



OFFICE *of*  
**INSPECTOR GENERAL**  
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UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT

# Fair Housing and Equal Opportunity's Oversight of Fair Housing Enforcement Agencies

2021-OE-0008

November 15, 2022

**Date:** November 15, 2022

**To:** Lynn Grosso  
Director, Office of Enforcement, Fair Housing and Equal Opportunity, EDP

**From:**   
Brian T. Pattison  
Assistant Inspector General for Evaluation, Office of Inspector General, G

**Subject:** Fair Housing and Equal Opportunity's Oversight of State and Local Fair Housing Enforcement Agencies (2021-OE-0008)

Please see the attached final report on our evaluation of the Office of Fair Housing and Equal Opportunity's (FHEO) oversight of State and local fair housing enforcement agencies. It contains four recommendations.

In response to our draft report, FHEO agreed with all four recommendations. FHEO's comments and corrective actions, along with our response to those comments, are included in the report. FHEO also provided one technical comment, which we incorporated into the final report. The status of recommendations 1, 2, and 4 is "resolved-open." The status of recommendation 3 will remain "unresolved-open" until we agree to FHEO's proposed management decision. We will contact FHEO within 90 days to discuss its proposed management decisions.

I greatly appreciate the assistance you and your staff provided throughout the evaluation. The report will be posted to our website within 3 days. Please contact Christopher Backley, Director of the Program Evaluations Division, at 202-731-9804 or [cbackley@hudoig.gov](mailto:cbackley@hudoig.gov), with any questions.

## Executive Summary

### FAIR HOUSING AND EQUAL OPPORTUNITY'S OVERSIGHT OF FAIR HOUSING ENFORCEMENT AGENCIES | 2021-OE-0008

#### Why We Did This Evaluation

Under the U.S. Department of Housing and Urban Development's (HUD) Fair Housing Assistance Program (FHAP), State and local agencies serve as a force multiplier to the Office of Fair Housing and Equal Opportunity (FHEO). These agencies enforce laws in their jurisdictions that are equivalent to the Fair Housing Act and conduct outreach and education to reduce housing discrimination.

Regulations state that FHAP agencies must meet certain performance standards to maintain certification from FHEO. That certification is required for FHAP agencies to remain in the program and receive funding from FHEO to administer fair housing laws equivalent to the Fair Housing Act. We initiated this review to determine whether FHEO is providing the necessary oversight to ensure that FHAP agencies meet these performance standards.

#### Results of Evaluation

We determined that FHEO could provide more guidance related to FHEO's performance assessment process to improve its oversight of State and local fair housing enforcement agencies participating in FHAP. The FHAP Division has provided guidance that FHEO regional staff responsible for monitoring and overseeing FHAP agency performance (HUD reviewers) does not consistently follow. Additionally, although all HUD reviewers work from the same performance standards, individual reviewers sometimes apply the standards in different ways. HUD reviewers expressed a desire for more definitive guidance as to what level of compliance was acceptable and concrete examples of what constituted compliance and noncompliance.

Other opportunities exist for the FHAP Division to provide enhanced guidance and training. Although FHEO provides training, nearly all HUD reviewers and regional directors we spoke with requested more training. At the time of our fieldwork, HUD reviewers had not had access to refresher training on conducting PARs in more than a year. The most recent PAR-specific refresher training was in July 2020. The FHAP Division held its most recent training for new reviewers in January 2021.

Another area in which the FHAP Division can enhance guidance is through performance improvement plans (PIP). FHEO can use PIPs to improve FHAP agencies' performance after determining that the agency is not meeting a performance standard. Regulation allows regional offices discretion in applying PIPs. However, during our period of review, regional offices often did not place FHAP agencies with repeat deficiencies on PIPs. The FHAP Division leaves the management of FHAP agency performance to the regions, and FHEO regional directors use different criteria when deciding to issue a PIP. The FHAP Division can issue stricter guidance clarifying when regional directors are expected to place a FHAP agency on a PIP.

## Recommendations

We present four recommendations to help FHEO ensure that regional offices provide consistent oversight to FHAP agencies by providing HUD reviewers with enhanced guidance and more frequent training. The status of recommendations 1, 2, and 4 is “resolved-open.” The status of recommendation 3 will remain “unresolved-open” until we agree to FHEO’s proposed management decision.

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# Introduction

## OBJECTIVE

Our objective was to determine whether the Office of Fair Housing and Equal Opportunity's (FHEO) oversight of State and local fair housing enforcement agencies ensures that they meet performance standards for substantial equivalency certification under the Fair Housing Assistance Program (FHAP).

## BACKGROUND

Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act,<sup>1</sup> prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of race, color, national origin, religion, sex, familial status, and disability.<sup>2</sup> Federal regulations also require all U.S. Department of Housing and Urban Development (HUD) programs related to housing and community development to be administered in a manner that affirmatively furthers fair housing.<sup>3</sup>

FHEO is charged with development, administration, enforcement, and promotion of public understanding of Federal fair housing policies and laws.<sup>4</sup> FHEO's activities include investigating fair housing complaints, ensuring compliance with civil rights laws in HUD programs, conducting compliance reviews, managing fair housing grants, and increasing public awareness of fair housing rights and responsibilities.

## FHEO and FHAP Agencies Enforce Fair Housing Laws

To achieve its mission, FHEO enters into cooperative agreements with State and local agencies under FHAP. Under these cooperative agreements, FHEO provides funds annually, on a noncompetitive basis, to State and local agencies (referred to as FHAP agencies) to administer fair housing laws that FHEO considers substantially equivalent to the Fair Housing Act. These FHAP agencies receive housing discrimination complaints and conduct investigations to determine whether the alleged discrimination occurred. FHAP agencies must use their authority to ensure that victims are made whole through conciliation agreements,<sup>5</sup> settlements, and administrative or judicial enforcement.<sup>6</sup> HUD requires FHAP agencies to seek appropriate public interest relief in conciliation agreements, such as changes in policies,

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<sup>1</sup> 42 U.S.C. (United States Code) 3601, 19

<sup>2</sup> 42 U.S.C. 3604, Discrimination in the sale or rental of housing and other prohibited practices

<sup>3</sup> 24 CFR (Code of Federal Regulations) 5.150-168, Affirmatively Furthering Fair Housing

<sup>4</sup> FHEO also implements and enforces

- Title VI of the Civil Rights Act of 1964
- Section 109 of the Housing and Community Development Act of 1974
- Section 504 of the Rehabilitation Act of 1973
- Titles II and III of the Americans with Disabilities Act of 1990
- the Architectural Barriers Act of 1968
- the Age Discrimination Act of 1975
- Title IX of the Education Amendments Act of 1972

<sup>5</sup> Conciliation is "the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the [HUD] Secretary." A conciliation agreement documents the terms of resolution. (42 U.S.C. 3602(l) and (m))

<sup>6</sup> The FHAP Division recognizes that many FHAP agencies rely on other entities within their jurisdictions to conduct judicial enforcement. It, therefore, encourages FHAP agencies to develop strong interagency agreements with their enforcement partners to effect full enforcement of the fair housing laws.

to protect the public interest. FHAP agencies are also required to engage in outreach and education in efforts to eliminate housing discrimination.

To become a FHAP agency, the Assistant Secretary for Fair Housing and Equal Opportunity determines whether a State or local agency enforces “a law that is substantially equivalent to the Fair Housing Act with regard to substantive rights, procedures, remedies, and the availability of judicial review.”<sup>7</sup> FHEO assesses this through a two-phase process called substantial equivalency certification. In the first phase, Adequacy of Law, FHEO first grants new agencies interim certification if the fair housing laws the agency enforces are, on their face, substantially equivalent to the Fair Housing Act.<sup>8</sup> The determination is based on the analysis of the literal text of the law, as well as the regulations, directives, rules of procedures, judicial decisions, and interpretations of the law. Interim certification lasts no longer than 3 years.<sup>9</sup> In the second phase, Adequacy of Performance, FHEO assesses whether the agency’s operations provide complainants rights, remedies, and due process that are substantially equivalent to those provided in the Fair Housing Act. If so, FHEO grants the agency full certification and enters into a memorandum of understanding (also called a cooperative agreement) with the agency.<sup>10</sup> FHEO reassesses the FHAP agency’s certification every 5 years.

FHEO has FHAP cooperative agreements with 77 State and local agencies. In fiscal year (FY) 2020, FHEO and FHAP agencies together completed 7,705 housing discrimination investigations, which resulted in nearly \$8.1 million in monetary relief for complainants.<sup>11</sup> In general, while both FHEO and FHAP agencies can address complaints, FHAP agencies address the majority of fair housing complaints each year. According to our analysis of data in FHEO’s annual reports, between FY 2010 and FY 2019, FHAP agencies addressed roughly four times as many fair housing complaints annually as FHEO regional offices.<sup>12</sup>

In FY 2021, FHAP received \$24.4 million in appropriated funds.<sup>13</sup> For more details on the different categories of FHAP funds, see the FHAP agency funds table in appendix D.

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<sup>7</sup> 24 CFR) 115.201(a)

<sup>8</sup> 24 CFR 115.201(a)

<sup>9</sup> Interim certification is based on procedures and authorities outlined in the interim agreement. Interim agreements are granted for up to 3 years.

