



Fair Housing 2021: What Counselors Need to Know
November 16-17, 2021

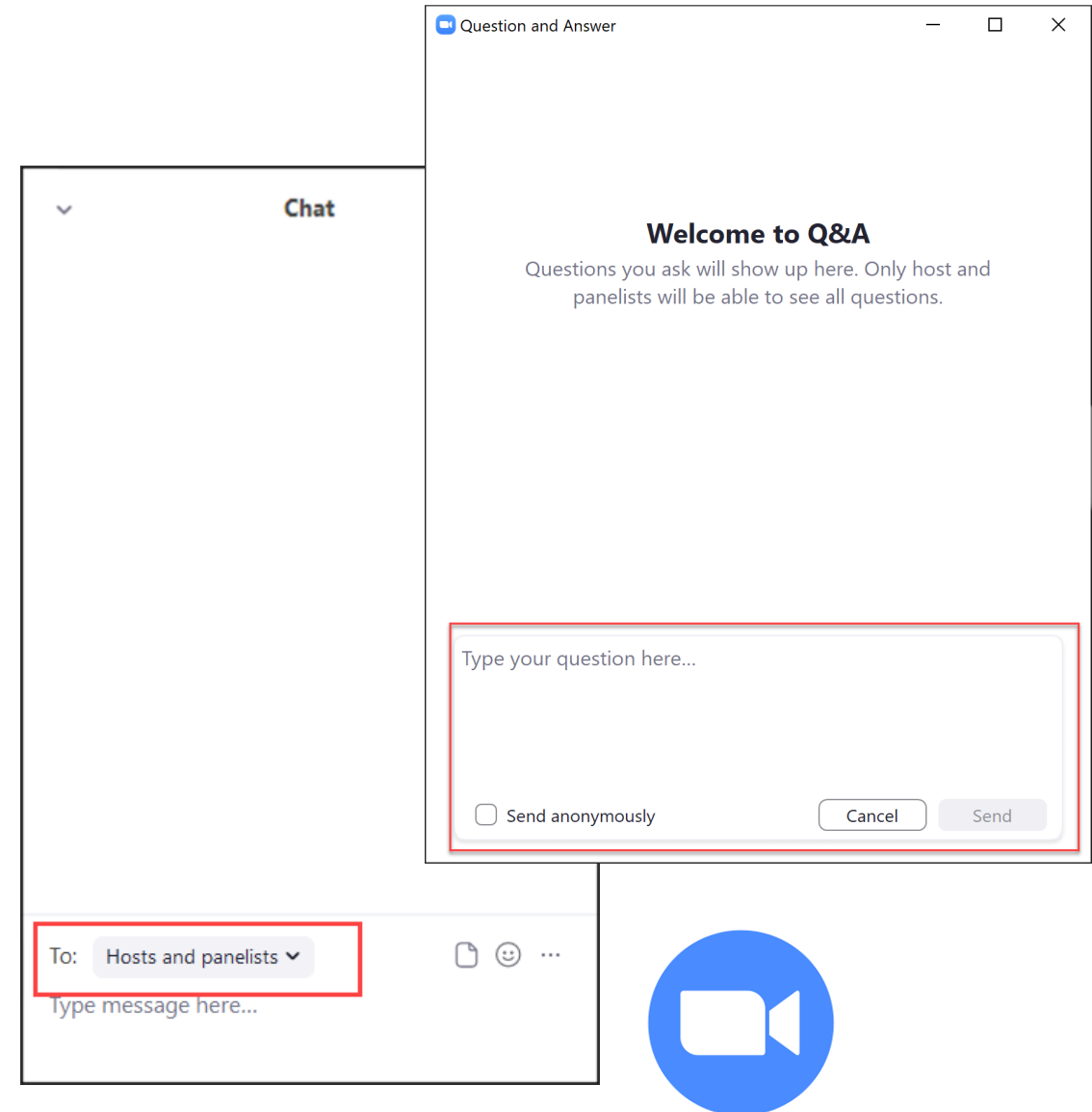


Rights for Persons with Disabilities

Wednesday, November 17th, 2021 | 12:00 PM – 1:00 PM

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Agenda

- Definitions, Protections and Basic Accessibility Requirements
- Reasonable Accommodations & Reasonable Modifications
- Enforcement
- Q & A

Speakers

- Michele Hutchins, Equal Opportunity Specialist, HUD Office of Fair Housing and Equal Opportunity
- Karen Hoskins, Lead Community Development Consultant, ICF

Definitions,
Protections and Basic
Accessibility
Requirements

Disability Definition in Housing

- The Fair Housing Act (FHA), Title VIII of the Civil Rights Act of 1968, as amended in 1988 prohibits discrimination against persons with disabilities.
- The Act defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities.
- The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, speaking, or working

