

SECTION 811 PROJECT RENTAL ASSISTANCE PROGRAM REASONABLE ACCOMMODATION – MARCH 1, 2018

Instructor: Debbie Piltch
Piltchassociates@gmail.com
Cell: (339) 364-4748

A few housekeeping items...

2

- All participant lines are muted.
- If time allows, there will be a Q&A session at the end of this webinar. You may submit questions in the 'Question' box throughout the webinar, or you may raise your hand during the Q&A and we will unmute your line. If we don't get to your question today, we will on the next webinar (more on that later).
- If you would like to print out the webinar slides for note-taking during this session, please find them in PDF format under the 'Handouts' drop down menu.

Today's Agenda

3

- The legal obligation of grantees and housing providers of the Project Rental Assistance (PRA) program to provide reasonable accommodation to applicants and residents with disabilities;
- When an accommodation is considered reasonable/unreasonable;
- Verification permitted/not permitted;
- Examples of reasonable accommodations;
- Common concerns raised; and
- Questions

Before we begin...



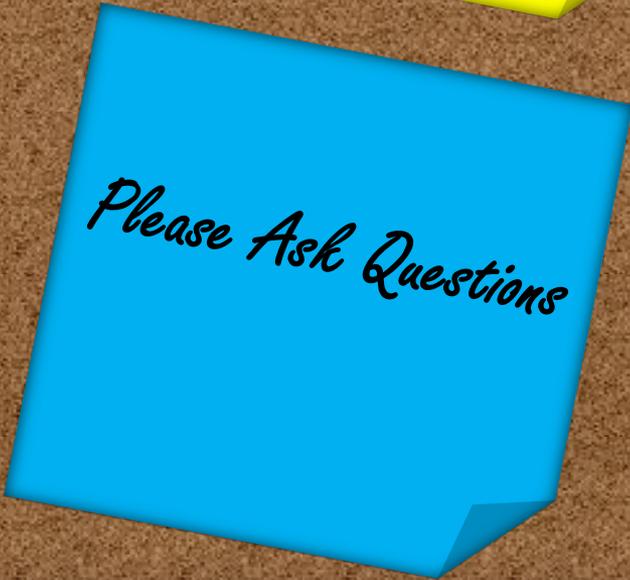
Please Be Present
Today



*Nothing Today Is
Legal Advice!*



Rely on Your
Agency/Company's
Internal Fair
Housing
Expertise/
Resources and HUD
Resources



Please Ask Questions

Why Do Grantees and Owners/Agents Have To Understand Reasonable Accommodation?

5

- ❑ Grantees and owners/agents involved in the 811 PRA program must comply with federal and state laws which prohibit discrimination against people with disabilities (as well as other protected groups).
 - ❑ The Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA).
- ❑ The refusal to make reasonable changes in rules, policies, practices, or services, or a physical change to a unit or the common area, when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, is a form of illegal discrimination.

What Is The Definition Of Disability For Civil Rights Purposes?

6

□ A person who:

1. Has a **physical or mental impairment** that **substantially limits** one or more **major life activities**;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment

- **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, alcoholism and drug addiction (vs. current use).
- **substantially limits:** significant or “to a large degree.
- **major life activity:** 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.

This Definition Is Very Broad

7

- ❑ It isn't the same as any definition of disability for Social Security.
- ❑ It isn't the same as the eligibility definition of a person with a disability to get into the 811 PRA program (or any public or assisted housing) or to be eligible for certain allowances against income.

What Is A Reasonable Accommodation?

8

- ❑ Although the concept of reasonable accommodation/modification is central to federal and state laws that prohibit discrimination against people with disabilities, different laws use different terminology.
 - ❑ For example:
 - ❑ **The Fair Housing Act** (which applies to all sites) uses two terms: **Reasonable Accommodation** to describe rules, policies, procedures and services and **Physical Modifications** to describe physical changes to a unit or the common area;
 - ❑ **Section 504** which applies only to entities/sites that receive federal dollars, such as funding through the 811 PRA program, uses one term, **reasonable accommodation** to describe both.
- ❑ For the purpose of today's webinar, reasonable accommodation includes changes in rules, policies, procedures, services and physical modifications because grantees and owners/agents must comply with both laws.

Because Grantees and Owners/Agents must comply with both Section 504 and The Fair Housing Act, they Are Required To Pay For A Reasonable Accommodation.