<sup>10</sup> 24 CFR 115.205(a)

<sup>11</sup> State of Fair Housing Annual Report to Congress, FY 2020, pg. 32

<sup>12</sup> Office of Inspector General (OIG) analysis of data contained in FHEO’s Annual Report of Fair Housing, issued 2012 through 2019

<sup>13</sup> HUD Congressional Budget Justification FY 2022, pg. 32-5

## While the FHAP Division in FHEO Headquarters Manages the Program, FHEO Regional Offices Administer the Program

The FHAP Division in FHEO headquarters is comprised of four staff members, including the FHAP Division Director.<sup>14</sup> FHEO has 10 regional offices, each led by a regional director who reports to the Deputy Assistant Secretary for Fair Housing and Equal Opportunity. The FHAP Division issues annual guidance to the FHAP agencies and FHEO regional offices, which contains information about the use of FHAP funds and provides instruction and technical guidance for the administration of FHAP program requirements.

Further, the FHAP Division assesses whether FHAP agencies' laws are substantially equivalent to the Fair Housing Act. The FHAP Division also submits packages to the Deputy Assistant Secretary when agencies are to be recertified or decertified. The FHEO regional offices administer the program by authorizing payments to FHAP agencies for completed fair housing cases,<sup>15</sup> overseeing the FHAP agencies' performance, and providing technical assistance as needed.

## FHAP Agencies Must Meet Performance Standards To Maintain Certification

To retain certification, FHAP agencies are required to meet performance standards set forth in 24 CFR (Code of Federal Regulations) 115.206.<sup>16</sup> During interim certification, the FHEO regional office may conduct an onsite performance assessment within 6 months after the execution of the interim agreement or 6 months immediately before the expiration of the interim agreement to ensure that the agency meets the performance standards.<sup>17</sup> During certification, the FHEO regional office may conduct onsite performance assessments every 24 months. While the regulation states that regional offices "may" assess performance at these intervals, FHEO disseminated stricter guidance requiring assessments at these intervals.<sup>18</sup> Specifically, the memorandum states that FHEO regional offices must conduct onsite performance assessments not later than 6 months after interim certification and again during the 6 months before interim certification is set to expire. FHEO guidance also requires FHEO regional offices to conduct performance assessments at least every 24 months for fully certified FHAP agencies. The FHEO regional offices also have the discretion to conduct additional performance assessments during both interim and full certification periods as they deem necessary.<sup>19</sup>

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<sup>14</sup> The FHAP Division has had an acting director since March 2021.

<sup>15</sup> Regulations in 24 CFR 115.206 use the terms "cases" and "complaints" interchangeably.

<sup>16</sup> 24 CFR 115.206(e)(1) through (9)

<sup>17</sup> 24 CFR 115.206(a) and (b)

<sup>18</sup> Memorandum from Lynn Grosso, Director, Office of Enforcement, FHEO, to FHEO Regional Directors, entitled "Fair Housing Assistance Program (FHAP) Performance Assessments," August 14, 2008

<sup>19</sup> 24 CFR 115.206(a) and (b). According to the FHAP Division, FHEO assesses an agency's performance after an agency is placed on a performance improvement plan (PIP), after suspension, in connection with capacity building, or at any other time at the FHEO regional office's discretion.



## **FHEO's Regional Offices Assess FHAP Agencies' Performance and Document the Results in a Performance Assessment Report**

During the performance assessments, FHEO evaluates whether the FHAP agency engages in timely, comprehensive, and thorough fair housing complaint investigation, conciliation, and enforcement activities using nine performance standards set out in regulations<sup>20</sup> and described in appendix C. FHEO also assesses whether the agencies comply with overarching participation requirements set out in the regulations, such as using the appropriate data systems identified by HUD, proper management and drawing down of FHAP funds, and following subcontracting requirements.<sup>21</sup>

FHEO regional offices document whether FHAP agencies met these performance standards and other participation requirements in a performance assessment report (PAR). The FHAP Division and the Assistant Secretary for Fair Housing and Equal Opportunity use these reports, among other information, to decide whether to recertify an agency for continued participation in the program. In the PAR, FHEO regional offices may also recommend to the Assistant Secretary whether FHAP agencies should continue to be interim certified or certified.<sup>22</sup> The FHAP Division provides a PAR template for FHEO regional staff to use when completing performance assessments.

The FHEO regional staff members performing these assessments are classified as equal opportunity specialists (EOS).<sup>23</sup> The EOSs specifically assigned to conduct FHAP agency oversight are called government technical monitors (GTM) and government technical representatives (GTR). A GTM provides technical and financial oversight and evaluation of the FHAP agency's performance.<sup>24</sup> While a GTR may evaluate an agency's performance, GTRs also conduct the technical administration of the cooperative agreements, the acceptance of technical reports or projects, the approval of payments, and other responsibilities specified in the cooperative agreements.<sup>25</sup> Additionally, EOSs not officially designated as GTMs and GTRs may assist during performance assessments but do not conduct ongoing FHAP agency monitoring or oversight. Through the balance of this report, we refer to these individuals as HUD reviewers.

## **FHEO May Use a Set of Progressive Corrective Actions When a FHAP Agency Fails To Meet Performance Standards**

When FHEO determines that interim and certified FHAP agencies do not meet one or more of the performance standards, it may use performance deficiency procedures outlined in 24 CFR 115.210. The performance deficiency procedures include (1) providing technical assistance, (2) offering a performance

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<sup>20</sup> 24 CFR 115.206(e)(1) through (9)

<sup>21</sup> 24 CFR 115.307(a)(1)-(14)

<sup>22</sup> 24 CFR 115.206(c)

<sup>23</sup> An EOS conducts housing discrimination complaint investigations and civil rights compliance reviews of program participants who receive Federal financial assistance.

<sup>24</sup> 24 CFR 115.100

<sup>25</sup> 24 CFR 115.100

improvement plan (PIP), (3) suspension, and finally (4) withdrawal. Several of these procedures allow FHEO discretion in their application.

After discovering the deficiency, the regulations state that the FHEO regional office should immediately inform the FHAP agency and provide it with technical assistance.<sup>26</sup> HUD reviewers may document these deficiencies in a PAR as part of the performance assessment process. They may also communicate performance deficiencies and required corrective actions throughout the performance period during ongoing monitoring, case reviews, and feedback.

Following technical assistance, if the agency does not bring its performance into compliance with 24 CFR 115.206 within a period identified by the FHEO regional director, the FHEO regional director may offer the FHAP agency a PIP. The PIP will outline the FHAP agency's performance deficiencies, identify the necessary corrective actions, and provide a timetable for completion. If a FHAP agency fails to meet performance standard 7 because it does not receive and process a reasonable number of complaints under both the Federal Fair Housing Act and the agency's fair housing statute or ordinance, HUD may bypass the technical assistance and proceed to the PIP.

The FHEO regional office may provide the FHAP agency with technical assistance during the period of the PIP. If the FHAP agency receives a PIP, FHEO may suspend the FHAP agency's funding for the duration of the PIP. FHEO may restore the agency's funding once the agency implements the corrective actions to eliminate the deficiencies and the FHEO regional director accepts such corrective actions.

If the FHAP agency does not agree to implement the PIP or does not implement the corrective actions identified in the PIP within the time allotted, the FHEO regional director may suspend the agency's interim certification or certification.

At the end of suspension, FHEO assesses the FHAP agency's performance. During that assessment, if the agency has not corrected deficiencies, the Assistant Secretary for Fair Housing and Equal Opportunity may propose to withdraw the agency's interim certification or certification.

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<sup>26</sup> 24 CFR 115.210

## Findings

### **ADDITIONAL GUIDANCE FOR HUD REVIEWERS COULD ENHANCE THEIR ABILITY TO ASSESS, DOCUMENT, AND FOLLOW UP ON FHAP AGENCIES' PERFORMANCE**

While HUD's regulations set the overarching performance standards and expectation of FHAP agencies, FHEO is responsible for setting clear performance requirements and the acceptable level of variation from these requirements. The FHAP Division established minimum requirements for two of the nine performance standards. It has also provided a PAR template with detailed instructions for assessing compliance with the performance standards.

We interviewed 15 of the 51 HUD reviewers on staff in FY 2022 and all of the 10 regional directors. Many of the 15 HUD reviewers<sup>27</sup> we interviewed expressed a desire for more definitive guidance as to what level of compliance was acceptable and concrete examples of what constituted compliance and noncompliance. Several HUD reviewers and regional directors also requested the creation of a handbook or field guide for HUD reviewers conducting FHAP agency oversight. We also observed HUD reviewers not complying with existing guidance. Specifically, HUD reviewers did not consistently provide justification in the PAR when making determinations about the agencies' compliance with performance standards. Further, HUD reviewers did not always follow the PAR template instructions when providing corrective actions, including clearly identifying the corrective action(s), providing a timeframe for response and implementation, and providing a timeframe during which HUD would follow up to assess the status of the corrective action.

FHEO has also not defined a consistent process for following up with FHAP agencies' progress in completing required corrective actions in PARs. HUD reviewers described different ways of tracking FHAP agencies' progress in completing corrective actions, which differed across the regions. Without formally tracking FHAP agencies' progress to address performance deficiencies, regional offices risk losing continuity of oversight.

### **The FHAP Division Has Established Minimum Requirements for Performance Standards 1 and 7**

There are nine performance standards set forth in 24 CFR 115.206 to ensure that FHAP agencies engage in timely, comprehensive, and thorough fair housing complaint investigation, conciliation, and enforcement activities.<sup>28</sup> Two of the nine performance standards (performance standards 1 and 7) have explicit minimum requirements.<sup>29</sup>

For performance standard 1, 24 CFR 115.206 identifies timeframes that FHAP agencies must observe when processing fair housing cases. For example, agencies must begin processing complaints within 30 days of receiving the complaint and either complete investigative activities within 100 days or notify the

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<sup>27</sup> EOSs designated as GTRs or GTMs. The team interviewed at least one HUD reviewer from each region. In total, the team interviewed 15 of the 51 HUD reviewers on staff in FY 2022.

