

April 2004

FAIR HOUSING

Opportunities to Improve HUD's Oversight and Management of the Enforcement Process



G A O

Accountability * Integrity * Reliability



Highlights of [GAO-04-463](#), a report to congressional requesters

Why GAO Did This Study

Discrimination in housing on the basis of race, sex, family status, and other grounds is illegal in the United States. Each year, the Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) and related agencies carry out enforcement activities for several thousand complaints of housing discrimination. The timeliness and effectiveness of the enforcement process have been continuing concerns. GAO describes the stages and practices of the fair housing enforcement process, looks at recent trends, and identifies factors that may influence the length and thoroughness of the process.

What GAO Recommends

GAO makes six recommendations to the HUD Secretary for improving the management and oversight of the fair housing enforcement process. These recommendations include exploring ways to disseminate effective practices used at various enforcement locations, improving tracking and data-gathering procedures, and finding a way to meet human capital challenges in, among other things, staffing and skill levels.

HUD generally agreed with the report's conclusions and recommendations and stated an intent to look closely at incorporating them into planned efforts to improve the timeliness and effectiveness of enforcement.

www.gao.gov/cgi-bin/getrpt?GAO-04-463

To view the full product, including the scope and methodology, click on the link above. For more information, contact David G. Wood at (202) 512-6878 or woodd@gao.gov.

FAIR HOUSING

Opportunities to Improve HUD's Oversight and Management of the Enforcement Process

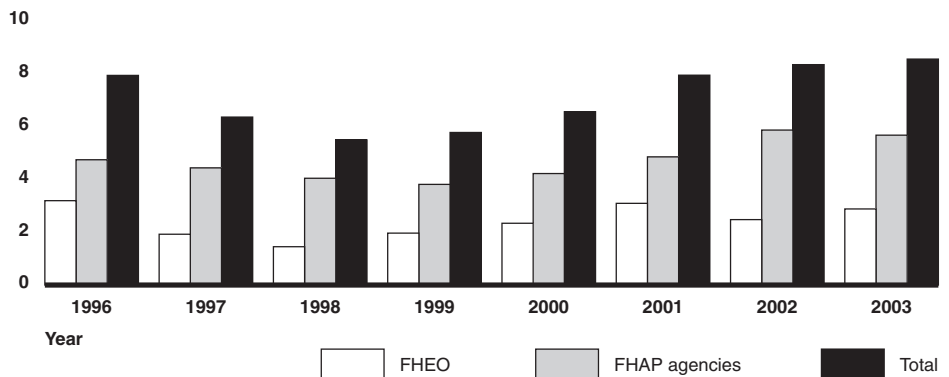
What GAO Found

The current fair housing enforcement process provides a framework for addressing housing discrimination complaints. Both FHEO and Fair Housing Assistance Program (FHAP) agencies located around the country take inquiries about potential incidences of discrimination and conduct investigations to determine whether discrimination did in fact occur. The practices used during intake and investigation differ among FHEO and the FHAP agencies, as the state and local agencies have some discretion in determining which practices work best for them. As a result, some agencies have developed procedures that they said improved the quality of intake and made investigations easier. For example, some FHAP agencies use experienced investigators during the intake process to help clients develop formal complaints. To date, FHEO has not looked at such practices to determine if they should be disseminated for potential use at other locales.

Further, individuals alleging discrimination in housing sometimes face a lengthy wait to have their complaints investigated and decided. Although the law sets a benchmark of 100 days to complete investigations into complaints of discrimination, FHEO and the FHAP agencies often do not meet that deadline. The typical time to complete an investigation in 1996 through 2003 was more than 200 days, with some investigations taking much longer. However, a lack of data makes it impossible to assess the full length and outcomes of fair housing enforcement activities. For example, because FHAP agencies are not required to report intake data to FHEO, complete information is not available on the number of initial contacts individuals alleging discrimination make with FHAP agencies. A lack of data on the ultimate outcomes of some investigations conducted by both FHEO and FHAP agencies may also prevent FHEO from fully measuring the time that complaints face before cases are ultimately decided. Human capital management challenges, such as ensuring adequate numbers of trained staff, further affect FHEO's ability to carry out its mission in a timely manner.

Number of Investigations Completed by FHEO and FHAP Agencies, FY 1996-2003

Number of completed investigations (In thousands)



Source: GAO analysis of HUD data.

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Abbreviations

| | |
|---------|--|
| ALJ | Administrative Law Judge |
| CSRS | Civil Service Retirement System |
| CMS | Contact Management System |
| DOJ | Department of Justice |
| FERS | Federal Employee Retirement System |
| FHAP | Fair Housing Assistance Program |
| FHEO | Office of Fair Housing and Equal Opportunity |
| FHIP | Fair Housing Initiatives Program |
| FTE | Full-Time Equivalent |
| HUD | U. S. Department of Housing and Urban Development |
| HIHRTS | HUD Integrated Human Resources and Training System |
| OGC | Office of General Counsel |
| QMR | Quality Management Review |
| REAP | Resource Estimation and Allocation Process |
| TEAPOTS | Title Eight Automated Paperless Tracking System |

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United States General Accounting Office
Washington, D.C. 20548

April 21, 2004

The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jack Reed
Ranking Minority Member
Subcommittee on Housing and Transportation
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Office of Fair Housing and Equal Opportunity (FHEO) of the Department of Housing and Urban Development (HUD) has been responsible for addressing nearly 57,000 complaints of housing discrimination filed in the last 8 years. The Fair Housing Act (the Act)—Title VIII of the Civil Rights Act of 1968, as amended—prohibits housing discrimination against minorities, persons with handicaps, and other protected groups. The Act, which is administered by FHEO and 100 Fair Housing Assistance Program (FHAP) agencies, establishes a 100-day benchmark for investigating fair housing complaints.¹ In recent years, neither FHEO nor the FHAP agencies have routinely met this benchmark. For example, 1,611, or 39 percent, of open fair housing discrimination investigations were over 100 days old and thus considered “aged” as of September 2003.

You asked us to review several aspects of the fair housing enforcement program. Specifically, we agreed with your offices to (1) describe the steps involved in the fair housing enforcement process; (2) determine the practices selected FHEO and FHAP agencies use to carry out the enforcement process and identify practices with the potential to expedite or improve it; (3) determine the trends, if any, that are discernable in HUD data on the numbers, characteristics, and outcomes of fair housing investigations; (4) determine the median time needed to complete each

¹FHAP agencies are state and local agencies that receive funding under FHEO’s Fair Housing Assistance Program because they have rights and regulations that are substantially equivalent to those defined in the Act. FHAP agencies may investigate fair housing complaints made in their regions.

stage of the enforcement process; and (5) identify factors that may influence the length and thoroughness of the enforcement process.

To describe the fair housing enforcement process, we reviewed the legislation, regulations, and other guidance describing each stage of the process and interviewed FHEO officials responsible for policymaking. To determine the practices used at selected locations and their potential for expediting or otherwise improving the process, we visited FHEO offices and FHAP agencies in different regions and conducted structured interviews with key officials in each location.² To identify trends in FHEO data on the numbers, characteristics, outcomes, and length of fair housing investigations, we obtained and analyzed data from FHEO's automated case-tracking system for an 8-year period (1996 to 2003). We also used these data to determine the median time needed to complete fair housing investigations. We assessed the reliability of data from this system by reviewing documents and interviewing managers to determine the reasonableness of system controls and by conducting reasonableness tests of system data. To identify the factors that could influence the length and thoroughness of the Title VIII enforcement process, we interviewed FHEO and FHAP agency officials responsible for management, intake, investigation, and legal matters at selected field locations and used a questionnaire to survey all of FHEO's 10 regional directors. We conducted our work in Washington, D.C.; Chicago, Ill.; Columbus, Ohio; Detroit, Mich.; Fort Worth and Austin, Tex.; New Orleans and Baton Rouge, La.; and New York, N. Y. between September 2003 and February 2004, in accordance with generally accepted government auditing standards.

Results in Brief

The fair housing enforcement process consists of three stages:

1. *Intake*, during which FHEO offices and FHAP agencies receive inquiries from individuals (complainants), determine whether the inquiries involve a potential violation of the Act, and file fair housing complaints for those that do.

²We selected these locations on the basis of several factors within the regions, including (1) the number of "aged" cases, (2) the total number of complaints received, (3) the ratio of FHEO investigations to all investigations FHEO and FHAP agencies completed, and (4) the number of FHEO centers and offices.

-
2. *Investigation*, during which FHEO or FHAP agency investigators collect evidence to determine whether reasonable cause exists to believe that a discriminatory housing practice occurred, or is about to occur and simultaneously work with parties to conciliate complaints to the extent possible.
 3. *Adjudication*, during which an administrative law judge, another administrative entity, or a federal or state court actually determines whether a violation of the Act has occurred.

For each stage, either the Act or FHEO guidelines establish timeliness benchmarks for certain aspects of the enforcement process.³ For a number of reasons, however, not all intake actions proceed through the subsequent stages. For example, FHEO or FHAP agency personnel may determine during the intake stage that the allegation does not fall within the Act's scope and therefore may not proceed with the investigation. Similarly, FHEO or a FHAP agency may help resolve a complaint during the investigation stage.

Some practices for handling fair housing complaints varied significantly among the FHEO and FHAP agencies we visited, and officials noted that certain practices have helped them expedite or improve the enforcement process. For example, some FHEO offices and FHAP agencies used experienced investigators during the intake stage to gather required information from aggrieved parties, a practice that staff at these locations believed improved the quality of intake and decreased the overall length of the enforcement process. (Other offices used some intake analysts who did not have investigative experience.) Similarly, some sites involved attorneys earlier and more frequently in the investigation stage than did other sites. Officials at locations where attorneys were involved earlier and more frequently believed that practice improved the thoroughness and decreased the length of the enforcement process. We did not observe any significant variations in FHEO and FHAP practices in the adjudication stage. Because FHEO and FHAP agencies have some discretion in choosing the practices they use to carry out the enforcement process, the variations in practices may be greater than what we observed in our limited sample. Many FHEO field office directors believed that the practices used during the

³When we refer to "timeliness benchmarks," we mean guidance on completing certain enforcement actions. Some of these benchmarks are contained in the Act, and some of them are contained in FHEO's *Title VIII Intake, Investigation, and Conciliation Handbook*.

enforcement process could be improved, but we found that FHEO had not systematically reviewed the practices in use across its field offices and FHAP agencies to determine which ones worked best. Because of the potential some practices may have to expedite the fair housing enforcement process and reduce the backlog of aged cases, we are recommending that HUD establish a way of sharing information on effective practices among its regional fair housing offices and FHAP agencies.

