

October 10, 2023

## Snakes on a Plane, in an Apartment, or at the Supermarket? Assistance Animals Under Three Federal Statutes

People with disabilities commonly request permission to be accompanied by an assistance animal at a range of locations, from airplanes to supermarkets to apartment buildings. The legal requirements that apply to these requests can vary by animal species, disability, and business environment. This In Focus reviews the federal disability laws governing assistance animals, as contained in three federal statutes and their regulations.

### Statutory Overview

A variety of federal and state laws govern service animals. This In Focus concentrates on provisions applicable to businesses, found in three federal statutes: the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101–12213; the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705; and the Fair Housing Act (FHA), 42 U.S.C. §§ 3601–3631. Title III of the ADA requires reasonable modifications to policies, practices, and procedures to allow people with disabilities access to “public accommodations,” that is, businesses and nonprofits open to the public. 42 U.S.C. § 12181. Most businesses, large and small, fall under the ADA (though most religious facilities are exempted).

Aside from the ADA, separate statutes govern disability access with respect to two specific types of businesses. The ACAA regulates airline service. The ADA does not cover air carriers, although it may govern other aspects of airport access. The FHA regulates both commercial and noncommercial housing providers—property owners, housing managers, homeowner and condominium associations, insurers, real estate agents, housing authorities, and colleges and universities, as well as others. While the FHA covers the housing those entities provide, the ADA may cover other parts of the businesses, such as leasing offices, open to the public.

The ADA, ACAA, and FHA each require a business or nonprofit to make the reasonable modifications that a person with a disability needs to have equal opportunity to enjoy and use its services. Under these statutes, a disability is a physical or mental impairment that substantially limits one or more major life activities. Modifications can include exceptions to a no-animal or no-pet policy for an assistance animal, though the statutes differ as to which animals they protect.

### Other Laws

Several other laws, not further discussed here, may be relevant to some assistance animal requests. The ADA’s Title II applies requirements like those in Title III to state and local government services, programs, and activities, whether conducted by governments or their contractors. Title II covers local parks, police services, voter

registration, and public education facilities, among other things. ADA’s Title I extends similar protections in the employment context.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, requires accommodations in federal and federally funded programs and activities, applying rules similar to those in the ADA. The Affordable Care Act, 42 U.S.C. § 18116, through cross-reference to the Rehabilitation Act, applies disability protections to many health care providers. As a practical matter, many health care providers and federally funded entities are also public accommodations falling under the ADA. The Congressional Accountability Act, 2 U.S.C. § 1302(a), applies ADA and Rehabilitation Act standards to the legislative branch. The Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482, governs special education programs.

In addition, some state laws contain more expansive rules for accommodating assistance animals, including protections for people without disabilities who seek accommodations for service animals in training.

### Animals Protected Under the ADA and ACAA

The ADA and ACAA regulations require entities to accommodate only one type of assistance animal: a *service* animal. 14 C.F.R. § 382.3; 28 C.F.R. §§ 36.104, 36.302(c). ADA regulations, established by the Department of Justice, define a service animal as one that has been trained to do work or perform tasks related to an individual’s disability. Only two species of animals qualify for ADA regulatory protection: dogs and miniature horses. (Miniature horses are included to accommodate dog allergies.) ACAA regulations, administered by the Department of Transportation (DOT), require accommodations only for trained dogs. For example, a dog may lead a blind person around obstacles, alert someone with epilepsy about an oncoming seizure, or retrieve dropped objects for a wheelchair user. A dog need not be professionally trained to qualify; it may be trained by its owner.

Some untrained animals may act as support, comfort, or companion animals. These animals provide assistance just by being with a person and may assist with such disabilities as anxiety, depression, or post-traumatic stress disorder. Many creatures have featured in support animal accommodation requests, including dogs, horses, alligators, ducks, marmosets, snakes, parrots, and rats. In particular, requests for certain animals to board aircraft, including a squirrel, pig, peacock, and boa constrictor, have garnered media attention. These support animals, however, are not eligible for ADA protection under existing regulations, regardless of species. In 2020, in part because of

“disruptions caused by requests to transport unusual species of animals onboard aircraft,” DOT changed ACAA regulations to allow only trained dogs. (As discussed below, the FHA protects many support animals.) Support animals are distinct from trained animals providing psychiatric assistance. The ADA and ACAA could protect a dog trained to sense anxiety attacks and take specific action, for example.

