

**U. S. Department of Housing and Urban Development
Office of Inspector General**



**Evaluation of FHEO Housing Discrimination
Complaint Processing and Compliance**

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Executive Summary

The Office of Inspector General, Inspections and Evaluations Division, conducts independent, objective examinations of U.S. Department of Housing and Urban Development (HUD) activities, programs, operations and organizational issues.

We completed an evaluation of HUD's Office of Fair Housing and Equal Opportunity (FHEO) and its nonprofit affiliated Fair Housing Assistance Program (FHAP) and their processing of housing discrimination complaints. The objective of our evaluation was to determine whether FHEO and FHAP intake and investigation processes are timely completed, consistently thorough, and accurately reported in the Title VIII Automated Paperless Tracking Office System (TEAPOTS). Our evaluation follows prior work conducted by the Government Accountability Office (GAO) that addressed similar program management issues. In its October 2005 report (GAO-06-79) the Government Accountability Office found deficiencies in processing timeliness, documentation sufficiency, and the data integrity of TEAPOTS and recommended corrective actions to improve performance.

Based on our tests of random samples of FHEO and FHAP investigations nationwide, we found evidence of the same or similar processing deficiencies noted in the GAO report. Our tests covered fair housing investigations opened and conducted during two periods subsequent to the GAO review, January through June 2006 and October through December 2007. Consequently, although several compliance improvements were noted, we recommend that HUD conduct aggressive monitoring and appropriate tests of current case documentation compliance with the Fair Housing Act, related regulations, and Handbook guidelines.

If you have any questions concerning this report, please call Kenneth R. Taylor Jr., Special Agent In Charge, at (202) 402-8416.

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Introduction

The Department of Housing and Urban Development's (HUD) Office of Fair Housing and Equal Opportunity (FHEO) and related state and local Fair Housing Assistance Program (FHAP) agencies investigate several thousand complaints of housing discrimination annually. The Fair Housing Act (Act), as amended, generally prohibits discrimination against minorities, persons with handicaps, and other protected groups in the sale and rental of residential dwellings. FHEO enforces the Act through an investigative process. Critical to these processes are case file documentation standards, including required conciliation attempts.

FHEO has developed a three stage documentation process for receiving, investigating, and resolving housing discrimination complaints.

- Intake. FHEO offices and FHAP agencies receive complaints from individuals and determine whether the complaints involve a potential violation of the Fair Housing Act (or equivalent state law);
- Investigation. FHEO or FHAP agency investigators collect evidence to determine whether reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur and simultaneously work with parties to conciliate, or reach a mutually acceptable solution; and
- Adjudication. An administrative law judge, another administrative entity, or a federal or state court determines whether a violation of the Fair Housing Act has occurred.

To ensure compliance with the Fair Housing Act, FHEO and FHAP documentation standards are prescribed in HUD Handbook 8024.01 REV-2. These instructions provide specific directives on how investigators must document hardcopy evidence in the case file. FHEO and FHAP agencies also use an automated case tracking system, the Title Eight Automated Paperless Office Tracking System (TEAPOTS), to record information electronically about complaints and key steps in the investigative process.

During the period January 2006 through June 2006, FHEO and FHAP agencies investigated 5,386 housing discrimination complaints. Nine hundred forty-one were settled through negotiated conciliation between the parties, 1,902 were closed with a determination of no reasonable cause, 131 were referred to adjudication, and 1,184 were dismissed or terminated without resolution. The remaining 1,228 complaints were open.

During the period October 2007 through December 2007 FHEO and FHAP agencies investigated 2,316 housing discrimination complaints. Three hundred and thirty were settled through negotiated conciliation between the parties, 675 were closed with a determination of no reasonable cause, 64 were referred to adjudication, and 564 were dismissed or terminated without resolution. The remaining 683 complaints were open.

Our evaluation follows prior work conducted by the Government Accountability Office (GAO) that addressed similar program management issues. In its October 2005 report (GAO-06-79) the Government Accountability Office found deficiencies in processing timeliness, documentation sufficiency, and the data integrity of TEAPOTS.

Scope and Methodology

To address our objectives we obtained an overview of the housing discrimination complaint processing from the Office of FHEO and reviewed the Fair Housing Act, HUD Handbook 8024.01 REV-2 and related directives as well as GAO's audit observations.

