
CHAPTER 4

COMPLAINT INTAKE

4-1 INTRODUCTION

This chapter provides guidance to staff involved in the complaint intake process and covers the responsibilities of each Equal Opportunity Specialist (EOS) who performs intake responsibilities, including how to collect and review complaint information, interview aggrieved persons, perfect complaints and recognize complaints that require special processing.

Complaint intake begins when the Department first receives information regarding an alleged discriminatory housing practice. This information is called an inquiry. The words “claim” and “inquiry” have the same meaning— an allegation of a discriminatory housing practice that has not been determined as jurisdictional. Title 24 of the Code of Federal Regulations, Part 103 (24 CFR § 103), uses the term, “claim.” TEAPOTS uses the term “inquiry.” For consistency, the Handbook uses “inquiry.”

The EOS begins the investigation process by collecting information necessary to determine whether HUD has jurisdiction under the Fair Housing Act (the Act), other civil rights laws, or both, to investigate the allegations contained in the inquiry. If the EOS determines that HUD has jurisdiction, the EOS converts the inquiry into a complaint. If the EOS determines that HUD does not have jurisdiction the inquiry is closed and the person making the inquiry is notified of the closure. The EOS is required to take actions and make decisions to ensure timely and effective complaint processing. FHEO policy requires an EOS to process inquiries within 20 days of receipt.

EOSs have the responsibility to educate aggrieved persons about the Act and other civil rights laws enforced by HUD. The EOS must recognize all civil rights laws relevant to the allegations included in an inquiry. When an EOS converts an inquiry into a complaint, the complaint must be filed under all relevant civil rights laws. A complaint filed under the Act plus any other civil rights law(s) administered or enforced by HUD is called a multi-jurisdictional complaint. Knowledge of civil rights laws, rules and regulations enforced and administered by HUD, and the ability to apply these laws to a particular set of facts and circumstances is critical.

EOSs must enter all inquiries and the information collected concerning the inquiry into the Title Eight Automated Paperless Office Tracking System (TEAPOTS). TEAPOTS is HUD’s official automated system for processing and tracking fair housing complaints and is an important tool for EOSs.

4-2 THE INTAKE OPERATION

A. The Intake Unit

Each Fair Housing Regional Office includes an Intake Unit staffed with personnel properly trained to perform all complaint intake-processing functions. The primary function of the Intake unit is to receive inquiries and, when appropriate, convert them into complaints. Each Intake Unit shall perform the functions listed below:

- Receive and analyze incoming inquiries to determine whether HUD has jurisdiction under the Act or another civil rights statute;
- Provide the aggrieved person with information about the coverage of the Act and other civil rights statutes and the Department's role in investigating and enforcing each law based on the allegations of the inquiry or complaint;
- Identify situations that may require immediate attention such as complaints that require prompt judicial action, or complaints for which the statute of limitations is about to expire;
- Record in TEAPOTS the method by which the aggrieved person learned about his or her right to file a fair housing complaint;
- Identify complaints that should be "dual-filed" with HUD and with FHAP agencies;
- Identify complaints that may require special processing, such as complaints raising First Amendment issues;
- Appropriately refer matters that are not within HUD's jurisdiction;
- Enter all inquiries and complaints into TEAPOTS to properly control and track incoming inquiries, correspondence and complaint activity; and
- Assemble and maintain the case file during the time it is in Intake.

B. Customer Service during Intake

The Department's commitment to providing good customer service means that intake personnel will perform the intake-processing function in a proactive, consumer-oriented way. Intake personnel must be responsive to the public. In addition to being knowledgeable about and having responsibility for all facets of the complaint intake process, EOSs also must be courteous and helpful and take the time to help aggrieved persons understand the complaint process. Where HUD lacks jurisdiction under the Act,

EOSs must explain the basis for the determination and inform aggrieved persons of other alternatives, where appropriate.

C. Reasonable Accommodations

Each Regional FHEO Office must make reasonable accommodations for a disabled person who needs assistance in filing an inquiry or complaint. Aggrieved persons may have a physical or mental disability that affects their ability to read, speak or write. In addition, an aggrieved person may have a physical or mental disability that requires sensitivity on the part of intake personnel. Intake staff should make provisions for assisting such individuals, whether they file in person or by telephone. Further, every office receiving complaints must have a Telecommunications Device for the Deaf (TDD) system in place in order to receive inquiries and complaints from persons who are hearing-impaired or deaf.

Each Regional Office should have a plan to accommodate persons with disabilities. When a disabled person requests assistance in filing a complaint or obtaining help from FHEO, the EOS must notify the supervisor who will arrange for the acquisition of the services of interpreters for the hearing impaired and readers for the visually impaired through the Administrative Service Center, or other requested accommodations.

D. Limited English Proficiency

Some clients may exhibit a limited ability to read or write the English language. These clients may be treated as persons with limited English proficiency (LEP). When HUD has no literature available in a language that the clients can read or write, each office shall provide services using the guidance that has been published on the HUD website at: <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>. The website includes Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” HUD’s guidance to implement the Executive Order and best practices from our fair housing partners.

Each office should take reasonable steps to ensure that the LEP population is served. For example if you are meeting with a client who has LEP, you should use the “Language Identification Flashcard” that is available through www.lep.gov. If you are unsure what language a client speaks, show him or her this card. After the client self-identifies the language he or she speaks, use HUD’s online interpreters. Online interpreters will provide over-the-phone interpretation in 150 languages, 24 hours a day, seven days a week. To access this interpreter service dial 1-866-800-0289, and follow the instructions provided from the “Interactive Voice Response” unit.

4-3 RECEIVING INQUIRIES

Inquiries may be received at HUD Headquarters, and any Field or Regional Office in person or by telephone, mail, facsimile or the Internet. The EOS should review all inquiries, including the HUD 903.1, Housing Discrimination Information Form, to

determine whether the aggrieved person's allegation(s) contains the elements required to establish jurisdiction, as described in this Chapter. When an individual submits an inquiry in person at Headquarters, or a field office that does not have an Intake Unit, a copy of the interview and the aggrieved person's data should be faxed or sent by electronic mail to the appropriate Regional Office within one business day of receipt of the inquiry. The EOS, Intake Supervisor and Regional FHEO Director will also review the information to identify any First Amendment issues for referral to Headquarters, FHEO Office of Enforcement (O/E). Callers who contact Headquarters or a HUD Field Office that does not have an intake staff should be provided with the toll-free number for the appropriate Regional Office as well as any other civil rights information they request.

Inquiries also may be filed with any FHAP agency for processing or accepting of cases. Such complaints are considered dual-filed with a FHAP agency under its own law and with HUD under the Act.

A. Inquiries Received by Telephone

Intake personnel shall accept telephone calls received by Regional Fair Housing Offices regarding alleged discriminatory housing practices and shall be available to respond to incoming inquiries during the entire working day. A telephone answering machine, with messages in English and where appropriate, in Spanish, should operate at all times, including after official business hours. All information should be collected, and the information read back to the aggrieved person. Although the Act requires that a complaint be in writing, this requirement is satisfied when the EOS takes the information by phone, enters the data into TEAPOTS and processes a Housing Discrimination Complaint Form. The Housing Discrimination Complaint Form should then be sent to the aggrieved person by certified mail, return receipt requested, and by regular mail, with a request that the complainant sign and return the original signed complaint to HUD within 10 days.

B. In-Person Inquiries

In-person inquiry interviews should be conducted in a quiet, private location. Inquiry information should be transcribed and the information read back to the aggrieved person. The information should then be entered into TEAPOTS and a Housing Discrimination Complaint Form generated. The aggrieved person should be asked to sign the Housing Discrimination Complaint Form. If the aggrieved person is unable to sign the Housing Discrimination Complaint Form prior to leaving the office, inform the aggrieved person that it will be mailed to him or her and that the aggrieved person should return the original signed complaint to HUD within 10 days.

C. Inquiries Received by Mail or Internet

Every attempt should be made to contact the aggrieved person, or the aggrieved person's representative (if one has been identified) by telephone, in order to obtain any missing or unclear information. The allegation(s) should be entered into TEAPOTS as an inquiry

and a Housing Discrimination Complaint Form sent to the aggrieved person for signature and return to HUD.

If the correspondence indicates that an attorney or an advocacy organization represents the aggrieved person, the EOS should contact the aggrieved person's representative to arrange a time to speak directly to the aggrieved person. Information concerning the aggrieved person's representative should be entered in TEAPOTS under the **Intake Tab: Complainants/Claimants; Complainant's Representative**, and placed in the case file under Tab B.

If the prospective aggrieved person has submitted documents in support of his or her allegations, these documents must be included in the case file and entered into TEAPOTS under the **Investigation Tab: Description of Document**.

If an aggrieved person cannot be reached by telephone, the EOS should write to the aggrieved person, or the aggrieved person's representative, and request the information necessary to complete processing of the inquiry. The aggrieved person should be informed that if the required information is not returned to HUD within 10 business days of his or her receipt of HUD's letter, the inquiry will be closed and no further action will be taken with respect to the inquiry. Information requests should be made by certified mail, return receipt requested.

Inquiries received by mail in Headquarters, or a Field Office that does not have an Intake Unit, should be date-stamped to acknowledge the date of actual receipt. The materials should be faxed or sent by electronic mail to the appropriate Regional Office Intake Branch. The original documents should be sent by mail to the Regional Office within one business day.

D. Inquiries Received from a Substantially Equivalent State or Local Agency

When an inquiry is first received by a FHAP agency under its fair housing law or ordinance, and the aggrieved person alleges discrimination cognizable under the Act, the agency will enter the data as an inquiry into TEAPOTS within 5 working days. The EOS will review the information in TEAPOTS to determine if the inquiry contains the four elements of jurisdiction: timeliness, standing, jurisdiction over the subject matter and jurisdiction over the respondent. The EOS, the supervisor and the Regional FHEO Director will also review the information to identify potential First Amendment issues that must be referred to Headquarters for review by FHEO, O/E. If FHEO, O/E confirms the presence of a First Amendment issue, the FHAP agency must be notified that the complaint will not be accepted for dual filing. If the complaint contains the elements that establish jurisdiction, and there are no First Amendment issues, the inquiry will be accepted as dual-filed and assigned a HUD case number. The Regional Office will notify the agency within 5 working days of HUD's acceptance of the inquiry as dual-filed and whether HUD has determined that other civil rights authorities are applicable.

Some State and local agencies enforce statutes or ordinances that prohibit discrimination based on protected classes that are not covered by Federal law. Only inquiries based upon race, sex, color, religion, national origin, disability and familial status can be accepted as dual-filed with HUD.

