



RCI, PAL and Army Housing Training

Legal Issues of Concern

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Agenda

- **Major Decisions**
- **Davis Bacon Act**
- **Ethics Topics: Prohibited Sources & Resident Incentives**
- **Sex Offenders**
- **Service and Assistance Animals**



Major Decisions “+”

- Sell or lease (other than Tenant Leases) all or substantially all of the assets of the Company
- **Fund any extraordinary capital expenditures relating to the Project**
- Borrow money (beyond initial financing)
- Amend any financing documents
- Initiate or agree to settle any litigation (above threshold)
- Discontinue the operations of the Company
- Repurchase or redeem Membership Units issued by the Company
- **Approve an Operating, Capital or Development Budget**
- **Change Orders**
- Accept additional capital contributions
- Decrease insurance coverage maintained by the Company
- Convert or reorganize the Company into any other form of entity
- Acquire real property
- Hire employees
- Lend any money, or enter into a guaranty of the debts of any other person or entity
- Designate a substitute Property Manager or Developer
- Declare Bankruptcy
- **Approve Incentive Fees**



Who Can Bind The Army?

- **General Rule is that the Government cannot be bound by the unauthorized acts of its agents**
 - *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947)
- **Authority to bind the Government in contract may be either express or implied**
 - *H. Landau & Co. v. United States*, 886 F.2d 322, 324 (Fed. Cir. 1989)
- **The doctrine of implied actual authority cannot be used to create an agent's actual authority to bind the government in contract when the agency's internal procedures specifically preclude the agent from exercising such authority**
 - *Cruz-Pagan v. United States*, 35 Fed. Cl. 59, 62 (1996)
- **Impact of DA Major Decision Matrix**



Davis Bacon Act

- **DOL has determined that privatized housing constitutes “public buildings of the United States” and is therefore subject to DBA**
- **Recurring Challenges**
 - Lack of contracting officer -- 29 CFR Part 5/ DOL AAM 152
 - “Stick” for non-compliance?
 - Subject to DBA or unregulated contract for service?
 - How often is a new wage determination required?
 - Ancillary issue – applicability of the FOIA?



Current Davis Bacon Issues

- **Painting and Construction as part of Property Management Activities**
 - DFARS 222.402-70 standard for installation support contracts is 200 sq. ft. of painting and 32 hours of labor per service order
 - RCI Projects are not implemented through the use of FAR contracts
 - Lack of Military Department consensus
 - OSD is currently working to develop a position that can be taken to DOL for a determination
- **Potential for Retroactive Application?**
 - DBA provides no private cause of action
 - Army's focus is prospective but DOL can require payment of back wages
 - DOL has recently required payment of back wages in for construction performed in UP Service Contracts
 - DOL waived retroactive application in the CityCenter DC dispute



Davis Bacon – Army Expectations

- **Project (MM/PM/GC) will monitor that the DBA is complied with for all covered activities**
 - Army personnel should be “spot checking” for compliance
- **Projects will budget for payment of DBA prevailing wages or all applicable work (including property management related construction or painting) using the standard described in DFARS 222.402-70**
 - Painting in excess of 200 sq. ft. per service order
 - Repairs involving more than 32 hours of work per service order



RCI “Partners” are “Prohibited Sources” to Government Program Personnel

- **Joint Ethics Regulation (JER) gift rules are applicable**
- **Commercial business practices often conflict with JER requirements**
- **Offers of gifts and gratuities by Partners to Army Program Personnel place our personnel at risk of violating ethics rules**
- **When in doubt, seek guidance from supporting ethics counselor**



May Residents Accept “Incentives” from a Property Manager?

YES, if:

- The Property Manager is not a prohibited source, such incentives can be accepted under 5 CFR 2635.204(c)(2)(iii) – as an "opportunity or benefit" “offered . . . to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay”
--- Or
- The incentives are excluded from the definition of a gift under 5 CFR 2635.203(b)(4) as an “opportunity and benefit,” which includes “favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations”
- **Beware of “special” services or benefits provided to Soldiers based on their rank or position!!!!!!!!!!!!!!**



Sex Offenders

- **Secretary of the Army has directed initiation of administrative elimination actions for Soldiers convicted of sex offenses**
 - See Army Directive 2013-21 (Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses)
- **Regulating Sex Offender's on-post housing occupancy?**
 - Per 42 U.S.C. §13663, individuals who are lifetime registrants of a state sex offender list are barred from “federally assisted housing”
 - RCI housing is **NOT** “federally assisted housing” – see 42 U.S.C. §13664(a)(2)
 - “Barring” sex offenders from residing in on-post housing?
 - Individual bar letter
 - Local regulation
 - Army-wide regulation or directive?