FHEO's fair housing program data revealed several trends in the volume, characteristics, and outcomes of enforcement actions between 1996 and 2003. Among other things:

- Overall, the number of inquiries received annually varied only slightly but increased substantially in 2003. The number of fair housing complaints filed each year showed a steady increase since 1998. Further, the nature of discrimination alleged in complaints changed during the period, with an increasing proportion alleging discrimination on the basis of handicap and a declining proportion alleging discrimination because of race.⁴ However, race was most often cited as the basis of housing discrimination over the period.
- The total number of fair housing investigations completed each year increased somewhat over the period after declining in 1997 and 1998. Throughout the period, FHAP agencies conducted more investigations than FHEO.
- The outcomes of investigations also changed, with an increasing percentage closed without a finding of reasonable cause to believe discrimination occurred. Conversely, a declining percentage of investigations were resolved by the parties themselves or with the help of FHEO or a FHAP agency. The ultimate outcomes for many cases in which FHEO and FHAP agencies found reasonable cause were not clear because the data from FHEO's automated case-tracking system were incomplete, particularly for cases processed by FHAP agencies.

⁴The Act prohibits discrimination in the sale and rental of a dwelling or provision of services because of a handicap of the buyer or another person associated with the buyer. According to the Act "handicap" means—with respect to a person—a physical or mental impairment that substantially limits one or more of such person's major life activities, or a record of having such an impairment, or being regarded as having such an impairment. It does not include the current, illegal use of or addiction to a controlled substance.

Accordingly, we are recommending that FHEO take steps to ensure that its system contains complete data on the outcomes of the adjudication process.

- Finally, the percentage of investigations completed within 100 days showed a general increase during the period.

Because of limitations in the data provided by FHEO's automated case-tracking system, we were not able to determine the median number of days needed to complete each stage of the enforcement process. Complete data were available only for measuring the length of investigations. From 1996 to 2003, the median number of days required for investigations was 259 days for investigations that FHEO conducted and 195 for those FHAP agencies conducted. Because of the importance of reliable data in monitoring progress, managing cases, and achieving timeliness benchmarks, we are recommending that FHEO take steps to ensure that its system includes complete data documenting the key dates in each stage of the process.

FHEO and FHAP agency officials identified a number of factors that could influence the length and thoroughness of the fair housing enforcement process. First, the nature of the complaint itself could affect the length of investigations. For example, complaints involving lending or financial practices generally took longer to investigate. Second, as noted above, variations in the practices followed appeared to affect the length and thoroughness of investigations. Third, human capital issues, including the numbers, skill, and experience of investigators and other staff involved in the process, could also influence investigations. Several FHEO field officials stated that their staff lacked some of the skills needed to conduct investigations, and some also pointed to limitations in the quantity and timing of training. Fourth, the availability of funds that enabled investigators to travel and collect evidence, conduct interviews, or undertake related activities impacted investigations. We are recommending that HUD consider a wide range of strategies to help ensure that the skills and competencies needed to meet the fair housing mission are fully developed.

HUD's Assistant Secretary for Fair Housing and Equal Opportunity provided comments on a draft of this report indicating general agreement with our findings and recommendations. The comments also included technical clarifications, which we have incorporated into this report as appropriate. HUD's comments are reprinted in appendix IV.

Background

A number of federal statutes prohibit housing discrimination, but the Act is the most comprehensive.⁵ This report focuses on enforcement of fair housing rights under the Act, which is one of the federal government's central tools for fighting discrimination in housing. The Act (as amended) prohibits discrimination on the basis of race, color, religion, national origin, sex, handicap, and familial status. The Act applies to certain issues, including discrimination in the sale, rental, or advertising or financing of housing, the provision of brokerage services; and other activities related to residential real estate transactions. The Act covers all "dwellings," which are defined generally as buildings designed to be used in whole or part for a residence, as well as vacant land offered for sale and lease for constructing or locating a building, with some exceptions.⁶

The enforcement process granted to HUD and others under the Act has been expanded since the law's enactment in 1968. The original Act gave no enforcement powers to HUD—other than the ability to investigate and conciliate complaints—and gave limited enforcement powers to private persons and the Attorney General. Under the 1968 Act, private persons who believed they had been discriminated against in housing could enforce the Act by filing a complaint with HUD, and HUD could investigate and conciliate those complaints.⁷ The 1968 Act had no mechanism for HUD to adjudicate complaints, so HUD had no options for further enforcement if conciliation efforts failed. The 1968 Act also authorized aggrieved persons to bring a civil action within 180 days of the date of the alleged discrimination. The relief that courts could provide in such cases included only injunctive relief, actual damages, punitive damages up to \$1,000, and, where the plaintiff was not able to pay his or her own attorneys' fees, those

⁵Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794 and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., as amended prohibit discrimination in housing that receives federal funds.

⁶The Act does not apply to certain transactions involving private homes marketed without a broker and without advertising if the owner does not own more than three single-family dwellings at any one time, or to transactions involving units within certain owner-occupied dwellings. The Act also does not apply, in certain circumstances, to religious organizations or private clubs, and the familial status provisions do not apply to housing for older persons. Finally, the Act specifically provides that it does not "limit the applicability of reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."

⁷Conciliation is the process by which FHEO helps the parties find a "just and mutually acceptable" resolution of the disputed issues to a Title VIII complaint.

fees.⁸ Under the 1968 Act, the Attorney General could initiate a civil suit under some circumstances—for example, when there was reasonable cause to believe that a “pattern or practice” of resistance had emerged to the provisions of the Act. The Attorney General could also bring a suit if a group of persons had been denied a right granted by the Act that raised an issue considered to be of general public importance. However, damage awards were not available in actions brought in these types of cases.

The 1988 amendments to the Act provided HUD, private persons, and the Attorney General with more tools and remedies for enforcement. Currently, under the Act as amended, there is an adjudication mechanism, so HUD’s enforcement efforts need not end if conciliation efforts do not succeed. Additionally, aggrieved parties can elect not to utilize the administrative enforcement process and can file civil actions in federal court within 2 years of the alleged discrimination; and the Act provides for actual and punitive damages without limitation and for injunctive relief and attorneys’ fees. As under the original 1968 Act, presently the Attorney General can bring a civil action in pattern or practice cases or cases of public importance. The 1988 amendments allow the Attorney General to commence civil actions in cases of breached conciliation agreements or discriminatory housing practices referred by HUD and to enforce subpoenas. In cases commenced by the Attorney General, courts can award civil penalties up to \$100,000 for the second violation, in addition to compensatory monetary damages and attorneys’ fees. The 1988 Act also created a deadline of 100 days for HUD’s investigation and reasonable cause determination.

FHEO directs HUD’s enforcement efforts, although some state and local FHAP agencies handle most enforcement efforts for their states and localities. FHEO refers complaints alleging violations of state and local fair housing laws that are administered by a certified FHAP to that agency. A certified agency that has entered into a memorandum of understanding with FHEO is eligible to participate in the Fair Housing Assistance program. Under this program, FHAP agencies receive funding for fair housing activities and must conform to reporting and record maintenance requirements, agree to on-site technical assistance, and agree to implement policies and procedures provided to the agencies by FHEO. FHEO has staff in each of HUD’s 10 regional offices, called “hubs,” through which it

⁸Injunctive relief is an order that commands or prevents an action.

conducts its enforcement efforts.⁹ FHEO staff has responsibility for the intake, investigation, and resolution of some of these complaints. Aggrieved persons may also go directly to FHAP agencies, which then perform the intake process. However, FHEO must ultimately approve the filing of all complaints involving alleged violations of the Act. If an aggrieved party contacts a FHEO office regarding discrimination that allegedly occurred in a state or locality that has a FHEO-certified “substantially equivalent” state or local agency (that is, a FHAP agency), FHEO will complete the intake process and refer the complaint to that agency for enforcement.

Under the Act and HUD’s implementing regulations, FHEO can certify an agency if (1) the rights and remedies available under the state or local laws are substantially equivalent to those available under the Act, and (2) the operation of the agency demonstrates that it meets performance standards for timely and thorough fair housing complaint investigations, conciliation, and enforcement. The local law must require the agency to meet the 100-day investigation benchmark contained in the Act. Although the FHAP agency enforcement process must be substantially similar to the HUD process, it need not be exactly the same. That is, FHAP agencies review incoming complaints to determine if they allege a violation of their state or local fair housing laws, the Act, or both; investigate complaints to determine if fair housing laws have been violated; and provide for the final adjudication of complaints, but each of the 100 FHAP agencies can take different actions to accomplish these tasks. These certified state and local agencies could be civil rights agencies like the Michigan Department of Civil Rights.

FHEO field offices monitor the FHAP agencies, review cases FHAP agencies investigate to determine if the agencies are eligible for payment under FHAP, and provide technical assistance. FHEO field offices also have responsibility for other functions, such as assessing compliance with fair housing regulations for entities receiving federal funds, providing community education and outreach efforts for fair housing issues, and managing grants under the Fair Housing Initiatives Program, which funds public and private entities combating discriminatory housing practices.