SPECIAL NOTE: During all interaction with the aggrieved person, no matter how the inquiry is received, the EOS should maintain a neutral attitude and never create an impression, by word or conduct that HUD will act as an advocate for the aggrieved person. Explain that HUD receives many inquiries and handles them as expeditiously as possible.

4-4 PERFECTING INQUIRIES INTO COMPLAINTS

The process by which the necessary jurisdictional elements are established to convert an inquiry into a complaint, and the complaint is put into the required form, is called “perfecting the complaint.” Perfecting complaints consists of collecting information through a variety of sources and using the information to produce a completed Housing Discrimination Complaint Form. The EOS should begin the complaint perfection process as soon as the supervisor assigns the inquiry. The process should be completed within 20 calendar days, unless the inquiry requires a First Amendment review or a Section 901 referral. Perfecting complaints often includes a search for information about the respondent(s) so that the correct respondent(s) can be named in the complaint, and the complaint can be properly served on the named respondent. Perfecting complaints also includes a search for information to establish at intake whether HUD has jurisdiction over the allegations and at least one person who can legally be held responsible for at least one of the alleged acts of discrimination. Whenever information provided by the aggrieved person does not satisfy the four required elements to establish jurisdiction the EOS must contact the aggrieved person and other appropriate sources, and request the information necessary to perfect the complaint.

The EOS will use the same general principles and procedures for collecting, screening, and analyzing inquiry information at intake, regardless of whether the information was received by telephone, Internet, in-person or mail. The critical factor is the accuracy and thoroughness of the initial interview of the aggrieved person. It is essential that the EOS obtain as much information as possible about the aggrieved person’s allegations at that time. The EOS needs to know and understand the substantive and procedural provisions of the Act and other civil rights laws enforced by HUD to best determine what information is necessary and what questions to ask, as well as to recognize which allegations may require rapid or special processing.

4-5 WHEN IS AN INQUIRY CONSIDERED FILED AS A FAIR HOUSING ACT COMPLAINT?

An inquiry is filed as a complaint under the Act when the EOS determines that sufficient information has been obtained to establish that the aggrieved person's allegation(s) contain the four elements of jurisdiction identified below in the Housing Discrimination Complaint Form as prescribed by the Secretary, in accordance with Section 810(a) of the Act.

SPECIAL NOTE: The requirements for establishing jurisdiction under HUD's other civil rights authorities may differ from the requirements of the Act. See Chapter 6, Multi-Jurisdictional Complaints.

The four elements, necessary to establish jurisdiction, are: standing, timeliness, respondent jurisdiction and subject matter jurisdiction.

1. Standing

In order for any person to have standing, he or she must be an "aggrieved person" as defined by the Act. The Act defines an "aggrieved person" as any person who claims to have been injured, or is about to be injured, by a discriminatory housing practice. The term "any person" includes individuals and other entities such as corporations or organizations, e.g., private fair housing organizations, disability rights groups or homeowners' associations.

At intake, it is not necessary to obtain evidence proving that the aggrieved person suffered an injury; the aggrieved person's assertion of the injury is sufficient for the filing of the complaint. If an aggrieved person does provide financial or other documentation demonstrating the extent of his or her injury, the records should be placed and secured in Section II.B. of the case file, Complainant's Evidence. See Chapter 10, Preparation of the Case File.

TEAPOTS contains a brief checklist for use in collecting information regarding the aggrieved person's injury. This checklist is found under the **Intake Tab: Other Questions for the Claimant**.

In order to have standing the aggrieved person must allege that he or she has been injured by a discriminatory housing practice, or will be injured by a discriminatory housing practice that is about to occur. The aggrieved person must also specifically allege that the respondent based the unlawful discriminatory housing practice on the aggrieved person's race, color, religion, sex, national origin, familial status or disability, or that the respondent discriminated against the aggrieved person because the aggrieved person associated with one or more persons who belonged to one or more of the protected classes. The aggrieved person might be a white woman denied a rental after the property manager met her African-American foster child, or a non-disabled man denied the opportunity to purchase a home, who suspects the denial was because he planned to establish a group home that would house four disabled adults. In both of these examples, the alleged discrimination is tied to the protected class status of someone other than, but associated with, the aggrieved person. Another

example is the case where an aggrieved person, not in a protected class, complains that a protected class has been excluded, thereby denying the aggrieved person the right of free association. The aggrieved person might be a white male complaining that African-Americans have been excluded from his apartment complex. The aggrieved person's basis for filing his or her complaint is entered in TEAPOTS under the **Intake Tab: Why Did It Happen?**

SPECIAL NOTE: If the basis is disability the EOS should use the disability questionnaire found in TEAPOTS under the **Intake Tab: Why Did It Happen?** This questionnaire lists the questions the EOS should ask at intake to determine whether the aggrieved person is a person with a disability within the meaning of the Act. This checklist covers only the questions necessary at intake to make a threshold determination of jurisdiction while being sensitive to the aggrieved person's privacy. An EOS may need to ask additional questions during the investigation.

Any individual filing a complaint on behalf of an aggrieved person must present documentation that confirms that he or she has the authority to represent the interests of the aggrieved person. Examples of such documentation include a signed statement by the aggrieved person, or court orders appointing the individual as legal guardian, custodial parent, conservator or administrator on behalf of the aggrieved person.

2. Timeliness

The Act requires that an aggrieved person must file the Title VIII complaint within one year of the date of the most recent occurrence of the alleged discriminatory housing practice. To determine whether an aggrieved person filed the complaint within one year of the most recent date of the alleged act of discrimination, begin counting from the day after the date of the alleged violation to the date of filing. One year includes all legal holidays and weekends.

The date that the Intake Branch receives an inquiry is entered into TEAPOTS under the **Intake Tab: Date of Initial Contact**. The date that an inquiry is "perfected" (determined to be jurisdictional under the Act) is entered into TEAPOTS under the **Jurisdiction Tab: Date of Filing**. In situations where the statute of limitation is about to expire, the inquiry will be considered as perfected and the date of receipt will be considered the filing date.

The EOS should ask the aggrieved person to indicate the specific date or dates on which the alleged discriminatory housing practice occurred. If the aggrieved person alleges that the discrimination is continuing, the EOS should ask him or her to provide the date of the most recent discriminatory housing practice. This date is entered in TEAPOTS under the **Intake Tab: When Did It Happen?**

The Act specifically allows a person to allege that a discriminatory act is about to occur, or that he or she will be subjected to retaliation if he or she exercises a right under the Act. Standing based upon an act of discrimination that has not yet occurred

is sometimes difficult to discern. The EOS should seek the advice of a supervisor and consult with Regional Counsel when processing such complaints.

3. Respondent Jurisdiction

While HUD has jurisdiction over the vast majority of housing-related transactions, the Act exempts some transactions from its coverage. These include certain (1) single family houses owned by private individual owners [Sec. 803 (b)(1)]; (2) religious organizations [Sec. 807]; (3) private clubs; and (4) housing for older persons [Sec. 807]. Information concerning respondent jurisdiction is entered into TEAPOTS under three **Intake Tabs: Who discriminated? When did it happen? Where Did It Happen?** Under the tab, “Who discriminated?”, the EOS should enter the name and address of the legal entity that owns the property, and the names and addresses of the individuals or entities who participated in the alleged act of discrimination. The EOS should also ask the aggrieved person to provide copies of any applications, leases, correspondence or other documents that may contain the name and address of the individual, partnership or corporation.

The tab, “**Where did it happen?**” poses a series of questions designed to assist the EOS in assessing whether the subject dwelling and/or the respondent is exempt. However, there is often not enough information available at the intake stage to accurately determine respondent jurisdiction. Therefore, the EOS should always consult with his or her supervisor before closing out an inquiry as non-jurisdictional based on these exemptions.

4. Subject Matter Jurisdiction

The aggrieved person’s statement should contain sufficient detail to determine “subject matter” jurisdiction, i.e., whether the allegations describe unlawful discrimination that would violate Sections 804, 805, 806 or 818 of the Act. Each separate allegation should be entered into TEAPOTS under the **Intake Tab: What Happened?**

In addition to entering the information on jurisdiction in the TEAPOTS screens listed above, the EOS should identify any issues concerning the elements of jurisdiction that require additional investigation in TEAPOTS under the **Investigation Screen: Investigation Planning; Elements of Jurisdiction**. For a detailed discussion on issues affecting jurisdiction see Chapter 3, Jurisdiction.

As stated earlier, the Act provides the Secretary with the authority to establish the required form for the filing of fair housing complaints. Complaints must conform to the regulations as set forth in 24 C.F.R. § 103.30.

Under the regulations (24 C.F.R. § 103.30 (c)), Fair Housing complaints must contain:

- The name, address and telephone number (if any) of the aggrieved person;
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- The name and address of the respondent;
 - The date the aggrieved person believes the discrimination occurred;
 - The address and a description of the dwelling involved (if any); and
 - A description of the alleged discriminatory housing practice and a brief description of the facts and circumstances that cause the aggrieved person to believe that the respondent discriminated against him or her, including pertinent dates.

SPECIAL NOTE: Every reasonable effort should be made to obtain the aggrieved person's signature on the formal perfected complaint as early in the process as possible, but the aggrieved person's signature is *not* required for the conversion of an inquiry to a complaint.

4-6 AGGRIEVED PERSON INFORMATION

The initial interview of the aggrieved person is one of the most critical activities in the complaint intake process. The EOS must obtain the information necessary to make an initial assessment of jurisdiction. The EOS must also explain the investigation process to the aggrieved person and make appropriate referrals when necessary.