“Service” and “Assistance” Animals

- **HUD has issued detailed guidance on how housing providers must respond when tenants seek to have “service” or “assistance” animals reside with them**
 - See FHEO 2013-01 (posted with course materials)
- **Key point is that service and assistance animals are NOT pets**
 - No PET deposits can be required!!!!



Service Animals

- **Only dogs and miniature horses can be service animals**
- **A service animal must be trained to do “work” or “tasks” for the benefit of a person with a disability**
 - Emotional support, well being, comfort or companionship are not “work” or “tasks”
- **Service animals must be allowed into all “public accommodations” (including leasing offices) if accompanying a person with a disability**



Permissible Questions Relating to Service Animals

- **If an individual's disability and work or tasks the "service animal" have been trained to do are not readily apparent you can ask:**
 - "Is this a service animal required because of a disability?"
 - "What work or tasks has the animal been trained to perform?"
- **No questions regarding the person's disability are allowed and no proof of training or certification can be required!!!!**



Limiting Service Animal's Access to Public Accommodations

- **You can limit access if:**
 - The animal is out of control and the handler is not effective in controlling the animal
 - The animal is not housebroken
 - The **SPECIFIC** animal poses a direct threat to the health and safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification of policies, practices, or procedures



Assistance Animals

- **Service animals are assistance animals – assistance animals may or may not be service animals**
- **Assistance animals provide assistance or perform tasks for the benefit of a person with a disability or provide emotional support that alleviates a symptom or effect of a person's disability**
- **An assistance animal can be virtually any type of animal**



Determining Eligibility for Residence of Assistance Animals

- **If a person requests that an assistance animal reside with them, housing providers must determine if:**
 - There is a resident/prospective resident in the household that has a disability (physical or mental impairment that substantially limits one or more life activities);
 - The disabled resident has a disability-related need for the assistance animal



Permissible Questions Relating to Assistance Animals

- **If the disabled individual's disability or the assistance the animal in question provides is not readily apparent or known, housing providers can request:**
 - Reliable documentation of the individual's disability; and/or
 - Reliable documentation of the disability-related need for the animal in question



Grounds for Otherwise Denying Residency to Assistance Animals

- Undue financial or administrative burden
- Fundamental alteration of the housing provider's services
- Specific assistance animal poses a **DIRECT THREAT** to health or safety of others or would cause **SUBSTANTIAL** damage to the property of others
 - Satisfying this test requires an individualized assessment of the animal in question



Questions?

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SECRETARY OF THE ARMY
WASHINGTON

07 NOV 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2013-21 (Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses)

1. References:

- a. Title 42, United States Code, section 16911.
- b. Army Regulation (AR) 27-10 (Military Justice), 3 October 2011.
- c. AR 135-178 (Enlisted Administrative Separations), 13 March 2007, including Rapid Action Revision (RAR) 2 issued 13 September 2011.
- d. AR 635-200 (Active Duty Enlisted Administrative Separations), 6 June 2005, including RAR 3 issued 6 September 2011.
- e. AR 135-175 (Separation of Officers), 28 February 1987, including RAR 2 issued 4 August 2011.
- f. AR 600-8-24 (Officer Transfers and Discharges), 12 April 2006, including RAR 3 issued 13 September 2011.
- g. AR 10-87 (Army Commands, Army Service Component Commands, and Direct Reporting Units), 4 September 2007.

2. Sex offenses are serious crimes. Notwithstanding the provisions of any other Army regulation, directive, policy or other like guidance published by any Army official or organization, this directive establishes new policy to ensure that the decision to retain any Soldier convicted of a sex offense is fully informed and in the Army's best interest. In addition, this directive establishes Army policy prohibiting the overseas assignment or reassignment of any Soldier convicted of a sex offense.

3. Commanders will initiate the administrative separation of any Soldier convicted of a sex offense, as defined by references 1a or 1b, whose conviction did not result in a punitive discharge or dismissal. This policy applies to all personnel currently in the Army, regardless of when the conviction for a sex offense occurred and regardless of component of membership and current status in that component.

SUBJECT: Army Directive 2013-21 (Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses)

a. For enlisted personnel:

(1) Commanders will follow the current policy for initiating administrative separation proceedings pursuant to references 1c or 1d, as appropriate.

(2) If the separation authority approves retention, he or she will initiate an action for the exercise of Secretarial plenary separation authority under paragraph 14-3 of reference 1c or paragraph 5-3 of reference 1d, as appropriate.

