



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

HUD Developed and Implemented a Plan To Address Executive Order 13988

Audit Report Number: 2024-BO-0003

June 5, 2024

To: Lynn M. Grosso
Deputy Assistant Secretary for Enforcement, Office of Fair Housing and Equal Opportunity, ED

//signed//

From: Kilah S. White
Assistant Inspector General for Audit, Office of Inspector General, GA

Subject: HUD Developed and Implemented a Plan To Address the Requirements of Executive Order 13988 To Prevent and Combat Gender Identity and Sexual Orientation Discrimination

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our audit of HUD's implementation of Executive Order 13988 to prevent and combat discrimination on the basis of gender identity and sexual orientation.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, as amended, requires that OIG post its reports on the OIG website. Accordingly, this report will be posted at <https://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call Ronald J. Lloyd, Audit Director, at (617) 994-8380.

Highlights

HUD Developed and Implemented a Plan To Address Executive Order 13988 | 2024-BO-0003

What We Audited and Why

We audited the U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity's, implementation of Executive Order 13988, which President Biden issued to prevent and combat discrimination on the basis of gender identity or sexual orientation. We performed this audit to assess HUD's progress in developing an action plan to implement the executive order. Our audit objective was to determine whether HUD had established and implemented a plan to prevent and combat discrimination based on gender identity and sexual orientation.

What We Found

HUD developed a proposed plan of action related to Executive Order 13988. According to HUD Office of General Council officials, HUD submitted its proposed plan to the White House Domestic Policy Council within 100 days of Executive Order 13988, thereby satisfying the requirements of the executive order. To implement its plan, HUD regional offices and Fair Housing Assistance Program agencies identified and notified almost all complainants who alleged gender identity or sexual orientation discrimination in accordance with its guidance. It also committed to the Equal Access Rule. As a result of developing and implementing the plan, HUD had reasonable assurance that its regional offices and FHAP agencies were properly identifying and addressing allegations of gender identity or sexual orientation discrimination in HUD programs and HUD-assisted housing and shelters.

What We Recommend

The report contains no recommendations.

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Background and Objective

The Fair Housing Act, as amended, prohibits discrimination because of race, color, religion, national origin, sex, disability, and familial status.¹ The Act applies to certain issues, including harassment and discrimination in the sale, rental, advertising, or financing of housing; the provision of brokerage services; and other activities related to residential real estate transactions. With some exceptions, the Act covers all “dwellings,” which are defined generally as buildings designed to be used in whole or part for a residence, as well as vacant land offered for sale and lease for constructing or locating a building. HUD’s Office of Fair Housing and Equal Opportunity (FHEO) investigates allegations of housing discrimination and is charged with the enforcement, administration, development, and public understanding of Federal fair housing policies and laws. To achieve its mission, FHEO enters into cooperative agreements with State and local agencies under the Fair Housing Assistance Program (FHAP).

Although HUD has delegated the processing of some fair housing allegations to FHAP agencies, it retains the responsibility of ensuring that FHAP agencies are properly addressing all fair housing allegations. HUD provides annual funding to FHAP agencies on a noncompetitive basis to receive housing discrimination complaints and conduct investigations to determine whether the alleged discrimination occurred. HUD expects the agencies to use their authority to ensure that victims are made whole through conciliation agreements, settlements, and administrative or judicial enforcement. As of March 2024, there were 76 FHAP agencies in 36 States.

On June 15, 2020, the Supreme Court issued a decision in *Bostock v. Clayton County*², which held that Title VII of the Civil Rights Act of 1964’s prohibitions against sex discrimination includes sexual orientation and gender identity. Following that decision, on January 20, 2021, President Biden issued Executive Order 13988 on preventing and combating discrimination on the basis of sexual orientation or gender identity. The executive order applied the Court’s reasoning in *Bostock* to other Federal laws that prohibit discrimination on the basis of sex, including the Fair Housing Act. It directed the head of each agency to develop a plan to prevent and combat sex discrimination on the basis of gender identity or sexual orientation within 100 days of the executive order. The executive order also directed the head of each agency to consider whether additional actions are necessary to ensure that it is fully implementing the order.

Our audit objective was to determine whether HUD established and implemented a plan to prevent and combat discrimination based on gender identity and sexual orientation.

¹ The Fair Housing Act is also referred to as Title VIII of the Civil Rights Act of 1968.

