

FACT SHEET ON HUD'S ASSISTANCE ANIMALS NOTICE

On January 28, 2020, the U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO) released Notice FHEO-2020-01, sometimes referred to as the "Assistance Animals Notice." The Notice includes two attachments. The first, "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act," recommends a set of best practices for complying with the Fair Housing Act (FHA) when assessing a person with a disability's accommodation requests involving animals in housing. This includes information regarding:

- The difference between assistance animals and pets;
- The types of accommodations that a housing provider may need to grant, such as exceptions to no-animal policies, deposits, or fees that are ordinarily charged for animals;
- Assessing whether an animal is a service animal or an assistance animal other than a service animal (sometimes referred to as a support animal);
- Permissible inquiries regarding assistance animals, particularly if the individual's disability or disability-related need for an animal is non-obvious or non-observable, or not otherwise known to the housing provider;
- The type of verification and documentation that a housing provider may request regarding an individual's disability and disability-related need for an assistance animal;
- Descriptions of the typical types of assistance animals, an example of a unique type of animal that provides disability-related assistance and guidance on handling requests involving more than one animal; and
- Other best practices regarding reasonable accommodations for assistance animals.

The second attachment is "Guidance on Documenting an Individual's Need for Assistance Animals in Housing." It provides guidance on information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider about his or her disability-related need for the requested accommodation, including supporting information from a health care professional.

The contents of the Assistance Animal Notice do not have the force and effect of law and are not meant to bind the public in any way. The documents are intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Background

The Fair Housing Act (FHA) makes it unlawful for a housing provider to refuse to make a reasonable accommodation that a person with a disability may need in order to have equal opportunity to enjoy and use a dwelling. HUD released Notice FHEO-2020-0,1 the Assistance Animals Notice, to clarify the rights and obligations under the FHA regarding assistance animals. It supersedes HUD's prior guidance, FHEO-2013-01, on assistance animals.

HUD has long recognized the need of some persons with disabilities to keep an assistance animal in their home, and the legal obligation of housing providers to make reasonable accommodations to allow such assistance animals. Persons with various types of disabilities may need an assistance animal in their home to have an equal opportunity to use and enjoy their housing. While some disabilities may be known or obvious to a housing provider, other disabilities may not be.

As the guidance explains, assistance animals are not pets. Assistance animals could be a trained service animal, or they could be other animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities that affect major life activities. Due to the unique nature of housing, a person with a disability may need an assistance animal in their home that provides disability-related assistance, even if the animal is not individually trained as a service animal. Assistance animals are generally an animal commonly kept in the household. Housing providers may not exclude or charge a fee or deposit for assistance animals because these animals serve an important function that individuals with disabilities that affect major life activities need in order to have equal opportunity in housing.

HUD's guidance is intended to help housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability that affects a major life activity who simply wants to have a pet or avoid the costs and limitations imposed by housing providers' pet policies, such as pet fees or deposits. The guidance may also help persons with a disability that affects a major life activity who request a reasonable accommodation to use an assistance animal in housing. The guidance also helps housing providers understand the information they may ask a person with a disability to provide when the person's disability and related need for an animal are non-observable or not previously known by the housing provider.

Questions and Answers about the Assistance Animals Notice

Question: Does the Assistance Animals Notice change or restrict the Department's interpretation regarding assistance animals in housing?

No, the Assistance Animals Notice reflects the Department's longstanding interpretation regarding reasonable accommodations for assistance animals. The guidance clarifies the existing law regarding assistance animals and better informs housing providers, individuals with disabilities, and the public of their rights and obligations regarding reasonable accommodations for assistance animals under the FHA. It is intended to provide greater transparency of the Department's established policies on this subject. For decades, the Department has recognized the need for assistance animals in homes, which includes support animals, both trained and untrained, that provide therapeutic emotional support for individuals with disabilities. This is distinct from "service animal" as defined in the Department of Justice's regulations implementing the Americans with Disabilities Act.

Question: Does the Assistance Animals Notice affect my right to bring my assistance animal to restaurants, stores, on public transportation, and to other public places?

The Assistance Animals Notice applies only to housing, including public and common use areas of housing developments and facilities covered by the FHA, including apartments, condominiums, cooperatives, single family homes, nursing homes, assisted living facilities, group homes, and other types of housing covered by the FHA. Some types of short-term temporary shelter are not covered by the FHA. The reasonable accommodation requirements apply to all housing covered by the FHA, regardless of whether the housing is private, public, or receives federal financial assistance. While it does not extend to buildings, vehicles or areas that are not covered by the FHA, these areas may be covered by other laws with other requirements for animals for persons with disabilities, such as the Americans with Disabilities Act or the Air Carrier Access Act. For more information on these requirements, see Department of Justice and Department of Transportation implementing regulations, notices, guidance, and policies.

Question: Who can use the Assistance Animals Notice?