(3) If an enlisted Soldier who has been convicted of a sex offense already has been subject to an administrative separation action under references 1c or 1d for that conviction and has been retained as a result of that proceeding, the separation authority will initiate a separation action under the Secretarial plenary authority, as detailed in paragraph 3a(2) of this directive.

b. For commissioned and warrant officers:

(1) Commanders **will** initiate an elimination action under references 1e or 1f, as appropriate.

(2) No further action is required if a commissioned or warrant officer who has been convicted of a sex offense has already been subject to an elimination action for that conviction and has been retained.

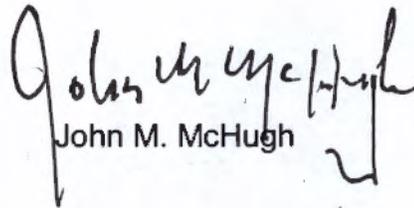
4. Commanders will ensure that Soldiers convicted of an offense covered by references 1a or 1b are not assigned or deployed on a temporary duty (TDY), temporary change of station (TCS) or permanent change of station (PCS) status to duty stations outside of the Continental United States (OCONUS). The only permitted OCONUS locations are Hawaii, Alaska, the Commonwealth of Puerto Rico, or Territories or possessions of the United States.

5. Soldiers currently serving in any non-permitted OCONUS locations who have been convicted of an offense covered by references 1a or 1b are ineligible for continued duty at those locations. Accordingly, overseas commanders of Army Commands, Army Service Component Commands or Direct Reporting Units (as established in reference 1g) will identify such Soldiers in their commands and coordinate with the applicable Headquarters, Department of the Army Assignment Authority (Commander, U.S. Army Human Resources Command; The Judge Advocate General; or Chief of Chaplains) for reassignment to the continental United States or the permitted OCONUS locations listed in paragraph 4 as soon as possible. Soldiers who are deployed to a non-permitted OCONUS location in any status (TDY/TCS) will immediately be returned to their parent organization. Command responsibility to reassign or redeploy a Soldier under this policy takes precedence over initiation of separation. Accordingly, Soldiers

SUBJECT: Army Directive 2013-21 (Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses)

convicted of an offense covered by references 1a or 1b will first be reassigned or redeployed to a CONUS or permitted OCONUS location. The receiving commander will subsequently ensure the initiation of separation in accordance with paragraph 3.

6. The provisions of this directive are effective immediately. The Deputy Chief of Staff, G-1 is the proponent for this policy and, in coordination with the Assistant Secretary of the Army (Manpower and Reserve Affairs), will publish appropriate implementing instructions as soon as possible. This directive and its implementing instructions take precedence over and cancel any conflicting guidance. They will remain in effect until relevant Army regulations are revised and published to incorporate the policies set forth herein.



John M. McHugh

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HUD > Press Room > Press Releases > 2013 > HUDNo.13-060A

HUD No. 13-060A
Shantae Goodloe
(202) 708-0685

FOR RELEASE
Tuesday
April 30, 2013

HUD ISSUES NOTICE ON ASSISTANCE ANIMALS AND REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

WASHINGTON – The U.S. Department of Housing and Urban Development (HUD) today issued a Notice reaffirming that housing providers must provide reasonable accommodations to persons with disabilities who require assistance animals. The “Notice on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs” discusses how the Fair Housing Act and the Americans with Disabilities Act (ADA) intersect regarding the use of service or assistance animals by persons with disabilities.

[The Fair Housing Act](#) prohibits landlords from discriminating based on disability, race, color, national origin, religion, sex, and familial status. [The ADA](#) prohibits discrimination against people with disabilities in employment, transportation, public accommodations, communications, and state and local government activities. Both laws contain provisions which address the use of service or assistance animals by people with disabilities. While the Fair Housing Act covers nearly all types of housing, some types of housing, such as public housing, are covered by both laws.

“The vital importance of assistance animals in reducing barriers, promoting independence, and improving the quality of life for people with disabilities should not be underestimated, particularly in the home,” said John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “Disability-related complaints, including those that involve assistance animals, are the most common discrimination complaint we receive. This notice will help housing providers better understand and meet their obligation to grant reasonable accommodations to people with disabilities that require assistance animals to fully use and enjoy their housing.”

HUD's new notice explains housing providers' obligations under the Fair Housing Act, including the requirement to provide reasonable accommodations to people with disabilities who require assistance animals. Pet restrictions cannot be used to deny or limit housing to people with disabilities who require the use of an assistance animal because of their disability. Housing providers must grant reasonable accommodations in such instances, in accordance with the law. The guidance also describes the Department of Justice's revised definition of "service animal" under the ADA, as well as housing providers' obligations when multiple nondiscrimination laws apply.

