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October 24, 2017

Regenia Y. Hawkins, Regional Director
Office of Public and Indian Housing
Department of Housing and Urban Development
801 Cherry Street, Unit #45
Suite 2500
Fort Worth, Texas 76102

RE: Demand that HUD Direct Dallas Housing Authority to Reinstate its Request for Proposals for Project Based Vouchers for Neighborhood Pilot Program of Permanent Supportive Housing for Persons with Intellectual or Developmental Disabilities

Dear Ms. Hawkins:

On behalf of our client, Community for Permanent Supportive Housing (CPSH),¹ I write to demand that HUD immediately instruct the Dallas Housing Authority (DHA) to reinstate its Request for Proposals for Project Based Vouchers for Neighborhood Pilot Program of Permanent Supportive Housing for Persons with Intellectual or Developmental Disabilities (RFP) and make awards to bidders who met the RFP's criteria.

As you well know, DHA issued the RFP on July 31, 2016, offering up to 50 project-based vouchers (PBVs) that would provide community-based single-family housing options for adults with intellectual or developmental disabilities (I/DDs). After months of missing projected deadlines for awards, DHA informed CPSH at a meeting on April 18, 2017, that DHA had decided to withdraw the RFP altogether based on consultation with HUD. During that meeting, DHA told CPSH that if it granted a reasonable accommodation to permit an owner of a property

¹ CPSH is a non-profit corporation recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization. Its mission is to work with families, the government, service providers and other community partners to create safe, affordable housing for adults with intellectual/developmental disabilities in Collin, Dallas, Denton, Ellis, Kaufman, Rockwall, and Tarrant Counties, Texas. It worked with DHA to develop and publicize this RFP to address the significant and continuing need for permanent, affordable and community-based housing for individuals with intellectual and developmental disabilities. The organization has been forced to divert significant resources to counteract the unlawful rescission of the RFP. Moreover, CPSH's mission has been significantly impaired and frustrated as a result of these actions. Individuals known to CPSH were encouraged to apply for the opportunity offered under the RFP and they, too, have been injured directly and concretely by these actions.

assisted with a PBV to rent to his or her own child, it understood that HUD would “levy fines” against DHA.

The withdrawal of the RFP means that as many as 50 adults with I/DDs have had to remain in less integrated, more institutional settings, an outcome contrary to the commands of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Fair Housing Act (FHA) and HUD’s own regulations and guidance.

After we wrote to DHA on August 15, 2017, requesting that DHA reinstate the RFP and make awards to successful bidders, DHA confirmed that it had relied on direction from you and other HUD regional staff—in February and March 2017²—that it was not permitted to provide the above-referenced accommodation. The subsequent letter to you from DHA Senior Vice President/Chief Operating Officer David Zappasodi, dated September 27, 2017, actually quotes your direction verbatim. According to Mr. Zappasodi, you said HUD is “unable to identify any special provision that would allow an owner to rent to a relative as a means of providing a reasonable accommodation” and that “[w]hile there appears to be no special regulatory provisions, you may be able to seek approval on a case-by-case basis through a regulatory waiver request.”

In plain terms, you advised DHA that moving forward was a risky proposition, and that it should not issue PBVs in support of community integration of adults with I/DDs. Based on this limited evidence alone, it is clear that DHA’s decision to rescind the RFP and deprive people with intellectual and developmental disabilities of the opportunity to live in the community was based, in substantial part, on your erroneous interpretation of HUD regulations. Evidently, you based your response on an obscure bit of commentary in the preamble to the 2005 PBV regulation (at 70 Fed. Reg. 59907) rather than on the 2014 regulation which was controlling law during the pendency of the RFP. HUD’s 2014 rulemaking repudiates the 2005 comment and leaves no doubt that a reasonable accommodation allowing a voucher holder to be related to an owner is permitted under HUD regulations. It says that a public housing agency (“PHA”):

may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, *unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.*

24 C.F.R. § 983.251(a)(4) (emphasis added). The preamble to that rulemaking makes it clear that HUD sought to remove any ambiguity about the availability of a reasonable accommodation for a family member residing in the property. 79 Fed. Reg. 36146, at 36148 (June 25, 2014)

² The March 16, 2017 e-mail from your staff member, Garrett Sauve (which was copied to you) erroneously informed CPSH—and, by extension, at least four parents of adults with I/DDs who are CPSH constituents—that HUD regulations “specifically prohibit[DHA] from approving an owner to rent to an immediate family member as a means of providing a reasonable accommodation,” and that any DHA request for a regulatory waiver would have to be submitted to HUD as well as that “[t]here are not guarantees that a regulatory waiver will be approved.”

(discussion of final rule); *see also* 77 Fed. Reg. 28742, at 28747 (May 15, 2012) (discussion of proposed rule).

This regulation remains in effect today. Notably, this regulation does *not* prohibit a HUD-funded entity from awarding a grant to any grantee. If applied as here, such a prohibition – because an applicant had a relative who had a disability – would clearly violate civil rights requirements. In our view this language indicates that at the point when tenancy is being determined and DHA approves a unit, a family member may be permitted to reside in the property when the PHA determines that approving the unit is an appropriate accommodation.

We read the current regulation to *require* HUD to authorize DHA to move forward with selection of one or more eligible grantees under the RFP. To the extent any winning bidder proposes tenancy by a family member, DHA must consider whether approving such a tenancy is necessary as a reasonable accommodation. There is no authority in the regulations for prohibiting a PBV grant from being made to an owner who happens to have a family member who is an individual with a disability. Nor do those regulations require HUD to review or approve a DHA decision to grant an accommodation or regulatory waiver. There is simply no need for such a procedure, as the regulation is clear on its face.

Had you considered the operable regulation, DHA could have proceeded with its RFP and CPSH constituents likely would now be living in integrated housing in the community. As it is, HUD and DHA have each violated their obligations under the ADA, Section 504, the FHA, and their corresponding regulations. *See generally* 24 C.F.R. §§ 9.102, 9.130(a), 9.130(b)(1), 9.130(b)(4) and 9.130(d).

Simply directing DHA to do what it should have done will not suffice to make CPSH and its constituents whole. Rather, to remedy its own violations of law, HUD must immediately:

1. Withdraw its objections to the DHA's RFP, and confirm that position in writing.
2. Withdraw its instructions to DHA to request a regulatory waiver to proceed with the RFP.
3. Adopt clear instructions at the national level to correct HUD's apparent misunderstanding of the requirements of the PBV regulations and permit applications from potential owners who may wish to rent to family members.
4. Provide training to all employees of the Office of Public and Indian Housing nationally to correct HUD's improper actions here.
5. Reimburse CPSH for its reasonable attorneys' fees and expenses in correcting these violations of federal law.

Please let me know by November 15, 2017 if HUD is prepared to make this right on a voluntary basis.

RELMAN, DANE & COLFAX PLLC

Sincerely,

A handwritten signature in blue ink, appearing to read "Sara K. Pratt". The signature is fluid and cursive, with a large initial "S" and a long horizontal stroke at the end.

Sara K. Pratt
Glenn Schlactus