Differences Between the Three Acts

1. **Fair Housing Act (FHA)** prohibits discrimination in private and federally assisted housing and housing-related transactions because of disability.
2. **Americans with Disabilities Act (ADA)** prohibits discrimination on the basis of disability in programs, services, and activities of state and local governments, and protects people with disabilities in places of public accommodation, including employment and transportation and some housing.
3. **Section 504 of the Rehabilitation Act** prohibits discrimination on the basis of disability in any federally-assisted programs or activities, including housing. It also covers standards for housing programs themselves are operated in a manner that is accessible to and usable by persons with disabilities accessible units as well designed, including:
 - New construction housing - a minimum of 5% of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments.
 - Rehabilitation housing – for 15+ units, the 5% and 2% covered above apply

FHA Disability Protections – 42 U.S.C. 3604(f)(1)

- To discriminate in the sale or rental
- Otherwise make unavailable, deny, or refuse to negotiate
- Because of buyer's or renter's disability, disability of a household member, or any person associated with them
- Example: Housing authority director refused to lease to a tenant with a disability because she was “concerned” for his safety.

FHA Disability Protections – 42 U.S. 3604(f)(2)

- Discrimination in the terms, conditions, or privileges of sale or rental
- Provision of services
- Provision of facilities
- Refusal to provide necessary reasonable accommodation
- Example: A renter with a disability is unable to enter the leasing office because the doors are too heavy to open, and the automatic door opener is broken. The leasing office ignores the requirement to fix the doors.

FHA Disability Protections – 42 U.S.C. 3604(f)(3)(A)

- Refusal to grant a request for reasonable modification where such a modification may be necessary to afford a person an equal opportunity to use and enjoy the dwelling
- Example: A tenant with a disability is unable to enter his unit because there is a two-inch step at the doorway. The tenant could request permission to make a reasonable modification by constructing a small ramp. If the landlord refuses, he violates the Act.

Prohibited Acts – 42 U.S.C. 3604(f)(3)(C)

- Failure to Design & Construct an accessible property
- Applies to all multi-family properties designed and constructed on or after March 13, 1991
- Includes 7 Basic Requirements
 - To help builders comply with these requirements, HUD issued in 1991 its [Fair Housing Act Accessibility Guidelines](#).



Seven Basic Accessible Design Requirements

1. Accessible entrances and accessible routes
2. Accessible and usable public & common use areas
3. Usable doors
4. Accessible route into and through the covered unit
5. Light switches, outlets, thermostats, & other environmental controls are in accessible locations
6. Reinforced walls for grab bars
7. Usable kitchens and bathrooms

Reasonable
Accommodations &
Reasonable Modifications

What is Considered a Reasonable Accommodation under the Fair Housing Act?

A change, exception, or adjustment to a rule, policy, practice or service, which may be necessary to afford an individual with a disability an opportunity to use and enjoy a dwelling unit, including public and common use spaces.



Examples of Accommodations

- Aid in filling out housing related documents or permitting an applicant to submit a housing application via a different means
- Assistance animals allowed at property with No Pets Policy or that exceed animal weight restrictions or that are on a restricted breed list
- Transferring a tenant from 3rd floor to 1st floor
- Allowing a tenant to pay rent when their SSDI check arrives instead of on the 1st of the month

Reasonable Accommodations

Common reasonable accommodation requests:

- Accessible parking space for a person with a mobility impairment
- Assistance Animals



Parking Spaces

Parking spaces may be requested as a reasonable accommodation to assist:

- Persons with mobility impairments or other disabilities that may affect the distance a person may walk
- Requires access aisle and curb cuts to be accessible
- Accessible spaces require signage that space is for persons with disabilities only

Assistance Animals

Assistance Animals are Not Pets.

“Assistance Animal” includes:

- Service Animals
- Emotional Support Animals
- Under certain circumstances, can include all animals, not just dogs

A No Pet Policy is permissible but must clearly state that the policy does not apply to assistance animals. Weight, breed, number, or size limitations also cannot be applied to assistance animals.

Reasonable Accommodation Example

Can a landlord charge an extra fee or require an additional deposit or insurance from applicants or tenants with a disability as a condition of granting a reasonable accommodation?

Reasonable Accommodation Example

No. Landlords may not require persons with disabilities to pay extra fees or deposits or to obtain additional insurance as a condition of receiving a reasonable accommodation.

What is a Reasonable Modification under the Fair Housing Act?

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.