The Assistance Animals Notice provides guidance for housing providers who receive a request for a reasonable accommodation from an individual with a disability to keep an assistance animal in housing. Individuals with disabilities that affect major life activity may also use the guidance to assist them in requesting a reasonable accommodation and to clarify what type of information they may need to give their housing provider to support their request under the FHA. Additionally, it can be used by other members of the public, including healthcare providers who may be asked to provide supporting information for persons who are requesting a reasonable accommodation for a disability.

Question: Why is the Department releasing guidance on Assistance Animals?

Fair Housing Act complaints concerning reasonable accommodation and disability access comprise almost 60% of all FHA complaints and those involving requests for reasonable accommodation for assistance animals are almost half of those. In fact, such complaints are the most common type of fair housing complaint that HUD receives. Most HUD charges of discrimination against a housing provider following a full investigation involve the denial of a reasonable accommodation to a person who has a physical or mental disability that the housing provider cannot readily observe. In recent years, the practice of the sale and use of so-called “certificates” for assistance animals has also proliferated. In HUD’s view, such certificates, issued in the absence of a personal medical relationship, are not meaningful and a waste of money. In some instances, these appear to be employed by persons who do not meet the requirements for a reasonable accommodation, sowing confusion among housing providers. Therefore, the Department has determined that it is helpful to release further guidance on this matter to assist housing providers, individuals with disabilities, and the public to understand when the FHA requires a housing provider to grant a reasonable accommodation to an individual who has a disability-related need for an assistance animal, including when the need for such an animal is not obvious and the animal does not have individualized training.

Question: As a housing provider, will the Assistance Animals Notice help me to understand the documentation requirements regarding assistance animals for persons with disabilities, including what to do if a tenant provides me with documentation from the internet?

Yes, the guidance provides best practices for housing providers regarding when they can request more information or documentation regarding a disability and disability-related need for an assistance animal. As the Assistance Animals Notice explains, in appropriate instances, housing providers may ask for more information consistent with the Fair Housing Act. The guidance describes the type of information that a housing provider may request when processing a reasonable accommodation request. One reliable form of documentation is a note from a person's health care professional that confirms a person's disability affecting a major life activity and related need for an assistance animal for therapeutic purposes when the health care professional has personal knowledge of the individual. HUD has heard from housing providers, persons with disabilities, and other groups and individuals who are concerned about commercially available documentation from the internet. The guidance explains that, in HUD's experience, documentation from websites that sell certificates, registrations, and licensing documents and animal gear for animals to anyone who answers certain questions or participates in a short interview and pays a fee is not sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal. However, in some circumstances, documentation may be reliable where provided by legitimate, licensed health care professionals delivering health care services remotely, including over the internet. The guidance helps housing providers to navigate these questions regarding information and documentation of a disability affecting a major life activity and disability-related need for an assistance animal.

Question: In what circumstances would a person with a disability need an assistance animal in their home?

There are a number of reasons that a person with a disability may need an assistance animal in their home, and assistance animals may perform a variety of tasks or serve a variety of functions. Examples of tasks include guiding an individual who is blind or has low vision, pulling a wheelchair, or providing therapeutic emotional support with respect to an individual's mental disability affecting a major life activity. A common and appropriate example is a veteran returning from combat relying on and using an assistance animal that provides therapeutic support related to post-traumatic stress disorder (PTSD) that limits major life activities, such as holding a job or attending school regularly.

Question: How will the guidance impact HUD investigations and enforcement of complaints of discrimination on the basis of disability because an individual was denied a reasonable accommodation for an assistance animal?

As noted above, complaints of this nature are the most common type of fair housing complaint that FHEO receives. The Department intends for the guidance to proactively assist housing providers and individuals with disabilities affecting a major life activity so that individuals who are entitled to an accommodation receive one and housing providers comply with the FHA. However, the guidance does not change or otherwise affect an individual's right to file a fair housing complaint on this basis with FHEO or the defenses available to housing providers. It does not change FHEO's procedures for investigating such complaints. Individuals who believe they have experienced housing discrimination may file a complaint by contacting FHEO.

Question: If my housing provider has already provided me with a reasonable accommodation for my assistance animal, how does the Assistance Animals Notice affect my housing?

The guidance does not change HUD's interpretation of the FHA and does not affect any already granted reasonable accommodations. Consistent with the requirements of the FHA, housing providers should not re-assess any accommodations they have already granted to individuals with disabilities. The guidance provides clarity for analyzing future requests for reasonable accommodations.

Question: If my housing provider requests documentation of my disability or disability-related need for an assistance animal, consistent with the FHA, do I need to provide it in a specific format, such as the attachment, "Guidance on Documenting an Individual's Need for Assistance Animals in Housing"?

No, "Guidance on Documenting an Individual's Need for Assistance Animals in Housing" does not require that documentation be provided in a specific format, nor is that document a form that is or may be required. Instead, that attachment provides guidance on the type of information that may be necessary to provide to a housing provider to document a disability affecting a major life activity and disability-related need for an assistance animal. It is intended to reduce the burden on individuals with disabilities, their healthcare providers, and housing providers by providing guidance on the type of information that is relevant to assessing a reasonable accommodation request under the FHA and to speed the process for making reasonable accommodation decisions.