We selected two samples of housing discrimination case files for our compliance tests. For Sample 1, we examined the documentation in 88 randomly selected case files of nationwide housing discrimination cases that were opened during the first half of the calendar year 2006. The sample case files include 67 cases investigated by FHAP offices and 21 cases that HUD staff investigated. The sample files included 6 open cases, 27 cases that were closed administratively, 17 cases that were conciliated, 34 that were closed with a finding of no reasonable cause, and 4 cases that were closed with a finding of reasonable cause. For Sample 2, we examined the documentation in 58 randomly selected case files of nationwide housing discrimination cases that were opened during the last quarter of the calendar year 2007. The sample case files include 52 cases investigated by FHAP offices and 6 cases that HUD staff investigated. The sample files included 12 open cases, 11 cases that were closed administratively, 5 cases that were conciliated, 27 that were closed with a finding of no reasonable cause, and 3 cases that were closed with a finding of reasonable cause.

We wanted to determine whether the case file documentation demonstrated that the investigator had met certain requirements and best practices for conducting fair housing investigations. We identified these requirements by referencing the Fair Housing Act (Act) and Title 24 Code of Federal Regulations as well as the best practices described in Handbook 8024.01 REV-2. We also discussed those practices with FHEO officials at HUD headquarters as well as FHAP agency officials in Washington, DC, Maryland, and Virginia.

We conducted the inspection in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Observation 1: Housing Discrimination Investigations were not Completed Timely and Interested Parties were not always Notified, as Required

Housing discrimination investigations are to be completed timely. In GAO's October 2005 report, FHEO officials stated that for cases with complex issues, it was often difficult to meet the 100-day investigative requirement and also conduct a thorough investigation.

100-Day Timeliness Requirement

The Act requires that HUD complete fair housing investigations within 100 days from the filing date of the complaint.¹ The Handbook defines completion as the date: when a determination or charge is issued, a conciliation agreement is executed or the complaint is otherwise closed.²

Sample 1

We identified 78 cases with closure types other than reasonable cause. We tested and determined that 50 percent (39 cases) exceeded the 100-day completion requirement. The cases were open between 104 to 364 days. In some cases, the documentation in the files was incomplete for the specific number of days the cases were open.

Sample 2

We identified 43 cases with closure types other than reasonable cause. We tested and determined that 40 percent (17 cases) exceeded the 100-day completion requirement. The cases were open between 104 to 195 days. In some cases, the documentation in the files was incomplete for the specific number of days the cases were open.

In Sample 2, we noted that there was a reduction in the percentage of cases that exceeded the 100-day timeliness requirement. Nevertheless, the 40% noncompliance rate in our test results should be a continued concern for program management and indicates a need for oversight.

The staff of the FHAPs in the National Capital Area that we interviewed indicated the 100-day requirement to complete an investigation is sometimes unrealistic. Many cases are open for more than 100 days because of difficulty tracking down witnesses and locating complainants, waiting 30-45 days for responses from issued subpoenas, and requests from the respondents for more time to respond to the complaint.

Complainant and Respondent Notifications

If an investigation cannot be completed within 100 days, then the Act requires that the complainant and the respondent be notified in writing of the reasons for the delay.³

Sample 1

We found that of the 39 cases open for more than 100 days, 74 percent (29) of the files did not include the 100-day notification letters to the complainants and respondents. For the cases where HUD had determined reasonable cause, 75 percent (3) of the 4 cases

¹42 U.S.C. § 3610(a)(1)(B)(iv)

² Handbook 8024.01 REV-2 Paragraph 7-27

³ 42 U.S.C. § 3610(a)(1)(C)

exceeded the 100-day requirement and only 1 of the files had copies of the 100-day letters. The six open cases have exceeded the 100-day requirement and we found that none of these case files included the 100-day notification letter.

Sample 2

We found that of the 17 cases open for more than 100 days, 59 percent (10) of the files did not include the 100-day notification letters to the complainants and respondents. For the cases where HUD had determined reasonable cause, all of the 3 cases exceeded the 100-day requirement and 33 percent (1) of the files did not have copies of the 100-day letters. The twelve open cases have exceeded the 100-day requirement and we found that 58 percent (7) of the files did not include 100-day notification letters.

We noted an improvement in the documentation of 100-day notification letters to the complainants and respondents in Sample 2.

Observation 2: Files Lacked Required Documentation

The Act and the Handbook require that the case files include certain documentation to ensure investigations are consistent and thorough. We examined the files and checked for documentation consistency to include Initial Notification Letters, Closure Notices, Final Investigative Reports, Determinations, Investigative Plans and Conciliation documents.