A. Preliminary Information

The implementing regulations at 24 C.F.R. § 103.25 identify the information that the aggrieved person should provide to HUD when filing a complaint. Among other things, the aggrieved person should provide the name, address and any telephone number of someone who will always know where the aggrieved person can be reached. To obtain this information, the EOS should:

1. Ask the aggrieved person to provide his or her complete name and address and any telephone numbers where he or she can be reached. Check carefully for accuracy of spelling. Enter this information in TEAPOTS under the **Intake Tab: Complainant**. All names entered here will appear on the Housing Discrimination Complaint Form generated by TEAPOTS.
 2. Inform the aggrieved person that he/she must sign the Housing Discrimination Complaint Form. Generally, spouses, if both are aggrieved persons, should file a single, joint complaint. Note: A husband or wife may not sign the Housing Discrimination Complaint Form on behalf of his or her spouse. Both should sign the housing discrimination complaint if they are aggrieved persons.
 3. Ask the aggrieved person for the names of any other person or persons who may have been injured by the alleged discriminatory housing practice(s). Enter this information in TEAPOTS under the **Intake Tab: Other Aggrieved Persons**. Such persons might include children under the age of 18 who reside in the household.
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4. Ask the aggrieved person if there are any additional adults in the household, other than the aggrieved person's spouse, who may also want to file a complaint (e.g., a roommate, a sibling). If so, advise the aggrieved person to have that person contact the EOS. In any event, enter their names in TEAPOTS under the **Intake Tab: Witnesses**.
 5. Inform the aggrieved person that he or she should promptly notify the Regional Office and the investigator of any change in address, telephone number or contact person during the course of the investigation. The aggrieved person must be informed that failure to keep HUD apprised of his or her whereabouts might result in a dismissal of the complaint through administrative closure.
 6. Ask the aggrieved person for the name and telephone number of a contact person, such as a sibling or parent, through whom the aggrieved person can be reached. Enter this information into TEAPOTS under the **Intake Tab: Contact Person**.

SPECIAL NOTE: Often, aggrieved persons continue to look for housing at the time that they file their complaint, and may move or be difficult to contact. Possible contacts might include friends or relatives who will know the whereabouts of the aggrieved persons, as well as current, former or prospective employers.

B. Information Concerning the Enforcement Process

The EOS should:

1. Ask the aggrieved person to describe briefly the facts and circumstances that prompted the inquiry. Ascertain how the aggrieved person learned about fair housing and contacted HUD/FHEO. Record the referral source in TEAPOTS. The appropriate section is found behind the Complainant/Claimant screen.
 2. Briefly describe the complaint intake and investigation process, explain the coverage of the Act and the Department's role in enforcing the Act. Often, aggrieved persons have limited knowledge of the protections afforded by the Act.
 3. Explain the notification procedures to the aggrieved person. The aggrieved person needs to be made aware that under the Act; the respondent(s) will be notified of the complaint. It is important to emphasize this point to the aggrieved person, and distinguish between the notice requirements under the Act and the civil rights program statutes that permit aggrieved persons to file their complaints anonymously against HUD-funded recipients.
 4. Explain the referral process to the aggrieved person, if it appears that a complaint will be referred to a FHAP agency.
 5. Ascertain whether the aggrieved person wishes to file a complaint.
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6. If the Act clearly does not cover the alleged discriminatory housing practice or basis, but the aggrieved person believes that he or she is a victim of some form of discrimination that may be covered by a State statute or local ordinance (e.g., source of income, sexual preference, etc.), refer the aggrieved person to the appropriate State or local agency or private fair housing group that may be able to assist them. If it appears that the matter complained of does not fall within the jurisdiction of the Act or State or local laws, e.g., a landlord-tenant dispute, inform the aggrieved person of his or her right to seek advice from a private attorney. The EOS, however, should not refer the aggrieved person to a specific attorney. If the aggrieved person cannot afford an attorney, recommend that the aggrieved person contact a local non-profit legal aid society or lawyer referral service.
 7. If the aggrieved person does wish to file a complaint, obtain the necessary information to enter into TEAPOTS. Ensure that the information satisfies the requirements of the four basic elements of a filed complaint and establishes jurisdiction.
 8. Briefly describe the conciliation process to the aggrieved person. Explain that FHEO may attempt conciliation at any time, beginning with the filing of the complaint and ending with the filing of a charge or dismissal of a complaint. Explain that HUD must make a good faith effort to achieve a resolution of the complaint and obtain assurance that the respondent will satisfactorily remedy any discriminatory housing practices.

C. Questions About the Respondent

1. For each specific violation alleged, an aggrieved person should name as respondents all persons who may be held liable for the discriminatory housing practice. Therefore, the aggrieved person should be asked with whom he or she had direct contact in the course of each alleged discriminatory action.
2. Ask the aggrieved person about the employer of the person with whom the aggrieved person dealt directly.
3. Ask the aggrieved person if he or she knows who might have had responsibility for creating the alleged discriminatory housing policy or practice.
4. Ask the aggrieved person if he or she, or any respondent, receives any type of Federal housing assistance. If the answer is yes, other civil rights laws in addition to the Act may govern the respondent's actions. Attempt to identify the type of assistance that the aggrieved person or respondent receives. Check the box in TEAPOTS on the intake screen to indicate that Federal funding is involved.

D. Other Important Information

Identify available evidence related to the alleged discriminatory act and the injury. Ask the aggrieved person if he or she has any documents relevant to the complaint and note the response in TEAPOTS. This will alert the investigator to collect those documents, in addition to those that may be obtained at intake. If the aggrieved person has the documents in his or her possession during a personal interview, make copies of the documents. Such documents should include any papers that relate to the alleged discriminatory housing practice, (e.g., letters concerning the issues, cancelled checks, applications, etc.) Aggrieved persons should be advised to make photocopies of any documents they will provide to HUD. The EOS should ask the aggrieved person to preserve and retain the original documents. If the case involves a person seeking housing, ask the aggrieved person to keep records of any further housing searches. Remind the aggrieved person to retain any receipts or documents relating to costs or other injury, financial or otherwise, that he or she believes resulted from the alleged discriminatory incident.

Ask the aggrieved person if he or she knows or has heard about any individuals who the aggrieved person believes were treated either differently or the same as the aggrieved person because of their race, sex, national origin, color, religion, disability or familial status. TEAPOTS includes in the Intake Screen special data boxes for recording information on “Others Treated Differently” (than the aggrieved person) and “Other Persons Treated the Same.” Information about potential comparators recorded in these data boxes will assist the investigator in planning and conducting the investigation.

Conclude the interview. Upon concluding the interview, pertinent information should be read back to the aggrieved person to make sure that the information has been correctly recorded as provided by the aggrieved person.

A Housing Discrimination Complaint Form should be given to the aggrieved person to sign if he or she is on-site or sent to the aggrieved person, requesting that it be signed and returned to the Regional Office within 10 days of receipt, or the inquiry may be closed for failure to sign a Housing Discrimination Complaint Form.

SPECIAL NOTE: Throughout the complaint intake process, it is critical that the EOS take good notes, record these notes in TEAPOTS and safeguard and organize any records presented by the aggrieved person. Hard copies of all complaint-related information received during intake should be assembled and secured in the case file before the case file leaves intake. For guidance in organizing intake records see Chapter 10, Preparation of the Case File.

E. Aggrieved Person Wishes to File Anonymously

In cases where an aggrieved person requests that his or her name be withheld, the EOS must explain that HUD cannot withhold a complainant’s name from a respondent. The Act does not provide for anonymous complaints. The EOS must explain that the Act mandates that once the complaint has been filed, HUD must notify the complainant and

the respondent. Each notification letter must include a copy of the original complaint. Since the original complaint contains the name and the signature of the complainant, HUD cannot comply with this notice provision of the Act if it withholds the name and signature of the complainant. The EOS should advise the aggrieved person that the Act prohibits retaliation or reprisal for filing a complaint and that some protective measures can be taken to not disclose the aggrieved person's identity to persons other than the respondent. However, if federal financial assistance is involved, Title VI and Section 504 allow for anonymous complaints. See Multi-Jurisdictional Complaints at Section 4-11. The EOS should explain that aggrieved persons might choose to forego their rights under the Act, and file a complaint under the applicable civil rights program-related statute in order to obtain anonymity.

It is important for aggrieved persons to understand that the parties against whom a complaint is filed will have the opportunity to learn the identity of the person who made the allegations, and the substance of the allegations. This information will help aggrieved persons decide whether they wish to proceed with the complaint filing.

4-7 INFORMATION REGARDING THE RESPONDENT

A. Identifying the Respondent

The Act defines a "respondent" as any person or entity accused of a discriminatory housing practice. Obtaining accurate information about the respondent named in a complaint may require more creativity and research than other aspects of intake because the aggrieved person often will not have complete information. It is not advisable to contact the respondent before the complaint has been accepted as filed.

To obtain the best information on respondent(s), the EOS should:

1. Ask the aggrieved person for the name, address and telephone number of potential respondents. If the aggrieved person does not know the names or addresses, attempt to get any other kind of identifying information: for example, the title of the person with whom the aggrieved person spoke, or a physical description of the person.
2. Attempt to determine whether the respondent is a builder, owner, broker, salesperson, superintendent, manager, bank, lending institution, resident, tenant, etc., and enter the data in TEAPOTS.
3. Attempt to establish who owns the subject property. If a business entity is identified as the owner, determine its proper legal name. Attempt to identify all of the entities and individuals who participated in the alleged discriminatory act who may be properly named as respondents. This may include a parent company, a management company, a real estate broker or rental agent or an employee of a respondent company.

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4. When the aggrieved person can provide only a property address and/or a commercial property name (e.g., “Huntington Towers”), the EOS should conduct a property search and name the owner of the property as a respondent. The complaint should be served on the owner. If the owner is a corporation the complaint should be served upon the registered agent of the corporation. If the owner is a partnership the complaint should be served on the general partner. The complaint **cannot** be served upon an address of a property or the name of the property. **Note:** Registered agents should not be named as respondents. If the EOS is having difficulty identifying the proper respondent, he or she should contact his or her supervisor and consult with Regional Counsel.
 5. The EOS should determine the role of those individuals who allegedly had a direct role in the discriminatory conduct. Those persons may be served with the complaint and may be named as respondents. Attorneys who represent a respondent should not be named as a respondent for alleged discriminatory acts. If an attorney allegedly participated in the alleged discrimination, the EOS should consult with Regional Counsel prior to naming the attorney.

If an inquiry is filed without an identifiable respondent, the EOS must advise the aggrieved person that an inquiry cannot be perfected and filed as a complaint unless a respondent can be identified. If a respondent is not identified within the 20 days for perfecting a complaint, the inquiry should be closed.

SPECIAL NOTE: Although FHCO has accepted complaints that name apartment complexes and other buildings as respondents, for the purposes of filing a complaint, this practice must be avoided. Neither buildings nor apartment complexes, nor any form of real or personal property, can be named as a respondent in a Fair Housing Act complaint. Complaints can be pursued only against legal persons— a building or an address is not a legal person.

B. Other Methods of Identifying a Respondent and/or a Respondent’s Property

1. Newspaper records: If a respondent advertised the subject dwelling in a newspaper, but did not disclose a name or property address, contact the newspaper to find out the name and billing address of the person who placed the advertisement. If necessary, this information can be subpoenaed.
2. Telephone Numbers: If the aggrieved person has a telephone number he or she used to contact the respondent and no other identifying information, telephone numbers can be researched to identify the holder of the telephone number who may be the respondent.
3. Property searches: County and municipal property records are useful resources to identify property owned by the respondent(s). Because such records may contain

property descriptions, they also may be helpful in determining whether HUD has jurisdiction over the dwelling in question.