The Americans with Disabilities Act requires equal access for people with disabilities using trained service dogs in public accommodations and government facilities. Under the Fair Housing Act, housing providers have a further obligation to accommodate people with disabilities who, because of their disability, require trained service dogs or other types of assistance animals to perform tasks, provide emotional support, or alleviate the effects of their disabilities.

HUD's and the Department of Justice's [Joint Statement on Reasonable Accommodations](#) provides additional information regarding housing providers' obligations to provide reasonable accommodations. The Department of Justice has also published a [fact sheet](#) on service animals and the ADA.

Click here to read HUD's [new notice](#).

Persons who believe they have been denied a reasonable accommodation request may file a complaint by contacting HUD's Office of Fair Housing and Equal Opportunity at (800) 669-9777 (voice) or (800) 927-9275 (TTY). Housing discrimination complaints may also be filed by going to www.hud.gov/fairhousing, or by downloading HUD's free housing discrimination mobile application, which can be accessed through Apple devices, such as the iPhone, iPad, and iPod touch.

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HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes: utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way HUD does business. More information about HUD and its programs is available on the Internet at www.hud.gov and <http://espanol.hud.gov>. You can also follow HUD on twitter [@HUDgov](https://twitter.com/HUDgov), on facebook at www.facebook.com/HUD, or sign up for news alerts on [HUD's News Listserv](#).



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

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors
of Public and Indian Housing (PIH); Housing;
Community Planning and Development (CPD), Fair
Housing and Equal Opportunity; and Regional Counsel;
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**
Issued: April 25, 2013
Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations¹ for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHA or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHA and Section 504. In situations where the ADA and the FHA/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHA/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHA, Section 504, and/or the ADA².

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

² Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

- 3. Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities³ with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals⁴ in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.⁵ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

³ Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

⁴ Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

⁵ For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).

- (1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

If the answer to question (1) **or** (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.⁶

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

⁶ A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant’s dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider’s practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.⁷

Section II: The ADA Definition of “Service Animal”

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define “service animal” narrowly 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 revised regulations specify that “the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”⁸ Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses⁹), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of “service animal” applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of “service animal” to be allowed into a covered facility.

⁷ Ibid.

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

⁹ 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁰ A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.¹¹

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."¹²

¹⁰ 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).

¹¹ For more information on ADA requirements relating to service animals, visit DOJ's website at www.ada.gov.

¹² 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under 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 use of the animal does not pose a direct threat.”¹³ In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may “nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct.”¹⁴ While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for “service animal,” the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁵

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider’s responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion

The definition of “service animal” contained in ADA regulations does not limit housing providers’ obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, 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 a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

¹³ 75 Fed. Reg. at 56194, 56268.

¹⁴ 75 Fed. Reg. at 56166, 56240.

¹⁵ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.



John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity



ADA 2010 Revised Requirements

Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

This publication provides guidance on the term “service animal” and the service animal provisions in the Department’s revised regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

How “Service Animal” Is Defined

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

This definition does not affect or limit the broader definition of “assistance animal” under the Fair Housing Act or the broader definition of “service animal” under the Air Carrier Access Act.

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from that State’s attorney general’s office.

Where Service Animals Are Allowed

Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal’s presence may compromise a sterile environment.

Service Animals Must Be Under Control

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal’s work or the individual’s disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person’s disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal’s presence.

- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Staff are not required to provide care or food for a service animal.

Miniature Horses

In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

**For more information about the ADA,
please visit our website or call our toll-free number.**

ADA Website
www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the link near the top of the middle column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)
24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)
to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. July 2011



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



SECRETARY OF THE ARMY
WASHINGTON

28 JAN 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2013-01 (Guidance on the Acquisition and Use of Service Dogs by Soldiers)

1. References:

- a. Army Regulation 40-501 (Standards of Medical Fitness), including Rapid Action Revision Issued 4 Aug 11.
- b. Army Regulation 40-905 (Veterinary Health Services), 29 Aug 06.
- c. Technical Bulletin Med No. 4 (DoD Human-Animal Bond Principles and Guidelines), 16 Jun 03.

2. Purpose. This directive sets forth policies and procedures for the acquisition and use of service dogs by wounded, ill and injured Soldiers with disabilities for whom a service dog is clinically indicated. The guidance in this directive is applicable to all Soldiers regardless of component or duty status. It also sets forth certain requirements for Soldiers who have already received and are using a service dog. This directive does not apply to emotional support animals, therapy animals and activity animals. This directive does not prevent Soldiers from owning pets, subject to installation pet policies.