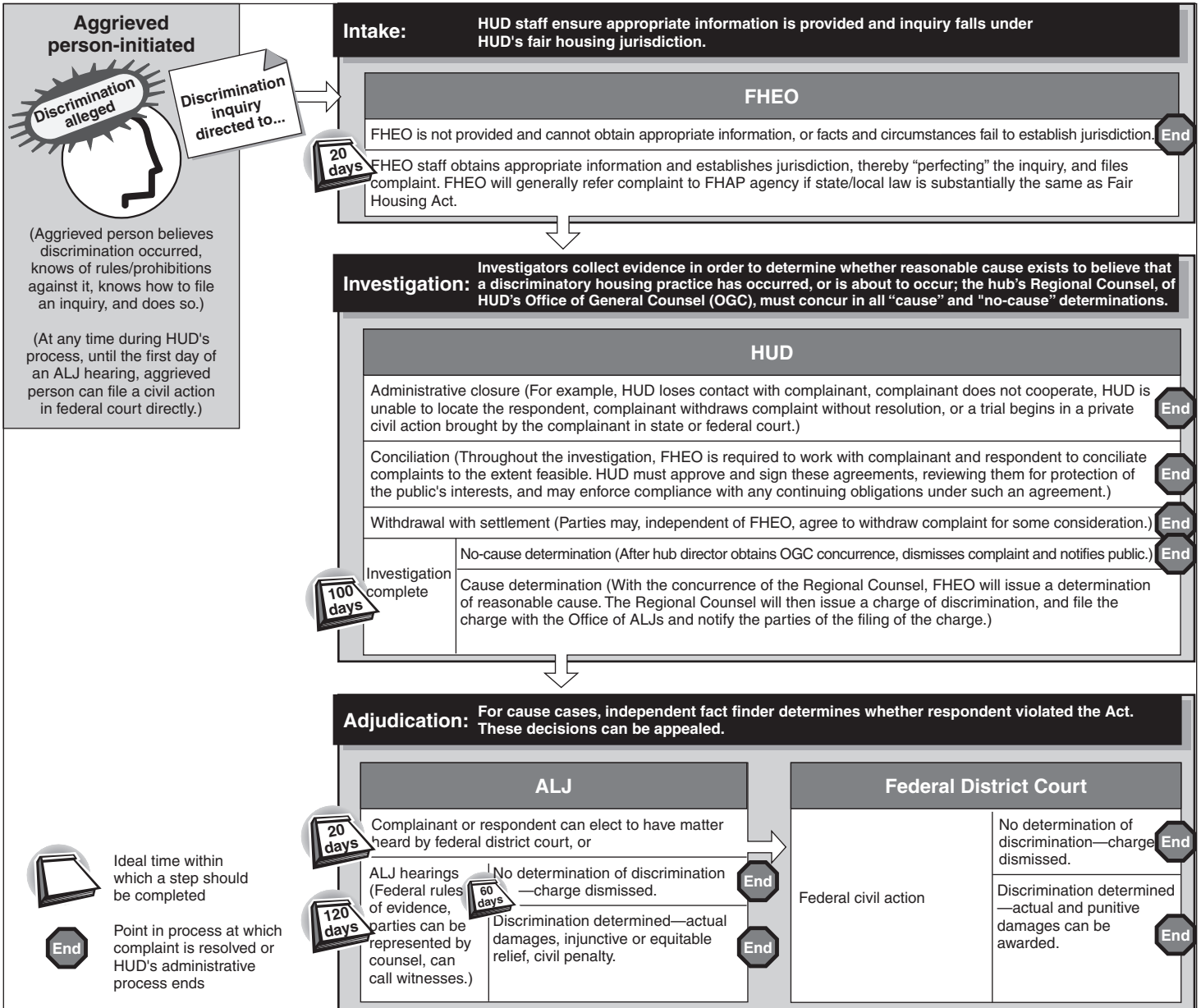
⁹Figure 4 shows the states for which hubs have enforcement authority. These hubs are located in Atlanta, Boston, Chicago, Denver, Fort Worth, Kansas City, New York City, Philadelphia, San Francisco, and Seattle.

FHEO tracks fair housing enforcement efforts through its Title Eight Automated Paperless Office Tracking System (TEAPOTS) database. FHEO enforcement personnel input information at major stages of the enforcement process, such as when a complaint is filed at FHEO, when an investigation of a complaint begins, and when a case is resolved. FHEO managers use TEAPOTS to track the progress of fair housing cases and enforcement efforts. All FHAPs have access to TEAPOTS and are required to report their performance information (such as timeliness milestones for initiated and completed investigations) into TEAPOTS or other data and information systems technology agreed to by HUD. TEAPOTS captures numerous aspects of enforcement efforts both nationally and by hub, including the numbers and lengths of enforcement actions; characteristics of complaints, such as basis of discrimination (race, religion, etc.) and subject matter of discrimination (sale, rental, etc.); and type of resolution.

HUD's Fair Housing Enforcement Process Provides the Framework for Handling Complaints

The fair housing enforcement process consists of three stages: (1) intake, during which FHEO or FHAP agencies receive inquiries from individuals with housing discrimination concerns and determine whether those concerns involve a potential violation of the Act; (2) investigation, during which FHEO or FHAP agency investigators collect evidence to determine if reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur; and (3) adjudication, during which an independent fact finder determines whether the person charged with discrimination (the respondent) did in fact violate the Act. The independent fact-finding may occur before an administrative law judge (ALJ) or, if one of the parties chooses, a federal court or state court for complaints filed with HUD and FHAP agencies, respectively. The Act and other guidelines establish timeliness benchmarks for completing certain parts of the enforcement process. An overview of HUD's basic fair housing enforcement process is shown in figure 1.

Figure 1: HUD's Fair Housing Enforcement Process



Sources: GAO analysis of the Act and fair housing regulations and GAO interviews with HUD, FHAPs, and private fair housing advocates.

Note: Although the most common way to initiate the enforcement process is through an inquiry made by an individual, the HUD Secretary, a FHAP agency, or a private fair housing organization might bring

a complaint on behalf of an aggrieved party. For illustration, this figure shows HUD's basic process. FHAP agencies follow a similar process.

Intake: FHEO Analyzes Inquiries to Determine Whether They Constitute Fair Housing Complaints

In the intake stage, FHEO hubs receive inquiries (called “claims” from 1996 to 2001), determine which ones involve a potential violation of the Act, and file fair housing complaints for those that do.¹⁰ FHAP agencies also receive inquiries and work with complainants to determine whether a potential violation of the Act, state or local law, or both has occurred. According to FHEO headquarters staff, the process usually starts when an individual contacts a FHEO hub by telephone, fax, or mail; in person; or over the Internet.¹¹ Intake analysts refer numerous contacts they receive that are not related to fair housing to appropriate outside organizations. Intake analysts record contacts dealing with fair housing as “inquiries” in TEAPOTS. The analysts interview complainants and may do other research—for example, property searches and searches of newspaper or corporate records—to see if enough information exists to support filing a formal complaint. This initial process is known as “perfecting” a complaint, although it does not always result in a complaint. In order for a complaint to be perfected, it must:

- contain the required four elements of a Title VIII complaint: the name and address of the aggrieved party (the person who was allegedly injured by a discriminatory housing practice), the name and address of the respondent, a description and address of the dwelling involved, and a concise statement of the facts leading to the allegation; and
- satisfy the Act’s jurisdictional requirements that the complainant has standing to file the complaint; that the respondent, dwelling, subject matter of discrimination (e.g., refusal to rent or refusal to sell),¹² and the basis (e.g., race, color, familial status) for alleging discrimination are

¹⁰Of FHEO’s many field locations, only the 10 hubs handle intake. Although complainants sometimes contact other offices about fair housing issues, these offices refer the complainants to the appropriate hub.

¹¹FHAP agencies may also contact FHEO with an inquiry that they have received directly. If FHEO determines that an inquiry alleges a violation of the Act, FHEO considers the inquiry a complaint and “dual files” it, paying the FHAP agency if it investigates the complaint. FHEO reviews complaints received from a FHAP agency to ensure that the complaint alleges a violation under the Act as well. Intake analysts identify complaints that should be “dual-filed” with the appropriate FHAP agency.

¹²FHEO uses the terms “issue,” “type,” or “subject matter” of discrimination interchangeably.

covered by the Act; and that the complaint has been filed within a year of the last occurrence of the discriminatory practice.

Hub directors decide whether these conditions are met. If so, the inquiry becomes a perfected complaint; otherwise, it is dismissed. Intake analysts record key information about perfected complaints in TEAPOTS, have complainants sign the official complaints, and send letters of notice about the complaint and the enforcement process to both complainants and respondents.¹³ The complaint file is then usually delivered to the investigator.¹⁴

According to FHEO headquarters staff, the intake stage for a complaint that will be investigated by FHEO—rather than a FHAP agency—is usually considered complete when the complaint file is delivered to a FHEO investigator. For such complaints, FHEO's *Title VIII Intake, Investigation, and Conciliation Handbook* (Handbook) establishes a timeliness benchmark of no more than 20 days for the intake stage. However, FHEO also performs intake for inquiries that, because of their characteristics, are ultimately referred to a FHAP agency for investigation. For example, if a person alleges a discriminatory practice that is within the jurisdiction of a FHAP agency, FHEO intake analysts complete the intake stage, file the complaint, and refer the case to the FHAP agency.¹⁵ For such complaints, the Handbook establishes a timeliness benchmark of no more than 5 days for the intake stage.

¹³Federal regulations allow the complaint to be signed at any time during an investigation, but FHEO prefers to have the complaint signed early on to protect against frivolous or false claims and erroneous statements.

¹⁴In some cases, however, FHEO has special processing procedures that it follows. These cases include complaints requiring assistance from the Department of Justice (DOJ), such as those that require prompt judicial action, show a pattern and practice of housing discrimination, or involve local zoning laws; complaints involving free speech that might be protected by the First Amendment and complaints naming HUD as a respondent.

¹⁵FHEO generally does not take further action on a complaint referred to a FHAP agency but may reactivate the complaint in certain circumstances—for instance, when FHEO and the FHAP agency agree to it or when the FHAP agency has not taken sufficient actions within certain time frames.

Investigation: FHEO Collects Evidence to Determine If Reasonable Cause Exists to Believe a Discriminatory Housing Practice Has Occurred or Is about to Occur

During the investigation stage, FHEO investigators collect evidence to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. Similarly, FHAP agencies may collect evidence to determine if a local or state fair housing law has been violated. The Handbook provides guidance for investigators during this process, although the Handbook notes that investigations will vary (see table 1).