4. Corporate records: If it appears that a respondent is a corporation, the appropriate State or local corporate records office should be contacted to obtain information concerning the respondent's articles and/or certificate of incorporation, the legal name of the corporation, the names of the members of the Board of Directors, and the name and local address of a registered agent. The "registered agent" of a corporation is a person who has registered with the Secretary of State as the agent for one or more corporations or business entities, and who accepts service of process for those business entities. Where the registered agent's sole function is fulfilling the state's requirement to identify a person within the state for service of process, that person should **not** be named as a respondent although the complaint should be served upon the registered agent who must accept the complaint on behalf of the respondent. Many Secretaries of State maintain corporate databases that can be researched on the Internet.
5. Boards of Directors of Corporations: If a corporate respondent operates under the control of a Board of Directors, the corporation must be named as a respondent. The individual members of the Board should not be named as respondents, unless the facts presented during intake allege that these board members directly participated in the alleged discriminatory housing practice.
6. Boards of Directors of Unincorporated Associations: If an organization has not incorporated itself under the laws of any State, the individual board members may be named as respondents. If the discriminatory act resulted from a vote of the members of the unincorporated Board, those members who voted in favor of the action that produced the discrimination may be named as respondents.

If an EOS has questions about identifying the proper respondent, the EOS should consult with Regional Counsel.

SPECIAL NOTE: If an aggrieved person believes that he or she has been injured by separate and distinct discriminatory actions committed by two or more respondents in a "single transaction," a separate complaint should be filed against each individual respondent whose conduct can stand alone as a separate violation of the Act. For example, a couple alleges that their real estate broker attempted to "steer" them away from viewing available houses in a community because of their race. After successfully negotiating the purchase of a dwelling in that community, the same couple then alleges that a local lending institution denied their purchase loan application, also based upon their race. If the aggrieved persons want to file a complaint against the broker and the lender in such situations, the EOS should advise the aggrieved persons to file a complaint alleging a violation of Sections 804(a) and (c) against the broker. A second complaint alleging a violation of Section 805 should be filed against the lender because of the alleged discriminatory conduct of each respondent.

4-8 NOTIFICATION OF THE RESPONDENT AND COMPLAINANT

Section 810(a)(1)(B) of the Act requires HUD to serve notice of the filing of a Title VIII complaint upon the aggrieved person(s) and on each respondent. The regulations require service by CERTIFIED MAIL – RETURN RECEIPT REQUESTED, or personal service. Written proof of service requires the signature of the party or the party's agent, or an affidavit or certificate of service from the neutral third party who personally served the respondent.

TEAPOTS has been designed to generate the notification letters, which will be mailed to the complainant and the respondent as contemplated by the regulations. The notification letter to the complainant consists of HUD's acknowledgment of receipt of the complaint for filing, the designation of a complaint number, information relating to HUD's processing procedures and the complainant's rights and obligations under the Act. The respondent's notification letter must include a summary of the respondent's procedural rights and obligations under the Act. To constitute effective notice under the Act, a copy of the original complaint must accompany the respondent's notification letter. Copies of the computer-generated 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 either by certified mail or personal service, i.e., proof of service. See also Chapter 10, Preparation of the Case File.

The implementing regulations at 24 C.F.R. § 103.202(b)(5) provide for notification of a person who is not named in the complaint, but who is nevertheless being joined as an additional or substitute respondent. The provision states that effective notice to such a respondent consists of a copy of the complaint, and a notification letter that satisfies the criteria set forth in 24 C.F.R. § 103.202(a) and (b) of the implementing regulations for notifying additional or substitute parties. This notice also includes an explanation of the basis for the Assistant Secretary's belief that the person being joined is a proper party to the complaint.

4-9 PROOF OF SERVICE

In order to establish HUD's authority under the Act to issue a determination and charge affecting the rights of a respondent, it is necessary to demonstrate that the respondent was served with a notification letter that satisfies the statutory requirements, and a copy of a verified Housing Discrimination Complaint, prior to the issuance of HUD's determination.

A. Proof of Personal Service upon a Party

Proof of personal service consists of a Certificate of Service, signed and dated by a qualified process server. The Certificate of Service should contain the date, the location where service was accomplished (full address), a description of the circumstances under

which service was effected (e.g., “personally in hand,” or otherwise). The Certificate of Service should be placed in the Evidentiary Section of the case file, Section II.A., Jurisdiction (see Chapter 10, Preparation of the Case File), and the date and manner of service should be included in the Final Investigative Report Summary of the Investigation.

B. Proof of Service upon a Party by Certified Mail

Proof of certified mail service consists of a completed Certified Mail Return Receipt showing the date mailed, stamped with the date served, and the signature (and receipt date) of the recipient. To assist in the identification and tracking of individual records, always record the case name and HUD file number on the face of the Certified Mail Return Receipt. Signed green cards should be retained in the paper case file and attached to the corresponding letters.

4-10 REFERRALS TO SUBSTANTIALLY EQUIVALENT AGENCIES

Section 810(f) of the Act requires HUD to refer complaints alleging discriminatory housing practices to Fair Housing Assistance Program (FHAP) agencies before taking any further action with respect to the complaint. Any non-Title VIII complaints in multi-jurisdictional cases (e.g., Title VI, Section 504, Section 109 complaints, etc.) should not be referred to FHAP agencies. At a minimum, processing of these cases and findings should be coordinated for consistency. HUD should strongly consider reactivating the Title VIII component of a multi-jurisdictional complaint.

The following intake procedures should be followed for complaints that HUD must refer to a FHAP Agency:

1. For complaints that will be referred to a FHAP agency, review the specific allegations and bases contained in the complaint to determine whether:
 - a. HUD has jurisdiction over the allegations in the complaint; the agency has jurisdiction over the complaint;
 - b. The complaint should be referred or processed by HUD; and
 - c. The complaint involves other civil rights authorities that should be investigated by FHEO.

If the FHAP agency has jurisdiction over the complaint, ensure that the complaint is referred to the agency for further processing in accordance with the terms of the Memorandum of Understanding or Interim Agreement, and the Cooperative Agreement in effect between the agency and HUD. The terms of these written agreements should govern all referrals and dual-filings.

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2. Record the status of the complaint by entering the appropriate processing information in the TEAPOTS system and in any other referral record-keeping systems maintained by the Intake Unit.
 3. All complaints identified for referral should be transmitted to agencies through the TEAPOTS system and by certified mail, return receipt requested. HUD's notification should be timely and the intake supervisor should communicate with the agency's intake supervisor or other supervisor, and determine whether the agency is planning to test the allegations set out in the complaint.
 4. Notification of HUD's referral of the complaint should be sent to each complainant and respondent by certified mail, return receipt requested, or personally served. If notice is delivered by personal service, documentary proof of a party's receipt of such service must be obtained and preserved in the case file.
 5. The FHEO Regional Office, in accordance with subparagraphs 2 and 3 above, should forward complaints identified for referral to the agency within 5 days of receipt, whenever possible. To the extent possible, the jurisdiction of HUD and the FHAP agency should be resolved and established before referring the complaint. Complaints should never be retained in the Intake Unit for the purpose of "perfecting" or "accumulating a batch" prior to transmittal to the agency. Such complaints should be transmitted as they are received or within timeframes specified in the Agency's Memorandum of Understanding, Interim Agreement or Cooperative Agreement.

4-11 MULTI-JURISDICTIONAL COMPLAINTS

In addition to the Act, HUD 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, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975 and Executive Order 11063. See also Chapter 6, Multi-Jurisdictional Complaints, for additional guidance.

When an aggrieved person alleges discrimination cognizable under more than one of these statutes the complaint should be concurrently processed under all applicable statutes. For example, a housing discrimination complaint filed against a recipient of Federal financial assistance that alleges discrimination on the bases of national origin, age, and disability should be processed as follows: national origin under the Act and Title VI; disability under the Act, Section 504, and the Americans with Disabilities Act; and age under the Age Discrimination Act of 1975.

Title VI and Section 504 require that the identity of the complainant be kept confidential absent written authorization from the complainant to the contrary. Therefore, the EOS should obtain and include in the investigative file a written waiver of confidentiality. If a

Title VI, Section 109 and/or Section 504 complaint is filed in addition to a Title VIII complaint, it is not necessary to obtain a waiver of confidentiality.

If the complainant does not file the complaint under any statute other than Title VIII, but the allegations suggest noncompliance with another civil rights statute or civil-rights-related program requirement, the EOS should recommend the recipient for a compliance review in conjunction with the Title VIII investigation, when appropriate, and follow the guidance in the chapter on multi-jurisdictional complaints. In addition, the FHEO Regional Director should notify the appropriate program office, Housing, Public Housing or Community Planning and Development (CPD), so that the program office can gather any necessary information during a monitoring review, if one has been scheduled.

There may be instances when the aggrieved person, after counseling from the EOS, refuses to file a complaint under the Act, or one of the other civil rights statutes. In such instances the wishes of the aggrieved person must be honored with respect to the decision not to proceed under the Act. If possible, the EOS should obtain a written statement from the aggrieved person stating that he or she understands the implications of his or her decision, and that he or she voluntarily refuses to file under the Act. With respect to the other civil rights statutes administered by the Department, the EOS must explain the Department's independent, public trust responsibility to eliminate discrimination from all programs and activities that receive Federal financial assistance.

When complaints allege discrimination by recipients of Federal funds, the EOS should be alert for properties built with low-income housing tax credits (LIHTC). Although Federal financial assistance does not include tax credits, HUD, DOJ, and Treasury entered into a Memorandum of Understanding, August 11, 2000, which establishes procedures that require FHEO to notify the Department of the Treasury and the Department of Justice whenever HUD finds breach of a settlement agreement, or reasonable cause under the Act in a case that involves a LIHTC property. Pertinent information on the MOU and its impact can be found on the HUD Website at <http://hudweb.hud.gov/po/e/enforce/LIHTC%20Policy.pdf>.

A. Complaint Numbering

The general principle that applies to multi-jurisdictional complaints is that there should be one investigation unless it is a Title VIII complaint that must be referred to a FHAP agency. In such a case, the complaint should not be concurrently processed under the Act. The complaint must be separated: the Title VIII portion will be dual-filed with the agency, and the allegations under all other civil rights authorities will be processed by HUD. At a minimum, processing of these cases and findings should be coordinated for consistency. HUD should strongly consider reactivating the Title VIII component of a multi-jurisdictional complaint. Multi-jurisdictional complaints should be entered into TEAPOTS under "Other Authorities" and if there is an allegation that the Act was violated it should also be entered as a Title VIII complaint in TEAPOTS.