3. Definitions

a. Service Dogs. A service dog is a dog individually trained to do work or perform specific tasks for the benefit of an individual with a disability. Service dogs include guide dogs that assist individuals who are blind or have low vision with navigation and other tasks. Generally, Soldiers requiring a service dog are expected to require the dog for an extended period of time, often for life. A service dog usually undergoes a period of training with the individual Soldier who will receive it. Currently, the U.S. Department of Veterans Affairs (VA) does not recognize service dogs for behavioral health conditions, and therefore psychological service dogs are not considered service dogs for the purposes of this directive. If the VA policy in this regard changes, The Surgeon General will review and propose amendments to this directive for my approval. Species other than dogs, whether wild or domestic, trained or untrained, are not covered by this policy. Except as provided in paragraph 9, the Army will recognize only those service dogs obtained by eligible Soldiers from a source accredited by an organization recognized by the VA.

b. Service Dogs in Training. These dogs are undergoing a period of training designed to lead to their ultimate designation and employment as service dogs. At the

SUBJECT: Army Directive 2013-01 (Guidance on the Acquisition and Use of Service Dogs by Soldiers)

discretion of the installation's senior commander, access to Army facilities by trainers with service dogs in training may be granted, provided that the training is occurring under the auspices of a source accredited by a VA-recognized organization. In some cases, the training of service dogs occurs as part of a medically supervised program wherein the trainer benefits from the act of training dogs for service to other individuals. The use of such medically supervised training programs and the granting of access rights to medical treatment facilities to such dogs in training are at the discretion of the commander of the applicable medical treatment facility. A Soldier is not authorized to train his/her own service dog.

c. Emotional Support Animals. These animals provide therapeutic benefit to individuals through the provision of companionship and affection. These animals have the same rights as pets and fall outside the scope of this policy.

d. Therapy Animals. These animals are used in goal-directed interventions where the animal is an integral part of a treatment process designed to improve physical, social, emotional and/or cognitive functions. The animal is kept under the control and possession of medical staff or volunteers, not the patient. Therapy animals fall outside the scope of this policy.

e. Activity Animals. These animals are used in interactions designed to enhance quality of life. An example is use of a puppy to brighten the lives of children who are patients on a pediatric oncology ward. The animal is kept under the control and possession of medical staff or volunteers, not the patient. Activity animals fall outside the scope of this policy.

4. Access to Army Facilities and Spaces. Service dogs will be given access to those Army facilities and spaces generally open to the public, including (but not limited to) installations, hospitals, treatment facilities, recreational facilities, barracks and other structures, as long as such access does not compromise public health (including infection control standards), safety, readiness, mission accomplishment, and good order and discipline.

5. Acquisition of Service Dogs

a. The Army does not provide service dogs. With a view to assisting Soldiers as they transition to Veteran status, the Army will recognize only those service dogs obtained by eligible Soldiers from a source accredited by a VA-recognized organization. Reliance on those sources accredited by VA-recognized organizations also gives the Army an effective and efficient means to conclude that a service dog is qualified and capable of performing those tasks clinically required to assist the Soldier.

SUBJECT: Army Directive 2013-01 (Guidance on the Acquisition and Use of Service Dogs by Soldiers)

b. Eligible veterans may be authorized certain VA benefits related to recognized service dogs, such as payment for veterinary care and equipment required for optimal use of the dog. Soldiers should be aware that dogs obtained from sources not accredited by VA-recognized organizations may not qualify as service dogs and may be ineligible for VA benefits.

6. Deployment Status. Soldiers for whom a service dog is recommended are not deployable.

7. Determination of Eligibility for and Acquisition of a Service Dog. The following procedures must be used in determining eligibility for and acquisition of a service dog.

a. A Soldier may be identified as a potential candidate for a service dog by his/her primary care manager (PCM). Other medical providers familiar with the Soldier must make their recommendation for a service dog to the Soldier's PCM. Soldiers who believe they are potential candidates to receive a service dog may also request one from their PCM.

b. Upon receipt of a recommendation or request that a Soldier receive a service dog, the PCM will counsel the Soldier on the provisions of this directive and the potential effects of receiving a service dog. If, after counseling, the Soldier validates the recommendation or request for a service dog, the PCM will convene a multidisciplinary team consisting of the Soldier's PCM; a behavioral health provider; a command representative (an officer or senior noncommissioned officer) designated by the Soldier's unit commander; and, if the Soldier is assigned to an installation, an installation representative designated by the garrison commander (officer or senior noncommissioned officer). The PCM may invite the participation of other members necessary to enable the multidisciplinary team to make an informed decision, such as a veterinarian or unit medical provider who is familiar with the Soldier. The team will consider the following matters with a view to making appropriate recommendations to the first colonel or GS-15 in the Soldier's chain of command:

(1) whether a service dog is clinically required in light of the Soldier's documented medical conditions;

(2) whether the Soldier is suited for a service dog;

(3) whether any limitations should be placed on the Soldier's use of the service dog, such as specifying areas where a service dog may not accompany the Soldier or tasks assigned to the Soldier for which accompaniment by the service dog would not be permitted;

SUBJECT: Army Directive 2013-01 (Guidance on the Acquisition and Use of Service Dogs by Soldiers)

(4) whether appropriate accommodations are available for the Soldier and the service dog if the Soldier lives in barracks or family housing. In some circumstances, this may include consideration as to whether the Soldier should be allowed to move off post; and

(5) any other matters deemed appropriate for consideration.

c. The PCM will notify the Soldier of the multidisciplinary team's recommendation. If the team does not recommend a service dog for the Soldier or cannot reach a consensus, the PCM will refer the team's recommendation, together with its rationale or viewpoints, to the Deputy Commander for Clinical Services (DCCS) of the servicing military treatment facility for review. The DCCS will consider the factors set forth in paragraph 7b in making a recommendation and will provide written rationale for his/her recommendation.

d. If the multidisciplinary team or the DCCS recommends that the Soldier receive a service dog, the PCM will ensure that the Soldier has an existing Permanent-3 or Permanent-4 profile or is immediately assigned such a profile. The PCM will also make sure the Soldier is in the Disability Evaluation System or is immediately referred into the system. For Soldiers not already in a Warrior Transition Unit, the unit commander shall determine whether to recommend the Soldier's assignment to a Warrior Transition Unit.

e. Neither the multidisciplinary team nor the DCCS may issue a final decision on a recommendation or request for a service dog. The PCM will prepare a packet containing the multidisciplinary team's recommendation and the recommendation from the DCCS, if applicable. A sample packet is at the enclosure. The PCM will forward the packet through command channels to the first colonel or GS-15 in the Soldier's chain of command for decision. Each commander in the chain of command must document his/her recommendation as to whether the Soldier should or should not receive a service dog, as well as any recommended limitations on use of the service dog that are in addition to those the multidisciplinary team or DCCS proposed. The first colonel/GS-15 will consider those factors set forth in paragraph 7b in making his/her decision, according considerable weight to the clinical recommendations of the multidisciplinary team or the DCCS.

(1) If the first colonel/GS-15 approves the recommendation or request for a service dog, the decision is final. The first colonel/GS-15 will specify any limitations on use of the service dog.

(2) If the first colonel/GS-15 disapproves the recommendation or request for a service dog, he/she must provide a written rationale for the decision.

SUBJECT: Army Directive 2013-01 (Guidance on the Acquisition and Use of Service Dogs by Soldiers)

f. A decision by the first colonel/GS-15 to disapprove the recommendation or request for a service dog will be reviewed by the first general officer (GO) or member of the Senior Executive Service (SES) in the Soldier's chain of command, who also will consider those factors set forth in paragraph 7b and give considerable weight to the clinical recommendations of the multidisciplinary team or the DCCS. The first GO/SES will issue a final decision, provide a written rationale and, if the service dog is approved, specify any limitations on the Soldier's use of the service dog.

g. The PCM will notify the Soldier of the final decision.

(1) If a service dog is approved, the PCM will refer the Soldier to the VA's online resources at <http://www.va.gov/health/ServiceandGuideDogs.asp> so that the Soldier may seek to obtain a service dog from a VA-recognized source. Soldiers are responsible for obtaining their service dogs, including any associated expenses. Army approval is no guarantee that a VA-recognized source will provide a service dog. Once a VA-recognized source agrees to provide a service dog, the Soldier must notify his/her PCM and unit commander and give the PCM sufficient documentation that the service dog was obtained from a VA-recognized source.

(2) If a service dog is not approved, and if one or more of the factors set forth in paragraph 7b materially changes such that the PCM or other medical professional familiar with the Soldier again recommends a service dog, the PCM will convene a multidisciplinary team to consider the matter. The recommendation or request for a service dog will be processed in accordance with the procedures set forth in paragraph 7.

h. Before the Soldier obtains the service dog, the Soldier's unit commander will counsel the Soldier about installation and facilities access, any workplace issues and the need to keep the commander informed of any changes in the Soldier's condition that might affect the Soldier's ability to keep the service dog. If the Soldier is approved to move off post, the unit commander will coordinate with the garrison commander to initiate the Soldier's receipt of Basic Allowance for Housing.