Initial Notification Letters

The Act requires HUD to provide a formal written acknowledgement of a complaint filing to the complainant(s) and respondent(s).⁴ Copies of the letters to the complainant and the respondent must be placed in the paper case file, along with proof that the parties received the notification letters.

Sample 1

For closure types other than reasonable cause, initial notification letters were not addressed to:

- complainants in 14 percent of the files (11) we sampled.
- respondents in 12 percent of the same files (9).

For closure types other than reasonable cause, evidence of receipt was not found for:

- complainants in 33 percent of the cases (22).

⁴ 42 U.S.C. § 3610(a)(1)(B)(i and ii)

- respondents in 32 percent of the cases (22).

Sample 2

For closure types other than reasonable cause, initial notification letters were not addressed to:

- complainants in 2 percent of the files (1) we sampled.
- respondents in 2 percent of the same files (1).

For closure types other than reasonable cause, evidence of receipt was not found for:

- complainants in 5 percent of the cases (2).
- respondents in 5 percent of the cases (2).

We tested for evidence such as return receipts from certified mail or personal service and correspondence indicating receipt or knowledge of the complaint notification.

Our tests in Sample 2 indicate material compliance improvement in the documentation of initial notification letters as well as evidence of receipt.

Closure Notices

HUD regulations require that complainants and respondents should be notified when an investigation is closed.⁵

Sample 1

For closure types other than reasonable cause, 13 percent of the files (10) did not include copies of closure letters addressed to the complainants and 19 percent of the files (15) did not include copies of closure letters addressed to the respondents. For the four cases where HUD determined reasonable cause, two of the files did not include closure notices to the complainant or respondent.

Sample 2

For closure types other than reasonable cause, 16 percent of the files (7) did not include copies of closure letters addressed to the complainants and 42 percent of the files (18) did not include copies of closure letters addressed to the respondents. For the three cases where HUD determined reasonable cause, two of the files did not include closure notices to the complainant or respondent.

Our tests indicate no compliance improvement between the two sampling periods.

⁵ 24 C.F.R. § 103.400(a)(1) and (2)(i) and (ii)

Final Investigative Reports and Determinations

The Act requires that two separate documents, a Final Investigative Report (FIR) and a Determination, must be prepared at the end of each investigation.⁶ The FIR and the Determination include a formal conclusion concerning whether the investigation found reasonable cause or no reasonable cause to support the complaint.

Sample 1

The FIR required for reasonable cause and no reasonable cause outcomes and the Determination showing the outcome of cases were not always present. For the 34 cases that were closed with a determination of no reasonable cause, the FIR was missing from 6 files (28 percent) and the Determination was missing in 50 percent (17) of the files. For the four cases that were closed with a determination of reasonable cause, one of the case files did not contain either the FIR or the Determination.

Sample 2

For the 27 cases that were closed with a determination of no reasonable cause, the FIR was missing from 6 files (22 percent) and the Determination was missing in 1 percent (3) of the files. For the three cases that were closed with a determination of reasonable cause, the FIR was documented in each file while the Determination was missing from 2 files (67 percent).

Our tests indicate no material change in compliance between the two samples.

Investigative Plan

The Handbook states that the Investigation Plan is a road map for the investigation based on careful analysis of the complaint, the known facts and the provisions of the Act. It helps the investigator avoid dead ends and keeps the investigation on track and on schedule. The Investigation Plan is not mandated by statute; nonetheless, an Investigation Plan is critical to ensuring efficient and effective completion of the investigation.⁷

Sample 1

We found that 90 percent (70) of the cases with closure types other than reasonable cause did not include investigative plans. For cases where HUD had determined reasonable cause, we did not find an investigative plan in any of the 4 files.

⁶ 42 U.S.C. § 3610(b)(5)(A)

⁷ Handbook 8024.01 REV-2 Paragraph 7-6

Sample 2

We found that 74 percent (32) of the cases with closure types other than reasonable cause did not include investigative plans. For cases where HUD had determined reasonable, we did not find an investigative plan in 66 percent (2) of the files.

We consider the incidence of case files that did not include investigative plans too high in both samples to represent acceptable compliance.

