



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

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OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

MEMORANDUM FOR: All FHEO Regional Directors
Regional Counsel

FROM: Sara K. Pratt, Deputy Assistant Secretary for Enforcement
and Programs, ED

SUBJECT: New ADA Regulations and Assistance Animals as
Reasonable Accommodations under the Fair Housing Act
and Section 504 of the Rehabilitation Act of 1973

I. Purpose

This memo explains that the Department of Justice's (DOJ) recent amendments to its Americans with Disabilities Act (ADA) regulations¹ do not affect reasonable accommodation requests under the Fair Housing Act (FHAct) and Section 504 of the Rehabilitation Act of 1974 (Section 504). The DOJ's new rules limit the definition of "service animal" in the ADA to include only dogs. The new rules also define "service animal" to exclude emotional support animals. This definition, however, does not apply to the FHAct or Section 504. Disabled individuals may request a reasonable accommodation for assistance animals in addition to dogs, including emotional support animals, under the FHAct or Section 504. In situations where both laws apply, housing providers must meet the broader FHAct/Section 504 standard in deciding whether to grant reasonable accommodation requests.

II. Definitions of Service Animal

The DOJ's new ADA rules define "service animal" 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 new rules specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services. Final Rule. 75 Fed. Reg. 56164 (Sept. 15, 2010) (to be codified at 24 C.F.R. part 35); Nondiscrimination on the Basis of Disability in State and Local Government Services. Final Rule. 75 Fed. Reg. 56236 (Sept. 15, 2010) (to be codified at 24 C.F.R. part 36).

work or tasks for the purposes of this definition." Thus, trained dogs are the only species of animals that may qualify as service animals under the ADA (there is a separate provision regarding miniature horses) and emotional support animals are expressly precluded from qualifying as service animals.

Neither the FHAct, Section 504, nor HUD's implementing regulations contain a specific definition of the term "service animal." However, species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the FHAct and Section 504. The new ADA regulation does not change this FHAct/Section 504 analysis, and specifically notes, "[u]nder 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 animal does not pose a direct threat."² In addition, the preambles to the new rules state that emotional support animals do not qualify as service animals under the ADA but may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct."³

III. Applying the Law

Under the FHAct and Section 504, individuals with a disability may be entitled to keep an assistance animal as a reasonable accommodation in housing facilities that otherwise impose restrictions or prohibitions on animals. In order to qualify for such an accommodation, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. Further, there must be a relationship, or nexus, between the individual's disability and the assistance the animal provides. If these requirements are met, a housing facility, program or service must permit the assistance animal as an accommodation, unless it can demonstrate that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of the housing program or services.⁴

Under the ADA, the animal need only meet the definition of "service animal" to be covered by the law. No further test or reasonable accommodation analysis should be applied. An individual's use of a service animal in an ADA-covered facility should not be handled as a request for reasonable accommodation. If an animal qualifies as a "service animal," ADA-

² 75 Fed. Reg. at 56194, 56268.

³ 75 Fed. Reg. at 56166, 56240.

⁴ The request may also be denied if the specific animal in question poses a direct threat to the health and safety of others that cannot be reduced or eliminated by a reasonable accommodation or if the specific animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation.

covered entities may not restrict access to a person with a disability on the basis of his or her use of that service animal unless the animal is out of control and its handler does not take effective action to control it or if the animal is not housebroken. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go.

The new ADA definition of "service animal" applies to state and local government services, public accommodations, and commercial facilities; the FHAct covers housing services and facilities; and HUD's Section 504 regulations apply to all recipients of HUD-funds. Some types of entities, such as rental offices and housing authorities, are subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct or Section 504. Entities must ensure compliance under all relevant civil rights laws. Compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. An entity that is subject to both the ADA and the FHAct or Section 504 must permit access to ADA-covered "service animals" and, additionally, apply the more expansive assistance animal standard when considering reasonable accommodations for persons with disabilities who need assistance animals that fall outside the ADA's "service animal" definition.

IV. Conclusion

The ADA regulations' revised definition of "service animal" does not apply to reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. 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 disabilities an equal opportunity to use and enjoy a dwelling, common areas of a dwelling, or participate in, or benefit from, any housing program receiving Federal financial assistance from HUD, unless an exception applies.