² 590 U.S. 644

Results of Audit

HUD Developed and Implemented a Plan To Address Executive Order 13988

HUD developed a proposed plan of action related to Executive Order 13988. The plan included five objectives to ensure that the requirements of the executive order were addressed. To implement its plan, HUD regional offices and FHAP agencies identified and notified almost all complainants who alleged gender identity or sexual orientation discrimination in accordance with its guidance. It also committed to the Equal Access Rule. As a result of developing and implementing the plan, HUD had reasonable assurance that its regional offices and FHAP agencies were properly identifying and addressing allegations of gender identity or sexual orientation discrimination in HUD programs and HUD-assisted housing and shelters.

HUD Developed a Plan To Address Gender Identity and Sexual Orientation Discrimination

HUD developed a proposed plan of action to address discrimination on the basis of sexual orientation and gender identity in HUD programs and HUD-assisted housing and shelters. The plan was issued on April 30, 2021, as an internal briefing memorandum and had five objectives:

1. Improve safe access and reduce barriers to housing and shelters for transgender and gender-nonconforming people.
2. Identify and address housing discrimination aimed at lesbian, gay, bisexual, transgender, and queer (LGBTQ) people and communities.
3. Identify and address structural housing challenges for vulnerable LGBTQ groups, including seniors, youth, transgender women, immigrants, people of color, and persons with disabilities.
4. Identify and address barriers to home ownership for vulnerable LGBTQ groups.
5. Ensure that HUD is a safe, welcoming, and inclusive workplace for LGBTQ employees and contractors.

According to HUD Office of General Counsel officials, HUD submitted its proposed plan of action to the Domestic Policy Council (an office of the White House) within 100 days of Executive Order 13988, satisfying the requirements of the executive order.

HUD Implemented Its Plan as Established

HUD implemented its plan to address discrimination on the basis of sexual orientation and gender identity. For example, HUD regional offices and FHAP agencies identified and notified almost all complainants who alleged gender identity or sexual orientation discrimination in accordance with its plan and guidance. Specifically, before issuing the plan, the Acting Assistant Secretary for Fair Housing and Equal Opportunity issued a memorandum on February 11, 2021, entitled "Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act." The memorandum instructed HUD regional offices and FHAP agencies to review all records of allegations of discrimination received since January 20, 2020, and notify complainants who alleged gender identity or sexual orientation discrimination that their

claims may be timely and jurisdictional for filing. Although HUD and FHAP agencies did not identify all inquiries in the HUD Enforcement Management System (HEMS) related to gender identity and sexual orientation, of the 529 inquiries reviewed, HUD and FHAP agencies identified 435 inquiries, or 82 percent, and notified those complainants that their claims may be timely and jurisdictional for filing.

Additionally, the memorandum instructed that effective February 11, 2021, HUD would accept for filing and investigate all complaints of sex discrimination, including discrimination because of gender identity or sexual orientation, that met other jurisdictional requirements. Of the 60 inquiries reviewed from June 2021 through December 2022, HUD accepted 58.

To address discrimination on the basis of sexual orientation and gender identity in HUD programs and HUD-assisted housing and shelters as stated in HUD's plan, HUD committed to the Equal Access Rule.³ HUD's Office of General Counsel provided internal training to HUD employees regarding the Bostock decision and the Equal Access Rule. HUD's Office of Community Planning and Development (CPD) has a public website for the LGBTQ community, which provides information about (1) program guidance and the Equal Access Rule; (2) guides, tools, and trainings; (3) online project resources; and (4) research. HUD grantees may submit requests for formal program guidance assistance through the "Ask A Question" portal. Also, CPD's Office of Special Needs Assistance Programs provides training and office hours to its grantees and partners. In addition, HUD's CPD and FHEO offices have participated in three listening sessions with LGBTQ youth. HUD also held four listening sessions with LGBTQ advocates and service providers to learn more about how HUD can help fight housing discrimination against the LGBTQ community and use HUD programs to help address housing instability. Additional listening sessions are planned to discuss issues related to housing discrimination. Further, FHEO has updated its form HUD-903.1, Report Housing Discrimination, to make it easier to report sexual orientation and gender identity discrimination. FHEO has also been working to update its HEMS database to better track and capture sexual orientation and gender identity complaints.