9

| Type of Change | Section 504 | The Fair Housing Act | State Laws |
|---|---|--|--------------------------------------|
| Changes In Rules, Policies and Procedures | The owner pays up to limits that will be discussed later. | The owner pays up to limits that will be discussed later. | Usually mirror the Fair Housing Act. |
| Physical Modifications | The owner pays up to limits that will be discussed later. | The Resident Pays. O/A may require: 1) the work be done in a workmanlike manner; 2) all necessary permits be pulled; 3) the resident return the unit (not common area) back to its original manner if the modification interferes with marketability; and 4) the resident put money in escrow if he/she has bad credit. | Usually mirror the Fair Housing Act. |

- It is important to note that accommodations relating to rules, policies, procedures and services, generally do not cost money.
- Costs are standardly associated with physical changes to a unit or the common areas, and statistically do not cost very much money.

The Obligation Applies Throughout The Occupancy Cycle

10

- Application and recert process
 - ▣ Alternative formats/plain language; how/where interviews are conducted
- Negative Tenancy History/criminal history and Consideration of Mitigating Circumstances ★
- Waiting list update
- Physical Modifications: Standard Physical Changes include: Grab bars; Garage door openers; Hand-held showers; Raised toilet seat; Automatic door opener; Carpet removal
- Services and Activities
- Assistance animals ★
- Live-in aides ★
- Internal Transfers (Owner Pays)
- Lease Violations/Evictions ★

We recognize that some of these topics are more complicated than others and will focus on specific topics in a second webinar.

Limits On Owner's Obligations

11

- ❑ A grantee or owner/ agent does not have to take any action that:
 - ❑ fundamentally alters the nature of their program; or
 - ❑ poses an undue financial and administrative burden.

What Is A Fundamental Alteration?

12

- ❑ A fundamental alteration is a basic change in the nature of the housing program.
- ❑ To determine if an accommodation would result in a fundamental alteration requires a determination of the primary purpose of the program and the practical components necessary to achieve the purpose. This is not a cost based analysis.
- ❑ If the reasonable accommodation request would require a grantee or owner/agent to provide a service that isn't part of the site's housing program it can be denied.
 - ❑ For example, staff walking an assistance animal for a resident with a disability.

How Is Undue Financial and Administrative Burden Determined?

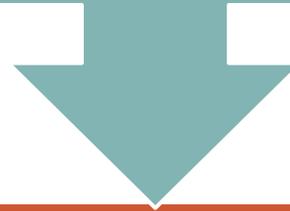
13

- ❑ Whether an accommodation will pose an undue financial and administrative burden must be determined on a request by request basis.
- ❑ Each grantees/property's administrative and financial capacity is different and can change during a fiscal year.
- ❑ Satisfied when an entity would not to be able to operate in a way that meets its Legal and contractual obligations.

What Is The Next Step For When An Accommodation is Determined Unreasonable?

14

The obligation doesn't end if the initial request is determined to be unreasonable.



The grantee/owner/agent must engage in interactive dialogue with the applicant/resident to determine what will meet their disability-related need, but not pose a fundamental change or undue financial and administrative burden to the property; failure to do so is a denial.

In the case of undue financial and administrative burden you must explore if and when the work or a portion of the work can be done. Person with a disability always retains the right to pay for the requested accommodation or up to the portion that makes it not an undue financial and administrative burden.

Know Your Program/Site's Policy

15

- How a request is made;
- The process for determining if an accommodation is provided;
- Applicable forms and documentation procedures;
- Who at the Grantee/site is responsible for compliance with Section 504; and
- Documentation

How Does Someone Get A Reasonable Accommodation?

