citing 24 C.F.R. § 9.131(c)) and Joint Statement).

10. *Are there guides available to assist me with my LHA's Self-Evaluation/Transition Plan and complying with other administrative requirements under the ADA and Section 504?*

Yes. One such guide was prepared by consultant Kessler, McGuinness & Associates and is available on DHCD's website (see <http://www.mass.gov/dhcd> and search under "fair housing and civil rights information"). Additional examples of resources on the Americans with Disabilities Act ("ADA"), as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and other fair housing laws are provided below. It is important to note that design and construction standards for new construction/rehabilitation projects must comply not only with applicable ADA and Section 504 requirements, but must also comply with the federal Fair Housing Act and its regulations, as well as the rules and regulations of the Massachusetts Architectural Access Board ("MAAB").

### **Additional Resources:**

Further examples of reasonable accommodations by housing providers 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>.

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>.

For further information on Title II of the Americans with Disabilities Act ("ADA"), applicable to public entities, 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 ADA updates, including the Americans with Disabilities Amendments Act of 2008 and revised ADA regulations implementing Title II of the ADA. For further information on Section 504 of the Rehabilitation Act of 1973, applicable to recipients of federal financial assistance, see HUD's technical assistance materials, available at <http://www.hud.gov/offices/fheo/disabilities/sect504.cfm>.