HUD released its 2023 update to its Equity Action Plan.⁴ HUD's primary focus in advancing housing justice is to expand its role in proactively supporting and protecting underserved communities through increased Fair Housing Law enforcement and compliance. In addition, HUD CPD, in collaboration with the U.S. Interagency Council on Homelessness, is codeveloping and reviewing the Federal Strategic Plan To Prevent and Reduce Homelessness. The plan details challenges and opportunities, plus actions HUD and other Federal agencies can take to improve support to vulnerable populations.

As a result of HUD's developing and implementing the plan, the gender identity or sexual orientation discrimination allegations will be properly identified and addressed.

Conclusion

HUD established and implemented a plan in response to Executive Order 13988. HUD accepted almost all gender identity and sexual orientation complaints in accordance with its plan and has made strides in supporting expanded protections for the LGBTQ community.

³ The Equal Access Rule requires HUD grantees to ensure equal access for transgender and gender-nonconforming people to CPD programs and shelters.

⁴ HUD's 2023 Equity Action Plan: <https://www.hud.gov/equity>

Recommendations

The report contains no recommendations.

Scope and Methodology

We performed our audit remotely from December 2021 through March 2024. Our audit covered the period January 20, 2020, through December 31, 2022.

To accomplish our objective, we

- Reviewed applicable laws, regulations, executive orders, HUD memorandums, and notices of funding opportunities; a sample FHIP grant agreement; the HEMS Manual; HUD’s Office of Policy Development and Research reports; HUD press releases; FHEO’s 2020 Annual Report; and HUD CPD’s website.
- Reviewed applicable Congressional Research Service reports, congressional hearings, and Supreme Court decisions.
- Interviewed FHEO officials to gain an understanding of how HUD implemented Executive Order 13988 and how complaint inquiries were maintained in HEMS.
- Interviewed CPD officials to obtain an understanding of how HUD applied the Equal Access Rule to shelters.
- Analyzed HEMS data to identify inquiries related to sexual orientation and gender identity. During the period January 20, 2020, through May 31, 2021, HEMS included 39,214 complaint inquiries. To determine whether an inquiry was related to sexual orientation and gender identity, we analyzed the allegations field in HEMS. We used the search function in Microsoft Excel to identify allegations that included the terms gender identity, sexual orientation, transgender, lesbian, gay, bisexual, queer, binary, nonconforming, and LGBT. We selected the terms of sexual orientation and gender identity because these terms were used in the executive order. We selected the term transgender because people use it in place of gender identity. We selected the term LGBT and the individual words that make up the abbreviation because people use that term in place of sexual orientation. Our analysis identified 529 inquiries related to our audit objective. We reviewed each of those inquiries to determine whether the inquiry
 - related to fair housing,
 - related to sexual orientation or gender identity,
 - contained evidence that HUD or the FHAP agency notified complainants about the Bostock decision or Executive Order 13988,
 - demonstrated whether HUD or the FHAP agency notified complainants by March 13, 2021,
 - was reopened by HUD or the FHAP agency, and
 - should have been reopened.
- Analyzed HEMS data during the period June 1, 2021, through December 31, 2022, to identify inquiries related to sexual orientation and gender identity. HEMS included 60,492 complaint inquiries. To determine whether an inquiry was related to sexual orientation and gender identity, we analyzed the allegations field in HEMS. We identified allegations that included the terms gender identity, sexual orientation, transgender, lesbian, gay, bisexual, queer, binary, nonconforming, and LGBT. Our analysis identified 1,047 inquiries related to our audit objective. We made a nonrepresentative selection of 60 inquiries from the 1,047 inquiries. The 60 inquiries were selected based on HUD region and HEMS closure reason. Our analysis

found that HUD accepted 58 of 60 inquiries related to sexual orientation and gender identity. The results of our analysis of inquiries were not projected to the universe of inquiries.

To achieve our objective, we relied on HEMS. HEMS is the system in which case data on housing discrimination complaint inquiries and case files are documented during the investigation process. We relied on HEMS to determine whether FHEO regional offices and FHAP agencies identified allegations of discrimination based on gender identity or sexual orientation. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequate for our purposes.

We determined that the internal controls over program operations, compliance with laws and regulations, and validity and reliability of data were relevant to our audit objective. We assessed HUD's internal controls over HEMS to determine whether inquiries were within the period January 20, 2020, through December 31, 2022.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix

Auditee Comments and OIG'S Evaluation

On May 23, 2024, we issued the discussion draft report to the Deputy Assistant Secretary for Enforcement. On May 31, 2024, the Deputy Assistant Secretary for Enforcement informed us that HUD chose not to provide formal written comments for inclusion in the final report.