



**U.S. Department of Housing and Urban Development**  
Region IV Office of Fair Housing and Equal Opportunity  
Five Points Plaza  
40 Marietta Street, 16th Floor  
Atlanta, GA 30303-2806

April 11, 2023

*Via Electronic Mail and USPS Certified Mail*

Berkeley Burbank, Chief Executive Officer  
Alco Management, Inc.  
35 Union Avenue, Suite 300  
Memphis, TN 38103

Dear Mr. Burbank:

**SUBJECT:** Letter of Findings of Noncompliance  
Civil Rights Limited Compliance Review of Greenbriar Apartments  
Compliance Review Numbers: 04-23-R560-4 (Sec. 504) 04-23-R560-D (ADA)

On November 8, 2022, the U.S. Department of Housing and Urban Development (hereinafter “HUD” or “Department”), Region IV Office of Fair Housing and Equal Opportunity, (hereinafter “Region IV FHEO”) initiated a limited compliance review of Greenbriar Apartments (hereinafter “Greenbriar,” “development,” or “recipient”), pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and HUD’s implementing regulations at 24 C.F.R. part 8, and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101[12131] et seq., and its implementing regulations at 28 C.F.R. part 35.

HUD’s compliance review was limited to Greenbriar’s policies, procedures, and practices related to reasonable accommodations and reasonable modification requests at Greenbriar as well as accessibility of common areas. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in any program or activity that receives Federal financial assistance. Title II of the ADA prohibits discrimination against individuals with disabilities in all programs, activities, and services of public entities.

As more fully described below, HUD finds that Greenbriar Apartments, as a recipient of federal funds, is in noncompliance with Section 504 and Title II of the ADA. A summary of the Department’s findings is set forth below.

## **I. Background**

Greenbriar Apartments is located at 3131 Madewell St, Memphis, TN 38127, and is a 208-unit Multifamily housing development and recipient of HUD financial assistance under the Project-Based Rental Assistance (PBRA) program administered by the Office of Multifamily Housing (MFH). The development is owned and managed by Alco Management, Inc., which owns and manages 60 Multifamily properties throughout the Southeast.

**II. Findings of Noncompliance**

**A. Failure to Provide Reasonable Accommodations/Modifications - 24 C.F.R part 8.4, 8.24, and 8.33**

The Department finds that Greenbriar failed to ensure compliance with Section 504 and Title II of ADA in its operations of the property. Specifically, between January 1, 2020, and January 1, 2023, Greenbriar did not execute proper handling of reasonable accommodation requests. As such, tenants were denied full participation in and benefit from the use and enjoyment of their dwellings through Greenbriar’s failure to effectuate reasonable accommodations. In its response to HUD’s request for data on November 28, 2022, Alco Management stated they had not received any reasonable accommodation requests since January 1, 2020. However, HUD found several valid reasonable accommodation and modification requests that were submitted to Greenbriar staff that were denied, unjustifiably or unreasonably delayed, lost, ignored, or otherwise improperly documented.

Some of the most significant findings of denied and delayed reasonable accommodation requests are as follows:

- █ has lived at Greenbriar Apartments for █ and has a nonvisible disability. █  
 █ went to the office and asked the property manager to be relocated to another unit. █  
 █  
 █ A review of the recipient’s reasonable accommodation log showed that the incident was not documented. Furthermore, management did not ask █ for documentation of █ disability status or arrange an emergency unit transfer. █  
 █  
 █ went back to the office and requested a transfer again on three separate occasions, but the property manager stated that she would not be able to help █ skip other applicants on the waitlist at another Alco property. █  
 █  
 █  
 █  
 █ followed up with █ request by emailing the Section 504 Coordinator for Alco Management. In █ email, █ made a reasonable accommodation request for a transfer due to █ disability. █ received an out of the office reply but failed to get a response to █ email as of February 16, 2023. █’s request was not documented in █ tenant file, in the VAWA folder, or in the recipient’s reasonable accommodation log.
- █ has been a resident at Greenbriar for one year. █ has a readily apparent disability (difficulty walking). █ uses a walker on days when it is especially difficult for him to get around. In the summer of 2022, █ went to the office and requested a designated handicap

parking space so that he did not have to traverse the stairs located by the available parking space near his unit. ■ explained that he went to the office and spoke with the property manager in person. He stated that the property manager did not ask him for any follow-up information and simply told him if they granted him the designated parking space, everyone would want one. The request was not documented in ■' tenant file or on the recipient's reasonable accommodation log.