Reasonable Modification Examples

- Widening doorways to make rooms more accessible for persons in wheelchairs
- Installing grab bars in bathrooms
- Lowering kitchen cabinets to a height suitable for persons in wheelchairs
- Adding a ramp to make a primary entrance accessible for persons in wheelchairs
- Altering a walkway to provide access to a public or common use area

Who Pays for a Reasonable Modification?

The person making the request pays.

Exception:

Recipients of federal funds, including housing authorities, must pay for reasonable modifications.

Reasonable Modification

If a person with a disability has made reasonable modifications to the interior of the dwelling, must they restore all of them when they moves out?

- The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where “it is reasonable to do so” and where the housing provider has requested the restoration.
- The tenant is not responsible for expenses associated with reasonable wear and tear.
- In general, if the modifications do not affect the housing provider’s or subsequent tenant’s use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state.

How to Assess Accommodation and Modification Requests?

- Reasonable accommodation and modification requests may be in writing or oral
- Landlord's form may be used but not required
- Some documentation may be requested

Assessing Accommodation and Modification Requests

1. Does the person seeking the accommodation or modification have a disability that substantially limits one or more major life activities?
2. Is the accommodation or modification necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling?



Assessing Accommodation and Modification Requests

What types of questions are landlords allowed to ask applicants/tenants regarding their disabilities?

Assessing Accommodation and Modification Requests

- Landlords MAY ask for:
 - Verification of disability if the disability is not obvious or otherwise known to the landlord
- Landlords MAY NOT:
 - Ask for a specific diagnosis
 - Ask about the nature or severity of disabilities
 - Require use of a form to submit request or verify disability or need

Assessing Accommodation and Modification Requests

- If the disability is obvious and the need for the requested accommodation is readily apparent, additional information can NOT be requested.
- Example: A resident who uses a walker requests a parking space near the building entrance. Both the disability and the need are known.

Assessing Accommodation and Modification Requests

If the disability is not obvious, disability related information can be requested that:

1. Verifies that the person meets the definition of disability under the Fair Housing Act.
2. Describes the needed accommodation.
3. Shows the relationship between the person's disability and the requested accommodation.

Assessing Accommodation and Modification Requests

A disability can be verified by:

- Proof that the person receives Social Security Disability Benefits or other disability-based government benefits.
- A letter from a healthcare provider, such as a doctor, nurse, therapist, social worker or other reliable 3rd party.

It is up to the requestor which type of proof they choose to submit.

Assessing Accommodation and Modification Requests

Once a landlord has documentation that the accommodation or modification is needed because of the disability, the request must be granted, unless one of the 3 grounds for denial applies.

Assessing Accommodation and Modification Requests

Factors for Denial:

1. Undue Financial and Administrative Burden (determination made on a case-by-base basis)
2. Fundamental Alteration of the Nature of Provider's Operation
3. Direct Threat to Health and Safety (determination made on a case-by-base basis)

Enforcement

Enforcement

- HUD FHEO investigates claims of discrimination against persons with disabilities.
- If you or a client believes their disability-related rights have been violated, you may contact FHEO to file a complaint.

Filing a Fair Housing Complaint

- **Online.** You can file a complaint with FHEO online in [English](#) or [Spanish](#).
- **Email.** You can download [this form](#) (also available in [Arabic](#), [Cambodian](#), [Chinese](#), [Korean](#), [Russian](#), [Somali](#), [Spanish](#), and [Vietnamese](#)) and email it to your local FHEO office at the email address on [this list](#).
- **Phone.** You can speak with an FHEO intake specialist by calling 1-800-669-9777 or 1-800-877-8339. You can also call your regional FHEO office at the phone numbers on [this list](#).
- **Mail.** You can print out [this form](#) (also available in [Arabic](#), [Cambodian](#), [Chinese](#), [Korean](#), [Russian](#), [Somali](#), [Spanish](#), and [Vietnamese](#)) and mail it to your regional FHEO office at the address on [this list](#).

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Relevant Resources

- [HUD FHEO's Disability Webpage](#)
- [Fair Housing Act](#)
- [Section 504 of the Rehabilitation Act of 1973](#)
- [Americans with Disabilities Act](#)
- [Joint Statement of HUD and DOJ on Reasonable Accommodations](#)
- [Joint Statement of HUD and DOJ on Reasonable Modifications](#)
- [Notice FHEO-2020-01: Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act](#)

Office of Housing Counseling & Fair Housing Equal Opportunity



- **Event Webpage:**

<https://www.hudexchange.info/programs/housing-counseling/fair-housing-conference-2021/>

- **Find us at:**

www.hudexchange.info/counseling

- **Email us at:**

Housing.counseling@hud.gov

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