



California's protection & advocacy system

Fact Sheet: Disability Discrimination and HUD Section 8 Vouchers

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This fact sheet discusses the rights of people with disabilities in the Section 8 Voucher Program. Please know that different rules may apply to the Project-Based Section 8 Program.

Introduction

The Section 8 voucher program (now called the Housing Choice Voucher Program) is a federal housing program that helps low-income families and people with disabilities afford safe, decent housing in the private housing market. The program works by giving participant families a voucher that pays for part of their monthly rent. Participant families are then free to use this voucher to rent from a housing provider of their choice, as long as the rent is within the amounts set by the public housing authority (often referred to as PHAs) and the housing authority approves the tenancy.

The Section 8 Program is funded through the U.S. Department of Housing and Urban Development (HUD) and is administered locally by a network of housing authorities. The program is subject to various state and federal laws that protect people with disabilities from discrimination by private landlords and public housing agencies. Federal laws include Section 504 of the Rehabilitation Act (29 U.S.C. Section 794), the Fair Housing Amendments Act (42 U.S.C. Sections 3601-3631), and Title II of the Americans with Disabilities Act (42 U.S.C. Sections 12131-12165). California state laws include the Fair Employment and Housing Act (Gov't Code Sections 12955-12956.2), the Unruh Civil Rights Act (Civ. Code Section 51), the Disabled Persons Act (Civil Code Sections 54.1 and 54.2), and Government Code Section 11135.

Disability-based housing discrimination can take many forms. It includes unequal treatment, refusing to rent to someone because of a disability, physical or communication access barriers, harassment, retaliation, and discriminatory statements. It also includes the failure to provide reasonable accommodations and reasonable modifications.

Reasonable Accommodations and Modifications

In the context of housing, an accommodation is an exception or change to a landlord's rules, policies, or practices. A modification is a physical change to a building, rental unit, or common area.

Under disability discrimination laws, landlords must provide reasonable accommodations and reasonable modifications when necessary to provide someone with a disability an equal opportunity to use and enjoy housing. Accommodations and modifications must be necessary due to a disability, and they must be reasonable. Accommodations and modifications are reasonable if they do not fundamentally alter the nature of the services provided and do not impose an undue burden on the landlord. In private housing, landlords must pay for the cost of any reasonable accommodation, while tenants must pay for the cost of any reasonable modification.

Like landlords, housing authorities are also required to provide reasonable accommodations when necessary to provide someone with a disability equal access to the Section 8 Program. Examples include:

- **Higher Payment Standards** – Payment standards represent the most a housing authority can pay to help a family with rent. A housing authority will set payment standards for each unit size, and they are generally somewhere between 90% and 110% of the area's fair market rate (FMR) for each unit size. A housing authority can approve a higher payment standard as a reasonable accommodation, but only up to 120% of the FMR. A housing authority may establish payment standards higher than 120% of the FMR as a reasonable accommodation, but only after approval from HUD.
- **Higher Subsidy Standards and Live-in Aides** – A subsidy standard is a standard established by a housing authority to determine the appropriate number of bedrooms for families of different sizes and compositions. A housing authority must approve a higher subsidy standard if necessary as a reasonable accommodation. This could be to accommodate a live-in aide, to provide extra room for necessary medical equipment, or for some other disability-related reason.

- **Higher Utility Allowances** – In cases where tenants pay for their own utilities, a housing authority may provide a utility allowance to account for the cost of reasonable utility consumption. A housing authority must approve a higher utility allowance if necessary as a reasonable accommodation for a tenant who uses disability-related equipment that results in higher utility bills.
- **Longer Search Times** – The initial term of a Section 8 Voucher is at least sixty (60) calendar days. This means that a person must generally find a rental unit within 60 days of receiving their voucher. A housing authority must extend the term of the voucher if necessary as a reasonable accommodation.
- **Reinstatement on Waiting List** - A housing authority may remove a voucher applicant from the waiting list if they do not respond to requests for information and updates. However, if an applicant did not respond to such a request because of a disability, the housing authority must reinstate the applicant in the family's former position on the waiting list.
- **Renting From a Relative** – Federal regulations generally prohibit housing authorities from approving a tenancy if the owner of the unit is a relative of the tenant. However, a housing authority may approve such an owner if necessary as a reasonable accommodation for the tenant so long as the owner does not also live in the unit.
- **Assistance with Finding Accessible Unit** - When a housing authority issues a voucher to a family that includes a person with a disability, it must provide a current listing of available accessible units known to the housing authority and, if necessary, otherwise assist the family in locating an accessible unit.

Obtaining Reasonable Accommodations and Modifications

These are the steps to take to obtain a reasonable accommodation or reasonable modification from a housing authority or housing provider:

1. Write a request for reasonable accommodations / modifications. Your request should explain the following:
 - that you are a person with a disability (you do not need to disclose the type of your disability);
 - the ways in which your disability affects your ability to use and enjoy your home / access the housing authority's services;

- the specific accommodations / modifications you need; and
 - the date by which you expect a response.
2. Unless your disability and need for accommodations / modifications is apparent, obtain a support letter from your doctor or other treating professional. This letter should explain why you need the requested accommodation / modification because of your disability.
 3. Send your written request and support letter. Be sure to keep copies for your records.