Table 1: FHEO’s Investigation Process for Alleged Act Violations

| Task | Description |
|--|--|
| Review case file from intake | Review intake documents, including intake log, Housing Discrimination Information form (Form 903), interviews or investigation conducted during intake, including fair-housing testing. |
| Review jurisdiction | Make sure that the complaint is timely, that the complainant has standing, that neither the dwelling nor respondent is exempt, and that the complaint alleges violation of the Act. |
| Interview complainant | Inform the complainant of rights and steps in the enforcement process and obtain information crucial to investigation. |
| Receive respondent’s defense | Receive (orally or in writing) the respondent’s response to notification made during the intake process. |
| Develop investigative plan | Study the respondent’s defense to determine whether it appears valid. Supervisors and investigators are responsible for ensuring that all claims made in the complaint are adequately investigated. |
| Request necessary additional data from parties | Gather information and documents in preparation for interviews. |
| Interview respondent | Clarify issues and facts in dispute in the complaint, collect additional information about the respondent, and assess all responses to the complainant’s allegations. |
| Make on-site or off-site visits | Communicate with parties and witnesses and examine records or other documents, either on or off site. |
| Analyze case | Evaluate the evidence gathered and determine whether further investigation is needed to make a recommendation of reasonable cause or no cause. |
| Final interviews | Request responses to or clarification of all of the evidence collected in the case from the complainant and respondent. |
| Create final investigative report | Conduct final check to validate jurisdiction, summarize the position of parties, summarize investigation activity and records, and summarize and analyze the evidentiary record. Recommend a finding of cause or no cause to believe that respondent violated the Act. |

Source: FHEO Handbook.

According to agency guidance, once an investigator completes an investigation, the appropriate hub director reviews the results and makes a determination of whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. With the concurrence of the relevant HUD's regional counsel, the hub director issues a determination of reasonable cause and directs the regional counsel to issue a "charge" on behalf of the aggrieved person. The charge is a short written statement of the facts that led FHEO to the reasonable cause determination. If the hub director decides that no reasonable cause exists to believe that a discriminatory housing practice has occurred; then, upon concurrence of the regional counsel, the hub director dismisses the complaint. In a March 6, 2003, memorandum, HUD's Office of General Counsel (OGC) in headquarters requested that regional counsels send OGC's Office of Fair Housing the final draft of any charge that they propose to file and that they not file charges until they have received a response from OGC's Office of Fair Housing.

At any stage before the investigation is complete, the enforcement process can end by either conciliation or administrative closure.¹⁶ FHEO's Handbook states that conciliation is the process by which FHEO "assists the complainant and respondent in achieving a just and mutually acceptable resolution of the disputed issues in a Title VIII complaint." The Act requires that HUD try to conciliate all complaints to the extent feasible, starting at the time the complaint is filed and continuing until the final charge is issued or the case is dismissed. The Handbook and federal regulations implementing the Act allow an individual to act as investigator and conciliator on the same case, but the regulations state that generally investigators will not conciliate their own cases.¹⁷ Instead, other investigators not investigating a complaint conciliate such complaints. Conciliation agreements are to seek to protect the public interest in furthering fair housing through various provisions, such as requiring the respondent to provide FHEO with periodic reports.¹⁸ FHEO may also close complaints administratively for several reasons—for example, if the complainant withdraws the complaint.

¹⁶In rare instances, FHEO does not resolve a case or complete an investigation but instead refers it to DOJ.

¹⁷24 C.F.R. 103.300 (c).

¹⁸The Act authorizes DOJ to enforce conciliation agreements.

The regulations implementing the Act require FHEO and the FHAP agencies to complete an investigation, conciliate a case, or otherwise close a complaint within 100 days of the filing date unless doing so is “impracticable.”¹⁹ An investigation is considered complete, and the 100-day deadline ends, when a hub director makes a cause or no-cause determination in which the regional counsel concurs. If the investigation cannot be completed within 100 days, FHEO must notify the complainant and the respondent in writing of the reasons for the delay. This written notification is called the 100-day letter.

Adjudication: An Independent Fact Finder Determines Whether a Violation of the Act Has Occurred

Once a determination of reasonable cause has been made and a charge has been issued, an independent fact finder determines whether the respondent has in fact violated the Act (FHAP agencies also use independent fact finders to make this determination). HUD’s regulations state that OGC must file charges with the Office of Administrative Law Judges within 3 business days. When the complainant and respondent receive notice of the charge, each has 20 days to decide whether to have the case heard in a federal district court or by an ALJ.²⁰ The complainant may intervene as a party, and the complainant and the respondent may be represented by a lawyer before the ALJ. The Act also requires that the ALJ hearing begin within 120 days of the date of the charge, unless impracticable, and that the ALJ decision be issued within 60 days of the end of the ALJ hearing, unless impracticable.²¹ If the ALJ determines that no discrimination has occurred, the case is dismissed. If the ALJ determines that discrimination has occurred, he or she is authorized to award injunctive or other equitable relief, economic and noneconomic damages, and civil penalties, as applicable.²² Any party adversely affected by the

¹⁹42 U.S.C.A. 3610(a)(1)(B)(iv) requires investigations to be completed within 100 days after the filing of the complaint, “unless doing so is impracticable.”

²⁰HUD enforcement personnel said that parties to a case have a variety of reasons for going to court. These reasons include, for a complainant, wanting greater access to the punitive damages that a federal district court can levy; for a defendant, fearing that the ALJ might be biased in favor of FHEO or the complainant; and for either the complainant or the respondent, wanting a jury trial or having been advised by an attorney more comfortable with the federal court procedures.

²¹42 U.S.C. § 3612(g)(1).(2).

²²Equitable relief is a nonmonetary remedy, such as a specific performance, when monetary damages cannot adequately redress the injury.

ALJ's decision may appeal it to the HUD Secretary and then to the appropriate appellate court, within certain time frames.²³ HUD and any person entitled to relief under the final decision may petition the appropriate court of appeals to have the final decision enforced.

If either party elects to go to federal district court after the charge is issued, the HUD Secretary must authorize a civil action in federal district court, and the U.S. Attorney General must undertake the action on the complainant's behalf. The complainant may participate and be represented by a lawyer in this court proceeding. The respondent may also choose to be represented by counsel. Any party adversely affected by the final court decision may file a petition in the appropriate appellate court.

Some Practices Suggest Ways to Expedite and Improve the Enforcement Process

Some practices for handling fair housing complaints varied significantly among the FHEO and FHAP agencies we visited, and officials noted that certain practices had helped them expedite or improve the quality of the enforcement process. For example, some FHEO offices and FHAP agencies used experienced investigators during the intake stage, while others did not. Some officials at locations that used experienced investigators said that this practice had improved the quality of intake and decreased the overall length of the enforcement process. The variation in enforcement practices between FHEO and FHAP agency locations is not surprising, given the freedom those offices have to administer the enforcement process. In fact, there is a potential for the variation to be even greater than we observed, as we visited only 3 of the 10 hubs and just 7 of the 100 FHAP agencies. Even this limited look revealed practices in some locations that could potentially expedite cases if adopted elsewhere. However, HUD has not performed a systematic nationwide review of the enforcement practices at all of these various locations to identify practices with such potential.

²³A party adversely affected by the decision may, within the first 15 days of the decision, file a motion with the Secretary explaining how and why the decision should be modified. The ALJ's decision becomes HUD's official decision after 30 days, during which time the Secretary may affirm, modify, or set aside the decision or remand the case for additional proceedings. Any party adversely affected by the final decision may file a petition in the appropriate appellate court within 30 days of the final decision. If no petition is filed, the final order becomes conclusive for any issues in connection with any petition for enforcement.

Involving Experienced Investigators in Intake May Shorten Process and Facilitate Investigations

We found two personnel practices that officials at some FHEO and FHAP agency locations believed had improved their enforcement processes. First, several locations we visited used experienced investigators during their intake processes, while others generally did not. Although all three hubs we visited used dedicated intake analysts rather than current investigators to handle intake responsibilities, two hubs used some former investigators as intake analysts. Several FHAP agencies we visited had no dedicated intake analysts. At these agencies, current investigators simply shared the intake of complaints. Some FHEO officials told us that using investigators for intake improved the thoroughness of intake and decreased the overall length of the enforcement process. Some officials said that investigators have a better understanding of the information needed for jurisdiction and investigations, and they thus focus their intake efforts on getting that information.

Second, one FHAP agency we visited had instituted a team approach to enforcement. The agency had changed its entire enforcement process in 1997 to incorporate this approach, using several teams consisting of “civil rights representatives” (as opposed to intake analysts and investigators) and a “coach attorney.” Teams handled the enforcement process starting with the initial contact and finishing up with the reasonable cause recommendation. Teams rotated through the intake function for 1 week each month, investigating all cases that originated in intake that week. Although this FHAP agency made other changes simultaneously with the change to the team approach, FHAP agency officials said that the team approach had helped its backlog of cases drop significantly and improved the quality of its enforcement process. It is not possible to isolate the team approach’s impact on the FHAP agency’s fair housing effort, and the complaint numbers provided by the agency included other civil rights enforcement work, such as enforcement of equal employment opportunity laws. However, FHAP agency officials told us that, after the team approach had been fully implemented, the average complaint processing time fell from 476 days to 335 days.

In addition to personnel practices, we found that one FHAP agency was using a software system to improve the intake procedure. In addition to using TEAPOTS, this particular FHAP agency, in conjunction with a software company, had developed Contact Management System (CMS) software that had significant extra capabilities. The CMS generated a series of initial intake questions for the FHAP agency’s civil rights representative to ask during intake and then constructed follow-up questions based on the answers to the previous questions. These follow-up questions reflected the

elements that would be necessary to prove discrimination in a given case. At the end of its approximately 2-hour intake process, the FHAP agency tried to have either a perfected complaint or a reason that the contact did not warrant a perfected complaint. A FHAP agency official told us that the CMS software had helped decrease the length and improve the thoroughness of its enforcement process. Again, it is not possible to isolate the impact of the CMS software, but after the software was installed, average complaint processing times for the FHAP agency's fair housing and other civil rights work decreased from 335 days to 252 days.

Differences in Investigations, Including the Degree of Attorney Involvement and Conciliation Methods, May Improve the Enforcement Process

We observed numerous variations in investigative practices among the FHEO and FHAP agencies we visited. In several locations, officials said that their specific practices had helped them expedite the process, improve the quality of the process, or both. First, some locations involved attorneys earlier and more frequently during the investigation than other locations. Second, some FHEO offices and FHAP agencies simultaneously investigated and conciliated complaints, while others delayed the investigation while conciliating. Third, one hub and one FHAP agency customarily used separate persons to investigate and conciliate a complaint, while at other hubs and FHAP agencies, a single person handled both of these tasks. Fourth, some enforcement locations employed a tool called a "bubble sheet" to help meet the 100-day requirement for completing investigations. Last, one FHAP agency used software that provided additional investigative tools that TEAPOTS did not provide.

