



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

April 5, 2021

**BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND ELECTRONIC MAIL**

Gitel Fischer, General Partner  
Carbrook Associates, LP  
410 Troy Avenue  
Brooklyn, NY 11213

Mr. Robert Kaplan  
80 Maiden Lane  
Suite 1502  
New York, NY 10038

**REDACTED**

Subject: Section 504 and Title VI Compliance Reviews of Carbrook Associates, LP,  
HUD Case Nos.: 02-18-0013-6 (Title VI); 02-18-0041-4 (Section 504)  
Notice of Suspension, Termination, and Refusal to Grant Federal Financial  
Assistance and Opportunity to Cure

Dear Ms. Fischer:

This letter serves as notice to Carbrook Associates, LP (Carbrook) that HUD is proceeding to suspend, terminate, and refuse to grant federal financial assistance because Carbrook is in noncompliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1, and HUD's implementing regulations. *See* 24 C.F.R. parts 1, 8, and 180. This action is being taken pursuant to HUD regulations implementing Title VI and Section 504. *See* 24 C.F.R. §§ 1.8(c); 8.57(c). As discussed in this Notice, Carbrook may request that HUD initiate an administrative hearing regarding this matter within twenty (20) calendar days of the date of this letter. The Office of General Counsel (OGC), Fair Housing Compliance Division (Compliance Division) will then set the matter for an administrative hearing. During the pendency of such proceeding, HUD will defer all federal financial assistance it currently provides to Carbrook. This Notice also sets forth the immediate actions Carbrook must take to prevent the immediate suspension, termination, and refusal to grant federal financial assistance. Please read this Notice carefully.

As you are aware, HUD is responsible for administering, implementing, promulgating regulations for, conducting investigations under, reviewing compliance under, and enforcing Section 504 and Title VI. Section 504 prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance. Title VI prohibits discrimination on the basis of race, color, and national origin in any program or activity receiving federal financial assistance. Carbrook is a "recipient" of "federal financial assistance" within the meaning of Section 504, 24 C.F.R. § 8.3; and Title VI, 24 C.F.R. § 1.2, because of Carbrook's receipt of Project-Based

Rental Assistance (PBRA) from HUD. In addition, regulations applicable to recipients of PBRA funding require compliance with Section 504 and Title VI. *See* 24 C.F.R. § 5.105(a). Carbrook has been a recipient of federal financial assistance under a Housing Assistance Payments (HAP) contract since 1981. Between 2009 and 2019, Carbrook received no less than \$11,614,018 dollars in PBRA federal financial assistance from HUD to operate its properties at 1577 Carroll Street and 440 Brooklyn Avenue in Brooklyn, New York.

## **Background**

In 2018, HUD initiated compliance reviews of Carbrook pursuant to Section 504 and Title VI. HUD opened these compliance reviews after receiving information that Carbrook operated two multifamily developments located at 1577 Carroll Street and 440 Brooklyn Avenue in Brooklyn, New York with apparent accessibility violations and race-based discrimination. In addition, a complaint was filed with HUD on April 17, 2018, alleging that Carbrook discriminated on the basis of race and disability. In 2018, the Office of Fair Housing and Equal Opportunity (FHEO) conducted on-site reviews of the properties located at 1577 Carroll Street and 440 Brooklyn Avenue, interviewed tenants, visited Carbrook's office located at 410 Troy Avenue, and reviewed tenant files and other records.

Both 1577 Carroll Street and 440 Brooklyn Avenue contain unresolved accessibility barriers in violation of Section 504. Both developments are inaccessible to persons with disabilities and lack designated accessible units required by Section 504. Both developments are almost exclusively occupied by white persons and appear to be exclusionary to other races and ethnicities. Carbrook has failed to resolve the Section 504 violations and refuses to cooperate in FHEO's investigation to determine whether Carbrook's program or activity violates Title VI.

