



U. S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

FHEO Region V
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard – Room 2101
Chicago, Illinois 60604-3507

Office of Fair Housing and Equal Opportunity

September 30, 2014

Irene McBride, Board Chair
Alexander County Housing Authority
c/o Martha Franklin, Executive Director
100 Ohio Street
Cairo, Illinois 62914-0191

Dear Ms. McBride:

SUBJECT: Letter of Findings of Noncompliance
Civil Rights Compliance Review of the Alexander County Housing Authority
Section 504 Review Number: 05-14-R004-4

On May 30, 2014, the United States Department of Housing and Urban Development (“HUD”), Office of Fair Housing and Equal Opportunity (“FHEO”), initiated a compliance review of the Alexander County Housing Authority (“ACHA”). FHEO reviewed compliance with Title VI of the Civil Rights Act,¹ Section 504 of the Rehabilitation Act, and Section 3 of the Housing and Urban Development Act.² FHEO investigators from the Chicago Regional Office and the Denver Regional Office conducted an on-site review from June 24 through June 26, 2014.

In addition to the FHEO review, other HUD program offices, including the Office of Public and Indian Housing (“PIH”), the Office of Labor Relations, and the Departmental Enforcement Center simultaneously reviewed ACHA’s compliance with their offices’ respective regulations. The review was prompted by findings made under a previous PIH review, initiated on September 10, 2013.

Applicable Law

Section 504 of the Rehabilitation Act states that:

No otherwise qualified individual with a disability in the United States, as defined in section 705 of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

¹ Published under separate cover as Title VI Review Number: 05-14-R002-6.

² Published under separate cover as Section 3 Review Number: 05-14-R004-3.

assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. 29 U.S.C. §794(a).

The implementing regulations provide specific prohibitions which include, but are not limited to the following:

Except as otherwise provided... no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. 24 C.F.R. §8.20.

A recipient shall operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. 24 C.F.R. §8.24.

Owners and managers of multifamily housing projects having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit... 24 C.F.R. §8.27.

The Section 504 regulations "appl[y] to all applicants for, and recipients of, HUD assistance in the operation of programs or activities receiving such assistance." 24 C.F.R. §8.2. Generally, the entire operation of a municipal corporation such as a public housing authority is considered to be a program or activity for the purposes of Section 504. In this case, the "program or activity" subject to this Section 504 review is the entirety of the operations of the ACHA, including, but not limited to the management of its low-income public housing program.

Background

The ACHA manages public housing in the Cairo, Illinois area, including the areas outside of the City of Cairo, but within Alexander County, Illinois. According to the 2012 American Community Survey ("ACS"), it is estimated that 1,752 out of the 7,736 non-institutionalized residents of Alexander County, or 22.6% of the population within ACHA's service area, have a disability. Within the City of Cairo, an even greater proportion of the population is disabled, according to the 2012 ACS. It is estimated that 766 out of the 2,765 non-institutionalized residents of the City of Cairo, or 27.7%, have a disability.

The managerial staff at ACHA include the current Executive Director, Martha Franklin, who has worked in that capacity since early 2013. Franklin's duties include managing the day-to-day operations of the housing authority. In addition, Franklin is in charge of approving or denying reasonable accommodation requests. Prior to that, Franklin was the Finance Director, where she worked as an assistant to the former Executive Director, James Wilson.

Donna Holman is the Chief Leasing Officer and Assistant Site Manager. Holman has been at the ACHA for 28 years. Her duties include managing the entire process of move-ins, move-outs, transfers, updating records, and lease enforcement. Holman also receives reasonable accommodation requests from residents.

Analysis

Accessible Dwelling Units

For older housing stock, the Section 504 implementing regulations set a target 5% objective for accessible dwelling units; as alterations and new construction proceed, a public housing authority is expected to work towards that goal of making 5% of the units in its portfolio accessible to people with physical disabilities.³ The same is true of common areas; that these facilities shall, to the maximum extent feasible, be made accessible to individuals with physical disabilities.⁴ The applicable accessibility standards for purposes of complying with Section 504 are the Uniform Federal Accessibility Standards (“UFAS”).⁵

In response to FHEO’s request, ACHA asserts that 21 of its 473 units, or approximately 4.44%, have been designed to be made accessible for people with physical disabilities. As part of its compliance review, FHEO staff was able to inspect 8 of these 21 units that ACHA holds out as accessible, as well as common areas and management offices.

While the ACHA-managed housing stock was built long before the introduction of UFAS, housing authorities such as ACHA are required to perform a “transition plan” and “needs assessment,” for both non-housing facilities and existing housing programs, respectively, in order to work towards meeting UFAS requirements.⁶ Although it is clear that ACHA has attempted to work towards compliance with UFAS, neither of these two documents were provided to FHEO in the course of its review.

ACHA discusses the topic of physical accessibility in its Admission and Continued Occupancy Policy (“ACOP”). It reiterates that ACHA must comply with Section 504, the ADA, the Fair Housing Act, and other applicable laws, and continues to state that “[t]he design, construction, or alteration of PHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS).

In general, FHEO has found numerous concerns with the design and construction of ACHA’s accessible units, as well as many features of the common areas. For the specific areas of non-compliance, please see the attached “**Alexander County Housing Authority UFAS Accessibility Assessment.**”

In particular, FHEO staff discovered that many units deemed to be “accessible” contained a staircase leading to second-floor bedrooms. FHEO staff was told that wheelchair lifts had at one

³ See 24 C.F.R. §8.23(b)(1).