OGC Involvement

At the FHEO offices and FHAP agencies we visited, investigators and attorneys interacted to different degrees, and several officials told us that greater interaction had resulted in shorter and more thorough investigations. For example, at one hub the regional OGC had weekly meetings with investigators at the same location and biweekly meetings with investigators at other offices in the region. Interaction at another hub was less formal, but both regional OGC attorneys and the investigators said that frequent and meaningful interaction occurred on most cases through the informal "open-door" approach. At a third hub, OGC attorneys were not yet formally interacting with investigators, although they had recently signed a memorandum of understanding to do so. At FHAP agencies, we saw similar variations. One FHAP agency, as mentioned earlier, had a "coach attorney" on each team to help from the earliest stages of the investigations. At other FHAP agencies we visited, investigators had more limited interaction with the FHAP agency attorney.

In our survey of the 10 hub directors, 5 said that involving OGC in investigations had a great or very great impact on investigations, improving thoroughness, decreasing length, or both.²⁴ Officials cited various reasons for this result, including that the interactions with OGC:

- reduced the amount of work wasted on aspects of a case that should not receive investigative attention, shortening investigations;
- reduced the amount of additional work involved in seeking attorney concurrence, decreasing the length of investigations;
- helped the investigators pursue the appropriate leads at the best times during an investigation, increasing thoroughness; and
- created more cooperation among complainants and respondents, as the parties believed that attorneys were more involved in the enforcement process.

FHEO has recognized the importance of greater FHEO-OGC interaction. A May 5, 2003, memorandum to all hub directors and OGC regional counsels from the FHEO Assistant Secretary and the HUD General Counsel said, “The most effective fair housing enforcement actions are the result of frequent coordination and collaboration between investigators and counsels.” That memorandum required FHEO/regional counsel to consult with FHEO personnel frequently during the enforcement process, including having:

“significant involvement at complaint intake, in determinations of jurisdiction, in investigative plan development, in conducting investigations, in the effort to resolve cases informally through conciliation, and in making determinations of reasonable cause.”

That memorandum also required each regional counsel and each FHEO hub director to enter into working agreements with each other to formalize their working relationships. As of November 24, 2003, every hub had those agreements in place, and one HUD official said that the new memorandum of understanding had resulted in improved communication between investigators and OGC.

²⁴The complete results of our survey appear in appendix II.

Simultaneous Conciliations

Some HUD locations we visited put investigations on hold when conciliation looked likely, while others did not. Some fair housing officials at the locations that simultaneously investigated and conciliated told us that doing so not only expedited the enforcement process but could also facilitate conciliation. Because the parties were aware that the investigation was ongoing, two hub directors told us they were sometimes more willing to conciliate. Additionally, some officials at the offices that delayed the investigation while attempting conciliation told us that this practice increased the number of calendar days necessary to investigate a case. However, one hub official told us that simultaneous investigation and conciliation could waste resources, as it might not be necessary to obtain further evidence in a case that would be conciliated. Overall, 6 of the 10 hub directors told us that simultaneous investigation and conciliation had a great or very great impact on the length of the enforcement process, and all 6 said that the practice decreased the length. Four directors said that the practice had a great or very great impact on the thoroughness of investigations, and these four told us that it increased the thoroughness of investigations.

Investigator Conciliation of Own Cases

Investigators at some FHEO locations and FHAP agencies customarily conciliated their own cases, while other locations usually used separate investigators and conciliators.²⁵ Officials we spoke with were divided on the impact of this practice. Some officials told us that having the same person performing both tasks had not caused problems. Other officials—including some at locations where investigators conciliated their own cases—indicated a preference to have different people perform these tasks. One official said that separating these tasks enabled simultaneous conciliation and investigation of a complaint, a practice that speeded up the process. Another official noted that parties might share information with a conciliator that they would not share with an investigator and that a conflict of interest might result if one person tried to do both. The same official said that although investigators were not allowed to use information they learned as conciliators during investigations, the information could still influence the questions conciliators posed—and thus the information they learned—as investigators. Similarly, at one hub an OGC official told us that information learned as a result of conciliation efforts should not be included in investigative findings. A few enforcement

²⁵Federal regulations implementing the Act allow an individual to act as investigator and conciliator on the same case, but the regulations state that generally investigators will not conciliate their own cases.

officials at locations that did not separate the tasks said that they did not have enough staff to have separate conciliators. One hub director said that a FHAP agency in its region was experimenting with a separate mediation track in addition to the conciliation mechanism. The mediation occurred early in the process and involved a professional, nongovernment mediator. The director said the mediation had usually pleased the parties, resulting in timely resolutions of cases and beneficial results.

Response to 100-day Requirement

In responding to the 100-day requirement, several hubs and FHAP agencies used variations of what they called a “bubble sheet”—a list of investigative milestones and a time line for completing them—in order to meet the 100-day requirement. If an investigator missed a milestone, the “bubble burst,” and the investigator might not meet the 100-day requirement. Some officials said that the bubble sheet helped investigators complete each of the small steps of the investigation in a timely fashion and thus increased the likelihood of compliance with the 100-day requirement. Nevertheless, some people said that the 100-day requirement was arbitrary and often unattainable, and their response to the 100-day requirement was simply to send the 100-day letter at the appropriate time.

Software

As in the intake stage, the CMS software used at one FHAP agency offered additional tools during investigations that TEAPOTS did not. The CMS generated interview questions for investigations based on the information obtained in intake and then generated a list of critical documents that were usually needed for certain types of investigations. According to FHAP agency officials, the CMS improved the quality of investigations and decreased the length of cases. One FHEO center we visited was attempting to store possible witness questions in a central database for investigators to review to see if any were applicable to their cases, but this system was not automated and relied on investigators to compile the list. Officials at that center hoped that having a central location for all such questions would give investigators at least some examples of possible questions to ask. Officials at the FHAP agency noted that some data they are required to enter into TEAPOTS duplicated information in CMS and indicated that it would be preferable not to enter this information twice. Another FHAP agency we visited that used other software in addition to TEAPOTS had begun a pilot program to alleviate this duplication, using a program that would allow information entered into TEAPOTS to be incorporated into the FHAP agency software without keying the data again.

Some Hubs and FHAP Agencies We Visited Had Limited Adjudication Involvement over Last Several Years

We did not observe any significant variations across agencies in the adjudication stage of the enforcement process, possibly in part because the hubs and FHAP agencies we visited had adjudicated very few cases through their administrative processes. For example, one hub and one FHAP agency we visited told us they did not have any cases that had gone through the administrative hearing process over the last 5 years. Officials at the FHAP agency told us that in the rare cases that could go to an administrative proceeding, the FHAP agency encouraged parties to opt for state court, since otherwise the FHAP agency would have to commit resources to the process. Agency officials said that steering parties to one forum is inconsistent with the enforcement framework of the Act and the neutral role FHEO and FHAP agencies should play with respect to forum selection.

FHEO and FHAP Agencies Had Discretion in Implementing Practices, but FHEO Had Not Examined Different Practices

The variations among hubs, centers, and FHAP agencies are not surprising, given the discretion FHEO locations and FHAP agencies have had to administer the enforcement process. While FHEO's Handbook contains significant guidance, policies, and procedures, FHAP agencies have not been required to follow them. Rather, FHAP agencies must meet certain performance standards to obtain or maintain certification as substantially equivalent agencies. Under these standards, FHAP agencies must have engaged in timely, comprehensive, and thorough fair housing complaint investigation, conciliation, and enforcement activities. For both FHEO locations and FHAP agencies, the variations we observed could be even greater, given our small sample. Additionally, according to the 2001 National Council on Disability report, variations in the hubs' practices had increased since 1996.²⁶ Similarly, the potential for variations in FHAP agencies' practices has likely grown with the number of FHAP agencies, which increased from 64 at the start of fiscal year 1996 to 100 at the start of fiscal year 2004.

Many FHEO hub directors indicated that practical improvements could be made to the enforcement process; in fact, at least four directors believed that practical improvements could be made to each stage. Several hub

²⁶"Reconstructing Fair Housing," (National Council on Disability) NCD Report, (Washington, D.C., November 6, 2001). The NCD Report said that FHEO headquarters had greater authority over the enforcement process in the early 1990s but that in 1996 authority began to devolve to FHEO's hubs. As a consequence of that development and other factors, the NCD report said, significant differences among hubs emerged.

directors provided specific ideas for improvements to the intake stage. One hub director said that her hub had recently written its own intake handbook and had set a requirement of completing intake within 15 days, rather than the 20 days specified in FHEO's Handbook. Five of the 10 directors said that improvements could be made to the investigation stage for FHEO that would reduce the length of the process to a great or very great extent. One director specifically mentioned a practice—mediation in the early stages of the complaint process—that was in place at FHAP agencies in his region. Additionally, 4 of the 10 directors said that practical improvements could be made to the investigation stage that would increase the thoroughness of the enforcement process to a very great extent. For example, several directors suggested either increasing OGC's staff to provide more assistance to investigators or putting a non-OGC attorney on staff at the hub or field level as a resource for the investigators. Additionally, one hub director said that a checklist she had recently developed for supervisors reviewing investigations should increase the thoroughness of investigations. Regarding the adjudication stage, one hub director said that the region was concerned about not knowing whether DOJ would accept a fair housing case if a party in the case elected to have it heard in federal district court.

Despite the existing differences in practices among the entities involved in enforcing the Act and officials' belief that some practices could be improved, HUD has not performed a systematic nationwide review of its or FHAP agencies' enforcement practices since 1996. The 1996 review, a business process redesign, focused on FHEO's practices, although one FHAP agency was represented in the process. FHEO uses other reviews for practices in its offices, such as Quality Management Reviews (QMR), in part as peer reviews that allow collaboration and information sharing between FHEO offices. Additionally, FHEO reviews cases FHAP agencies investigate to determine if the agencies are eligible for payment under the program. However, the QMRs and FHAP agency reviews are not systematic, nationwide reviews of the practices that FHEO and FHAP agencies are using.

Enforcement Data Show Some Trends in Numbers, Types, and Outcomes of Cases

Our analysis of FHEO data on fair housing enforcement activities from fiscal year 1996 to 2003 revealed a number of trends. We found that:

- The number of claims or inquiries FHEO received annually remained stable until 2002 but then increased substantially. The number of

complaints filed trended downward in the earlier years but then rose steadily.