Conciliation

The Act requires that investigators engage in conciliation efforts to the extent feasible on all housing discrimination complaints filed. The period during which conciliation must be attempted commences with the filing of the complaint, and concludes with the issuance of a charge on behalf of the complainant or upon dismissal of the complaint.⁸ The Handbook states that parties should be made aware that conciliation can be attempted at any time during the investigation of an open complaint.⁹ The Handbook also requires that the Conciliation Section of the case file contain all information relative to attempts to resolve the complaint through the conciliation process. Examples of documents in this Section include the contents of any conciliation discussions, details of negotiations and transmission of offers and counteroffers among the parties.¹⁰

Sample 1

We found that 94 percent (32) of the case files with a closure type of no cause did not document conciliation attempts, as required in the regulations. For reasonable cause closures, none of the 4 case files included documentation of conciliation. Documentation of the two cases with conciliation was complete.

Sample 2

We found that 63 percent (17) of the case files with a closure type of no cause did not document conciliation attempts. For reasonable cause closures, one of the 3 case files did not include documentation of conciliation.

We consider the improvement in the percentage of case files that included documentation of conciliation attempts material.

⁸ 42 U.S.C. § 3610(b)(1)

⁹ Handbook 8024.01 REV-2 Paragraph 11-8

¹⁰ Handbook 8024.01 REV-2 Paragraph 10-4D

Observation 3: Electronic records of investigations were not always accurate or complete.

The Title Eight Automated Paperless Tracking Office System (TEAPOTS) provides the framework for collecting, storing and reporting information about each case. All data collected during the investigation should be recorded in TEAPOTS.¹¹

TEAPOTS and Data Integrity

FHEO and FHAP staffs use the Title Eight Automated Paperless Tracking Office System (TEAPOTS) to process and track fair housing complaints and investigations. The system prompts users through the investigation process, provides on-line help, management reports, and system generated output documents.

Sample 1

We selected 10 of 60 TEAPOTS case print outs that were present in the files to assess the accuracy of the database entries. Our comparisons matched database and file document dates for the ‘last alleged violation’ and ‘HUD filing date.’ The dates matched for files where source documents were present. However, two of the 10 files did not contain the required documents. Additionally, when documents summarizing the investigation were present in the files, we noted omissions in TEAPOTS of entire sections of the investigation details. Absent were sections that should have contained records of interviews, case chronologies, conciliation attempts, and the investigator’s findings and conclusions.

Sample 2

We selected 10 of 35 TEAPOTS case print outs that were present in the files to assess the accuracy of the database entries. Our comparisons matched database and file document dates for the ‘last alleged violation’ and ‘HUD filing date.’ The dates matched for files where source documents were present. However, one of the 10 files did not contain the required documents. Additionally, when documents summarizing the investigation were present in the files, we noted omissions in TEAPOTS of entire sections of the investigation details. Absent were sections that should have contained records of interviews, case chronologies, conciliation attempts, and the investigator’s findings and conclusions.

We noted no improvement in the accuracy of database entries for the TEAPOTS case prints we reviewed.

The staff of FHAP offices in the National Capital Region told us that investigators use TEAPOTS extensively. They are required to enter interviews, case chronologies, conciliation attempts and the investigator’s findings and conclusions. However, one office acknowledged that the TEAPOTS case printouts were not always placed in the

¹¹ Handbook 8024.01 REV-2 Paragraph 7-4

files until recently, as a result of a HUD monitoring review. Additionally, the investigators started entering case chronologies and the investigator's findings and conclusions into TEAPOTS, as required.

Conclusion

Our findings indicate that there have been some improvements in FHEO and FHAP documentation of fair housing investigations from 2006 to 2007. However, HUD still needs to better assure that fair housing investigations are thoroughly and accurately documented to be in full compliance with the Act. We examined the contents of case files and the associated TEAPOTS records.¹² The lack of evidence we found in some files does not necessarily mean that required or recommended steps were ignored or overlooked. The documentation of inconsistencies and omissions in the case files and the incomplete records and inaccuracies in TEAPOTS raise questions about HUD's ability to assure that investigations are as thorough as they need to be. Consequently, we recommend that HUD conduct aggressive monitoring and appropriate tests of current case documentation compliance with the Fair Housing Act, related regulations, and Handbook guidelines.

Acknowledgements

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The fieldwork supervised by John W. Struchen, Deputy Director, Inspections and Evaluations Division. Erica Dickens, Senior Forensic Auditor, and Maura Nihan, Forensic Auditor conducted the fieldwork.

¹² We did not interview case investigators, other officials involved in the case, complainants or respondents.