- ■ has resided at Greenbriar since 2014. ■ has a readily apparent disability (difficulty walking) and receives Social Security Insurance (SSI). In or around December 2022, ■ went to the leasing office and asked assistant property manager, Kiara Cunningham, for a transfer to a first-floor unit. ■ stated that the property manager told her they “would take care of it,” and that she has not heard anything from the leasing office since making her request. While onsite on February 22, 2023, HUD staff noted that ■ had difficulty answering the door and getting around her apartment to find relevant documentation and due to her mobility impairment, used a chair for support to move about her unit. ■ stated that the property manager did not ask her for any follow up information. ■'s request is not documented in the reasonable accommodation log or in her tenant file.
- ■ is a current resident at Greenbriar. ■'s dependent daughter has a documented disability which has impacted her lung development. In or around December of 2022, ■ went to the office and requested a unit transfer due the mold in the unit. ■ stated that her daughter's disability was being exacerbated by the mold growing in her apartment, making it difficult for her daughter to breathe. ■ stated that she could provide documentation to substantiate her request from her child's doctor. ■ stated that the office never gave her a formal response to her request. There was no documentation of ■'s request in her tenant file or on the reasonable accommodation log.

The Department notes that these examples of failure to provide reasonable accommodations are only some of the violations that were discovered during the compliance review. In addition to the failure of Greenbriar to ensure that tenants with disabilities are accommodated, Greenbriar has expressed an unwillingness to transfer residents from one Alco property to another when a vacancy that meets the need of the requesting tenant is not available at Greenbriar. By failing to develop a policy for external transfers to one of its other HUD-funded properties in the area, Greenbriar is failing to ensure reasonable accommodations are provided to individuals with disabilities in a timely manner in accordance with federal nondiscrimination requirements 24 C.F.R. § 8.33; 28 C.F.R. § 35.130(b)(7)(i). As noted by the examples above, at least four tenants are unable to safely access their units from the parking lot, ascend and descend stairs in order to enter and exit the building, and sustain a quality of life without severe health consequences due to conditions at the property. Greenbriar did not engage in the interactive process or attempt to resolve the reasonable accommodation requests made by these tenants. Instead, the recipient either ignored, denied, or failed to respond to such requests.

B. Recordkeeping – 24 CFR § 8.55(b) entitled “Compliance reports,” requires that:

*[E]ach recipient shall keep such records and submit to the responsible civil rights official or his or her designee timely, complete, and accurate compliance reports at such times, and in*

*such form and containing such information, as the responsible civil rights official or his or her designee may determine to be necessary to enable him or her to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department data showing the extent to which individuals with handicaps are beneficiaries of federally assisted programs.*

In its response to HUD's request for information on November 28, 2022, Alco Management stated that Multifamily waitlist requirements do not require recipients to collect the disability status of applicants and tenants, and thus they could not provide the disability status of applicants on the waiting list. The recipient's practice of not documenting the disability status of applicants and tenants contradicts the aforementioned regulation and is in noncompliance with federal accessibility requirements.

Because the recipient failed to document the disability status of its program participants, the Department was unable to contact households on the waitlist with disabilities to assess and inquire about the accessibility related needs of applicants. Moreover, HUD found that several tenants were not marked as people with disabilities on the tenant roster despite receiving SSI or SSDI income. Finally, the recipient's reasonable accommodation log did not include any entries from Greenbriar for the last three years. The general lack of proper recordkeeping and lack of information required under § 8.55(b) is a violation under Section 504.

C. Unit Accessibility – 24 CFR §§ 8.20, 8.24, 8.32

Section 504 requires that recipients of federal financial assistance make dwelling units accessible for individuals with mobility disabilities.<sup>1</sup> HUD requires that 5% of the units in a multifamily housing project (including public housing) be accessible to individuals with mobility impairments, and that an additional 2% of the units are accessible for individuals with hearing or vision impairments. HUD has consistently applied these 5% and 2% minimum standards to the existing rental housing stock of the multifamily housing project. UFAS is the minimum standard for compliance with these requirements. HUD's Section 504 regulations allow HUD to prescribe a higher percentage or number than the 5% or 2%, respectively, based on census data or other available current data or in response to evidence of a need for a higher percentage of accessible units. See, 24 CFR §§ 8.22 (c) and 8.23(b) (2).