- An increasing proportion of these complaints alleged discrimination on the basis of handicap, while the most frequently cited basis of discrimination—race—declined as a proportion of all complaints.
- While the number of investigations completed fell in 1997 and 1998, more investigations were completed in each subsequent year. FHAP agencies rather than FHEO conducted most of the investigations.
- The outcomes of investigations changed over the period, with an increasing proportion of investigations closed without finding reasonable cause to believe discrimination occurred.
- The frequency with which FHEO and FHAP agencies completed investigations within 100 days increased over the period.

The trend data we present are reported on a fiscal year basis. We could not measure the volume of claims and inquiries before 1996. Generally, FHEO treated all inquiries it received between 1989 and 1994 as complaints, regardless of whether the contact alleged a violation of the Act. During parts of 1994 and 1995, FHEO did not collect information on those inquiries that did not result in an investigation.

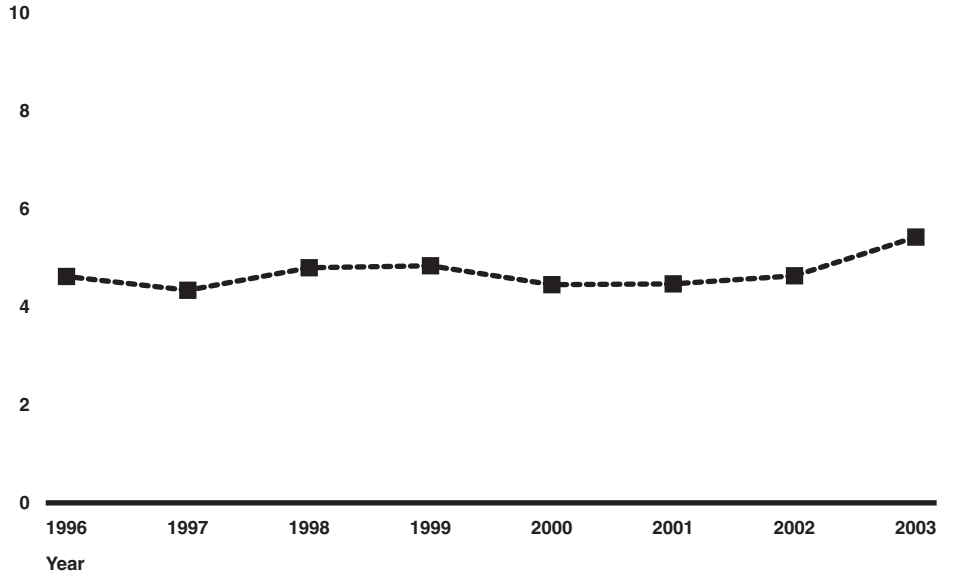
The Number of Inquiries and Complaints Filed Increased

From 1996 until 2002, FHEO's annual numbers of claims and inquiries alleging violations of the Act varied only slightly, averaging about 4,600 per year, but rose to more than 5,400 in 2003 (fig. 2). Because FHEO does not require FHAP agencies to report the number of claims and inquiries received during this period, we could not determine the number of claims and inquiries received by FHAP agencies.²⁷

²⁷Other FHEO data give an indication of the extent to which FHAP agencies received inquiries. Specifically, FHAP agencies were responsible for intake for nearly 24,000 complaints filed, or 42 percent of all complaints filed during the period.

Figure 2: Claims and Inquiries Received by FHEO, FY 1996–2003

Number of claims and inquiries (In thousands)

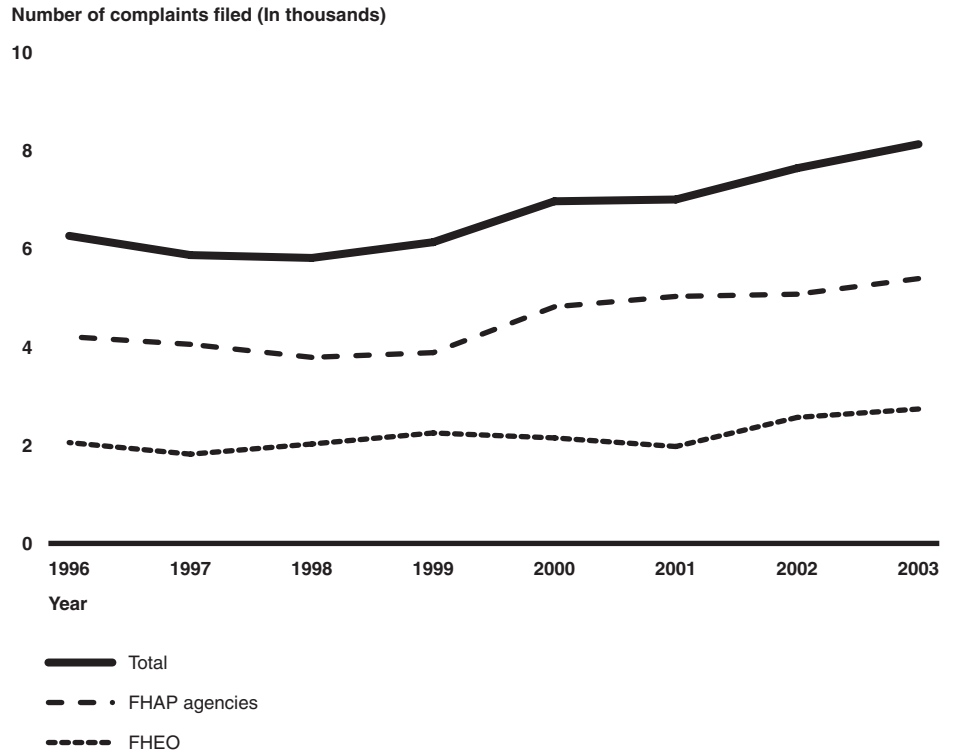


Source: GAO analysis of HUD data.

Note: Does not include inquiries received by FHAP agencies.

The combined number of complaints perfected and filed declined slightly from 1996 until 1998, but then began increasing steadily (fig. 3). By 2003, the number of complaints filed annually had risen to more than 8,000, with FHAP agencies responsible for investigating the largest share. Of the 53,866 complaints filed during the period, FHAP agencies were responsible for investigating 67 percent, and FHEO was responsible for investigating 33 percent.

Figure 3: Fair Housing Complaints Filed by Agency Responsible for Investigation, FY 1996–2003

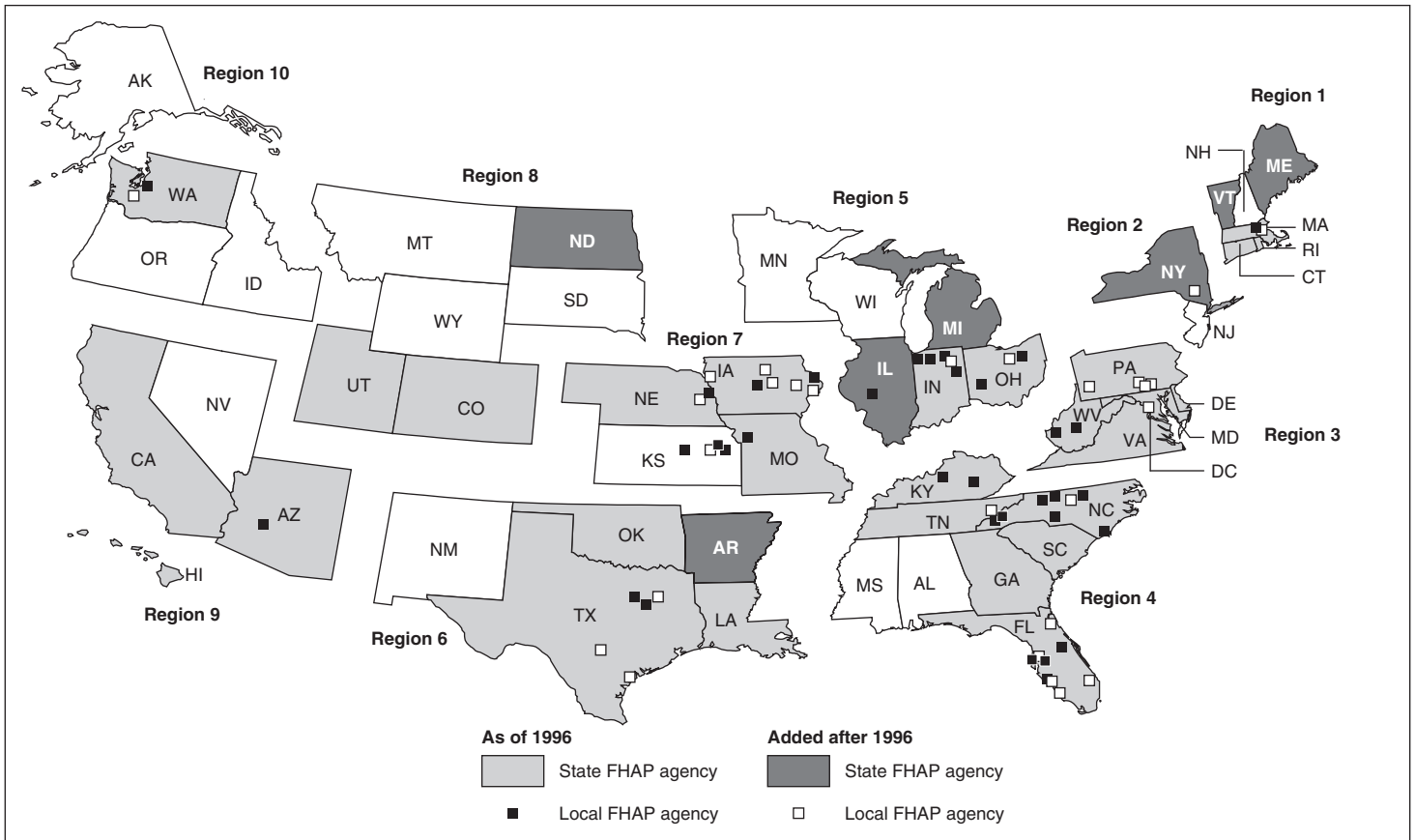


Source: GAO analysis of HUD data.

Note: Not all inquiries are perfected into complaints.