<sup>28</sup> See appendix C.

<sup>29</sup> For the remaining seven performance standards, the FHAP Division has established no quantifiable requirement or defined an acceptable level of variation for FHAP agencies to meet to be compliant.

complainant in writing of the reason for the delay within 110 days of receiving the complaint. The annual FHAP funding guidance<sup>30</sup> clarifies these minimum requirements for timeliness based on the complexity of the case and the type of resolution. For example, for systemic cases that are novel or complex, agencies have 300 days to settle or conciliate them or 350 days to make a cause or no cause determination. The annual guidance also lays out management goals that detail the accepted level of variation from the 100-day requirement. The management goals state that agencies are expected to close or charge<sup>31</sup> 50 percent of complaints filed in each complaint-processing period<sup>32</sup> within 100 days and 95 percent of cases carried over from the prior processing period by the end of the current processing period. However, these minimum requirements are not reflected in the language of the PAR template, which lists only the requirements from 24 CFR 115.206.

For performance standard 7, the regulation requires FHAP agencies to receive and process a “reasonable number of complaints.” The PAR template defines “reasonable” by identifying the minimum number of complaints a FHAP agency must receive and process based on the size of the FHAP agency’s jurisdiction.<sup>33</sup>

## HUD Reviewers Requested Enhanced Guidance on Interpreting Performance Standards

For the remaining performance standards, neither the FHAP Division nor the regulation include explicit measures for HUD reviewers to use when assessing FHAP agency performance. For all performance standards, HUD reviewers are expected to, through their case and document review and analysis, make an independent assessment of whether the agency is conducting timely, comprehensive, and thorough investigation and enforcement.

HUD reviewers expressed a desire for more guidance, including definitive guidance as to what level of compliance was acceptable and concrete examples of what constituted compliance and noncompliance. The most common point expressed was that, although all HUD reviewers work from the same performance standards, individual reviewers applied the standards in different ways. Of the FHEO regional staff members we interviewed, 10 HUD reviewers (67 percent) and four regional directors (40 percent) expressed concern about the lack of standardization in interpreting standards or suggested that FHEO needed to establish benchmarks to ensure that all FHAP agencies are held to the same requirements across the country. In addition, six HUD reviewers (40 percent) and three regional directors (30 percent) requested the creation of a handbook or field guide for HUD reviewers conducting FHAP agency oversight.<sup>34</sup>

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<sup>30</sup> The FHAP Division provides HUD staff and FHAP agencies with an annual FHAP funding guidance package. HUD is to use the guidance in administering FHAP funds and provide instruction and technical guidance for FHEO’s administration of FHAP program requirements.

<sup>31</sup> A case is charged when the FHAP agency determines cause and issues a charge of discrimination. The FHAP agency refers the complaint to appropriate counsel for prosecution before an administrative hearing or civil court. A case is closed when it is ended for other reasons, such as a settlement or administrative closure.

<sup>32</sup> A 1-year period, from July 1 to June 30, established by the FHAP Division for the purpose of calculating payments for case processing

<sup>33</sup> If FHAP agencies do not receive enough complaints to meet the minimums, HUD reviewers look at whether FHAP agencies are engaging in required education and outreach activities to inform the public of fair housing rights and responsibilities, to support case processing, and to augment their fair housing enforcement efforts.

<sup>34</sup> Nine HUD reviewers and seven regional directors did not discuss whether there was a need for a field handbook.

## Revisions to the PAR Template May Improve the Quality and Documentation of HUD Reviewers' Assessments and Corrective Actions

We found that the PAR template and FHAP Division trainings set expectations for how HUD reviewers should assess and document FHAP agencies' performance, but HUD reviewers did not always follow the PAR template or training guidance. For example, HUD reviewers did not consistently provide justification for passing agencies on performance standards when those agencies failed to meet some of the requirements for those standards. Further, HUD reviewers did not always follow the PAR template when providing corrective actions. Implementing a PAR template with stronger quality controls could help ensure that HUD reviewers in all regions meet basic quality requirements in their PAR submissions.

### HUD Reviewers Did Not Always Provide Support for Their Conclusions in the PARs

The PAR template has conclusion instructions for each performance standard directing HUD reviewers to conduct analysis, identify any deficiencies, and conclude whether FHAP agencies met the performance standards. The PAR template does not explicitly direct HUD reviewers to include the conclusion analysis in the PAR. However, based on training provided by the FHAP Division, HUD reviewers are expected to provide support for each conclusion based on specific examples and analysis in the PAR, but HUD reviewers did not always include support for their conclusions.

This support is important because it provides context for their conclusions when HUD reviewers apply the performance standards differently. For example, performance standard 1 requires FHAP agencies to process cases in a timely manner. The regulation at 24 CFR 115.206(e)(1) and the FHAP Division's annual guidance establish minimum requirements to define "timely." The PAR template lists a series of questions addressing five minimum requirements based on the regulation to assist HUD reviewers in assessing FHAP agencies' compliance with this standard (table 1). The evaluation team reviewed 183 PARs for consistency in interpreting performance standard 1.<sup>35</sup> Even when agencies achieved the same outcomes for the underlying requirements, the overall determination of whether the FHAP agency complied with performance standard 1 varied. We reviewed a subset of 18 PARs in which each agency achieved identical results on the minimum requirements (table 1).<sup>36</sup> Specifically, each agency failed three of the five requirements.

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<sup>35</sup> See appendix B for a discussion of methodology.

<sup>36</sup> See appendix B for a discussion of methodology.

**Table 1. Results recorded by HUD reviewers in subset of 18 PARs with the same results**

Requirements for performance standard 1	Results recorded in subset of 18 PARs (requirement met or not met)
1. Began processing fair housing complaints within 30 days of receiving the complaint.	Yes
2. Completed investigative activities within 100 days from receiving the complaints or, if impractical, sent written notification to the parties explaining the reasons for the delay within 110 days after filing the complaint.	No and unknown whether agency sent notification letters
3. Determined cause or no reasonable cause within 100 days after receiving the complaints or, if that was impractical, notified the parties in writing of the reasons for the delay.	No and unknown whether agency sent notification letters
4. Made a final administrative disposition within 1 year from receiving the complaints or, if that was impractical, notified parties in writing of the reasons for the delay.	No and unknown whether agency sent notification letters
5. Completed the investigations and prepared complete, final investigative reports for the complaints.	Yes

Although the agencies had the same outcomes for the individual requirements, HUD reviewers failed 7 (39 percent) of these agencies for performance standard 1 and passed the other 11 (61 percent). Of the 11 PARs in which the HUD reviewers determined that the agency complied with the performance standard despite the failures, HUD reviewers included some justification for this determination in only 3 PARs. HUD reviewers gave no explanation for finding the agencies compliant in the remaining eight PARs.

HUD reviewers and regional directors explained that agencies sometimes do not meet performance standards for reasons beyond their control. Three HUD reviewers and one regional director noted that they take into consideration factors like staffing shortages or the impact of the pandemic in assessing performance. A regional director described an instance in which the agency had several cases it had charged but was waiting for an administrative law judge to hear the cases.

In another example, performance standard 3 requires FHAP agencies to attempt conciliation in housing complaints to the extent feasible. The PAR template provides three subquestions to aid HUD reviewers in determining whether the agency met the standard:

1. Did the agency, to the extent feasible, attempt conciliation on all complaints? Explain.
2. Were conciliation attempts made throughout the processing of all complaints (that is, beginning with the filing of the complaint and ending with the filing of a reasonable cause finding or a charge)? Explain.
3. After a reasonable cause finding or charge has been issued, does the agency, to the extent feasible, attempt settlement until a hearing or a judicial proceeding has begun? Explain.

The evaluation team reviewed all 29 PARs from performance assessments completed in FY 2019<sup>37</sup> for consistency in evaluating performance standard 3. HUD reviewers rated the agencies as passing this standard in all 29 PARs. However, HUD reviewers did not always provide clear assessments of whether agencies passed all three subquestions. In two PARs (7 percent), HUD reviewers included only a single sentence that addressed subquestion two and did not provide a justification for whether the agency passed the requirements of the other two subquestions. In nine additional PARs (31 percent), HUD reviewers used vague and unclear language (for example, “typically attempts,” “demonstrated efforts,” or “generally reflects”) that did not definitively state whether the agency met the standard. Specifically, the standard requires the agency to attempt conciliation in each case in which it is feasible, so it was unclear whether these vague descriptions meant that the agency was meeting that standard.

While discretion is appropriate to allow HUD reviewers to account for different operating environments among the regions, these justifications should be clearly documented. Without clearly documented justification, PARs lack important context for the next HUD reviewer who assesses that agency’s performance, for the FHAP Division when it reviews PARs as a quality check,<sup>38</sup> and for the Assistant Secretary for Fair Housing and Equal Opportunity when making decisions on recertification.

### **HUD Reviewers Did Not Always Follow the PAR Template When Identifying Corrective Actions**

The PAR template requires HUD reviewers to (1) clearly identify the corrective action(s), (2) provide a timeframe for response and implementation, and (3) provide a timeframe in which HUD would follow up to assess the status of the corrective action. HUD reviewers did not always specifically identify actions they wanted agencies to take in the PARs as “corrective actions” and did not always include timeframes for response, implementation, and followup. Without HUD reviewers clearly identifying corrective actions in the PARs, FHAP agencies and FHEO do not have a common, documented set of expectations for steps toward recovery from performance deficiencies.

