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August 15, 2017

Troy Broussard
President and CEO
Dallas Housing Authority
3939 North Hampton Road
Dallas, TX 75212

Dear Mr. Broussard:

This firm represents the Community for Permanent Supportive Housing (CPSH) with respect to the Dallas Housing Authority's (DHA) decision to rescind its Neighborhood Homes IDD PBV Request for Proposals (RFP). The RFP was issued on July 31, 2016, proposals were submitted, and DHA announced that it had been canceled earlier this year. As you know, the RFP concerned 50 project-based vouchers that would provide community-based single-family housing options for adults with intellectual/developmental disabilities.

The RFP permitted reasonable accommodations to allow a property owner's family member to live in a property while receiving a voucher. DHA attempts to justify its rescission and failure to proceed with selections and awards on the ground that the Department of Housing and Urban Development (HUD) precludes this type of reasonable accommodation for project-based vouchers, relying on a comment HUD made during a 2005 rulemaking process. That reliance is unfounded. In a subsequent 2014 rulemaking, HUD adopted a rule the effect of which was to reject the earlier comment. By doing so, HUD left no doubt that a reasonable accommodation to permit a potential resident related to the owner is permitted under HUD regulations. 24 C.F.R. § 983.251(a)(4). DHA's cancellation of the RFP based on its refusal to consider reasonable accommodation requests is in plain violation of the Fair Housing Act (42 U.S.C. § 3604(f)); Section 504 of the 1973 Rehabilitation Act (29 U.S.C. § 794); and Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12101 – 12213) as well as the terms of its own RFP.

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 for individuals with intellectual and developmental

disabilities. As a result of DHA's actions, the organization has been forced to divert significant resources to counteract DHA's unlawful rescission of the RFP. Moreover, CPSH's mission has been significantly impaired and frustrated as a result of DHA's actions.

A. Federal Statutory and Regulatory Context

The Fair Housing Act, Section 504 of the Rehabilitation Act, and Title II of the ADA all require covered entities to make reasonable accommodations, or exceptions, to policies, practices or procedures to permit an individual with a disability to participate in or benefit from a program.¹ Section 504 and ADA Title II also mandate the provision of services and housing in the most integrated setting that is appropriate for the individual.² All of these laws are applicable to DHA.

HUD provided funding for the project-based vouchers at issue. **In general, its regulations require an owner to certify at the execution of a Housing Assistance Payments (HAP) contract covering project-based vouchers that the owner or principal of the property "is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit."** 24 C.F.R. § 983.210(e).³

In the rulemaking for the 2005 version of 24 C.F.R. § 983, HUD chose not to include a reasonable accommodation provision that would, notwithstanding § 983.210, permit owners to rent to close family members with a disability. In response to a comment urging such a provision, as already existed for tenant-based vouchers, HUD stated that it would "create[] a systematic incentive to owners to misuse the program. Persons requesting a reasonable accommodation in policies in order to effectively participate in the housing choice voucher program are not harmed by restricting the exception to renting to relatives to the tenant-based program."⁴

Of critical importance for present purposes, in 2014, HUD modified the same project-based voucher regulations to permit owners to have a close relative reside in their property as a reasonable accommodation to an individual with a disability. The provision states that a public housing agency ("PHA"):

¹ See, e.g., 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204; 29 U.S.C. § 794; 24 C.F.R. § 8.33; 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(7).

² See, e.g., 24 C.F.R. § 8.4(d); 28 C.F.R. § 35.130(d) ("A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999).

³ In addition, an owner may not reside in the property, see 24 C.F.R. § 983.53(b), but that restriction is not at issue here.

⁴ 70 Fed. Reg. 59892, at 59907 (October 13, 2005) (discussion of final rule).

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). HUD stated that this section was revised to remove any ambiguity about the availability of a reasonable accommodation for a family member residing in the property.⁵ This regulation remains in effect today.

Accordingly, under HUD's regulations which were in effect when the RFP was issued, and which are still in effect, a public housing agency (PHA) like DHA is to determine, after approval of a project-based voucher application and when participants are selected, whether a reasonable accommodation is needed with respect to a family member with a disability who wishes to reside in the property. That is, the decision on whether a reasonable accommodation should be granted is made by the PHA and it occurs after the award of project-based vouchers to a project is completed. The request for a reasonable accommodation is made when an applicant with a disability seeks to participate in a particular project that is owned by a close relative. That a reasonable accommodation may later be requested cannot be a legitimate basis to deny an owner's application for a voucher because HUD explicitly permits this exact type of reasonable accommodation.

This process adheres to the principles emphasized in the 2013 *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead*: "[I]ndividuals with disabilities, like individuals without disabilities, should have choice and self-determination in housing and in the health care and related support services they receive. For this reason, HUD is committed to offering individuals with disabilities housing options that enable them to make meaningful choices about housing, health care, and long-term services and supports so they can participate fully in community life."⁶

B. DHA's Actions Violate These Requirements

DHA's RFP initially adhered to HUD's regulation permitting reasonable accommodations for family members in connection with project-based vouchers. The Pre-Proposal Conference Questions and Answers about the RFP contain explicit provisions that would permit an owner of a property that is eligible under the RFP to be a family member of a resident of the property if the situation is considered and approved

⁵ 79 Fed. Reg. 36146, at 36148 (July 25, 2014) (discussion of final rule); see also, 77 Fed. Reg. 28742, at 28747 (May 15, 2012) (discussion of proposed rule).