Overall, FHAP agencies were responsible for investigating an increasing portion of complaints filed each year from 1998 until 2003. In part, these increases may be attributable to the growth in the number of FHAP agencies nationwide. Seven states (Arkansas, Illinois, Maine, Michigan, New York, North Dakota, and Vermont), Washington, D.C., and 26 localities created FHAP agencies between 1996 and 2003 (fig. 4). FHAP agencies were responsible for investigating an increasing number of complaints filed between 1998 and 2003 in all except the Denver region (Region 8). In comparison, four FHEO regions—Boston, Chicago, New York, and Philadelphia—were responsible for investigating a declining number of complaints filed during this period.

Figure 4: Number and Location of FHAP Agencies in 1996 and in 2003



Source: GAO analysis of HUD data.

Note: Does not include territories in Puerto Rico and the Caribbean, none of which had FHAP agencies. There are two local FHAP agencies located in Charlotte, NC and Seattle, WA, and two in Tampa, FL (one of which existed before 1996).

The Basis, Subject Matter, and Regional Distribution of Complaints Filed Changed

As the number of complaints filed rose between 1996 and 2003, the basis of, or reasons for, the alleged discrimination changed somewhat (fig. 5). First, although complaints alleging discrimination based on race continued to dominate, accounting for around 40 percent of the total, the annual percentage declined slightly over the period. The share of complaints alleging discrimination based on familial status declined from one-quarter to about one-sixth of complaints filed during the period. In contrast, complaints alleging discrimination based on handicap increased

significantly, rising by more than 13 percentage points to become the second most frequently cited basis of complaints. Complaints alleging discrimination on the basis of religion, national origin, and retaliation also grew somewhat, while those alleging discrimination because of sex and color declined.

Figure 5: Prohibited Basis as a Percent of Complaints Filed Each Year with FHEO and FHAP Agencies, FY 1996–2003

| Prohibited basis as a percent of complaints filed each year | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
|---|-------|-------|-------|-------|-------|-------|-------|-------|
| Race | 43.5% | 43.6% | 45.4% | 40.0% | 40.2% | 39.2% | 39.3% | 39.4% |
| Handicap | 25.2% | 29.6% | 30.4% | 33.9% | 34.4% | 34.8% | 37.9% | 39.0% |
| Familial status | 25.2% | 22.2% | 20.0% | 18.9% | 18.4% | 17.8% | 16.2% | 16.0% |
| National origin | 12.9% | 11.8% | 11.4% | 11.2% | 11.7% | 12.9% | 12.2% | 13.0% |
| Sex | 12.4% | 11.9% | 11.1% | 9.1% | 10.5% | 11.6% | 11.4% | 11.5% |
| Color | 7.5% | 10.0% | 7.4% | 4.5% | 4.1% | 4.5% | 2.4% | 2.2% |
| Retaliation | 2.3% | 2.1% | 3.1% | 3.0% | 4.1% | 5.9% | 5.3% | 5.0% |
| Religion | 1.5% | 2.0% | 1.9% | 2.4% | 2.3% | 2.2% | 2.7% | 3.0% |

Source: GAO analysis of HUD data.

Notes: Discrimination based upon retaliation prohibits retaliation against anyone who has filed a fair housing complaint, encouraged or assisted another person in the filing of a fair housing complaint.

Columns do not total 100 percent because some complaints alleged more than one basis.

The subject matter, or issue covered by the Act, of complaints also changed from 1996 through 2003. Most of the complaints filed alleged discriminatory terms, conditions, or privileges (e.g., refusal to repair, charging an inflated rent) or refusal to rent, but the share of these complaint issues fell over the period from a high of about 63 percent and 36 percent, respectively, in 1996 to 55 percent and 23 percent in 2003 (fig. 6). At the same time, the share of complaints alleging failure to make reasonable accommodation or modification rose significantly, from less than 1 percent in 1996 to 16.5 percent in 2003.²⁸ Complaints alleging a single issue represented about 68 percent of complaints filed during that period, while complaints alleging more than one issue represented the remaining 32 percent.

²⁸Discrimination in the sale or rental of housing because of handicap includes a refusal to make reasonable accommodations in the rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. This category may also include (with the exception of rental environments) the refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises. 42 U.S.C. 3604(f)(3).

Figure 6: Issue Covered Under the Act for Complaints Filed with FHEO and FHAP Agencies, FY 1996–2003

| Complaint issue as a percent of complaints filed each year | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
|--|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Discriminatory terms | 62.7% | 64.2% | 60.9% | 58.4% | 56.8% | 57.2% | 55.1% | 54.7% |
| Refusal to rent | 36.3% | 30.2% | 24.4% | 27.7% | 28.1% | 28.4% | 26.3% | 23.1% |
| Reasonable accommodation or modification | 0.2% | 2.6% | 6.3% | 11.2% | 14.6% | 14.6% | 17.8% | 16.5% |
| Retaliation ^a (Section 818) | 13.7% | 11.9% | 14.8% | 13.9% | 12.7% | 11.1% | 12.3% | 13.6% |
| Advertising ^b | 4.1% | 4.9% | 7.0% | 10.0% | 9.3% | 9.3% | 7.3% | 5.4% |
| Discriminatory lending or financial practices ^c | 3.8% | 5.0% | 5.0% | 4.0% | 5.2% | 6.1% | 6.4% | 6.5% |
| False representation ^d | 2.8% | 2.6% | 3.3% | 2.7% | 2.7% | 2.3% | 2.2% | 2.5% |
| Refusal to sell | 2.4% | 2.7% | 3.5% | 3.0% | 3.7% | 3.7% | 3.8% | 3.5% |
| Design and construction ^e | 0.9% | 2.1% | 3.7% | 4.5% | 3.1% | 2.2% | 2.0% | 2.7% |
| Steering, blockbusting, and redlining ^f | 0.8% | 0.9% | 1.2% | 1.0% | 1.3% | 1.1% | 1.0% | 1.5% |
| Other ^g | 8.0% | 7.4% | 8.9% | 10.6% | 7.4% | 6.0% | 9.5% | 10.7% |
| Single issue | 68.6% | 71.1% | 68.2% | 63.7% | 65.7% | 67.7% | 66.4% | 67.9% |
| Multiple issues | 31.4% | 28.9% | 31.8% | 36.3% | 34.3% | 32.3% | 33.6% | 32.1% |

Source: GAO analysis of HUD data.

Notes: Columns do not total 100 percent because some complaints involve more than one issue.

^aRetaliation is covered under Section 818 of the Act making it illegal to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of, his/her having aided any other person in the exercise of the right to file a fair housing complaint.

^bAdvertising refers to making, printing, or publishing, or causing to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on a protected class (e.g., race, color, etc.).

^cDiscriminatory lending or financial practices refers to engaging in residential real estate-related transactions (e.g., mortgages, construction loans, home equity loans, home improvement loans, and appraisals) that discriminate against any person making such a transaction on the basis of a protected class. This category includes discrimination in the provision of professional opportunities in real estate by restricting membership in the associations necessary for success.

^dFalse representation refers to representing to any person that any dwelling is not available for inspection, sale, or rental when such a dwelling is, in fact, so available.

^eDesign and construction refers to discrimination in connection with the failure to design and construct a dwelling in such a manner that, for example, the public and common use portions are readily accessible to and usable by persons with disabilities.

^fSteering refers to the practice of guiding prospective tenants or homebuyers to areas where persons of their class have previously been housed. Blockbusting refers to the practice of inducing homeowners to sell their property at depressed prices by appealing to their fear of integration. Redlining refers to a policy of excluding specific geographic areas from the consideration for investment.

^gOther category includes six issues involving (1) criminal activity (i.e., covered under a federal criminal statute, Section 901 of the Act, intended to prohibit housing-related acts of violence motivated by a prohibited basis such as race, sex, or religion); (2) refusal to insure, which was cited in less than 1 percent of complaints in 2003; and (3) failure to qualify for the senior housing exemption all of which were cited in less than 1 percent of complaints in 2003; (4) discriminatory zoning and land use (i.e., the practice of applying zoning codes in an uneven manner or voting to rezone tracts of land to prevent the construction of housing projected to attract persons of another race), which was cited in about 1 percent of complaints in 2003; (5) failure to comply with HUD poster regulations, which was not cited in any complaints in 2003; and (6) allegations involving otherwise denying or otherwise discriminating in housing, which were cited in about 10 percent of complaints in 2003.

While the volume of complaints filed nationwide grew during the period, two regions, Denver (Region 8) and Seattle (Region 10) saw a decline (table 2). Conversely, two regions saw substantial increases. Specifically, complaints filed in Kansas City (Region 7) doubled during the period and almost tripled in the New York region (Region 2). The increases may be attributable, in part, to the addition of FHAP agencies from 1996 through 2003. By November of 1999, the New York region had two FHAP agencies online. In fiscal year 2000, the number of complaints filed in the New York region had more than doubled, rising from 213 to 442 complaints, or 6.3 percent of all complaints filed. FHEO referred 337 of these complaints to the FHAP agencies for investigation.

Table 2: Regional Distribution of Discrimination Complaints Filed, FY 1996–2003

| Complaints by region filed each year | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Region 1 (Boston) | 386 | 382 | 359 | 374 | 436 | 407 | 400 | 458 |
| Region 2 (New York) | 253 | 239 | 238 | 213 | 442 | 607 | 699 | 685 |
| Region 3 (Philadelphia) | 506 | 453 | 368 | 408 | 532 | 536 | 560 | 541 |
| Region 4 (Atlanta) | 839 | 851 | 742 | 954 | 1,306 | 1,266 | 1,497 | 1,367 |
| Region 5 (Chicago) | 887 | 953 | 1,049 | 924 | 1,040 | 1,059 | 1,142 | 1,296 |
| Region 6 (Fort Worth) | 892 | 629 | 692 | 693 | 700 | 855 | 942 | 968 |
| Region 7 (Kansas City) | 507 | 580 | 780 | 808 | 654 | 677 | 760 | 1,035 |
| Region 8 (Denver) | 401 | 286 | 251 | 281 | 266 | 257 | 280 | 269 |
| Region 9 (San Francisco) | 1,118 | 1,113 | 1,061 | 1,089 | 1,058 | 1,003 | 1,067 | 1,176 |
| Region 10 (Seattle) | 479 | 389 | 277 | 379 | 536 | 339 | 298 | 341 |
| Total | 6,268 | 5,875 | 5,817 | 6,123 | 6,970 | 7,006 | 7,645 | 8,136 |

Source: GAO analysis of HUD data.