8. If the Soldier is not approved for a service dog or if a Soldier is unable to obtain a service dog from a VA-recognized source, the Soldier may nonetheless obtain a dog, subject to installation policies on pets.

9. Dogs Acquired Before Effective Date

a. A Soldier who acquired a dog before the effective date of this policy, and for whom an authorized licensed medical provider previously determined the dog was clinically indicated (including psychological service dogs), may keep the animal provided he/she complies with the provisions of paragraph 10 (except paragraph 10g), maintains

SUBJECT: Army Directive 2013-01 (Guidance on the Acquisition and Use of Service Dogs by Soldiers)

the dog's proper health and behavior, and adheres to appropriate limitations on the use of the animal imposed by the chain of command.

b. Commanders, in consultation with the Soldier's current medical provider, are authorized and expected to take necessary actions to ensure the health, safety and proper use of such dogs within the command.

c. Commanders, in consultation with the Soldier's current medical provider, may refer such cases to the multidisciplinary team to evaluate whether a Soldier's continued or ongoing possession of a dog remains clinically indicated. If not, the Soldier may be allowed to retain the animal as a pet. Note: solely for the purposes of reviewing cases involving a previously acquired, clinically indicated (and documented) psychological service dog, commanders and the multidisciplinary team will not apply the VA accreditation requirements of this policy in making its recommendation.

d. Nothing in this policy should be construed to permit the prescription or acquisition of psychological service dogs after the effective date of this policy.

10. Care and Control of Service Dogs. Soldiers with service dogs that are subject to this policy shall comply with the following requirements:

a. Soldiers are solely responsible for caring for their dog, which includes feeding, watering, exercising, toileting, waste removal, stewardship and veterinary care. Soldiers must provide their unit commander with a Family Care Plan that includes a care plan for the service dog and update it at least annually.

b. Soldiers with service dogs must follow all applicable laws, rules and regulations related to service dogs and must maintain the dog's proper behavior. Soldiers and/or service dog providers may be responsible for any damages and injuries their dogs cause.

c. Soldiers will make sure their service dog wears a special vest or harness identifying it as a service dog at all times while on an installation or in Army facilities.

d. Service dogs may receive military veterinary care on a space-available basis in accordance with reference 1b. TRICARE policies in effect at this time exclude service dogs from coverage.

e. Soldiers must register their service dogs with the garrison provost marshal's office/directorate of emergency services (or installation equivalent), which will maintain a registry of service dogs residing or working on the garrison.

SUBJECT: Army Directive 2013-01 (Guidance on the Acquisition and Use of Service Dogs by Soldiers)

f. Soldiers must maintain documentation of the dog's current immunizations.

g. Soldiers must maintain proof that their service dog was obtained from a VA-recognized source. (This provision does not apply to a previously acquired, clinically indicated psychological service dog discussed in paragraph 8.)

11. Responsibilities. The Surgeon General is the proponent for this directive and shall:

a. establish and implement any necessary guidelines for clinical recommendations related to the need for a service dog.

b. monitor and track service dog employment to ensure compliance with references 1b and 1c and other applicable regulations, policies and guidance.

c. establish measures of effectiveness, annually review issues surrounding Soldiers with service dogs and submit a report of the review to the Secretary of the Army. Reporting requirements include:

(1) the creation of a registry of Soldiers with service dogs, together with the diagnosis applicable to each Soldier;

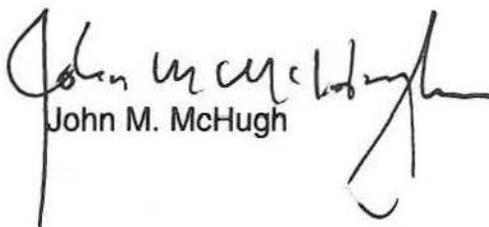
(2) the source of each service dog and an assessment of each Soldier's utilization rate for his/her service dog;

(3) an assessment of timeliness in the assignment of Permanent-3 or Permanent-4 profiles to Soldiers recommended to receive a service dog and of beginning the Disability Evaluation System process for such Soldiers; and

(4) a summary of Soldiers' dispositions after receipt of a service dog (for example, discharged from or retained on active duty).

12. This directive is effective immediately. Should the Department of Defense promulgate a service dog policy, The Surgeon General will expeditiously review and propose for my approval any changes to this directive required to conform to that policy. If the Department issues such policy, The Surgeon General shall, within 270 days, prepare and submit a comprehensive Army policy on service dogs for publication in an Army regulation.