The most common terms used to describe actions for FHAP agencies to take were “corrective action,” “recommendation,” and “concern.” The evaluation team identified and analyzed 754 action items with these labels in the corrective action section of 132 of the 183 PARs in our scope.<sup>39</sup> HUD reviewers characterized 511 (68 percent) of the action items as corrective actions,<sup>40</sup> 155 action items (21 percent) as recommended actions or included them in the recommendation section<sup>41</sup> of the PAR, and 88 action

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<sup>37</sup> These 29 PARs represented all performance assessments completed by FHEO regional offices in 2019. The evaluation team chose the year 2019 because it was the most recent year before the COVID-19 pandemic, in case pandemic restrictions affected FHAP agencies’ ability to conduct conciliations. See appendix B for a more detailed discussion of methodology.

<sup>38</sup> The FHAP Division explained that it reviews PARs and provides feedback to HUD reviewers every 5 years as part of the preparation for recertification decisions.

<sup>39</sup> Forty PARs did not contain action items for the FHAP agency to address to improve performance. Eleven PARs contained action items that HUD reviewers did not identify as corrective actions, recommendations, or concerns. We identified these unlabeled action items through language such as “the agency must” or “HUD recommends” but did not include these in the count of 754 action items.

<sup>40</sup> The team considered an action item a “corrective action” if the HUD reviewer labeled the action item specifically as “corrective actions” or included it in a corrective actions section without a different subsequent characterization (for example, we observed “recommendations” included in the corrective action section).

<sup>41</sup> The PAR template has a section to recommend or not recommend recertification at the end of the template but does not ask for recommended actions in that section.

items (12 percent) as concerns.<sup>42</sup> The corrective actions often did not include timeframes for response, implementation, and followup. Further, the action items not identified as “corrective action” were much less likely to be time bound or indicate that HUD would follow up. Of the 511 action items identified as “corrective action,” 409 (80 percent) indicated when the FHAP agency was to implement the corrective action or that HUD would follow up. In contrast, of the 243 action items (155 recommendations and 88 concerns) not identified as corrective actions, 10 action items (4 percent) were time bound, and 13 action items (5 percent) indicated that HUD would follow up.

Some of the action items HUD reviewers provided in PARs were to improve FHAP agencies’ performance that did not violate a performance standard. However, HUD reviewers do not have standardized guidance to provide suggestions for improvement in these cases. The PAR template does not provide common terms for describing HUD reviewers’ concerns when the concerns do not violate a performance standard but could improve a FHAP agency’s performance. As these suggestions are opportunities to assist FHAP agencies before they fall into noncompliance with a performance standard, additional guidance on documenting and following up on these suggestions could improve transparency, accountability, and overall program performance.

Updating the PAR template with stronger quality control mechanisms could help ensure that HUD reviewers not only include justification for their conclusions, but also include all required elements for corrective actions. Discussing PAR requirements and how to interpret policies and procedures with FHEO regional offices could also help ensure that all FHEO regional offices would have the same understanding. With regular discussions and written examples that demonstrate the FHAP Division’s expectations, HUD reviewers will be better positioned to oversee and communicate information regarding FHAP agencies’ performance consistently and better meet FHAP Division expectations.

## **FHEO Has Not Defined a Consistent Process for Following Up With FHAP Agencies’ Progress in Completing Required Corrective Actions in PARs**

Staff in different regions described various ways of tracking FHAP agencies’ progress in completing corrective actions. Four regional offices described a process for tracking monitoring activities at the regional level, but the remaining six offices did not describe a tracking process. All regions reported holding followup meetings for corrective actions, with a frequency of weekly, monthly, or bimonthly. Five regions documented followup for corrective actions in writing or using emails, and two regions had followup meetings but did not document the discussions. The remaining three regions did not explicitly describe the documentation they used during followup.

HUD reviewers described varied individual processes they used for followup, including using a spreadsheet to track FHAP agencies’ deficiencies, corrective actions, and deadlines; allowing FHAP agencies to determine timelines for corrections; interspersing emails and telephone conversations; monthly conference calls with the FHAP agency on corrective action progress; and regular monitoring, including notifying the FHAP agency of whether its deliverables met the intent of the corrective action.

With the differences in tracking FHAP agencies’ progress, it is clear that corrective action followup differs across the regions and not all regions have a formal followup process. While variance across the regions supports different operating environments, a standard set of expectations and formal tracking of FHAP

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<sup>42</sup> The percentage totals 101 due to rounding.



agencies' progress in addressing their performance deficiencies could enhance the FHAP Division's ability to oversee the program.

## HUD REVIEWERS EXPRESSED INTEREST IN MORE FREQUENT TRAINING TO EFFECTIVELY CONDUCT PERFORMANCE ASSESSMENTS

HUD reviewers should be well equipped with the knowledge and competence to effectively perform their oversight role and document FHAP agencies' performance in the periodic performance assessments. However, 5 of the 15<sup>43</sup> HUD reviewers we spoke with reported that they did not always feel prepared for their roles. All HUD reviewers we interviewed had at least 1 year of experience in FHAP oversight work. All but two had between 4 and 21 years of such experience.

The FHAP Division and FHEO's Professional Development Institute (PDI) conduct formal trainings for HUD reviewers (table 2). The FHAP Division also hosts quarterly calls with FHEO regional directors and provides technical assistance on demand to all HUD reviewers. At the time of our fieldwork, HUD reviewers had not had access to refresher training on conducting PARs in more than a year. Specifically, the most recent PAR-specific refresher training was in July 2020. The FHAP Division held its most recent training for new reviewers in June 2022. Additionally, FHEO's PDI provides training for FHEO staff, one of which was on conducting performance assessments. FHEO's PDI last held training on financial criteria in September 2020.

**Table 2. Trainings conducted by the FHAP Division and FHEO's PDI for HUD reviewers, as provided by the FHAP Division**

Formal training session provided	Date
FHAP GTR-GTM Conference in Denver, CO	August 2016
Financial Management Reviews and Budget Analysis Worksheet	June 2017
Conducting Effective PARs	March 2018
Monitoring Federal Grants and Cooperative Agreements	June 2019
Webinar 1: Conducting Effective PARs (part of FHEO's PDI series)	July 2020
Webinar 2: Recerts, Deficiencies, eSignatures (part of FHEO's PDI series)	August 2020
Webinar 3: Payments, Financial Oversight (part of FHEO's PDI series)	September 2020
GTR-GTM Onboarding Training (including how to conduct effective PARs)	January 2021
GTR-GTM Onboarding Training (including how to conduct effective PARs)	June 2022

However, nearly all HUD reviewers we interviewed (14 of 15, or 93 percent) and regional directors (9 of 10, or 90 percent) requested more training during our interviews. We list the most common requests in figure 3. Regional directors and HUD reviewers' most frequent requests were for training specific to

<sup>43</sup> The team interviewed 15 of the 51 HUD reviewers on staff in FY 2022 (29 percent). See appendix B for more details on our methodology.

financial reviews, formal or additional onboarding training for new staff, more frequent training, and a return of the FHAP conference (last held in August 2016).

**Table 3. Most common requests for additional training made by HUD reviewers during interviews<sup>44</sup>**

Type of additional training or guidance requested	No. of HUD reviewers	No. of regional directors	Total
At least one training request	14	9	23
Training on financial reviews	5	4	9
Formal or additional onboarding training for new staff	5	3	8
More frequent or more structured training	8	1	9
FHAP conference	5	2	7
<b>Total number of interviewees</b>	<b>15</b>	<b>10</b>	<b>25</b>

The most frequently requested individual topic for training was financial reviews. Although the PAR template contains a detailed checklist and a budget analysis worksheet, four regional directors (40 percent) reported that a lack of budget and accounting knowledge was an issue in their region or that HUD reviewers needed more training or guidance related to the budget and finance standards. Five HUD reviewers<sup>45</sup> (33 percent) also requested more training or additional guidance on conducting financial reviews (table 3). One regional director said that, without training, their staff members do not know how to read an audit report to tell whether the agency is meeting the financial standards.

Other regional directors addressed the need for budget and finance review skills by hiring staff members with an accounting background. Two regional directors (20 percent) reported that they had staff members with a background in conducting financial audits. One reported that having a GTR with a financial background was adequate for that region’s needs, taking into account the size of its FHAP agencies. However, if the region had larger agencies, the regional director would want a dedicated auditor. The other regional director reported having hired an auditor specifically to conduct the financial reviews, stating that FHEO needs “financial people” to manage grants and budgets as it is a necessary function that has been deficient for some time in FHAP. Only one regional director said the guidance on budget and finance reviews was “pretty self-explanatory” and did not feel a need for additional financial training or having staff with an accounting or finance background.<sup>46</sup>

In addition to ongoing training, it is important for newer HUD reviewers to be properly trained. In January 2021, the FHAP Division provided onboarding training for new HUD reviewers, including information on conducting effective PARs (table 2). However, five of the HUD reviewers we interviewed and three regional directors expressed concerns that not all new reviewers had access to standardized or adequate

<sup>44</sup> “Most common” is defined here as that at least five HUD reviewers or regional directors made the same request.

<sup>45</sup> Of the remaining HUD reviewers, one revealed having a financial background and being comfortable with the financial reviews, five mentioned financial reviews but did not raise concerns about doing them, three did not discuss financial reviews, and one had not yet conducted one.