What should an ADA- or ACAA-covered business do if asked to accommodate a service animal? When the animal’s function is not obvious, agency guidance provides that staff may ask (1) if it is a service animal needed because of a disability, and (2) what tasks it has been trained to do. 28 C.F.R. § 36.302(c)(6). Guidance specifies that staff should not ask about the nature of a person’s disability or for documentation, although airlines may require DOT forms verifying a service dog’s health, behavior, and training. If a patron does not have a disability, or if the animal is not trained to assist with that disability, these disability laws would not apply.

Staff may not charge extra fees for service animals, but covered businesses or government services also need not provide care or supervision for the animals. An animal’s handler must care for, clean up after, and control the animal. The animal’s handler must use a harness, leash, or other tether, unless this would interfere with the animal’s performance of its tasks. If a leash or harness cannot be used, the handler must control the animal with voice commands, signals, or other effective means. 28 C.F.R. § 36.302(c)(4) (animals on planes must be leashed or tethered). If the handler fails to control the animal, or if it is not housebroken, staff may exclude it. 28 C.F.R. § 36.302(c)(2).

Covered businesses and nonprofits need only accommodate service animals if reasonable, and this will depend on the circumstances. For example, it may be reasonable to allow a service animal in many health care facilities, but not reasonable to allow it in an operating room. Agency guidance recommends that staff permit service animals in areas customers are allowed to go, including, for example, self-serve foodservice areas, doctor’s offices, and other sanitary environments. Staff generally may not require people with service animals to use separate facilities.

Even if allowing a service animal would be reasonable for most businesses, a facility may deny the accommodation if it shows that, under the circumstances, the animal poses a direct threat to health or safety, would impose an undue hardship, or would fundamentally alter the nature of the business or service. For example, a zoo may exclude service dogs from areas where dogs would disrupt the animals on display. An airline must permit travelers to carry service animals on their laps, if it can be done safely, but need not upgrade passengers to first-class service to make room for the animals. The duty to accommodate does not overrule legitimate health and safety requirements. Swimming pools, then, need not permit dogs in the water. Additionally, the business may exclude an animal if its behavior or history show it to be unsafe.

### Animals Protected Under the Fair Housing Act

Compared to the ADA and ACAA, the FHA, as applied through regulations and agency guidance, provides more protection for people with disabilities living with assistance animals. Reasonable modifications in housing required under the FHA generally include allowing residents to keep assistance animals, including untrained support animals, even if a provider has a no-pet policy. A housing provider may ask about an animal’s function and request verification to the same extent it requires tenants to authenticate other representations in lease agreements. Staff may also ask for reliable documentation that the resident has a disability and needs an assistance animal, if the need is not obvious.

A housing provider may also consider the species. The Department of Housing and Urban Development (HUD) specifies in FHA guidance that requests for animals commonly kept in households, such as cats, dogs, fish, small birds, or rodents, are generally reasonable. The agency does not include reptiles (other than turtles), barnyard animals, and other nondomesticated animals as common household animals. A resident who asks to keep an animal not commonly kept in a household, such as a snake or miniature pony, has, in HUD’s view, the substantial burden of proving a disability-related need or other unique circumstances. One example might be allergies preventing use of a dog or plans to keep the animal outside. As an example of unusual circumstances, HUD describes a capuchin monkey trained to perform such tasks as opening cabinets and switching on lights. According to HUD, complaints of denied assistance animals are increasing and are one of the most common types of fair housing complaints.

As in the ACAA and ADA, if an animal poses a direct threat to health or safety or is an undue burden on the housing provider, it need not be accommodated. A housing provider is never responsible for the animal’s care. While the provider may not charge a fee for an assistance animal, it may charge a tenant for any damage.

### Considerations for Congress

When legislating in this area, Congress may consider whether to amend the multiple statutes regulating assistance animal requests. Because protections for assistance animals arise in regulations, Congress may choose, instead of enacting statutory specifications, to direct relevant agencies to adopt particular regulations. Congress could weigh the need for uniformity versus context-specific rules. It could set requirements for certain business settings, certain types of animals, or for particular disabilities. Statutory protections might be tailored to service animals, such as protections for service animals in training, separate rules for untrained support animals, or accreditation or registration for assistance animals. Provisions in the FAA Reauthorization Act of 2023, S.1939, 118th Cong. (2023), and H.R. 4049, 118th Cong. (2023), for example, would require the FAA to set up a pilot program to exempt registered “known service animal users” from air travel documentation requirements.

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