B. Respondents Receiving Federal Financial Assistance

- When a potential complaint of housing discrimination is filed, the EOS should determine whether the respondent is a recipient of Federal financial assistance. In some instances this can be easily determined, as when the respondent is a housing authority. EOSs should be aware that private landlords who accept housing choice vouchers are not recipients of federal financial assistance from HUD. Project based Section 8 assistance is federal financial assistance.
- The EOS should ask the aggrieved person if he or she knows whether the respondent receives Federal financial assistance from HUD or another federal agency, e.g., the Department of Agriculture.
- The EOS should use the software developed by HUD for the respective program offices to help determine whether a respondent/recipient receives Federal financial assistance from HUD.
- If the information cannot be obtained otherwise, the EOS should inquire of the various program offices in HUD to determine if the respondent receives HUD funding.

4-12 SPECIAL INTAKE ISSUES

A. Complaints Requiring Injunctive Relief

Some complaints involve circumstances requiring urgent attention, such as when aggrieved persons may be about to be evicted from their home or apartment, lose their home through foreclosure or lose some other unique housing opportunity. In these circumstances it may be imperative for HUD to take immediate action—even before the complaint is investigated—to prevent something from happening, or otherwise maintain the status quo. In such situations, the EOS needs to consult with Regional Counsel and determine whether the situation warrants immediate action. HUD and DOJ attorneys will decide whether to seek prompt judicial action and request injunctive relief.

Some examples of circumstances in which prompt judicial action may be appropriate include:

- A couple obtains legal guardianship of their 9-year old granddaughter. After they ask the park owner to add the child to the site lease for their mobile home, the park owner obtains an eviction order directing them to remove their dwelling from the park within ten days of the date of the order.
 - An aggrieved person provides convincing evidence that a respondent is likely to alter or destroy records critical to the investigation of the allegations in the complaint.
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- An aggrieved person alleges that a respondent is in the process of constructing a multifamily building whose design is in substantial noncompliance with the Design and Construction Requirements. If the construction is completed as planned, it will be more difficult, more expensive or impossible to correct the inaccessible features.

B. Injunctive Relief

"Injunctive relief" is an extraordinary legal remedy granted to an aggrieved person by a court of law that either prohibits someone from doing some specified act, or commands someone to undo some wrong or injury. There are two types of injunctive relief that are relevant during an investigation under the Act. These are:

- Preliminary Injunctions. A form of extraordinary relief issued by a court to immediately compel or restrain a party's actions, and which may either be discharged or become perpetual, depending on the result of the controversy, as soon as the court determines the rights of the parties.
- Temporary Restraining Orders (TROs). A TRO is a form of extraordinary relief similar to a preliminary injunction, except that a TRO can be issued without the respondent's receiving notice or an opportunity to be heard.

An EOS need not determine what type of injunctive relief is appropriate in a given set of circumstances--that will be decided by attorneys for the Office of General Counsel, consistent with the current delegation of authority, and/or the Department of Justice who represents the Department in asking for an injunction in court. Nevertheless, the EOS does play a critical role in identifying complaints involving situations that might warrant prompt judicial action. The EOS initiates the gathering of sufficient information to enable attorneys within the Office of General Counsel, consistent with the current delegation of authority, to determine whether prompt judicial action is appropriate. Since time is a critical factor, the EOS's efforts can help the Department identify the maximum time frame within which injunctive relief must be secured in order to preserve the housing rights of the aggrieved person.

C. Authority to Seek Prompt Judicial Action

Section 810(e) of the Act and 24 C.F.R. § 103.500 of the regulations permit the Secretary to authorize a prompt judicial action proceeding on behalf of an aggrieved person "at any time following the filing of a [Title VIII] complaint." Under the regulations, the General Counsel, acting on behalf of the Secretary, formally requests the Attorney General (DOJ) to petition a United States District Court to grant temporary or preliminary "injunctive relief" on behalf of an aggrieved person who:

- Has filed a Title VIII housing discrimination complaint; and

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- Believes that he or she is under an imminent threat of serious and irreparable injury, loss or damage from the respondent; or
 - Alleges facts that indicate that the respondent's actions subject the aggrieved person to an ongoing, continuing course of serious and irreparable injury, loss or damage for which prompt judicial action might be an appropriate remedy.

D. Determining Whether to Identify a Complaint for Prompt Judicial Action

When considering whether a complaint requires prompt judicial action processing, the EOS should carefully assess the allegations, and determine whether any or all of the following factors are present:

- The immediate threat of injury, loss or damage alleged by the aggrieved person is serious;
- There is evidence indicating the unique characteristics of the dwelling or housing benefit involved, such as size, layout, cost, location, amenities, evidence of scarcity of comparable housing in the local market, etc.;
- There is a relatively high degree of certainty that irreparable injury, loss or damage will occur unless injunctive relief is granted immediately;
- There is persuasive evidence that an alleged discriminatory housing practice has in fact occurred, and a significant likelihood that the aggrieved person will succeed on the merits of the case;
- The dwelling continues to be available and/or controlled by the respondent; and
- The aggrieved person continues to wish to rent or purchase the subject dwelling or obtain the housing benefit, or the respondent has prevented the aggrieved person from inspecting the dwelling in question, (as by false denial of availability, or steering) but the aggrieved person retains an interest in the dwelling based on its advertised specifications, its location, etc.

E. Examples of Documentation Necessary to Support a Request for Prompt Judicial Action

The preliminary investigation conducted during intake must result in the gathering of evidence that meets the legal standard that the court will require to justify its decision to grant the TRO or preliminary injunction. Supporting documentation must include, but need not be limited to, the following:

- A verified Housing Discrimination Complaint Form, together with the complainant's signed affidavit containing a detailed factual statement of the
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- alleged discriminatory conduct, setting forth specific facts showing that the respondent's conduct threatens or is about to threaten the complainant with irreparable injury, loss or damage (e.g., specific dates or times when events detrimental to the complainant are expected to occur);
- An analysis of the facts that clearly establishes the Department's jurisdiction (for example, review of possible property exemptions based upon number of units owned, type of housing, etc.);
 - Identification of the dwelling and verification of its continuing availability;
 - Evidence demonstrating the aggrieved person's special need for the housing sought (e.g., affordability, involuntary displacement (homelessness), overcrowding in current residence, physical accessibility, etc.);
 - Identification of respondents having authority to grant the relief sought by the aggrieved person (e.g., proof of property ownership, operational control of the dwelling, etc.);
 - Evidence that respondents have been notified of the filing of the complaint (in urgent circumstances, personal service of the complaint may be appropriate); and
 - Evidence indicating that the aggrieved person is likely to prevail on the issues of the complaint (for example, evidence that the aggrieved person is an otherwise qualified applicant, results of fair housing tests, witness statements, respondent's admissions, advertisements, brochures, policy statements, etc.).

F. Intake Processing Procedures for Prompt Judicial Action

The Memorandum of Understanding between HUD and DOJ executed on December 7, 1990, states that:

Prior to HUD's making its decision concerning whether or not to authorize the filing of a civil action seeking prompt judicial action, consultation between appropriate representatives of HUD and the Department of Justice shall commence immediately. These consultations may occur by whatever means that is [sic] appropriate and feasible (e.g. telephone, meeting, or in writing) concerning the propriety of such an authorization and/or whether or not HUD needs to gather any additional information before such a decision is made, as well as when to notify respondents of potential HUD action.

It is critical that Regional FHEO and Regional Counsel work together and notify their Headquarters counterparts at the earliest possible stage of complaint processing that a prompt judicial action proceeding may be required. Regional FHEO should provide Regional Counsel with early notification of requests for prompt judicial action or when a complaint appears to merit seeking prompt judicial action. Joint notification should be

provided to Headquarters, O/E and the Office of General Counsel, Fair Housing Enforcement Division, immediately following identification of complaints warranting prompt judicial action.

The EOS should assist the preliminary investigation by taking the following actions:

1. Where possible, establish jurisdiction, prepare a Housing Discrimination Complaint Form and obtain the aggrieved person's signature;
2. Enter the complaint in TEAPOTS to generate the case number, etc.;
3. Conduct follow-up interviews as necessary with the aggrieved person (and witnesses, if any) to confirm that the aggrieved person still wants the dwelling in question, and develop as much investigative information as possible. Obtain additional evidence suggesting that the Act has been or is about to be violated. Request supporting documentation and, in particular, verify date(s) on which the alleged irreparable injury, loss or damage is expected to occur;
4. Verify the type and location of the dwelling involved in the complaint;
5. Establish the identity and whereabouts of the owner(s) of the subject dwelling who must be notified as essential respondents in any prompt judicial action proceeding;
6. Discuss with the intake supervisor whether it is appropriate to contact the respondents directly to expedite the notification process;
7. Verify that all proper respondents have received notice of the filing of the complaint by certified mail or personal service; and
8. Document in TEAPOTS all contacts with any parties and witnesses, including preparation of narrative interview reports covering each contact.

Where possible, send the perfected Housing Discrimination Complaint Form to the aggrieved person by facsimile for review and signature in order to expedite processing and referral to DOJ. Where feasible, complainants and witnesses should also be encouraged to facsimile executed affidavits. Where faxing occurs, original complaints and affidavits should be transmitted by regular mail.

G. Referral Procedures for Complaints Requiring Prompt Judicial Action

A memorandum, signed by the Regional FHEO Director, which recommends and requests such action, must accompany complaints referred to Regional Counsel for possible prompt judicial action proceedings. Copies of the complaint package, consisting of:

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1. Copies of the Director's memorandum,
 2. The Housing Discrimination Complaint Form, and
 3. All supporting documentation

should promptly be delivered to DOJ's Housing and Civil Enforcement Section, in accordance with the MOU between HUD and DOJ which states that the Regional FHEO Director must provide DOJ with "all relevant information and documents relating to the matter" at the same time that the complaint is transmitted to Regional Counsel. Headquarters Office of General Counsel, Fair Housing Enforcement Division, and FHEO, O/E should receive copies of all transmissions to DOJ.

Upon receipt, the Office of General Counsel will review the complaint package in consultation with DOJ in order to reach a decision as to whether to authorize DOJ to seek prompt judicial action.