⁶ Statement of the Department of Housing and Urban Development on the Role of Accomplishing the Goals of Olmstead (June 4, 2013), available at <https://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>

by DHA as a reasonable accommodation. These provisions are consistent with the concepts of reasonable accommodation and integrated living that are contained in the federal civil rights laws identified above, as well as HUD's regulations specific to section 8 project-based vouchers. DHA subsequently told CPSH that it was rescinding the RFP because it is not authorized to permit this accommodation. For the reasons already explained, that is wrong; HUD regulations make plain that DHA does have this authority, and DHA's wholesale refusal to consider exercising it in connection with applications for tenancy at homes with project-based vouchers is unlawful.

In addition, any information DHA may have been provided by HUD in response to its questions, whether or not accurate, cannot release DHA from its obligation to follow federal law in the operation of its section 8 voucher program. See, e.g., *Garcia v. Washington Cty. Dep't of Hous. Servs.*, No. CV 05-1789-MO, 2006 WL 897984, at *4, *5 (D. Or. Mar. 31, 2006), holding that a housing authority must make reasonable accommodations to permit a relative with a tenant-based voucher to reside with an owner despite HUD's advice to the contrary. We understand a HUD representative may have indicated to DHA before the RFP was canceled that reasonable accommodations for family members are not available in connection with project-based vouchers, but that unquestionably false representation does not alter the legal requirements for granting accommodations.

When DHA halted the process for project-based vouchers for housing, it interfered with the availability of community-based housing for persons with disabilities and it effectively denied individual persons with disabilities the ability to be considered for housing opportunities, whether or not they might ultimately reside in housing owned by a close relative. DHA's actions have foreclosed the availability of community-based housing with people with intellectual or developmental disabilities, whether or not DHA's actions were sanctioned by HUD. Moreover, the decision to halt this project and instead move to project-basing vouchers in multifamily housing (as DHA says it will now do) will deny people with disabilities the same types of housing choices available to people without disabilities and (it) is inconsistent with DHA's obligation to assure that housing is available to people with disabilities in the most integrated setting.⁷

C. DHA Must Reinstate the RFP and Provide Project-Based Vouchers in a Manner that Comports with Federal Civil Rights Law

On behalf of CPSH, we demand that DHA immediately take the following steps:

- Make awards within 10 days from the date of this letter from the current pool of applicants for the RFP without regard to whether or not they are a close family member of an individual with a disability.

⁷ *Olmstead v. L.C.*, *supra* note 2, affirming that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the Americans with Disabilities Act (ADA).

- Within 15 days from the date of this letter, establish a clear reasonable accommodation procedure for use by potential applicants with disabilities who wish to reside in a property whose owner is a close family member after a HAP contract is executed and establish non-discriminatory criteria for decisions on these requests.
- Within 15 days from the date of this letter, accept requests for reasonable accommodations from potential residents of any project-based housing funded through DHA who may be close relatives of an owner.
- Within 30 days from the date of this letter, adopt a policy that clarifies that participation in an LLC or Special Needs Trust is not considered to be ownership that is affected by the provisions of close family relationships in future DHA offerings.
- Continue offering RFPs on a rolling basis that support project-based housing for persons with intellectual and developmental disabilities to meet the needs of community-based housing for this population.
- Pay appropriate damages and attorneys' fees to CPSH.

If DHA fails to do so, CPSH will consider all of its legal options to bring DHA into compliance, including litigation.⁸

DHA's potential financial liability if this matter must be litigated is substantial. First, there is no meaningful chance DHA would prevail in court given the clear factual record demonstrating legal violations. Second, DHA would be liable for CPSH's damages and the cost of injunctive relief to restore the housing opportunities it has taken away from people with disabilities. In connection with the unlawful denial of a reasonable accommodation to just a single individual, we note that another municipal housing authority was required to pay \$150,000 in damages and implement other remedial actions. See *Voluntary Compliance Agreement Between The U.S. Department of Housing and Urban Development and Housing Authority of Baltimore* (June 2013).⁹ Third, the willful and egregious nature of DHA's conduct supports significant punitive damages. Finally, DHA would be liable for CPSH's attorneys' fees and costs, in

⁸ CPSH's standing to bring suit against DHA should this matter not be resolved amicably is well-established. See, e.g., *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982) (organizational standing established by diversion of resources and frustration of mission showing a concrete and demonstrable injury to the organization's activities); *Fair Housing of Marin v. Combs*, 285 F.3d 899 (9th Cir. 2002) (injury to organization found based on non-litigation activities). We also note that the standing of applicants denied an opportunity to pursue a voucher is likewise well-established. See, e.g., *Teton Historic Aviation Found. v. U.S. Dep't of Defense*, 785 F.3d 719, 724-25 (D.C. Cir. 2015).

⁹ Available at <https://portal.hud.gov/hudportal/documents/huddoc?id=HBCVCA.pdf>.

addition to the fees and costs of its own defense, because the civil rights laws that DHA has violated provide for fee-shifting in favor of prevailing plaintiffs.

This office is available to discuss the matter with you in more detail and to develop a mutually agreed upon plan for DHA's remedial actions. Please contact the undersigned at (202) 728-1888 within ten (10) days from the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara K. Pratt". The signature is fluid and cursive, with a large initial "S" and "P".

Sara K. Pratt
Counsel

Relman, Dane and Colfax PLLC