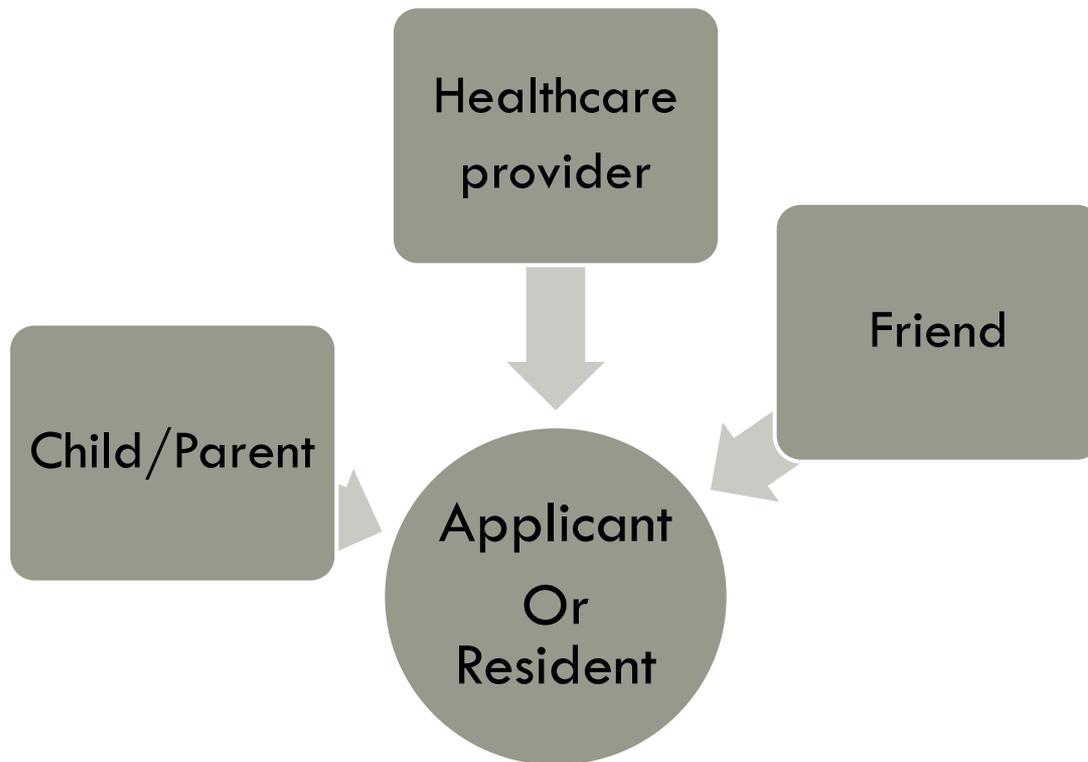
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- ❑ Someone must make a request.
- ❑ **The words reasonable accommodation aren't required.**
 - ❑ Would a reasonable person know/understand a request is being made?
 - ❑ If yes, then a request has been made.
 - ❑ A request may make a request to any employee.
 - ❑ If a resident makes a request (i.e. "I need a grab bar" or "I need a raised toilet"...) you must take action-you are on notice regardless of an employee's position.

Does The Person Making The Request Have To Be The Person With The Disability?

17

- ❑ No. It can be someone acting on the applicant/resident's behalf.



Unless the applicant/resident is a minor or under guardianship, confirm with the person that they want the requested accommodation.

- Remember, you'll also need to obtain a release of information from the individual if you need to obtain 3rd party documentation.

Can Staff Require Someone To Fill Out An Agency/Site Reasonable Accommodation Request Form?

18

- ❑ **No.** Staff can encourage them to do so, but you can't require it.
 - ❑ If someone doesn't want to fill out a form:
 - ❑ Explain that the purpose in having the request in writing is to avoid misunderstandings and ensure that you meet their needs.
 - ❑ Offer to help them fill it out or do it for them and have them initial its accuracy.
 - ❑ If someone still refuses to fill out the form send a letter confirming your understanding of the request.
 - ❑ **Note:** the person must sign a release form for you to be able to verify the person has a disability and/or the nexus if not obvious even if the person refuses to fill out the request form.

The Process Used For Determining If A Person's Request is Granted

19

- The following is always what is considered:
 - ▣ Does the person have a disability that meets the civil rights definition?
 - ▣ Does the person need the accommodation because of the disability? (Is there a nexus)
 - ▣ Does the accommodation pose a fundamental change in the program?
 - ▣ Will the accommodation result in an undue financial and administrative burden?

Note: Information gathered is limited to these inquiries.

If The Person's Disability Is Readily Apparent, Obvious Or Otherwise Known Can I Verify It?

20



Examples that someone has a disability that satisfies the civil rights definition:

- An applicant uses a guide dog;
- A resident uses a wheelchair, motorized scooter, or cane; and
- An applicant communicates with you using a sign language interpreter.

If The Nexus Between The Person's Disability And The Requested Accommodation Is Readily Apparent, Obvious Or Otherwise Known Can It Be Verified?