4-13 COMPLAINTS NAMING HUD AS A RESPONDENT AND COMPLAINTS AGAINST OTHER FEDERAL AGENCIES

An aggrieved person may file a Title VIII complaint against HUD as the sole respondent, or as one of several potentially responsible parties. A Title VIII complaint also may be amended during an investigation to add or substitute HUD as a responsible party. Typically, the aggrieved person is an applicant or a current participant in a housing program that is administered, funded or monitored by HUD.

Federal employees, including Field Offices, cannot be named as proper respondents. If HUD is named in a complaint, the complaint is against the Secretary of HUD. If an aggrieved person identifies a federal employee or a federal agency as a respondent and the EOS perfects the complaint, the head of the agency will be the proper respondent. A copy of the perfected complaint should be served on the General Counsel for the federal agency. A complaint against the Secretary of HUD should be served on the Associate General Counsel for Litigation, Office of General Counsel in Headquarters.

A. The Effect of DOJ's Position on Civil Enforcement of Housing Discrimination Complaints filed Against Executive Branch Agencies (Including HUD)

In 1994, the Office of Legal Counsel (OLC) for the Department of Justice (DOJ) took the position that DOJ could not enforce a Charge of housing discrimination issued by HUD against another federal agency in United States district court under the Act. OLC based its position on consideration of the President's authority under Article II of the U.S. Constitution "...to supervise and direct executive branch agencies and the Article III limitation that the jurisdiction of the federal courts extends only to actual cases and controversies...[F]ederal courts may adjudicate only actual cases and controversies, and ...a lawsuit involving the same person as both plaintiff and defendant does not constitute

an actual controversy, and...this principle applies to suits between two agencies of the executive branch...." OLC argued that although HUD issues a Charge of housing discrimination on behalf of a private complainant, HUD is still a "real party in interest" in any civil action commenced as a result of an election and referral to DOJ for enforcement. Therefore, such a civil action necessarily involves a lawsuit between two executive branch agencies.

FHEO Regional Offices will continue to accept housing discrimination complaints filed against federal agencies if the complaints are otherwise jurisdictional. Investigations should be conducted, and conciliation should be attempted in accordance with Section 810 of the Act, and the additional processing procedures described below. If conciliation is unsuccessful, the case file should be forwarded to FHEO Headquarters, O/E for further action. Each case should be forwarded with the FHEO Regional Director's recommendation for a Determination of "reasonable cause" or "no reasonable cause", and the Final Investigative Report summarizing the investigative findings and conciliation efforts. FHEO Regional Offices should not administratively close such complaints on the ground of lack of jurisdiction under the Act.

B. Complaints Filed against HUD

An EOS who receives a complaint naming HUD as an Agency or the Secretary of HUD as a respondent should take the following actions:

1. If jurisdiction is established, enter the complaint information into TEAPOTS to generate a complaint number and notification letters.
 2. Prepare a cover memorandum for signature by the Regional Director, FHEO. Facsimile the memorandum, together with a copy of the Housing Discrimination Complaint Form, to the Assistant Secretary for FHEO, ATTENTION: Director, Office of Enforcement. The memorandum should:
 - a. Inform the Assistant Secretary of the nature of the complaint;
 - b. Ask the Assistant Secretary to designate a contact person to handle investigation and/or conciliation matters; and
 - c. Request that the Assistant Secretary advise the FHEO Regional Office whether the Assistant Secretary will designate another Regional Office to assume responsibility for investigating the complaint.
 3. Transmit timely notification letters to the parties in accordance with the ten-day period provided in the Act and the implementing regulations. This constitutes official notice to the respondent of the filing of the complaint.
 4. Send a copy of the Housing Discrimination Complaint Form and the notification letters to Headquarters, OGC, addressed to the Office of General Counsel,
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Associate General Counsel for Litigation.

5. If the Assistant Secretary for FHEO designates another office to assume responsibility for processing the complaint, the EOS should transmit the case file to that office via overnight mail.

Upon receipt of a complaint naming the Secretary of HUD as a respondent that has been transferred from another office for processing, the EOS in the receiving Office should take the following actions:

- a. Alert the intake supervisor regarding the status of the complaint,
- b. Send written notification of the transfer to all parties to the complaint by certified mail or personal service and to the Associate General Counsel for Litigation, and
- c. Process the complaint in accordance with standard intake procedures set forth in this chapter.

4-14 SUBSTANTIVE AND PROCEDURAL LIMITATIONS ON FILING AND INVESTIGATING FAIR HOUSING ACT COMPLAINTS THAT MAY IMPLICATE THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Certain forms of speech, even speech that is discriminatory, may be protected by the First Amendment when engaged in for the purpose of influencing governmental action by persons who are not using the speech in a commercial context. In such cases, the First Amendment may protect the speech, and the Department will not accept a complaint based on the speech.

Sometimes the Department will be approached by individuals wishing to file complaints because they believe themselves to have been harmed by the statements, political activity, flyers, or legal activity opposing, in some way, their housing. Typically, these matters involve allegations that a third party, such as a neighbor, who is not directly participating in a real estate transaction, allegedly violated the Act. In order to ensure that the Department's investigative process does not interfere with speech protected under the First Amendment, no complaint alleging a violation of the Act where the respondents are private individuals (or groups/voluntary associations of private individuals) who allegedly engaged in non-violent, speech-related activities, may be filed absent prior formal approval from Headquarters, FHEO.

The EOS is responsible for preliminary identification of inquiries involving speech activities that may be protected by the First Amendment and for following the procedures identified below and explained in more detail in FHEO Notice 97-1 and subsequent extensions. This Notice can be found on the HUD Web at <http://hudweb.hud.gov/po/e/enforce/enforceguidance.html>. Neither this Notice nor the

procedures established affect the Department's practice of referring certain complaints involving threats of violence to the Department of Justice for possible criminal prosecution. See Section 4-15, Complaints Alleging Violations of Section 901, below.

A. Identifying Cases that Require Special Processing under the Department's First Amendment Guidance at Intake

Absent force, physical harm, or a clear threat of force or physical harm to one or more individuals, speech-related activities directed toward motivating action on the part of a Federal, State or local governmental entity or official, are protected by the First Amendment—even if the statements involved are hostile, offensive, distasteful, obnoxious, reprehensible or bigoted. The right of private citizens to organize and assemble peacefully to petition their government to take action that they believe to be beneficial is an essential part of a constitutional democracy.

The Department will not accept for filing or investigate any complaint alleging a violation of the Act involving speech-related activities by private individuals or organizations that:

1. Are directed toward achieving action by a governmental entity or official; and
2. ***Do not*** involve force, physical harm or a clear threat of force or physical harm, to one or more individuals and/or their property.

For example, suppose a citizen stands up in a public meeting convened by a county executive and says that the county "must" deny a proposed group home a conditional use permit because people with disabilities are "dangerous," will "ruin the neighborhood," and "shouldn't be allowed to live near children." The First Amendment protects that citizen's speech, however inaccurate and offensive. If, however, the same person slides a note under the door of the proposed group home threatening to burn the house down if it is occupied by disabled persons, that "speech" would *not* be protected because of its tangible threat of violent action.

SPECIAL NOTE: Additional examples of activities that are "directed toward achieving action by a governmental entity or official", include, but are not limited to:

1. Distributing fliers, pamphlets, brochures, posters or other written materials to the public at large;
 2. Participating in open community or neighborhood meetings or rallies;
 3. Writing articles or letters to the editor, making statements reported in a newspaper article, television or radio report;
 4. Participating in peaceful demonstrations (including picketing);
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5. Testifying and/or presenting petitions at public hearings;
 6. Communicating directly with a governmental entity or official concerning official governmental matters; and
 7. Litigation filed in courts. (If the court finds that the defendant/respondent filed a frivolous lawsuit, that finding should be assessed in accordance with the First Amendment Notice.)

B. Procedures for Processing Inquiries that may Involve Protected Speech

Allegations of Title VIII violations against persons who may be engaged in First Amendment protected activities should be accepted as inquiries. The EOS should obtain as much information as possible from the aggrieved person with respect to the precise nature of the alleged discriminatory actions. For example, information on what happened, where it happened and when it happened should be recorded in detail. Mere assertions of “threats,” “intimidation,” or “use of racial epithets” is insufficient to determine whether there are First Amendment implications. The EOS should acquire as much information as possible from the complainant and any publicly available sources such as newspapers or police reports.

After collection of this information, a memorandum requesting First Amendment review and the compiled information should be sent to Headquarters, O/E. The complaint cannot be accepted before completion of the First Amendment Review. The EOS **shall not** contact any named respondents until Headquarters has approved the acceptance of the complaint for filing.

4-15 COMPLAINTS ALLEGING VIOLATIONS OF SECTION 901

Section 901 of the Act prohibits any person, "whether or not acting under color of law" from using or attempting to use “force, or threat of force for the purpose of intentionally injuring, intimidating, or interfering with any person because of his race, color, religion, sex, handicap, familial status, or national origin in the exercise of rights protected under the Act.” Section 901 is intended to prohibit housing-related acts of violence directed against all persons covered under the Act, as well as their real or personal property. It imposes criminal penalties against any person convicted of such conduct, regardless of whether the alleged offender is or was involved in a housing-related transaction with the aggrieved person at the time of the alleged injury. In general, Section 901 contains prohibitions similar to those set forth in Section 818, the civil anti-harassment provision of the Act. Both sections prohibit threats, intimidation and interference with the rights of an aggrieved person; therefore, a respondent might engage in conduct prohibited under both sections of the Act.

The Department of Justice (DOJ) is responsible for investigating potential violations of Section 901. HUD, however, maintains jurisdiction over any violations of Section 818.

The 1990 Memorandum of Understanding (MOU) between DOJ and HUD outlines how such complaints should be processed. As per the MOU, ***FHEO Regional Offices refer all potential Section 901 complaints directly to DOJ.*** Further, HUD holds its investigation of the complaint in abeyance until DOJ determines whether criminal prosecution is warranted. In 1998, the MOU was modified to provide for closer cooperation and coordination between the two agencies. The modification provides that DOJ, upon receipt of a referral, will notify HUD whether an investigation of the referral has already been initiated, and if no such investigation is underway, notify HUD within two (2) weeks whether or not it will conduct a criminal investigation of the referral. DOJ will also inform HUD of the closing of a criminal investigation of a complaint, or the completion of a criminal prosecution, whether successful or not. Pending notification that DOJ will not initiate an investigation or of the closing or completion of an investigation or prosecution, HUD will hold in abeyance any contact with any of the parties involved or the initiation of any investigation. In situations where some contact is necessary to perfect the filing of a complaint, such contact shall be by telephone and shall be conducted by staff at FHEO Headquarters.