FHEO found that Carbrook fails to comply with federal accessibility requirements and the applicable federal architectural standards set forth in Section 504 regulations, which consists of the Uniform Federal Accessibility Standards (UFAS) or HUD's Notice on Use of an Alternative Accessibility Standard (HUD's Deeming Notice) for purposes of Section 504 compliance. *See* 24 C.F.R. § 8.32; 79 Fed. Reg. 29,671 (May 23, 2014). Carbrook has failed to comply with the physical accessibility requirements for individual dwelling units and public and common use areas in its residential facilities and otherwise ensure that its program or activity is readily accessible to and usable by individuals with disabilities. *See* 24 C.F.R. §§ 8.20, 8.22-8.24, 8.32.

Carbrook has failed to bring its buildings into compliance with HUD's Section 504 regulations, which require that a minimum of five percent (5%) of the total dwelling units be made accessible for persons with mobility disabilities, and an additional two percent (2%) of the total dwelling units be made accessible for persons with hearing or vision disabilities in accordance with the applicable federal architectural standard (designated accessible dwelling units). 24 C.F.R. §§ 8.20, 8.22, 8.23, 8.32. In addition, Carbrook has made or permitted alterations throughout each development but has failed to ensure such alterations are compliant with federal accessibility standards. 24 C.F.R. § 8.23(b). Carbrook has also not complied with its program access obligations by failing to ensure that its housing operations are readily accessible to and usable by individuals with disabilities by making accessibility improvements over time. 24 C.F.R. § 8.20, 8.24. For example, 1577 Carroll Street and 440 Brooklyn Avenue both lack accessible routes, as each has

stairs from the entrances to the elevators and units, though sufficient space is provided in the lobby of each building to provide an accessible route. *See* UFAS §§ 4.3.2 and 4.3.8. 440 Brooklyn Avenue also lacks an accessible route because the inner door at the entrance does not open sufficiently wide to allow a clear width of 32 inches to permit wheelchair, scooter, or other safe passage by a person with a disability. *See* UFAS § 4.13.5. Both developments also lack designated mobility or sensory accessible units or accessibility features in units or common areas as required by Section 504. *See* 24 C.F.R. §§ 8.20, 8.22, 8.23.

Since 2019, HUD has sought to bring Carbrook into compliance with Section 504 through a Voluntary Compliance Agreement (VCA). *See, e.g.*, 24 C.F.R. §§ 8.56(e)(2), 8.56(j). Carbrook has refused to engage in efforts to resolve any of its outstanding Section 504 violations.

FHEO issued to Carbrook a Letter of Findings of Noncompliance with Section 504 (LOF) on December 12, 2019. The LOF detailed FHEO's findings with respect to violations of federal nondiscrimination and accessibility requirements under Section 504. The LOF provided an opportunity to voluntarily resolve the matter through entry into a VCA. 24 C.F.R. § 8.56(g). The LOF also provided Carbrook with the opportunity to have the findings reviewed by a higher-level civil rights official if Carbrook provided supplementary information and requested a review within a specified timeframe.

Carbrook requested a review of the LOF on January 10, 2020, but provided no additional information to indicate that the findings should be modified. 24 C.F.R. § 8.56(h). On September 29, 2020, FHEO issued a Formal Determination of Noncompliance Sustaining the Letter of Findings (LOD) to Carbrook upon determining that Carbrook did not provide any supplementary information and that Carbrook had not provided evidence that the accessibility violations were remediated. 24 C.F.R. § 8.56(h)(3). The 2020 LOD again informed Carbrook of the opportunity to come into voluntary compliance through the execution of a VCA that remedied Carbrook's past noncompliance and ensured future compliance with federal nondiscrimination and accessibility requirements. FHEO gave Carbrook until October 30, 2020 to execute the VCA; however, Carbrook refused to execute or enter meaningful negotiations regarding the VCA. Carbrook's noncompliance detailed in the LOF remains unresolved.

Carbrook has also violated Title VI by refusing to cooperate with HUD's investigation and provide information in response to HUD's information requests. *See* 24 C.F.R. § 1.6(b)-(c). HUD requested that Carbrook provide information about its admission and occupancy policies and practices for its Title VI investigation in May 5, 2020, June 4, 2020, and October 29, 2020 letters, but Carbrook has refused to provide FHEO and the Compliance Division the information it requested. In HUD's letters dated June 4, 2020 and October 29, 2020, FHEO and the Compliance Division explained that failure to provide the information might result in a violation of Title VI. The October 29 letter said that HUD might find Carbrook in noncompliance with Title VI if Carbrook did not comply with the information requests within 21 calendar days from the date of that letter. Carbrook has refused to comply.