21



Reasonable Accommodation © Piltch Associates, Inc., 2.18

Examples of the nexus between the person's disability and the requested accommodation:

- A resident who uses a wheelchair requests that management assign her a parking space close to the building;
- An applicant who has a guide dog requests assistance in reading and completing an application.

How Is Readily Apparent And Otherwise Known Defined?

- ❑ HUD's guidance uses readily apparent and "obvious" interchangeably and suggests readily apparent is whether a "reasonable person" would find it so.
- ❑ Otherwise known includes someone receiving disability benefits.
- ❑ It may also include third-party verification provided to the grantee or owner/agent, such as a letter from a healthcare provider or social worker. The key is whether the documentation establishes:
 - ❑ Does the person have a disability; and
 - ❑ Does the person need the accommodation as a result of the disability.

What Do I Do If I Can't Get A 3rd Party To Return A Request Form?

23

- Keep trying to reach the provider via fax, phone and email, and document all efforts on the RA Log.
- Contact the applicant/resident, inform the person of your efforts and ask for assistance.
 - ▣ Offer to have the person come to the office and try together or conference the applicant/resident into the call.
 - ▣ Ask for another 3rd party.

Remember, Management needs to make every effort to respond to all requests. This means staying on top of things and keeping the applicant/resident informed.

What Happens Next?

24

- ❑ If the disability is obvious and the nexus is obvious or third party verifies the person has a disability and/or the nexus, the grantee or owner/agent makes a determination regarding the request:
 - ❑ Does it pose a fundamental change in the program?
 - ❑ Will it result in an undue financial and administrative burden?

What Does the Grantee/Site Do If The Accommodation Is Reasonable?

25

- ❑ Approve the Request.
- ❑ Inform the person of the request in writing, stating the approval and when any requested work will take place.
 - ❑ If a legitimate delay in implementation is expected explain why.

What Does A Grantee or Owner/Agent Do To Deny The Request?

26

- ❑ A request can only be denied if:
 - ❑ the person doesn't have a disability;
 - ❑ there is no nexus between the disability and the requested accommodation;
 - ❑ the request poses an undue financial and administrative burden or a fundamental change in the program.
- ❑ Must follow agency/site procedures.
 - ❑ Often this includes obtaining the approval of a Regional Manager and/or 504 coordinator before denying a request.

Next Step When An Accommodation is Determined Unreasonable

27

- ❑ An agency/housing provider's obligation doesn't end. Do anything up to the limit.
- ❑ “Should”* engage in an interactive dialogue with the requester: what will meet the person's disability related need but not pose a fundamental change or undue financial and administrative burden.
 - ❑ 504 Coordinator can assist.
 - ❑ *Please note that although HUD uses the term “should”, failure to engage in the dialogue may be considered discriminatory
 - ❑ It is a good business practice and in accordance with the spirit of the law to engage in the dialogue.
 - ❑ If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it.

If Undue Financial And Administrative Burden is Established

28

- Explore if and when the work or a portion of the work can be done.
- Person with a disability always retains the right to pay for the requested accommodation or up to the portion that makes it not an undue burden.

Concerns Housing Providers Commonly Raise Relating to Reasonable Accommodation/Modification

29

- Bad Precedent
- Not Treating People the Same is Discriminatory
- Number of Requests
- Timing of Requests

Concerns Housing Providers Raise In Relation To Reasonable Accommodation: Bad Precedent

30

- “Providing an accommodation/modification will set a bad precedent and result in other residents wanting the same request.”
 - ▣ This cannot be a basis for denying an accommodation.

Concerns Housing Providers Raise In Relation To Reasonable Accommodation: Not Treating People The Same Is Discriminatory

31

- ❑ Providing an accommodation for a resident and not doing it for another resident -who wants and needs it or who wants and doesn't need it will be “discriminatory” or perceived as “discriminatory”.
- ❑ **It isn't illegal for to deny a person an accommodation if they don't have a disability; or**
- ❑ **do not need the accommodation because of a disability.**
- ❑ Grantee/Owner/Agent could also deny it if the accommodation would pose an undue financial and administrative burden; it would be difficult to establish the accommodation poses a fundamental change if you had previously provided it.
- ❑ Staff may need to diffuse situations where residents believe management is acting out of favoritism.