Enclosure


John M. McHugh

SUBJECT: Army Directive 2013-01 (Guidance on the Acquisition and Use of Service Dogs by Soldiers)

DISTRIBUTION:

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Commander, U.S. Army Reserve Command

Director, Army National Guard

Director, Business Transformation

Executive Director, Army National Military Cemeteries

**SAMPLE MEMORANDUM RECOMMENDING APPROVAL OF A SERVICE DOG
FROM SOLDIER'S PRIMARY CARE MANAGER TO FIRST GENERAL OFFICER OR
MEMBER OF THE SENIOR EXECUTIVE SERVICE IN SOLDIER'S CHAIN OF
COMMAND**

PRIMARY CARE MANAGER'S OFFICIAL LETTERHEAD

OFFICE SYMBOL

Date

MEMORANDUM THRU Chain of Command

FOR (Insert Name of First General Officer or Member of the Senior Executive Service in the Soldier's Chain of Command)

SUBJECT: Recommendation for Approval of a Service Dog for (Insert Soldier's Name, Rank and Unit of Assignment)

1. A multidisciplinary team considered whether a service dog is clinically required for (insert Soldier's rank and name) and whether the Soldier is suited for a service dog. I participated on the team as the Soldier's primary care manager. Other team members were (insert names of team members and roles; for example, behavioral health provider, unit command representative).
2. The team recommends approval of a service dog for (insert Soldier's rank and last name). The service dog will assist (insert him or her) with (insert activities that formed the basis for the clinical recommendation).
3. The team recommends the following limitations on the use of the service dog: (insert any applicable limitations).
4. Endorsement of the team's recommendations by the Soldier's chain of command, including any limitations on use of the service dog that the command recommends, will be appended to this recommendation.
5. The Soldier has been placed on a (insert Permanent-3 or Permanent-4) profile and will be considered for medical separation or retirement through the Disability Evaluation System.

OFFICE SYMBOL

SUBJECT: Recommendation for Approval of a Service Dog for (Insert Soldier's Name, Rank and Unit of Assignment)

6. If approved, the Soldier must acquire a service dog from a source recognized by the U.S. Department of Veterans Affairs.

**PRIMARY CARE MANAGER'S
SIGNATURE BLOCK**

SAMPLE



DEPARTMENT OF THE ARMY

ORGANIZATIONAL NAME/TITLE
STANDARDIZED STREET ADDRESS
CITY, STATE AND ZIP + 4 CODE

SAMPLE CHAIN OF COMMAND RECOMMENDATION

USE APPROPRIATE LETTERHEAD

OFFICE SYMBOL

Date

MEMORANDUM THRU

MEMORANDUM FOR (Insert Name of First General Officer or Member of the Senior Executive Service in the Soldier's Chain of Command)

SUBJECT: Recommendation for Approval of a Service Dog for (Insert Soldier's Name, Rank and Unit of Assignment)

1. I have reviewed the multidisciplinary team's recommendation that (insert Soldier's name and rank), assigned under my command, receive a service dog.

_____ I recommend approval of this recommendation.

_____ I do not recommend approval of this recommendation.

2. Insert appropriate comments. (If the commander is recommending approval, the comments should include any suggested limitations on use of the dog in addition to, or different from, any that the multidisciplinary team recommended. If the commander does not believe additional limitations are required, he/she should document that position here. If the commander does not recommend approval of the team's recommendation, he/she should detail the rationale for disapproval here).

AUTHORITY LINE: (if necessary)

COMMANDER'S
SIGNATURE BLOCK



DEPARTMENT OF THE ARMY

ORGANIZATIONAL NAME/TITLE
STANDARDIZED STREET ADDRESS
CITY, STATE AND ZIP + 4 CODE

**SAMPLE GENERAL OFFICER/MEMBER OF THE SENIOR EXECUTIVE SERVICE
MEMORANDUM OF DECISION**

USE APPROPRIATE LETTERHEAD

OFFICE SYMBOL

Date

MEMORANDUM FOR Primary Care Manager of (Insert Soldier's Name, Rank and Unit of Assignment)

SUBJECT: Action on Recommendation to Approve a Service Dog for (Insert Soldier's Name, Rank and Unit of Assignment)

_____ I approve the recommendation for a service dog for (insert Soldier's name and rank). The Soldier's use of a service dog is subject to the following limitations (specify):

_____ I disapprove the recommendation for a service dog for the following reason(s):

My point of contact is (insert name, telephone number and email address).

APPROPRIATE
SIGNATURE BLOCK

CF:
CHAIN OF COMMAND