## **Notice of Suspension, Termination, and Refusal to Grant PBRA and Any Other Federal Financial Assistance**

This letter again provides Carbrook notice that HUD has determined that compliance cannot be secured through voluntary means pursuant to 24 C.F.R. §§ 1.8(c) and 8.57(c)(1). Unless Carbrook requests an administrative hearing within twenty (20) calendar days of the date of this letter, HUD will suspend, terminate, and refuse to grant Carbrook PBRA and any other federal financial assistance from HUD. 24 C.F.R. §§ 1.8(c), 1.9(a), 8.57(c), 8.58(a). Note that HUD is not required to and will not provide PBRA or any other federal financial assistance during the pendency of an administrative proceeding – such federal financial assistance will be deferred for the duration of any administrative proceeding. *See* 24 C.F.R. §§ 1.8(b), 8.57(b).

### **Opportunity to Cure or Seek an Administrative Hearing**

Carbrook has the following options regarding this action.

First, Carbrook may avoid the impending actions detailed in this Notice if it completes the following steps no later than ten (10) calendar days from the date of this Notice: (1) Carbrook returns a signed version of the VCA proffered by HUD regarding Section 504 on September 29, 2020; and (2) fully complies with HUD's October 29, 2020 data request regarding its Title VI compliance review. All materials shall be provided by electronic mail as detailed below.

Second, no later than twenty (20) calendar days of the date of this letter, Carbrook must notify the undersigned HUD counsel that it is requesting a hearing before an Administrative Law Judge (ALJ) pursuant to 24 C.F.R. §§ 1.9 and 8.58. If Carbrook requests such a hearing, undersigned HUD counsel will request that the Office of Administrative Law Judges set a hearing date. Such a proceeding will be governed by the rules set forth at 24 C.F.R. part 180.

In addition, the Compliance Division may choose to file a complaint and bring administrative proceedings against Carbrook to obtain necessary relief, including an injunction and relief for aggrieved individuals. 42 U.S.C. § 2000d-1; 29 U.S.C. § 794a; *see also* 24 C.F.R. §§ 1.8 and 1.9; 24 C.F.R. §§ 8.57 and 8.58; 24 C.F.R. §§ 180.105(a) and 180.415.

An executed VCA and responses to HUD's data request shall be submitted by email to William Lynch, Assistant General Counsel for Fair Housing Compliance, at **REDACTED** and Shira Gordon, Trial Attorney, at: **REDACTED**. Thank you in advance for your timely cooperation.

### **Prohibition on Intimidation and Retaliatory Acts**

Finally, HUD reminds Carbrook that the prohibitions on intimidation and retaliatory actions under Section 504 and Title VI continue to apply, particularly concerning Carbrook's actions and communications with its tenants. Carbrook cannot evict its tenants or fail to maintain its properties. Any retaliatory actions may result in additional enforcement actions by HUD and referral to the U.S. Department of Justice. *See* 24 C.F.R. §§ 1.7(e) and 8.56(k):

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by [Title VI or Section 504], or because he [or she] has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of [any] investigation, hearing, or judicial proceeding arising thereunder.

**Notice to Tenants**

HUD notes that tenants may have questions about these actions. As such, HUD has attached to this letter a notice to tenants. HUD requests that Carbrook post copies of this notice in conspicuous locations at the front entrances and at the elevators in the lobbies of each building. HUD will be separately mailing a copy of this notice to each tenant in each building.

Sincerely,

William Lynch  
Assistant General Counsel for Fair Housing Compliance  
Office of General Counsel  
U.S. Department of Housing and Urban Development

Cc: Jeanine M. Worden, Acting Assistant Secretary for FHEO  
Lynn M. Grosso, Director of Enforcement, FHEO  
Robert A. Doles, Director of Systemic Investigations, FHEO  
Dean Santa, Asset Management Division Director, Office of Multifamily Housing  
Jonelle Stewart, Chief (NY) Account Executive Branch, Office of Multifamily Housing

Attachment: Important HUD Notice to Tenants of 1577 Carroll Street and 440 Brooklyn Avenue