Greenbriar's Project Capital Needs Assessment (PCNA) issued on February 4, 2013, states the following on page 20:

*The property was originally constructed in 1973. Property management provided the 504 transition plan. A copy of the 504 transition plan can be viewed in Appendix E. The property currently does not feature any handicap designated units and it is financially unfeasible to modify standard units into full UFAS compliance during a refinance transition.*

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<sup>1</sup> An "accessible housing unit" is a dwelling that is designed, constructed, altered or adapted to comply with UFAS and is located on an "accessible route", as defined at 24 CFR § 8.3, meets the minimum standards for compliance and is accessible. See 24 CFR §§ 8.3 and 8.32.

Greenbriar is a recipient of federal financial assistance through its participation in the Project-Based Rental Assistance (PBRA) program administered by the Office of Multifamily Housing (MFH). As a recipient, Greenbriar is obligated by Section 504 and HUD's Section 504 regulation to operate its existing buildings, facilities, and programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities. Under the program accessibility obligation in HUD's Section 504 regulation, the recipient should be eliminating accessibility barriers over time. HUD's Integrated Real Estate Management System (iREMS) indicates that the subject property underwent a major rehab exceeding one million dollars in 2007-2008.<sup>2</sup> Further, news outlets reported that the development received \$4.7 million dollars in 2010 for the purpose of renovations to the property's fencing, roofs, windows, parking lots, and kitchen and bathroom upgrades. Further, from 2010-2021, Greenbriar received over \$18 million dollars in financial assistance from the Department; however, the recipient failed to make structural modifications to the development to remove accessibility barriers.

Greenbriar's transition plan, dated August 26, 1994, states the following:

*There are handrails on walkways at various locations throughout the property to assist anyone with a need...The office is accessible through the front entrance. The pathway is clear of obstructions. The office is served by gentle slope from the curb where a ramp services any persons with disabilities. There are two handicap accessible parking spaces located at the curb cut to better accommodate those with disabilities. One of these handicap parking spaces is also a van accessible handicap parking space. All handicap parking spaces are designated with marked signage and the van accessible space is marked with van accessible signage.*

The compliance review team determined that the entrance to the subject property's leasing office is not on an inaccessible route. The Department also found stairs with missing handrails at the entrance of common areas, in violation of UFAS §§ 4.9.4. Additionally, designated handicap parking spaces were not located along an accessible route, in violation of UFAS §§ 4.6.2. By not remediating the lack of any accessible units, and by failing to maintain an accessible route to common areas, Greenbriar has failed to comply with program accessibility requirements.

Thus, based on FHEO's review, the Department finds that Greenbriar failed to comply with its Section 504 obligations by failing to ensure that developments funded with federal financial assistance contain the required minimum number of accessible dwelling units and have accessible public and common use areas in accordance with federal accessibility requirements and applicable federal architectural standards.<sup>3</sup>

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<sup>2</sup> [Finish Line in Sight for Renovation Of Memphis Business Academy - Memphis Daily News](#)

<sup>3</sup> 24 CFR §§8.20, 8.24, 8.32; UFAS §§ 4.23, and 4.6.2

### III. Remedies and Other Corrective Actions

Greenbriar failed to process reasonable accommodation requests properly and provide reasonable accommodations and failed to adhere to program accessibility requirements outlined in Section 504 and Title II of the ADA. In addition, Greenbriar failed to maintain proper recordkeeping as required by 24 C.F.R. § 8.55(b). To remedy these violations, Greenbriar must take the following actions:

First, Greenbriar must revise its Reasonable Accommodation Policy. The policy must ensure that all applicants and tenants are informed of their right to make a reasonable accommodation request with a clear description of how to and to whom such requests should be made, ensure that all reasonable accommodations/reasonable modifications are processed on a case-by-case basis, and in a timely manner. The revised Reasonable Accommodation Policy shall also include grievance procedures that will allow tenants with disabilities to appeal denied requests to a person at a higher level of authority within Alco Management. Greenbriar's Reasonable Accommodation Policy, as well as any third-party Reasonable Accommodation Policy, must be made available to HUD for review and comment prior to implementation.