Concerns Housing Providers Raise In Relation To Reasonable Accommodation: Number of Requests

32

- “There must be a limited number of accommodations a resident can request.”
 - ▣ The law doesn’t set a specific number.
 - ▣ Regardless of how many requests you receive from someone, the same process must be followed.

Concerns Housing Providers Raise In Relation To Reasonable Accommodation: Timing of Request

33

- “A person with a disability should be required to let a provider know they need an accommodation/modification at move-in.”
 - ▣ It is the applicant’s/resident’s choice when he/she makes a request.
 - ▣ An applicant/resident doesn’t waive their right to make a request because they didn’t ask at application.
 - ▣ An applicant/resident may make a request at any time during application or during tenancy.

Resources/Helpful HUD Guidance For Today's Webinar

34

- JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE: REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT, May 2004
<https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>
- JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE REASONABLE MODIFICATIONS UNDER THE FAIR HOUSING ACT, May 5, 2008
https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar_08.pdf
- Occupancy Requirements of Subsidized Multifamily Housing Programs (4350.3), (especially Chapter 2, CIVIL RIGHTS AND NONDISCRIMINATION REQUIREMENTS), updated in 2013,
https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3

Resources/Helpful HUD Guidance

35

- MassHousing's, A Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities, Originally produced under the Department of Housing and Urban Development's Fair Housing Initiatives Program (FHIP), updated in July, 2015,
[file:///C:/Users/Owner/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/RA_Handbook%20\(1\).pdf](file:///C:/Users/Owner/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/RA_Handbook%20(1).pdf)

HUD website:

- Reasonable Accommodations Under the Fair Housing Act

https://www.hud.gov/program_offices/fair_housing_equal_opp/ReasonableAccommodations15

- SECTION 504 FREQUENTLY ASKED QUESTIONS

https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq

Reasonable Accommodation - Part II

36

- Tuesday March 13 2:00 ET.
- Feel free to send in questions, situations to Ellen at efitzpatrick@tacinc.org.

Topics That Will Be Covered In The Next Webinar Include:

37

□ Screening

- ▣ Do I have to lower my program's/site's suitability standards if someone has a disability?
- ▣ Do I have to let an applicant with a disability into my program/site if the person has a negative tenancy history or criminal record?
- ▣ Do I have to let an applicant in if they currently illegally use a controlled substance? What if they use medical marijuana?

Topics That Will Be Covered In The Next Webinar Include:

38

- Assistance Animals
 - ▣ Do I have to permit assistance animals if I have a no pets policy?
 - ▣ What does someone have to establish to obtain an assistance animal?
 - ▣ Can I limited the size, type, breed of an assistance animal?
 - ▣ What can I require?

Topics That Will Be Covered In The Next Webinar Include

39

□ Live-In-Aides

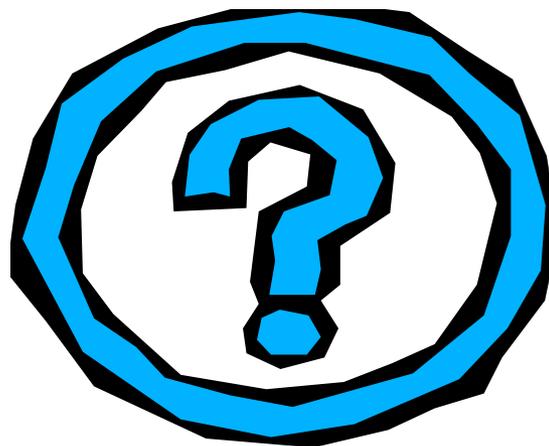
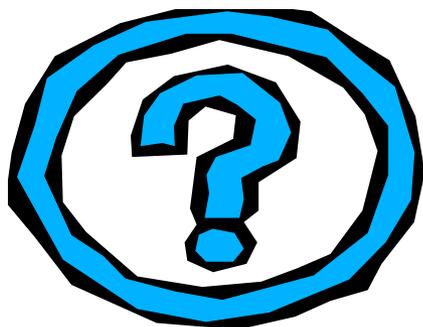
- What does someone have to establish to get approval for a live-in aide?
- Can I screen live-in aides? If yes, what for?

Topics That Will Be Covered In The Next Webinar Include:

40

□ Lease Violations

- ▣ What should I do if a resident with a disability violates the lease?
- ▣ If a resident requests a reasonable accommodation to address a lease violation, does a housing provider have to consider the request?



QUESTIONS ???