<sup>46</sup> Four regional directors did not discuss financial literacy.

onboarding training (table 3). FHEO regional offices hired 23 new HUD reviewers in the first half of fiscal year 2022 alone.<sup>47</sup> In addition to the training provided by the FHAP Division, we identified regional directors who provided formal onboarding training for new reviewers. For example, one region described its training as 3 days of presentations and answering questions from its reviewers.

Internal knowledge transfer appeared effective in preparing reviewers for their roles. Of the 15 reviewers we spoke with, 5 (33 percent) initially learned how to perform their oversight duties from their predecessors and felt adequately trained to do their job. However, FHEO risks losing this knowledge base through attrition. Three regions had an experienced HUD reviewer retire in 2021, and 5 regions expect a total of 13 HUD reviewers on board at the time of our review to be eligible to retire in 2022.<sup>48</sup> Therefore, FHEO cannot rely on peer-to-peer knowledge transfer as its main method for adequately preparing its new HUD reviewers. Three regional directors (30 percent) discussed needing to develop additional training for new reviewers. Three HUD reviewers (20 percent) said that new reviewers needed a formal course of onboarding training, and two (13 percent) said that new reviewers needed more training than they were receiving.

Formal, centralized training on conducting performance assessments was not as frequent or as detailed as some HUD reviewers considered necessary, especially since some HUD reviewers conduct assessments only every 2 or 4 years. Seven HUD reviewers (47 percent) requested more frequent training, with five of the seven HUD reviewers specifically requesting annual refresher training on conducting performance assessments (table 3). In addition, five HUD reviewers (33 percent) and two regional directors (20 percent) requested that the FHAP Division host more conferences like the ones held in Denver in 2016, even if done virtually, as they found the training and opportunity to share best practices valuable.

## **FHEO REGIONAL OFFICES ISSUED PIPS INFREQUENTLY, WHICH MAY REDUCE THE LIKELIHOOD THAT FHAP AGENCIES WOULD BE HELD ACCOUNTABLE FOR NOT CORRECTING PERFORMANCE DEFICIENCIES**

A PIP is one of the performance deficiency procedures that FHEO can use to improve FHAP agencies' performance after determining that the agency is not meeting a performance standard. The regulation at 24 CFR 115.210 (2) states, "[i]f, following technical assistance, the agency does not bring its performance into compliance...within a time period identified by the FHEO regional director, the FHEO regional director *may* [emphasis added] offer the agency a PIP." It also states that if an agency fails to process a reasonable number of complaints per year (performance standard 7), "HUD may bypass the technical assistance performance deficiency procedure and proceed to the PIP." Under a PIP, FHEO has the authority to withhold certain funds at the regional director's discretion. At the end of the PIP process, if the agency has not implemented the corrective actions, the FHEO regional director may suspend the agency's certification (suspension) and ultimately recommend the agency for withdrawal from the program (decertification).

We reviewed 183 PARs for 75 FHAP agencies during our 5-year scope. While 61 agencies (81 percent) failed to meet at least one performance standard in at least one PAR during that period, we identified 10

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<sup>47</sup> October 1, 2021-March 31, 2022

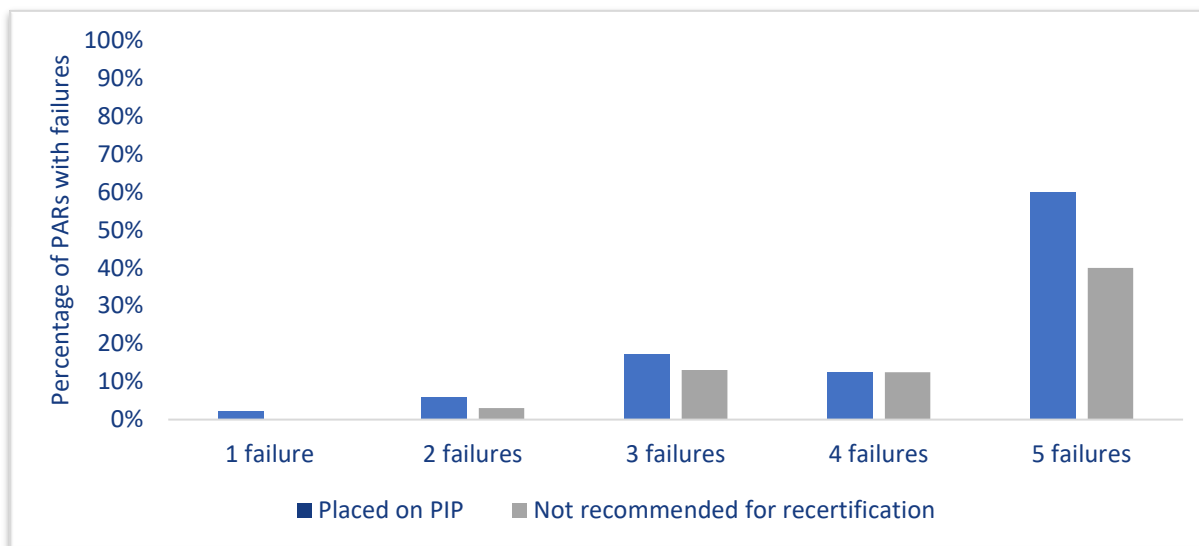
<sup>48</sup> The evaluation team contacted the regional directors to determine how many HUD reviewers had retired in calendar year 2021 and how many HUD reviewers were eligible for retirement in calendar year 2022.

agencies that FHEO had placed on a PIP. For these 10 FHAP agencies, FHEO recertified 4 after completing the PIP period. While the guidance provided to HUD reviewers states that the regional director *may* offer a FHAP agency a PIP, it does not require the director to do so. The FHAP Division explained that the regulations allow regional directors discretion in applying performance deficiency measures. Through our review, we identified inconsistencies in how regional directors applied the PIP process when addressing performance deficiencies.

### No Number of Performance Standard Failures Consistently Led to PIPs

The more standards an agency failed in a given PAR, the more likely regional directors were to place the agency on a PIP. On average, among all 183 PARs, those that did not result in a PIP had 1.2 failures, and those that did result in a PIP had 3.3 failures. Although the likelihood of issuing a PIP increased with the number of failed performance standards, the data indicate that even when an agency failed more than half of the standards, it may not have been placed on a PIP. For example, FHEO placed agencies that failed four standards in the same PAR on PIPs just 13 percent of the time. Agencies that failed five standards in the same PAR were placed on PIPs only 60 percent of the time (chart 4).

**Chart 1. Percentage of PARs with given number of failures that resulted in an agency’s being placed on a PIP or not recommended for recertification**



## No Single Standard, if Failed, Consistently Led to PIPs

There was no standard, which, if failed, consistently led to agencies' being placed on PIPs. The FHAP regulation states that FHAP agencies may be placed on PIPs regardless of whether they have first received technical assistance if they fail performance standard 7. Agencies that failed performance standard 7 were placed on PIPs just 6 percent of the time (table 4).

**Table 4. Frequency of a standard's being failed in a PAR and the percentage of those PARs that resulted in a PIP or recommendation not to recertify**

Standard failed	PARs in which standard was failed		Agency was placed on PIP		Agency not recommended for recertification	
	No. of PARs	% of all PARs	No. of PARs	% of PARs with standard failed	No. of PARs	% of PARs with standard failed
Performance standard 1	77	42%	10	13%	6	8%
Performance standard 2	8	4%	0	0%	0	0%
Performance standard 3	18	10%	4	22%	3	17%
Performance standard 4	23	13%	6	26%	4	17%
Performance standard 5	27	15%	6	22%	3	11%
Performance standard 6	6	3%	2	33%	2	33%
Performance standard 7	16	9%	1	6%	1	6%
Performance standard 8	16	9%	4	25%	3	19%
Performance standard 9	46	25%	3	7%	3	7%

## HUD Reviewers Did Not Place FHAP Agencies With Repeated Deficiencies on PIPs and Almost Always Recommended Them for Recertification

Of the 75 agencies, 68 had more than 1 PAR completed during the review period. There were 40 PARs from 30 agencies with multiple PARs<sup>49</sup> that had a repeated deficiency, in which the agency failed the same performance standard in the second or greater consecutive PAR.<sup>50</sup> As figure 6 shows, FHEO regional offices did not issue PIPs at least 85 percent of the time following PARs with repeated deficiencies. Additionally, FHEO regional offices recommended agencies for recertification 95 percent of the time following PARs with repeated deficiencies.

<sup>49</sup> This is 44 percent of the agencies that had more than one PAR completed during the review period.

<sup>50</sup> The second or greater consecutive PAR means the second, third, or fourth PAR in a row. See appendix B for a discussion of the methodology.

**Table 5. Number of PARs with repeated failures and outcomes**

HUD region	Number of PARs with repeated failures of the same performance standard...				
	...per region	...and agency put on PIP	...but agency not put on PIP	...and agency not recommended for recertification	... but agency recommended for recertification
Region 1	0	0	0	0	0
Region 2	2	1	1	1	1
Region 3 <sup>51</sup>	4	1	2	0	4
Region 4	11	0	11	0	11
Region 5	6	0	6	0	6
Region 6	10	3	7	1	9
Region 7	3	0	3	0	3
Region 8	0	0	0	0	0
Region 9	4	0	4	0	4
Region 10	0	0	0	0	0
<b>Totals</b>	<b>40</b>	<b>5 (12.5%)</b>	<b>34 (85%)</b>	<b>2 (5%)</b>	<b>38 (95%)</b>

Note: This figure is not intended to be an indicator of performance by HUD regions. A greater number of PARs may reflect that a particular region has more FHAP agencies.