⁴ *Id.*

⁵ See 24 C.F.R. §8.32(a).

⁶ See 24 C.F.R. §8.21(c)(4) and 24 C.F.R. §8.25(c).

time been in-place, but had since been removed. When asked about it, Franklin was under the impression that the lifts had been removed a long time ago, and was uncertain why that had happened.

Occupancy and Admissions Policies

The Section 504 implementing regulations require that housing authorities adopt suitable means to assure that information regarding the availability of accessible housing and programs reaches eligible individuals with disabilities, with respect to both current and prospective program participants.

With respect to its policies, ACHA has an entire section on the topic of non-discrimination contained within its ACOP. It appears to be comprehensive and in compliance with the relevant HUD regulations. For example, with respect to reasonable accommodations, it states that:

“[t]he PHA will ask all applicants and resident families if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the PHA, by including the following language: ‘If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the housing authority.’ A specific position and phone number will be provided as the contact for requests for accommodation for persons with disabilities.”

However, the FHEO review determined that there is nothing in the application for new residents that discusses reasonable accommodation. The Chief Leasing Officer, Donna Holman, stated to FHEO staff that rather than provide written materials, she instead inquires verbally as to an applicant’s need for a reasonable accommodation.

Furthermore, ACHA does not maintain pre-application materials, so of course there is no published information about reasonable accommodations being distributed to potential applicants.

ACHA does provide a reasonable accommodation request form in its “lease-up” package for program participants who have made it through the application phase.

When asked about the reasonable accommodation approval process, Holman stated that Franklin, the Executive Director, ultimately determines who is approved or denied, but Holman doesn’t believe that anyone has ever been turned away. When asked about approvals or denials, Franklin explained that she hasn’t really been asked for a reasonable accommodation, although she does recall an instance when someone requested a bigger unit. Franklin then added that she is aware that some residents of Connell Smith, in AMP 3, have physical disabilities. She mentioned that one resident in particular had requested a curved shower rod. Finally, when asked about how reasonable accommodation requests are tracked, Franklin said that this was something Donna Holman would handle.

With respect to physical modifications of units, one of the ACHA maintenance technicians, Robert Fitzgerald, stated that he has in the past responded to requests for tenants. He explained that the requests came from Franklin, and he has received requests for things such as grab bars and taller toilet seats. He further explained that the requests came from Franklin, who he described as “very accommodating.”

When asked if ACHA has a “service” or “assistance animal” policy, Franklin explained that she wasn’t sure, but that ACHA does provide a “pet policy.” The written pet policy submitted to FHEO does in fact distinguish between “animals that are used to assist persons with disabilities.” Furthermore, it goes on to say that:

“Assistive animals are allowed in all public housing facilities with no restrictions other than those imposed on all tenants to maintain their units and associated facilities in a decent, safe and sanitary manner and to refrain from disturbing their neighbors.”

No other assistance or service animal policy was ever provided to HUD by ACHA.

Findings

The FHEO review determined that ACHA’s accessible units and common areas do not comply with UFAS standards, and as a result, ACHA is in violation of 24 C.F.R. §8.20. Furthermore, there is no evidence that ACHA has completed a needs assessment or transition plan, in accordance with 24 C.F.R. §8.21(c)(4) and 24 C.F.R. §8.25(c).

In addition, upon review of its admission and occupancy policies (and their implementation), FHEO has determined that ACHA is not in compliance with other Section 504 requirements. Specifically, in its pre-application and application materials, ACHA lacks an effective method of communicating its reasonable accommodation request process and other program requirements for people for disabilities. Furthermore, ACHA lacks a transparent method for tracking and responding to reasonable accommodation requests for existing program participants. Finally, ACHA lacks a support or assistance animal policy. As a result, ACHA is in violation of 24 C.F.R. §§8.24 and 8.27.

Conclusion

The Department finds the Recipient in violation of Section 504. This letter addresses only the issues discussed herein and should not be interpreted as a determination of the Alexander County Housing Authority’s compliance or noncompliance with Title VI, Section 3, or in any other respect.

The issuance of a Letter of Findings (“LOF”) under Section 504 is discussed at 24 C.F.R. § 8.56. Under Section 504 the recipient may request a review of this preliminary Letter of Findings by the reviewing civil rights official. A request must be made within 30 days of receipt of this letter by submitting a written statement of the reasons the letter of findings should be modified in light of supplementary information. For the purposes of a request for review, supplementary information means new and material information not previously made available during the

course of the investigation. If the request does not include such information, it will be denied without further review and a formal written determination of non-compliance will be made.

If the Recipient does not request that the letter of findings be reviewed, a formal finding will be issued within fourteen (14) calendar days after the thirty-day period for the request for review has expired.

HUD prefers to achieve an informal voluntary resolution through the execution of a Voluntary Compliance Agreement (“VCA”) between HUD and the recipient. We invite the Alexander County Housing Authority to enter into an informal resolution. If the noncompliance cannot be corrected by informal means, compliance may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. See 24 C.F.R. §8.57.

Within the next 30 days, my staff will be in contact with suggestions for the terms of a VCA. You may also contact me directly at (312) 913-8400.

Sincerely,



Maurice J. McGough
FHEO Region V Director
Office of Fair Housing and
Equal Opportunity

(Enclosure)

cc: Martha Franklin
Executive Director, Alexander County Housing Authority

Antonio Riley
Regional Administrator, Region V

James Cunningham
Deputy Regional Administrator, Region V

William E. Wilkins
Director, Chicago Office of Public Housing

Harold McNally
Chairman, Alexander County Board of Commissioners