The following are examples of Section 901 complaints:

1. Evidence of infliction of physical injuries, serious threats of bodily injury, intimidation, or other violent interference directed against persons who have engaged in a protected activity (i.e., exercised their right to rent or purchase a dwelling), and which appears to be motivated by a prohibited basis. Examples of such activities include: violent physical assaults; home invasions; rock-throwing; pursuits on foot or in vehicles; threatening with deadly weapons; generating excessive noise, light or offensive odors; obscene or threatening phone calls or other violent conduct intended to deny, prevent, disrupt or terminate an aggrieved person's use and enjoyment of a dwelling.
2. Damage to the dwelling and/or property connected to the dwelling of a person, that is motivated by that person's protected class status or by other discriminatory bases covered under the Act. Examples of such conduct include: criminal trespass (unlawful entry); cross-burnings or effigy-hangings conducted on the aggrieved person's property; fire-bombing or other vandalism of vehicles; telephone calls featuring "hate" messages combined with threats of injury; arson or attempted arson; poisoning of pets; defacing property by spray-painting offensive insignia or epithets; posting signs and other displays containing offensive epithets on the dwelling; or other forms of serious and extensive deliberate damage to exteriors or interiors of dwellings.

A. Factors to be Considered when Reviewing a Complaint for a Possible Section 901 Violation

The EOS is often responsible for making an initial assessment as to whether the allegations in a Title VIII complaint constitute a violation of Section 901. Such an

assessment should include, but need not be limited to, consideration of the following factors:

1. The degree of intentional violent conduct involved or threatened (e.g., evidence of firearms and other instruments of potentially deadly force, including fire);
2. The intensity or the persistence of the alleged conduct (e.g., evidence of police reports of previous incidents, discounted warnings to housing providers, evidence of escalation of numbers of persons involved, recurring incidents and heightened levels of violence);
3. The impact of the alleged activity upon the aggrieved person's ability to use and enjoy the property (e.g., physical, psychological and financial impact, including possibility of loss of the dwelling due to damage, destruction or forced abandonment of the residence, including "constructive eviction" tactics); and
4. The apparent ability of the respondent to engage in the behavior.

B. Intake Procedures for Processing Section 901 Complaints

1. Previously filed complaints. If the aggrieved person's information relates to a complaint that was previously filed, the EOS should alert the Intake supervisor to the situation. Discuss with the supervisor whether circumstances warrant the filing of a new complaint or amendment of the previous complaint. Ascertain whether the previous complaint is still open, or has been conciliated, withdrawn or resolved through a determination. If the previous complaint has not yet been assigned for investigation, discuss with the supervisor whether the matter warrants referral to DOJ.
2. New complaints. Upon receipt of a new complaint that appears to allege a violation of Section 901, the EOS should take the following actions:
 - a. Contact the aggrieved person.
 - b. Ascertain whether State or local law enforcement authorities have been informed of the activities complained of and, if so, whether they are currently investigating the matter. If the aggrieved person has reported the activity to State or local police, request names and phone numbers of any law enforcement representatives who have contacted the aggrieved person regarding their investigation. If the aggrieved person does not have copies of police reports relating to the alleged criminal activities, contact the State or local authorities to request copies.
 - c. Advise the aggrieved person to immediately report any recurrence of the criminal activity to State or local law enforcement authorities.
 - d. Advise the aggrieved person to preserve any physical evidence relating to the alleged activities (including photographs of personal injury or property damage, audiotapes of "hate" calls, etc.)

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- e. Verify the location of the dwelling involved in the complaint;
 - f. Obtain as much information as possible relating to the identities and whereabouts of any unnamed respondents whose conduct is described in the complaint. Ask whether the aggrieved person/witness was able to identify such characteristics as sex, race, accent, approximate clothing and method of travel (on foot, bike, auto, van, truck). This information should be memorialized in a statement attached to the Housing Discrimination Complaint Form, and should be signed by the person providing the information.
 - g. Prepare the complaint, (complaints cannot be forwarded to DOJ without a Title VIII number) and have the aggrieved person sign the Housing Discrimination Complaint Form.

C. Referral Procedures for Section 901 Complaints

Referrals of Section 901 complaints to DOJ will be made directly from the originating FHEO Regional Office. Referrals should include the name of a HUD contact person who will be responsible for dealing with DOJ on issues related to the referral. In complaints involving life-threatening situations, HUD's recommendation of urgency will be supported with as much documentation and identifying data as is available pursuant to the MOU. As new information becomes available after the initial referral, HUD must immediately provide updates to DOJ via facsimile transmittal. The FHEO Regional Director also will promptly notify FHEO Headquarters of the referral, and will promptly fax copies of the materials sent to DOJ.

During DOJ's review of a 901-complaint referral or criminal investigation, HUD will hold in abeyance the issuance of any notice letters (ten (10) day notice – 100-day notice) to either the complainant or respondent.

Upon receipt of a referral, DOJ will advise whether the complaint allegations are already under investigation and whether the allegations warrant a criminal investigation. In the event that DOJ decides not to commence a criminal investigation of a complaint, DOJ will notify HUD of that decision within two weeks of its receipt of the complaint. If DOJ decides not to investigate, HUD may contact any individual involved and, as it deems appropriate, initiate and proceed with the processing and investigation of the complaint.

In the event that DOJ fails to notify HUD of the status of a complaint referred under Section 901, FHEO Regional Office supervisory staff may initiate contact with DOJ to ascertain the status of the referral.

If it appears that a delay in commencing or completing a criminal investigation may jeopardize an aggrieved person's safety and/or rights, FHEO Regional Offices will immediately contact FHEO Headquarters. Headquarters will consult with the Deputy Chief of DOJ's Housing and Civil Enforcement Section.

4-16 FAIR HOUSING TESTING

Sometimes HUD receives information that warrants the use of testing. Although no complaint has been filed, testing may be used to corroborate allegations received by HUD relating to a housing provider's alleged ongoing discriminatory housing practice. In such cases, the FHEO Regional Office may direct a private organization to conduct a fair housing test. A fair housing test is a planned interaction between a housing provider and an individual pretending to be a home- or apartment-seeker for the specific purpose of gathering information concerning the manner in which the respondent does business. Sometimes, tests will involve a pair of testers who are essentially identical in their qualifications for the housing being sought and who differ in only one significant way—their respective protected basis for the purposes of comparing their treatment and the respondent's statements and actions in the test. The results of such tests can provide compelling evidence in court. The EOS may play a role in identifying an inquiry as suitable for testing. The EOS will collect the supporting information, and present the facts to his or her supervisor for consideration.

The EOS may also encounter testing as the basis of a complaint filing. Private fair housing groups that conduct audit tests of housing and housing-related service providers sometimes file complaints based upon findings of apparent disparate treatment. In addition, an individual who has participated as a tester—playing the role of the home- or apartment-seeker and interacting with the provider—may file a complaint on his or her behalf if he or she was given false information or otherwise injured by the experience of conducting the test.

A. Identifying Complaints that may be Suitable for Testing During Intake

The effectiveness of testing as a tool for the investigation of a particular allegation rests upon the ability of a testing organization to place a third person into precisely the same relationship with the test subject as was the aggrieved person. Thus, if weeks or months have passed since the aggrieved person's encounter, or the housing desired by the aggrieved person is no longer available, or if the persons responsible for the housing have changed, it may be impossible to create a situation that mirrors that of the aggrieved person's closely enough for a test to be effective.

Some scenarios follow that might help an EOS identify cases that may be suitable for testing:

- The aggrieved person reports that he or she received conflicting information about the availability of a dwelling. The aggrieved person is told that a dwelling is no longer available although it is still being advertised.
- The respondent is alleged to have made statements indicating a discriminatory preference or limitation; there are no other witnesses, no written statements consistent with the preference or limitation, and no reason to believe that the respondent will admit to making the statements.

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- There is evidence that a respondent has a history of conduct violating the Act. (A review of TEAPOTS, for example, reveals the existence of several previous Title VIII complaints filed against the same respondent based upon similar allegations, all conciliated for modest sums). Testing may make it clear whether the respondent is engaged in the alleged discriminatory practices.
 - The respondent has executed a HUD Conciliation Agreement requiring him or her to refrain from engaging in discriminatory housing practices. Periodic testing may be used to monitor the respondent's compliance with the public interest provisions of the Agreement.

B. Intake Procedures for Complaints Appropriate for Fair Housing Testing

Timeliness and credible testers are critical factors in successful testing. Therefore, every reasonable effort must be made during the initial stage of intake to gather as much useful and detailed information as possible regarding the aggrieved person's encounter with the respondent.

1. To lay the proper groundwork for fair housing testing, the EOS should obtain a particularly detailed description of the manner in which the aggrieved person contacted the respondent. Details such as the location (office, home, the subject property, etc.); the time of day at which the contact occurred; whether the contact occurred in person or over the telephone; the aggrieved person's manner of dress; or the presence of a spouse, co-tenant or minor children can be critical information for a test provider. It is also necessary to establish the manner in which the aggrieved person learned that the dwelling was being marketed for sale or rent. For example, if the aggrieved person responded to a newspaper advertisement, ask whether the aggrieved person can provide a copy of the advertisement that shows the name of the newspaper and the date of publication. If sale or rental signs were posted on the property, obtain details of the text (e.g., photographs, drawings or verbatim transcripts) describing the dwellings. If the aggrieved person believes that the respondent falsely denied that the dwelling was unavailable, the EOS should identify the size and type of dwelling involved and should determine whether the aggrieved person has information suggesting that the dwelling was still being listed/posted/advertised for sale or rental on or after the date of the alleged discrimination.
 2. The more information a tester has regarding the aggrieved person's experience with the respondent, the greater the likelihood that he or she will be able to conduct an effective test of the respondent's housing practices. Therefore, it is important to have the aggrieved person describe details of the respondent's application procedures. The aggrieved person also should be asked to recall the nature of any information that he or she provided to the respondent during the course of the alleged discriminatory action. For example, ask the aggrieved person whether the respondent specifically requested personal information
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regarding the aggrieved person's race, national origin, disability status, presence and/or number of children in the household or whether the aggrieved person volunteered the information.

3. Ascertain whether there is any reason to believe that the respondent already is on notice that a complaint has been or is about to be filed. Ask the aggrieved person whether he or she told anyone that a complaint might or could be filed against the respondent, either on the date of the alleged violation, or subsequently. Prior confrontations between the parties may serve to taint test results.