### **FHEO Did Not Provide Clear Internal Guidance to FHEO Regional Staff on When To Place Agencies on PIPs**

Although the FHAP regulation states that the FHEO regional director “may offer” the FHAP agency a PIP, it does not require HUD reviewers to recommend or regional directors to issue a PIP to address FHAP agencies’ deficiencies. Additionally, the FHAP Division states that it leaves performance management to the regions. However, half of the regional directors we spoke with noted that the FHAP Division provides input on PIPs or can override the regional director’s decision. With no specific guidance from FHEO, regional directors used different criteria when deciding to issue a PIP.

In interviews, HUD reviewers and regional directors provided eight different criteria when asked how they decide when to recommend or issue a PIP. The criteria varied across the regions and included the number of performance standard failures, whether the FHAP agency failed certain standards, or continued failures after technical assistance. The timeframe for how long a FHAP agency had to display these deficiencies also varied (table 6).

<sup>51</sup> One PAR in Region 3 did not provide information on whether the agency was placed on a PIP.

**Table 6. Criteria for placing a FHAP agency on a PIP, as stated by HUD reviewers and regional directors in interviews**

Standard for placing FHAP agency on PIP	No. of HUD reviewers	No. of regional directors
Fails one or more standards	1	3
Fails two or more standards	1	0
Fails five or more standards	1	0
Fails certain standards	2	2
Continues to fail standards after technical assistance (length unspecified)	3	2
Continues to fail standards after 6 months of technical assistance	0	1
Continues to fail standards after 1 year of technical assistance	2	0
Continues to fail standards after several years of technical assistance	2	0
No clear definition	4	2
<b>Total</b>	<b>16<sup>52</sup></b>	<b>10</b>

During our discussions with HUD reviewers and regional directors on their technical assistance processes and criteria for placing an agency on a PIP, some described formal documentation related to their considerations. For example, during one interview, a HUD reviewer described the reviewer’s process to decide whether to implement a PIP. The HUD reviewer described issuing formal documentation after observing a FHAP agency’s not meeting performance standards before escalating to a PIP. If the agency’s performance did not improve within a year, the HUD reviewer would recommend placing the agency on a PIP. During that year, the HUD reviewer provided technical assistance and conducted monthly monitoring. The HUD reviewer reported not having to place an agency on a PIP because, when the agency sees the language in the documentation, it knows it is close to a PIP. The HUD reviewer said that the PIP takes the agency’s funds away and it was crucial not to go into that process without giving the FHAP agency “a real opportunity for improvement.” The evaluation team also observed that two regions issued letters of finding to document performance standard failures and two regions reported developing action plans with FHAP agencies to formally document how the agency would address performance deficiencies outside the PIP process.

While FHAP regulations do not require FHEO to place agencies on PIPs, the FHAP Division can issue stricter guidance clarifying when regional directors are expected to take this kind of corrective action. The FHAP Division already provides stricter guidance to FHEO regional offices than the regulations require related to the frequency of performance assessments. Similar guidance related to PIPs would improve the consistency across the regions in issuing PIPs and strengthen FHAP agency performance.

<sup>52</sup> One HUD reviewer discussed multiple criteria.

## Placing a FHAP Agency on a PIP May Have Unintended Negative Consequences for FHEO Regional Offices, Which May Prevent Them From Issuing PIPs

A small number of interviewees suggested that HUD reviewers may not always be inclined to issue a PIP because of the stigma and negative consequences related to PIPs. Five HUD reviewers and regional directors said that they considered PIPs the last resort to address a FHAP agency's deficiencies because PIPs take FHAP funds away from the FHAP agency or suggested that HUD reviewers should avoid issuing a PIP whenever possible. Three HUD reviewers and one regional director also expressed concerns about their regional offices' ability to absorb caseloads in the event of FHAP agency decertification. Specifically, because FHEO could decertify a FHAP agency if it did not successfully complete the PIP, three HUD reviewers said that they might not put the agency on a PIP or recommend that FHEO decertify the agency due to the possibility of FHEO's having to absorb a FHAP agency's case load. FHEO stated that a regional office's capability to absorb a FHAP agency's caseload should not affect how a regional office assesses performance. The FHAP Division Director also stated that the regional offices were not using PIPs frequently enough due to the negative perceptions of PIPs. While he stated that he was aware that FHAP agencies could lose local support or funding if they were put on a PIP, he said that regional offices should use the PIP as a roadmap to improve an agency's performance.

## Conclusion and Recommendations

Given the inconsistencies identified in our report, we shared the above information to aid FHEO in its efforts to improve consistency and develop a more standardized approach to oversight. FHAP agencies play a significant role in protecting access to equal housing opportunities. FHEO's reliance on FHAP agencies to enforce fair housing laws makes it critical that FHEO act on the following recommendations to ensure that all FHAP agencies meet performance standards.

The FHAP Division told us that it was developing a FHAP oversight handbook and planned to assemble a working group of select HUD reviewers and regional directors to inform centralized guidance and training. We strongly encourage the FHAP Division to assemble this working group with urgency, given the need to capture institutional knowledge for program management improvements and the potential for experienced HUD reviewers' retirements in 2022 and outlying years.

### WE RECOMMEND THAT THE DIRECTOR OF FHEO

#### 1. Provide more detailed guidance to HUD reviewers on benchmarks for each performance standard.

The FHAP Division should develop compliance benchmarks for each performance standard. For standards for which it is impractical to provide such benchmarks, FHEO could provide a detailed description of successful FHAP agency performance and performance deficiencies, using examples. FHEO could develop a FHAP oversight handbook that includes this guidance.



## **2. Update the PAR template to ensure that HUD reviewers include required information.**

The FHAP Division could consider establishing an electronic PAR system with required fields to ensure that PARs contain a HUD reviewer's analysis, conclusion statements, and all corrective action elements. The template should also include any relevant information from the annual guidance.

The FHAP Division could also consider implementing formal tracking of FHAP agencies' progress in addressing the performance deficiencies identified in the PAR.

FHEO could consolidate, in a FHAP oversight handbook, guidance provided in the PAR template, relevant annual guidance, and FHAP Division training. FHEO could consider providing guidance on how HUD reviewers can make "suggestions" that fall short of correcting a deficiency but could improve FHAP agency performance.

## **3. Assess HUD reviewers' skills and readiness to determine the appropriate frequency of training.**

FHEO may consider offering more frequent standardized onboarding training to reduce reliance on on-the-job training. When assessing the appropriate frequency of training for existing staff, FHEO could consider an individual's experience with FHAP agency oversight, the length of time since the last training on conducting oversight, and whether the individual received formal onboarding training or formal oversight training. FHEO may also consider providing training on financial reviews.

## **4. Provide more detailed guidance to HUD reviewers and FHEO regional directors on when and under what circumstances to recommend or issue a PIP.**

Factors FHEO could consider for a PIP are the number of failed performance standards in a single PAR, whether a FHAP agency had repeat deficiencies in consecutive PARs, and whether a failure of certain performance standards led to a PIP. FHEO should reinforce with FHEO regional staff and FHAP agencies that PIPs are a roadmap to improve FHAP agency performance.

# Appendixes

## APPENDIX A – AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

### Summary of the Office of Fair Housing and Equal Opportunity's Comments and the Office of Inspector General Response

We requested that the U.S. Department of Housing and Urban Development's (HUD) Office of Fair Housing and Equal Opportunity (FHEO) provide formal comments in response to our draft report and indicate agreement or disagreement with our recommendations. FHEO provided formal comments and agreed with our recommendations. We agreed with FHEO's corrective action plans and estimated completion dates for recommendations 1, 2, and 4. While FHEO provided a corrective action plan for recommendation 3, we did not agree that the planned trainings fully met the intent of the recommendation. As a result, we consider recommendations 1, 2, and 4 to be "resolved-open." We consider recommendation 3 to be "unresolved-open."

As part of FHEO's formal comments, FHEO included its corrective action plan for implementing our recommendations. FHEO is developing a Fair Housing Assistance Program (FHAP) oversight handbook for HUD reviewers to use as a resource and a guide for monitoring FHAP agencies. Additionally, the FHAP Division plans to review and improve the performance assessment report (PAR) template to ensure consistency in the application of the performance standards across the regions. FHEO plans to address FHAP training needs through the National Fair Housing Training Academy. In addition to these efforts, FHEO has reformed the funding controls in the Line of Credit Control System<sup>53</sup> to better ensure financial integrity. FHEO is focused on strengthening its internal capacity in accordance with HUD's fiscal year 2022-2026 Strategic Goals.

#### Recommendation 1

FHEO is developing a FHAP oversight handbook. FHEO expects the handbook to be completed by March 31, 2023. The handbook will provide detailed guidance for HUD reviewers on conducting PARs and will include how to correctly evaluate each performance standard with examples to assist HUD reviewers with assessing agency performance.

#### Recommendation 2


FHEO plans to update the PAR template with an expected completion date of March 31, 2023. FHEO anticipates that the updated version will establish consistency throughout HUD regions by ensuring that all performance standards are measurable. The revised version will also ensure that HUD reviewers provide direct feedback for the FHAP agencies. To assist with the revision of the PAR template, FHEO plans to host listening sessions with HUD monitoring staff in the fall of 2022.

#### Recommendation 3

FHEO plans to conduct monitor onboarding training before December 31, 2022. Additionally, after FHEO completes the update of the PAR template, FHEO plans to conduct training on the new template before April 30, 2023. While FHEO plans to have at least two trainings, it is unclear whether FHEO assessed

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<sup>53</sup> The Line of Credit Control System is HUD's primary grant disbursement system for HUD programs including FHAP.



existing HUD reviewers' skills and readiness or how it determined the appropriate frequency of the planned trainings.