Second, Greenbriar must develop and disseminate a standardized Reasonable Accommodation/Modification Log and collect information related to each Reasonable Accommodation/Modification request made by or on behalf of applicants and tenants, regardless of whether the request is made verbally, on a standardized form, or via any other mode of communication. Greenbriar must submit its Reasonable Accommodation/Modification Log to HUD for review before implementation.

Third, Greenbriar must amend its transfer policy to include transfers to other Alco Management properties. Greenbriar must coordinate with these other entities to develop the appropriate procedures to both send and receive transfers when the type of unit requested is not available onsite. Greenbriar must submit its new policy to HUD for review before implementation.

Fourth, Greenbriar must train staff on its revised reasonable accommodation and transfer policies and procedures. The training must occur as soon as possible following the completion of the revised policy and at least once annually. Evidence of trainings offered, and employees trained, must be submitted to HUD.

Lastly, in accordance with the Uniform Federal Accessibility Standards (UFAS), the recipient is required to (1) construct or convert 10 units for the mobility impaired to meet its required number of UFAS units, (2) construct or convert four units for the hearing and visually impaired, and (3) ensure at least one accessible route to all exterior and interior common use elements and accessible dwelling units.

To remedy the violations of 504 and ADA specified in this letter, the Department and recipient may enter into a Voluntary Compliance Agreement (VCA). A proposed VCA will be submitted to the recipient by April 28, 2023, which will contain the remedies and corrective actions to address Greenbriar's violations of Section 504 and ADA.

#### IV. Conclusion

Based on the Department's investigation and for the reasons set forth above, the Department concludes that Greenbriar Apartments is in noncompliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and HUD's implementing regulations at 24 C.F.R. part 8, and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101[12131] et seq., and its implementing regulations at 28 C.F.R. part 35. HUD seeks to resolve these matters through a written Voluntary Compliance Agreement (VCA) executed between Greenbriar and HUD. Therefore, the lead on the compliance review, Nadia Carlson, will contact you to negotiate the terms of a VCA.

#### V. Review Procedures

Pursuant to 24 C.F.R. § 8.56(h), a recipient may request a review of this Letter of Findings by HUD's reviewing civil rights official. Requests must be made within thirty (30) calendar days of receipt of this letter by submitting a written statement of the reasons that this letter should be modified in light of supplementary information. A request for review must be submitted to Jacy Gaige, Director, Civil Rights Compliance & Disability Rights Division, Office of Fair Housing and Equal Opportunity at [jacy.d.gaige@hud.gov](mailto:jacy.d.gaige@hud.gov).

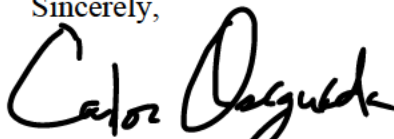
If you do not request that this Letter of Findings be reviewed, a formal finding of noncompliance will be issued within fourteen (14) calendar days after the thirty (30) day period for the request for review has expired. Upon request, HUD's Final Investigative Report will be made available in accordance with 24 C.F.R. § 8.56(g)(3).

As a reminder, any intimidation or retaliatory acts against a person because he or she has filed a complaint, testified, assisted, or participated in any manner in a Section 504 or ADA investigation are prohibited under 24 C.F.R. § 8.56(k); 28 C.F.R. § 35.134.

Please be advised that it may become necessary to release documents, correspondence, and records related to this case under the Freedom of Information Act, but in so doing, HUD will seek to protect, to the extent provided by law, information whose release would constitute an invasion of privacy. In accordance with 28 C.F.R. §§35.172 and 35.173, a copy of this Letter of Findings will be forwarded to the Assistant Attorney General.

If you have any questions about this matter, please contact Staci Gilliam, Programs & Compliance Director, at 202-297-2749 or [staci.n.gilliam@hud.gov](mailto:staci.n.gilliam@hud.gov).

Sincerely,



Carlos Osegueda, Regional Director  
Region IV, Office of Fair Housing and Equal Opportunity