

DEFINITION OF REASONABLE ACCOMMODATION

24 CFR 100.204

A change, exception, or adjustment to a rule, policy, practice, or service may be necessary for a person with a disability to have an equal opportunity to participate in the program and 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 participate in a program or 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 limitation or barrier posed by the individual’s disability.

Different ways to describe reasonable accommodation include:

- Any change in the way things are customarily done that enables an individual with a disability to enjoy equal employment or housing opportunities
- Any change or adjustment to a job or housing environment that permits a qualified applicant, participant/tenant or employee with a disability to fully participate in the housing or application process, to meet tenancy requirements, or to enjoy the benefits and privileges of housing equal to those enjoyed by employees, applicants, participants or tenants without disabilities.
- A change allowed by management to how the terms and conditions of an individual’s participation in the program or tenancy are met, in consideration of a known disability, unless this would create an undue hardship and administrative burden on the agency.

FAIR HOUSING PROTECTIONS FOR HANDICAP/DISABILITY

*24 CFR 100.201 and
24 CFR 8.3*

A person with a handicap (“handicap” is the word written into the older laws) or disability is anyone who:

- Has a physical or mental impairment which substantially limits one or more of such persons’ major life activities
- Has a record or having such an impairment
- Is regarded as having such an impairment

DEFINITIONS OF THE TERM “DISABILITY”

PHA staff and hearing officers must understand two different definitions of “disabled.”

HUD DEFINITION OF A PERSON WITH A DISABILITY

24 CFR 5.403

In specific instances HUD uses a “strict” or “narrow” definition of who qualifies as a person with a disability. The HUD definition for “disabled” is used for eligibility determination, income, and rent calculation allowances. The applicant or participant/tenant must provide third-party documentation that he or she meets of three qualifying definitions under the HUD definition of disabled:

- The person meets the Social Security Administration definition of a person with disabilities as defined in 42 U.S.C. 423
- The person has a physical, mental or emotional impairment that:
 - Is expected to be of long-continued and indefinite duration
 - Substantially impedes their ability to live independently
 - Is of such a nature that the ability to live independently could be improved by more suitable housing conditions
- The person has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

DEFINITION OF A PERSON WITH A DISABILITY FOR PURPOSES OF REASONABLE ACCOMMODATION

24 CFR 100.201

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD/Social Security definition. This broader definition is to ensure that limitations posed by disabilities do not create a barrier to housing programs.

As mentioned previously, under this broader definition, the person must have a physical, mental or emotional impairment that substantially limits one or more of the person's major life activities. The impairment can include practically any condition, disease, illness, disfigurement or disorder, as long as the impairment substantially limits one or more major life activities.

- Major life activities include, but are not limited to: Caring for oneself, walking, seeing, hearing, breathing, learning, working, concentrating, thinking.

THE REASONABLE ACCOMMODATION PROCESS

*PIH Notice 2010-26,
24 CFR 966.7*

First, the PHA has an obligation to inform applicants and assisted families of the right for any person with disabilities to request a reasonable accommodation. The PHA should review forms, letters, posters and signs for inclusion of this information. Such a statement should be on applications for assistance, annual reexamination paperwork, warning or termination letters, and posted in PHA offices in an obvious and well-marked place.

Qualifying as a person eligible to request an accommodation is the first step in the reasonable accommodation process. It is the establishment of the person's right to make a request of the program (including the appeal/hearing process).

- When a reasonable accommodation is requested, the disability needs to meet the Fair Housing Act/ADA/504 definition.

HUD/DOJ Memo 2004

- The PHA *may not* inquire into the nature or extent of a disability.

HUD/DOJ Memo 2004

- If the disability is obvious or otherwise known, the PHA may not verify the disability.

However, the person must also show that they are limited by the program due to their disability, and that the requested accommodation will remove that limitation so that they can completely fulfill the program's requirements (including participating in the appeal or hearing). To say it another way, there must be a barrier to housing presented by the person's disability that causes this person, without removal of the barrier, not to have equal access to programming.

- PHA staff does not decide whether there is a "nexus" between the disability and the requested accommodation. This burden is placed on "knowledgeable professionals" as defined in PHA policy unless the requestor presents an obvious disability and obvious barrier in which case the PHA makes the accommodation without any need for further inquiry.

"If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact (name and phone number)."

"If you are a person with a disability who may need a special accommodation in order to participate in the hearing, please contact [hearing coordinator, with telephone number] no later than [date (a date in advance of the first proceeding)] to make any necessary arrangements."

An applicant/participant/tenant's request *triggers* the PHA's consideration of the need for an accommodation.

- The reasonable accommodation process may include fluid negotiations on a case-by-case basis. What is reasonable in one situation may not be reasonable in another. The PHA may not be able to exactly meet the specific request, but may offer alternative options.
- The essential intent of federal antidiscrimination laws is that each case should be treated on its individual merits.

Here is the process:

1. Was an accommodation requested?
2. Is this a person with disabilities?
3. Is there a nexus between the disability and the specific request?
4. Is the request reasonable?

CONSIDERATION OF REASONABLENESS OF REQUEST

A PHA can deny a request for reasonable accommodation if:

- The request was not made by or on behalf of a person with a disability
- There is no disability-related need (nexus) for the accommodation
- The accommodation will result in an undue financial and administrative burden for the PHA.
 - Whether an undue financial and administrative burden results is determined on a case-by-case basis reviewing factors such as the overall size of the PHA's program with respect to the number of employees, type of facilities, and size of budget; the type of operation, including the composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations.
- The accommodation would fundamentally alter the nature of the PHA's operations.
 - For example, require the PHA to waive an essential family obligation under the lease or voucher, or require the PHA to do something it is not in the business of doing.
- Even with an accommodation, there is a direct threat to the health or safety of other individuals, or threat of substantial physical damage to the property of others.

Notice PIH 2010-26

IF REQUEST IS NOT REASONABLE, OBLIGATION TO EXPLORE ALTERNATIVES

If the PHA finds that the request is not reasonable, the Fair Housing Act requires the PHA to explore alternatives, which may include conversations, or fluid negotiations on a case-by-case basis.

If there is a reasonable alternative that meets the individual's disability-related need, the PHA must grant it.