**Recommendation 4**

FHEO is developing a FHAP oversight handbook that will include detailed guidance on how and when to consider performance deficiency procedures to include performance improvement plans (PIP). It will also include examples of when and under what circumstances the region should recommend and issue corrective actions and PIPs. FHEO plans for the handbook to provide HUD reviewers and regional directors with guidance on tracking and evaluating each performance standard. The estimated completion date for the handbook is March 31, 2023.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

Brian T. Pattison  
Assistant Inspector General for Evaluation  
HUD Office of Inspector General  
451 7<sup>th</sup> Street SW  
Washington, DC 20024  
**Sent Via Electronic Mail to:** [bpattison@hudoig.gov](mailto:bpattison@hudoig.gov)

October 14, 2022

Dear Mr. Pattison:

The Office of Fair Housing and Equal Opportunity (FHEO) appreciates the opportunity to review and comment on HUD's Office of Inspector General (HUD OIG) draft report entitled "*Fair Housing and Equal Opportunity's Oversight of State and Local Fair Housing Enforcement Agencies*" (2021-OE-0008). In the draft report, HUD OIG makes four recommendations to FHEO on improving the oversight of state and local fair housing enforcement agencies.

FHEO is actively focusing on strengthening our internal capacity in accordance with FY2022 – 2026 HUD Strategic Goals. As part of this effort, we continue to improve the oversight and guidance we provide to our Fair Housing Assistance Program (FHAP) agency partners we serve. In FY2022, FHEO reformed the funding controls in the Line of Credit and Controls System to better ensure financial integrity and tracking. FHEO also began developing a FHAP oversight handbook to provide our HUD reviewers with additional guidance, resources, and technical tools that will ensure consistency in the monitoring of FHAP across the regions. In addition to the handbook, the FHAP Division has already begun reviewing the Performance Assessment Report (PAR) template to assess better the needs and performance of participating FHAP agencies and will improve the template to ensure greater consistency in our application of the standards across HUD's regions. Building upon this progress, FHEO is addressing the training needs to enhance FHAP performance through its National Fair Housing Training Academy.

This letter concurs with the findings and recommendations proposed by this draft report. Enclosed with this letter, we have included our plan for implementing the recommendations proposed by the office of HUD OIG. Once again, thank you for the opportunity to comment on this draft report. If you have any questions, please contact our Acting Director of the FHAP Division, Erik Steinecker, via email at [Erik.L.Steinecker@hud.gov](mailto:Erik.L.Steinecker@hud.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "L. Grosso".

Lynn M. Grosso  
Deputy Assistant Secretary for Enforcement

[www.hud.gov](http://www.hud.gov)

[espanol.hud.gov](http://espanol.hud.gov)

### Corrective Action Plan

**1. Provide more detailed guidance to HUD reviewers on benchmarks for each performance standard.**

FHEO concurs with this recommendation and is developing the FHAP oversight handbook to provide detailed guidance for HUD reviewers on conducting the PAR and how to correctly evaluate each performance standard. This Handbook will also include clear examples that will assist HUD reviewers in more accurately measuring the agency's performance. The FHAP Handbook is currently under development in consultation with FHAP monitors and is expected to be completed by March 31, 2023.

**2. Update the PAR template to ensure HUD reviewers include the required information.**

FHEO concurs with this recommendation and is taking corrective action by updating the PAR template to ensure that all performance standards are measurable and more direct feedback for the FHAP agencies is provided. The PAR update will give a more uniform evaluation to ensure consistency throughout the regions and will be modernized to include new processes of collecting, measuring, and providing adequate feedback necessary for the performance assessment. The Division plans to host multiple listening sessions with HUD monitoring staff throughout the fall. Following these sessions, the PAR template will be updated and is expected to be completed by March 31, 2023.

**3. Assess HUD reviewers' skills and readiness to determine the appropriate frequency for training.**

FHEO will host a monitor onboarding training before December 31, 2022, similar to the training provided in July for new monitors. Following the completion of the updated PAR template, FHEO will host a substantive training on the new template within a month of the completion of the PAR template, before April 30, 2023.

**4. Provide more detailed guidance to HUD reviewers and FHEO regional directors on when and under what circumstances to recommend or issue a PIP.**

FHEO intends to include detailed guidance in the forthcoming FHAP oversight handbook on how to and when to consider performance deficiency procedures, including a Performance Improvement Plan (PIP). The handbook will provide detailed guidance for HUD reviewers and regional directors on tracking and evaluating each performance standard. The Handbook will also include clear examples of when and under what circumstances to recommend and issue corrective actions and PIPs. The FHAP Handbook is currently under development and is expected to be completed by March 31, 2023.

## APPENDIX B – SCOPE, METHODOLOGY, AND LIMITATIONS

We completed this evaluation under the authority of the Inspector General Act of 1978 as amended and in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency (December 2020). There were no limitations.

### Scope

We conducted our fieldwork between July 2021 and January 2022. There were 77 U.S. Department of Housing and Urban Development (HUD) Fair Housing Assistance Program (FHAP) agencies in 36 States and the District of Columbia. Fifteen States have multiple FHAP agencies ranging from two to seven FHAP agencies per State. Our review of performance assessment reports (PAR) included performance assessments in which any portion of the FHAP agency's performance period fell within fiscal years (FY) 2016 through 2020 (between October 1, 2015, and September 30, 2020). We received 273 PAR-related documents. The team determined that 38 documents were out of scope, 35 were duplicates, 18 were performance improvement plans (PIPs), and 1 was both a PAR and a PIP, which resulted in 183 unique PARs in the universe for analysis. PARs were not available for 2 of the 77 agencies during the review period, which resulted in a universe for analysis of 75 agencies.

### Methodology – PAR Review

The team reviewed 183 PARs in which the performance period fell within FYs 2016 through 2020 (between October 1, 2015, and September 30, 2020) and extracted information on the HUD reviewer's assessment of the agency's performance, including

- when the performance assessment took place,
- the performance periods evaluated,
- whether the performance assessment was remote or on-site,
- whether the agency passed each performance standard,
- whether the agency met subrequirements related to timely investigations, and
- whether the agency was recommended for recertification.

The team also reviewed 18 PIPs or PIP-related documents for 10 agencies.

### HUD Reviewers' Use of Discretion

The team evaluated HUD reviewers' independent assessments in performance standards 1 and 3. Performance standard 1 was chosen for analysis because the Office of Fair Housing and Equal Opportunity (FHEO) has established minimum requirements for it and because it is the standard FHAP agencies most frequently failed to meet. All 183 PARs were examined for consistency between HUD reviewers' evaluations of subrequirements and evaluations of the overall standard. As part of this analysis, the team identified a subset of 18 PARs in which FHAP agencies achieved identical results on the 5 subrequirements of performance standard 1.<sup>54</sup> The team reviewed this subset of PARs to determine how many met and how many failed performance standard 1 despite achieving identical results.

Performance standard 3 was chosen for analysis because FHEO has not established minimum requirements for it and because HUD reviewers noted in interviews that the standard was difficult to

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<sup>54</sup> See table 1.

assess or clarification was needed on what constituted compliance. The evaluation team analyzed a sample of 29 PARs, which represented all performance assessments completed by FHEO regional offices in 2019. The evaluation team chose the year 2019 because it was the most recent year before the COVID-19 pandemic, in case pandemic restrictions affected FHAP agencies' ability to conduct conciliations. The evaluation team reviewed HUD reviewers' assessments of performance standard 3 for consistency, clarity, and compliance with 24 CFR 115.206(e)(3) and the PAR template.

### **Action Items**

The evaluation team examined all 183 PARs for actions HUD reviewers wanted FHAP agencies to take to bring their performance in alignment with standards. The team used the following markers to identify action items:

- actions in the sections "Summary of Performance / Corrective Actions" and "Conclusion and Recommendation" or with explicit labels, including "corrective action," "recommendation," and "concern";
- timebound language, such as "within x days";
- directive language, such as "shall," "must," or "is required to"; and
- language indicating suggestions to take action, such as "HUD encourages the agency to..." or "HUD recommends..."

The evaluation team identified 143 PARs that contained action items. When labels were used, HUD reviewers most commonly labeled action items as "corrective actions," "recommendations," or "concerns"—132 of the 143 PARs had a total of 754 actions with one or more of these three labels.

The PAR template requires actions related to performance standards to meet three requirements: (1) be clearly identified as corrective action(s), (2) have a timeframe for response and implementation, and (3) have a timeframe when HUD would follow up to assess the status of the corrective action. The evaluation team, therefore, examined action items identified as corrective actions for compliance with the second and third requirements.

### **PIP Use**

The evaluation team reviewed all 183 PARs and 18 PIP documents to determine which of the 9 performance standards agencies did not meet and which PARs resulted in agencies' being placed on a PIP. The evaluation team then analyzed trends in how many standards or which standards, if failed, led to FHEO's placing agencies on PIPs.

In addition, for those agencies that had more than one PAR completed during the evaluation period, the evaluation team examined all PARs for each agency to identify repeated deficiencies. The team considered deficiencies as repeated deficiencies if the agency failed to meet the same standard more than once in consecutive performance assessments. That is, if the agency failed a standard in the first and second PAR, the team counted the second PAR as having a repeated deficiency. If the agency failed the same standard in the first and third PARs, the evaluation team did not count this as a repeated deficiency. The evaluation team analyzed trends in how many repeated deficiencies led to PIPs.