C. Intake Procedures for Complaints Based on Testing Evidence

EOSs are responsible for collecting and assessing information necessary to determine whether HUD has jurisdiction to investigate a housing discrimination complaint. Complaints that are supported in whole or in part by testing evidence must meet the same jurisdictional requirements that apply to all other complaints filed under the Act. In other words, whether the complaint is filed by the organization that sponsored the testing or by an individual tester, the aggrieved person must articulate how he, she or it was injured by the respondent's discriminatory action.

D. Information Necessary to Establish Jurisdiction for a Testing Complaint at Intake.

To insure that HUD has sufficient information to establish jurisdiction for complaints that are based solely on testing evidence, individual tester complainants and testing organization complainants, at a minimum, should provide information about the testing activity in the form of a summary. A "Testing Questionnaire" is provided in TEAPOTS. It can be accessed through the intake screen. Completing this questionnaire will assure that you have collected all the information you need to establish jurisdiction. (For ease of use, you may wish to save the questionnaire as a word-processed document. The questionnaire should then be completed and placed as a document into the Evidentiary Section of the paper file. The testers' *names*, and other identifying details, however, will be redacted as explained in greater detail below.)

E. Verification of Authority to File on Behalf of a Testing Organization

When an individual claims to have authority to file a complaint on behalf of a testing organization, the EOS should always request written verification of that individual's authority to file in the name of the organization. Acceptable examples of written authorization include official minutes of an executive board meeting in which authority to file was granted, or written authorization to file on behalf of the organization signed by an appropriate board officer.

F. Confidentiality of Testers' Identities.

If an individual tester's identity is disclosed to the public, that person's ability to conduct future tests may be compromised. A tester's identity may be disclosed, if and when, a

complaint proceeds to litigation. However, EOSs and investigators have a duty to protect the confidentiality of tester identities during the intake process and the administrative complaint investigation. During the complaint investigation, the Department will treat testers as “anonymous witnesses,” and will protect their identities from disclosure to the public, including all respondents. Disclosure of a tester’s identity is appropriate only if the tester personally files a complaint with HUD alleging a violation of the Act.

In order to protect a tester’s identity, his/her name, address, telephone number, e-mail address and other information that could reasonably reveal his/her identity will be maintained in the Deliberative Section of the case file. The Department has held that documents within this section are not subject to disclosure in response to a FOIA request. To enter confidential information into TEAPOTS properly go to the “Investigations” Tab and click on the heading that says “Deliberative Impressions/Opinions.” Right click on the field and enter the information there.

G. Information that Must Be Provided to Testing Organization Complainants at Intake

EOSs should inform all testing organization complainants that the testing coordinator, and all testers who participated in any tests conducted in support of the complaint, must be made available to the HUD investigator for interviews.

EOSs should also inform all testing organization complainants that they will be required to submit additional testing materials during the investigation, including the results of all tests associated with the complaint, regardless of the outcome of those tests. This information is necessary to enable HUD to conduct an independent assessment of the testing evidence supporting the complaint. Specifically, the complainant should be prepared to provide copies of the following testing materials to HUD:

- (1) Tester profiles,
- (2) Test reports,
- (3) Test coordinator logs,
- (4) Debriefing forms,
- (5) Test narratives,
- (6) Testing methodology,
- (7) Any materials that a tester received from the housing provider during the test transaction, and
- (8) Any other documents related to the tests associated with the complaint.

Complainants may redact their testing materials in order to protect the identities of their testers. Complainants should also be informed that these testing materials, **except for the testing methodology**, will be placed in the Evidentiary Section of the investigative file. The testing methodology documents will be protected in the Deliberative Section of the investigative file. (See Chapter 10, Preparation of the Case File.) For further guidance on the Treatment of Testing Evidence in Fair Housing Complaint Investigations, refer to FHEO’s guidance dated April 10, 2003 located on the HUD Web at <http://hudweb.hud.gov/po/e/enforce/enforceguidance.html>.

4-17 COMPLAINTS INVOLVING ZONING/LAND USE ISSUES

Section 814(b)(1)(B) of the Act states that DOJ has a maximum of eighteen (18) months after the occurrence or termination of an alleged discriminatory housing practice in which to file a civil action in U.S. District Court on behalf of an aggrieved person. Title VIII complaints containing significant zoning or land use issues are potentially subject to DOJ enforcement, and are therefore included in the 18-month statutory deadline. Such complaints should therefore be identified at intake for processing on a priority basis. FHEO Regional Offices should establish systems to track zoning and land use complaints once they have been identified, to ensure that they are timely processed in accordance with the 18-month statutory deadline. Investigations of zoning/land use complaints should be completed no later than twelve (12) months from the date of the alleged discriminatory practice, whenever practicable, to allow sufficient time for DOJ processing if FHEO refers the case.

Because of the eighteen-month time limit, it is imperative to determine immediately when the last alleged act of discrimination occurred, which is the date the eighteen-month statute of limitations begins to run. If the violation is continuing in nature, then the time limits may not have been triggered. Thus, at intake, it must be determined whether any adverse actions by the respondent are still pending on administrative appeal or other review process. In most circumstances, the decision to deny a permit or request for reasonable accommodation will be the date the statute of limitations begins to run. The EOS is to indicate the last date of an occurrence of the discrimination and add the phrase “and continuing,” if appropriate.

Any complaint that challenges the legality of a State zoning or land use law, or of a local zoning or land use ordinance, must be referred to Headquarters, FHEO, O/E, for referral to the Attorney General (DOJ). The MOU between HUD and DOJ authorizes HUD to conduct full investigations (including conciliation efforts) of Title VIII complaints, which raise "significant" issues relating to zoning and/or land use matters. Completed investigations of complaints involving significant zoning and/or land use issues for which the FHEO Regional Office Director would recommend “reasonable cause” should be forwarded to FHEO Headquarters for referral to DOJ.

Any complaint that alleges that a State zoning or land use law, or a local zoning or land use code or ordinance violates the Act should be identified at intake, and brought to the immediate attention of the intake supervisor. This will permit an early assessment of the significance of the land use related issues contained in the complaint.

The following are examples of actions involving zoning or land use issues:

- A municipality informs the purchasers of a single-family residence intended for use as a group home for disabled persons that the property will be classified as a boarding house under the local ordinance, and that they must, therefore, apply for

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- a conditional use permit in order to operate in an area zoned for single-family residency;
- A municipal building commissioner refuses to issue a building or occupancy permit to a developer of multifamily housing because of race, color, religion, sex, national origin, familial status or disability;
 - A municipality seeks an eviction order against a family with children under 18, to enforce a zoning ordinance permitting the establishment of a "seniors-only" residential district that does not meet the criteria for "housing for older persons;" and
 - A city council denies a complainant's appeal of a municipal zoning board's refusal to grant a zoning variance for the construction of a non-profit group home for chronically mentally disabled persons in an area zoned for single-family residences, based on neighbors' objections to having such persons in their neighborhood.

4-18 PROCEDURES FOR IMPLEMENTING THE MOU BETWEEN HUD AND THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL (FFIEC) MEMBER AGENCIES

On July 10, 1992, HUD issued the guidance on procedures for implementing the MOU between HUD and the FFIEC Member Agencies, under the title of 92 TGM 54-8. This guidance can be found and retrieved on the HUD Web at <http://hudweb.hud.gov/po/e/enforce/enforceguidance.html>.

A. Complaints Referred to HUD Headquarters by a Member Agency

1. FHEO Headquarters will send an acknowledgment letter to the referring member agency within fourteen (14) calendar days of the day HUD receives the complaint.
 2. FHEO Headquarters will review the referred complaint to establish timeliness and the Department's jurisdiction over the matter.
 3. If FHEO Headquarters determines that the complaint is timely filed and the Department has jurisdiction, the complaint will be referred to the appropriate FHEO Regional Office for processing.
 4. If FHEO Headquarters determines that it has no jurisdiction to process the referred complaint, FHEO Headquarters will return the complaint to the referral agency with an explanation of the Department's position in the matter.
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B. Complaints Received by HUD against a Regulated Institution

1. When an FHEO Regional Office receives a complaint involving a residential real estate-related transaction and the primary regulator is a member agency, the Office should transmit a copy of the complaint and a transmittal letter to the Headquarters Office of the appropriate member agency, with copies to FHEO Headquarters and to the affected parties. Such complaints are not to be referred to a FHAP agency.
2. When FHEO Headquarters receives a complaint involving a residential real estate-related transaction, the O/E will establish jurisdiction, timeliness, and standing, and refer the complaint to the appropriate FHEO Regional Office for processing. The O/E will notify the aggrieved persons and the appropriate member regulatory agency of the action taken involving the regulated financial institution.

C. Complaint Processing

1. If a basis of the complaint is race, color, religion, national origin or sex, FHEO Regional Offices or FHEO Headquarters, as appropriate, will coordinate the dates, times, and places of any on-site investigation against a regulated financial institution with the FFIEC member agency and solicit its participation. The remaining bases of disability and familial status are not covered under the FFIEC'S authorities and the member agencies normally do not investigate such matters.
2. In accordance with the MOU, requests for information from the member agencies will be made in writing. In addition, requests for a member agency's examination-related documents will be made only to the member agency rather than directly to the financial institution.

D. Intake Procedures for Lending Discrimination Complaints

In order to carry out HUD's obligations under the MOU between HUD and the FFIEC Member Agencies, the EOS must prepare an Intake Memorandum for each lending discrimination complaint processed under the Act. The Memorandum must include the following information for each complaint:

1. The names of all aggrieved persons, including all members of the aggrieved person's household. Adult aggrieved persons should sign the Housing Discrimination Complaint Form on behalf of themselves and any minor children in the household;
2. The name, address and telephone number of the lending institution. If the transaction at issue occurred at a branch office, also obtain the address and telephone number of the Headquarters Office;

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3. The name(s) and position title(s) of any person(s) with whom the aggrieved person had contact;
 4. A detailed description of the specific act(s) which gave rise to the allegation(s) including relevant dates and the alleged discriminatory basis;
 5. The names, addresses and telephone numbers of any witnesses and/or similarly-situated persons known to the aggrieved persons;
 6. A list of any supporting documents in the aggrieved person's possession;
 7. The name of the member agency responsible for regulating the respondent institution; and
 8. The date on which HUD formally notified the appropriate member regulatory agency of the filing of the complaint.

4-19 SYSTEMIC, PATTERN OR PRACTICE AND SECRETARY-INITIATED COMPLAINTS

For a discussion on intake procedures for processing Systemic, Secretary-initiated and Pattern or Practice cases, see Chapter 5, Systemic, Secretary-Initiated and Pattern or Practice Complaints.