A sample letter requesting reasonable accommodations / modifications and a sample support letter are at the end of this fact sheet.

Informal Hearings

If a housing authority denies your request for reasonable accommodations, you should ask the housing authority for an informal hearing. Although federal regulations do not guarantee the right to an informal hearing for reasonable accommodation requests, many housing authorities include the right to an informal hearing in their administrative plans. Please know that the procedures for requesting an informal hearing will vary for each housing authority. However, most housing authorities have a deadline for requesting an informal hearing. Be sure to check your denial letter and the housing authority's administrative plan to make sure you request a hearing before the deadline.

Administrative Complaints

If you believe your landlord or a housing authority has refused to provide you with a reasonable accommodation or has otherwise discriminated against you because of your disability or the disability of someone you live with, you can file an administrative complaint with the California Department of Fair Employment and Housing (DFEH) or with HUD.

You can file an administrative complaint with DFEH within one year of the most recent date of discrimination. Information on how to file a complaint with DFEH can be found at <https://www.dfeh.ca.gov/filing-a-complaint-online/>, or by calling (800) 884-1684 (voice) or (800) 700-2320 (TTY). You can appeal a DFEH decision to the DFEH Director within 10 days of the decision.

You can also file an administrative complaint with HUD. If you are filing a complaint against a private landlord, you must file with HUD within one year. If you are filing against a housing authority, you must file with HUD within 180 days. Information on how to file a HUD complaint can be found at 1-800-669-9777 or:

https://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination.

Civil Litigation

You also have the option of enforcing your rights through a private civil lawsuit. Please be aware that statutes of limitations restrict the timeframe for filing litigation and you could potentially lose claims if you do not act within that timeframe. These deadlines can be as short as two years from the date of discrimination.

If you intend to sue the housing authority, be aware of the Government Tort Claims Act which requires that a government tort claim be filed within six months of a discriminatory incident before bringing a lawsuit for money damages against a state or local governmental entity. More information about tort claims can be found at: [Tort Claims--Filing Claims Against Public Entities Under the California Tort Claims Act](#). Please note that this website links to the form for claims against the state or a state agency or employee, which may not apply in your case.

If you are seeking less than \$10,000 in money damages, you may file a discrimination case in Small Claims Court. The statutes of limitations discussed above will apply. You cannot use a lawyer if you go to small claims court. For more information, see Disability Rights California, *A Guide to Small Claims Court: How to Sue if a Business or Landlord Discriminates Against You Because of Your Disability*, at:

<https://www.disabilityrightsca.org/publications/a-guide-to-small-claims-court-how-to-sue-if-a-business-or-landlord-discriminates>.

Other Resources

For more information about disability-based housing discrimination, the Housing Choice Voucher Program, and your right to request reasonable accommodations and modifications, please see the following publications and sample letters:

- Disability Rights California has published a series of fact sheets on the rights of people with disabilities in housing, which can be found here: <https://www.disabilityrightsca.org/publications/housing>

- Technical Assistance Collaborative, *Section 8 Made Simple*, available at: <http://www.tacinc.org/knowledge-resources/publications/e-books/section-8-made-simple/>
- Bazelon Center for Mental Health Law, *What Fair Housing Means for People with Disabilities*, available at: http://www.bazelon.org/wp-content/uploads/2018/05/Fair-Housing-Guide_2018-Update.pdf
- Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, available at: https://www.hud.gov/sites/documents/DOC_7771.pdf
- Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Modifications Under the Fair Housing Act*, available at: https://www.hud.gov/sites/documents/DOC_7502.PDF
- Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act*, available at: https://www.ada.gov/doj_hud_statement.pdf

Sample Letter to Housing Provider Requesting Reasonable Accommodation or Modification

[Date]

Dear [Landlord, Housing Authority, Homeowners Association]

I am writing to request reasonable accommodations/modifications for my disability/disabilities.

I live at/am applying to rent your property at [address]. Because of my disability, I need the following accommodations: [list accommodations/modifications].

My physician/psychiatrist/psychologist/therapist/social worker/occupational therapist /other individual [describe] has deemed these accommodations/modifications necessary in light of my disability. Please see the attached letter from [doctor or professional's name].

Federal and state law require that a housing provider reasonably accommodate tenants/occupants and applicants who have disabilities. Please respond to this request by [date]. Feel free to contact me at [your phone number and/or e-mail address] if you have any questions. Thank you.

Sincerely,

[Your name]

[Your address]

Sample Verification Letter

[Date]

To [Landlord, Housing Authority, and Homeowners Association]:

I am the physician/psychiatrist/psychologist/therapist/social worker/occupational therapist for [Your name], and am familiar with his/her condition. (S)he has a disability that causes certain functional limitations. These limitations include [list functional limitations that require the requested accommodation].

[The requested accommodation] is necessary for [Name] to live in the community and use and enjoy his/her dwelling by [describe how the accommodation will assist or support the individual].

Thank you for providing this reasonable accommodation for [Name].

Sincerely,

[Name and Title]

We want to hear from you! Please complete the following survey about our publications and let us know how we are doing! [\[Take the Survey\]](#)

For legal assistance call 800-776-5746 or complete a [request for assistance form](#). For all other purposes call 916-504-5800 (Northern CA); 213-213-8000 (Southern CA).

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>