## Methodology – Interviews

The team interviewed the acting FHAP Division Director, all 10 FHEO regional directors, and 15 HUD reviewers (29 percent of all individuals the FHAP Division identified as HUD reviewers).<sup>55</sup> The team analyzed testimonial evidence gathered from these interviews.

To understand the oversight process from the perspective of the FHAP agencies, the team interviewed 16 FHAP agency representatives from 13 FHAP agencies across the 10 FHEO regions. The team accounted for different jurisdiction sizes and experiences in the program. For example, 1 agency was certified on an interim basis, while 12 agencies were fully certified FHAP agencies. Six agencies were city agencies, four were State agencies, three were county agencies, and one agency experienced a PIP. The team interviewed the HUD reviewers that were responsible for monitoring the 13 FHAP agencies identified for interviews.

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<sup>55</sup> FHEO had 51 HUD reviewers in fiscal year 2022. The team interviewed 15 (29 percent). The team interviewed at least one HUD reviewer from each region.

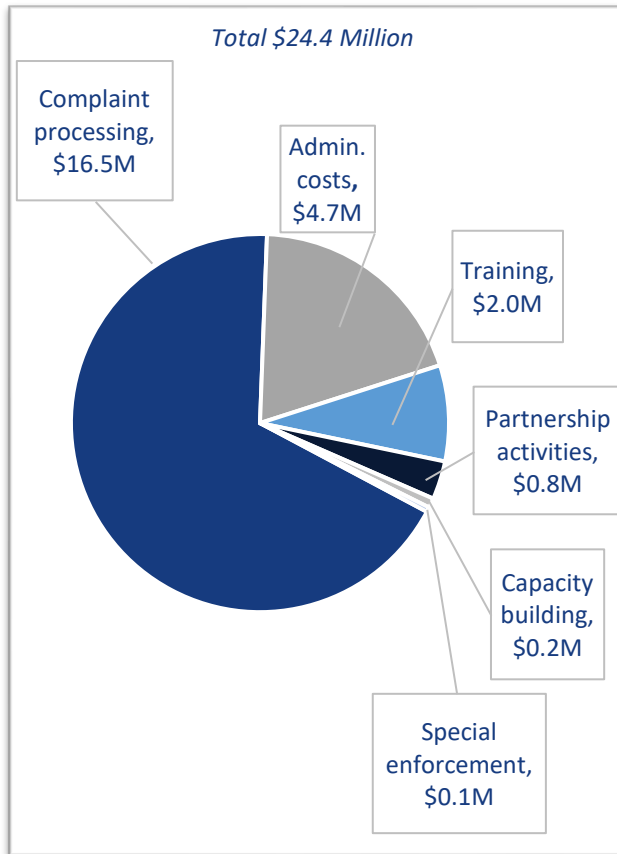


## APPENDIX C – THE NINE PERFORMANCE STANDARDS USED TO EVALUATE FHAP AGENCIES

Performance standard	Criteria
Performance standard 1	The Fair Housing Assistance Program (FHAP) agency must begin complaint proceedings within 30 days, carry forward such proceedings, issue determinations, make final administrative dispositions within the allotted timeline, and complete a final investigative report. Performance standard 1 specifically considers whether a FHAP agency completes investigations within 100 days from receiving the complaint or notifies the parties of the reason(s) for the delay in writing.
Performance standard 2	The FHAP agency must use administrative closures only in limited and appropriate circumstances.
Performance standard 3	The FHAP agency must attempt to (1) conciliate the complaint from the beginning with the filing of a complaint and ending with the filing of a charge or dismissal; or (2) settle until the beginning of a hearing or judicial proceeding to the extent feasible.
Performance standard 4	The FHAP agency must conduct compliance reviews of settlements, conciliation agreements, and orders resolving discriminatory housing practices.
Performance standard 5	The FHAP agency must consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of discriminatory practices. This performance standard requires the agency to seek actual damages as appropriate, seek and assess civil penalties or punitive damages as appropriate, and seek types of relief with consideration for inclusion of affirmative provisions designed to protect the public interest.
Performance standard 6	The FHAP agency must consistently and affirmatively seek to eliminate all prohibited practices under its fair housing law. This performance standard will assess education and outreach efforts.
Performance standard 7	The FHAP agency must demonstrate that it receives and processes a reasonable number of complaints under both the Fair Housing Act and the FHAP agency's fair housing statute or ordinance.
Performance standard 8	The FHAP agency must report to U.S. Department of Housing and Urban Development (HUD) on the final status of all dual-filed complaints <sup>56</sup> in which a determination of reasonable cause was made. At a minimum, the report must identify how complaints were resolved, when they were resolved, the forum in which they were resolved, and types and amounts of relief obtained.
Performance standard 9	The FHAP agency's performance must comply with the provisions of any written agreements between the FHAP agency and HUD regarding substantial equivalency certification, including the interim agreement or memorandum of understanding.

<sup>56</sup> 24 CFR 115.100(c). Dual-filed complaint means a housing discrimination complaint that has been filed with both HUD and the agency that has been granted interim certification or certification by the Assistant Secretary.

## APPENDIX D – FHAP AGENCY FUNDS



In FY 2021, the Fair Housing Assistance Program (FHAP) received \$24.4 million in appropriated funds. FHAP agencies receive funds for the following purposes:

- *Complaint processing* – payment for complaints in which the U.S. Department of Housing and Urban Development’s (HUD) Office of Fair Housing and Equal Opportunity (FHEO) regional office determined that the FHAP agency processed acceptably
- *Administrative costs* – to cover administrative costs
- *Training* – for HUD-approved or HUD-sponsored training of FHAP agency staff
- *Partnership activities* – to hire other individuals or organizations with expertise needed to effectively carry out the agency’s fair housing law
- *Capacity building* – for agencies with interim certification
- *Special enforcement* – for agencies meeting specific criteria demonstrating enhanced enforcement of the agency’s fair housing laws

Type of funds	Purpose	Eligible agencies <sup>57</sup>	Determination of distribution
Complaint processing	To pay the costs of processing complaints	Agencies that have previously received capacity-building funds for 1-3 years and that have processed cases acceptably <sup>58</sup>	Per case after case is acceptably processed, with amount determined by type of closure
Complaint processing – post-cause-enforcement supplemental payments	To facilitate more effective enforcement partnerships within jurisdiction governments	Agencies that have previously received capacity-building funds for 1-3 years and that have engaged in a post-cause-enforcement action	Per case after post-cause-enforcement action is acceptably completed
Administrative costs	To cover administrative costs	All agencies that have previously received capacity-building funds for 1-3 years	Per agency based on number of acceptably processed cases in the previous performance year, plus a locality adjustment for high-cost-of-living areas
Training	For HUD-approved or HUD-sponsored training of FHAP agency staff	All agencies	Per full-time equivalent
Partnership activities	To hire other individuals or organizations with expertise needed for specific activities (for example, earmarked in 2021 for education and outreach related to housing discrimination on the basis of sexual orientation and gender identity)	All agencies that have previously received capacity-building funds for 1-3 years	Per agency, following application for relevant activities
Capacity building	To support the activities of new agencies to increase awareness of the law within the jurisdiction and to administer and enforce the law	Agencies with interim certifications	Fixed amount per year for each agency in capacity building
Special enforcement	To assist agencies with the costs of complex or ongoing litigation or with costs related to	Agencies which (a) meet specific criteria demonstrating enhanced enforcement of the	Per case incurring such expenses, until funds are exhausted

<sup>57</sup> Agencies on performance improvement plans (PIP) are ineligible for special enforcement funds. FHEO may, at its discretion, hold any or all other types of funds while an agency is on a PIP or has a suspended certification.

<sup>58</sup> Acceptably is defined as complaints that are (a) cognizable under the Fair Housing Act and (b) acceptable for payment under the Criteria for Processing and Standards for Timeliness included as part of FHEO’s annual guidance and the cooperative agreement between the FHEO and the FHAP agency.

Type of funds	Purpose	Eligible agencies <sup>57</sup>	Determination of distribution
	investigations and enforcements outside the “ordinary” costs	agency’s fair housing laws, (b) have fewer than 20 percent of their cases result in administrative closures, (c) are not currently on a PIP, and (d) have not had their interim certification or certification suspended during the fiscal year in which special enforcement funds are sought	

## APPENDIX E – ABBREVIATIONS

Abbreviation	Definition
CFR	Code of Federal Regulations
EOS	equal opportunity specialist
FHAP	Fair Housing Assistance Program
FHEO	Office of Fair Housing and Equal Opportunity
FY	fiscal year
GTM	government technical monitor
GTR	government technical representative
HUD	U.S. Department of Housing and Urban Development
OIG	Office of Inspector General
PAR	performance assessment report
PDI	Professional Development Institute
PIP	performance improvement plan
U.S.C.	United States Code

## APPENDIX F – ACKNOWLEDGEMENTS

This report was prepared under the direction of Brian T. Pattison, Assistant Inspector General for Evaluation; Christopher Backley, Director, Program Evaluations Division; and Kimberley Lake de Pulla, Assistant Director. The Office of Evaluation staff members who contributed are recognized below.

### Major Contributors

Darren Wallace, Senior Evaluator (team lead)

Heidi Kim, Senior Evaluator

Lorenzo Marquez, Evaluator

Christina Moreno, Senior Evaluator

Patricia Schwindinger, Evaluator

### Other Contributors

Gabrielle Foster, Senior Evaluator (referencer)

Travis Hill, Senior Evaluator (referencer)

Kaitlyn Large, Assistant Director (referencer)