Note: Excludes 26 complaints filed with Region 00 (Washington, D.C.).

The Number of Completed Investigations Rose, While Outcomes Varied

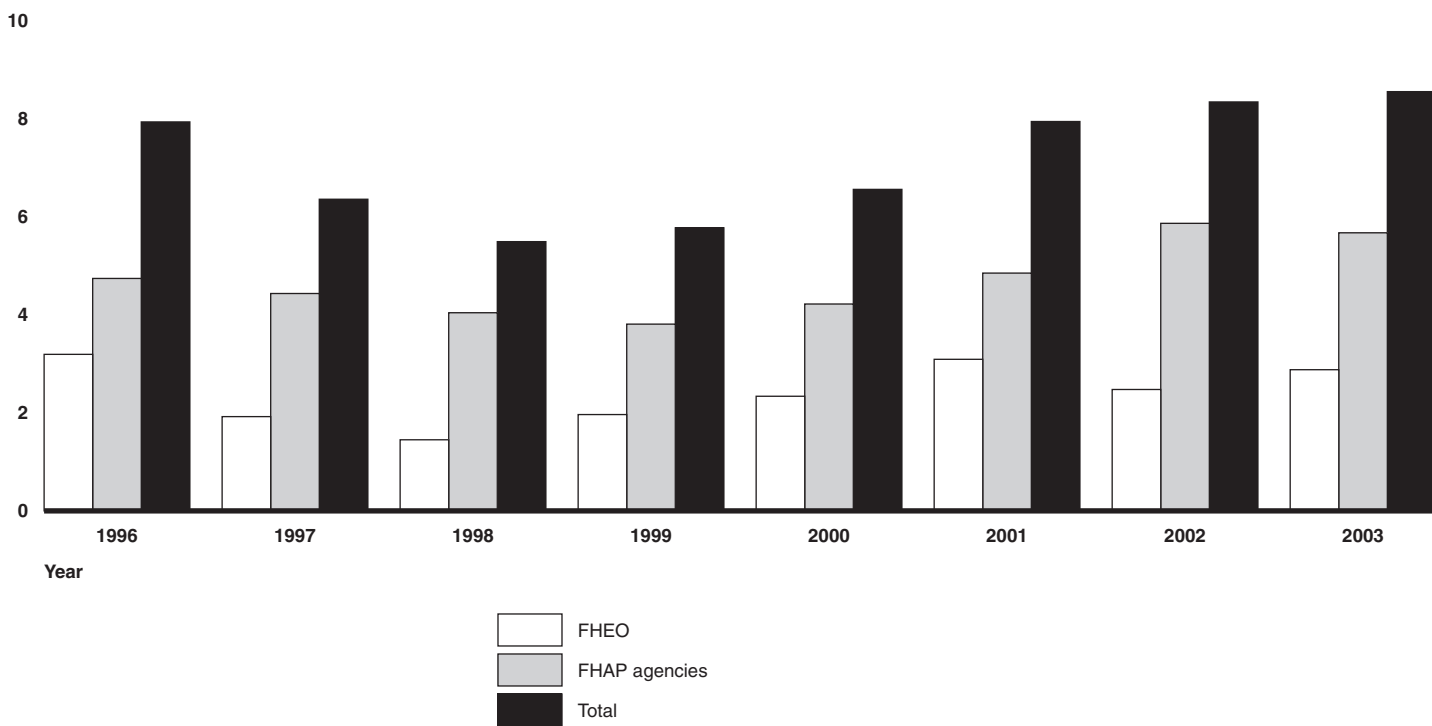
Investigations may be completed in several ways, each leading to a particular outcome. First, an investigation is considered complete when it is closed administratively—for example, the complainant withdraws the complaint or staff are unable to locate the complainant. Second, a FHEO-conducted investigation may be considered complete when the complaint is transferred to DOJ because of FHEO’s agreement to do so in certain instances, such as in cases involving criminal activity or pattern and practice issues. Third, FHEO or the FHAP agency may complete the investigation through conciliation with the parties, or the parties may settle among themselves. Fourth, FHEO or the FHAP agency may determine that reasonable cause may exist to believe that a discriminatory housing practice has occurred (find cause). Finally, FHEO or the FHAP agency may determine that there is not reasonable cause (no cause).

The number of investigations completed annually during the period rose after falling significantly in 1997 through 1998 (see fig. 7). This pattern was

similar for both FHAP agencies and FHEO, though the number of investigations completed by FHAP agencies declined in 2003 and the number of investigations completed by FHEO declined in 2002.

Figure 7: Number of Investigations Completed by FHEO and FHAP Agencies, FY 1996–2003

Number of completed investigations (In thousands)



Source: GAO analysis of HUD data.

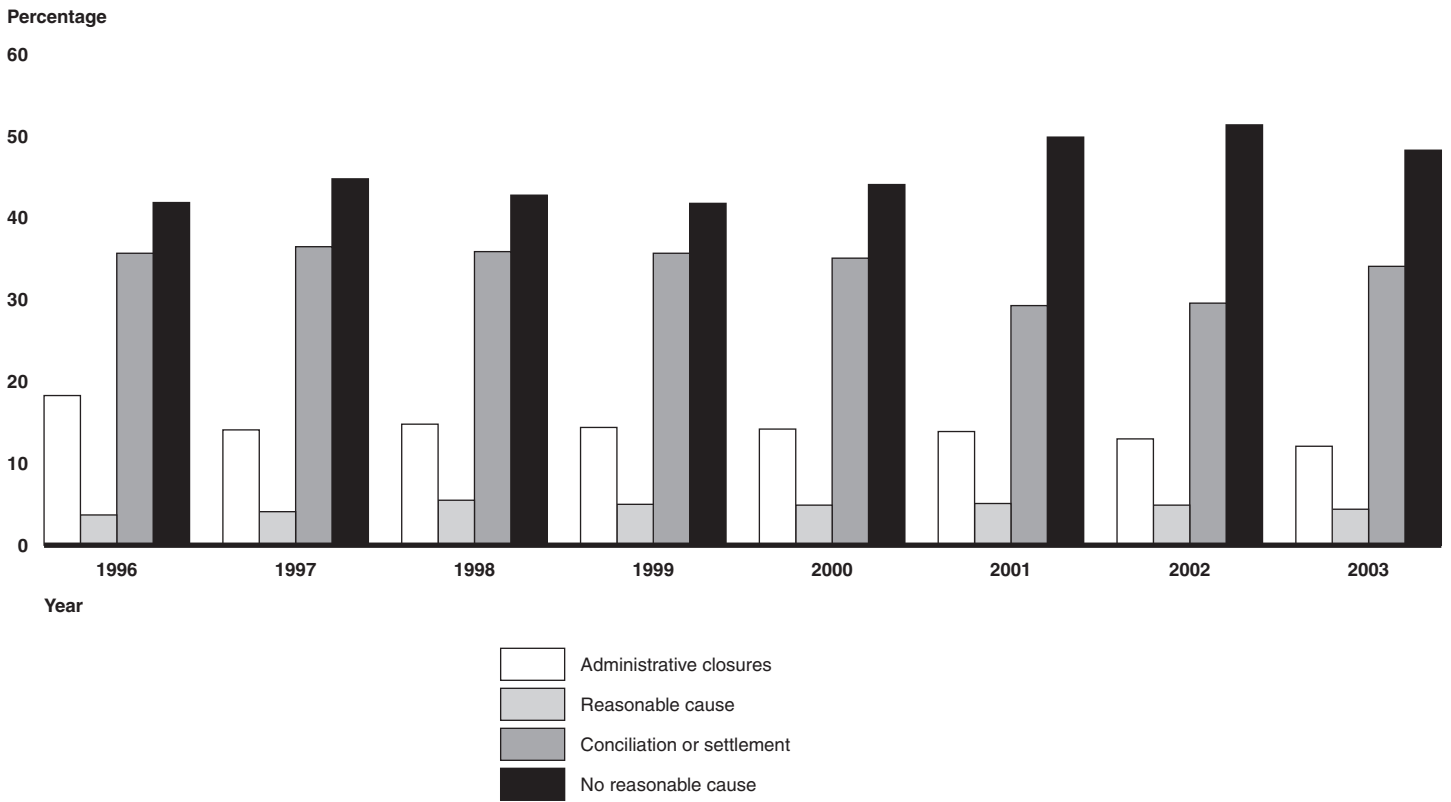
The most frequent outcome of investigations completed during the period was a determination that there was no reasonable cause to believe that discrimination had occurred (see fig. 8). The share of investigations resulting in this outcome rose from just over 40 percent in 1996 to around 48 percent in 2003. Conversely, the share of investigations completed through successful conciliation or settlement declined somewhat during

the period, but this outcome remained the second most frequent—about one-third of all investigations completed during the period.²⁹

A determination of reasonable cause accounted for the smallest share of outcomes, around 5 percent of all completed investigations. TEAPOTS does not have a code specifically indicating that an investigation was completed with a finding of reasonable cause, but does provide for a date on which cause was found. We used this date to measure the number of investigations completed with a finding of reasonable cause. According to a HUD official, FHEO hubs do not record cause dates in TEAPOTS consistently. Specifically, at least two hubs may initially record the date the case is transferred to the regional counsel, rather than the date of the issuance of a determination of reasonable cause with which the regional counsel has concurred. These hubs then enter a new date when the regional counsel concurs and a charge of discrimination is issued. Therefore, the number of investigations that we report as completed during each fiscal year with a finding of reasonable cause may not match the number of charges that HUD reports, particularly for fiscal year 2003.

²⁹About 1 percent of investigations completed during this period were closed by FHEO when they were transferred to DOJ.

Figure 8: Outcomes of Fair Housing Investigations Completed by FHEO and FHAP Agencies, FY 1996–2003



Source: GAO analysis of HUD data.

Note: Does not include investigations closed by FHEO through referral to the DOJ (about 1 percent in 2003).

We sorted HUD’s data on outcomes by basis of complaint, subject matter, and region. Our analysis revealed the following:

- The percentage of no-cause determinations varied somewhat according to the basis of discrimination alleged. Above-average proportions of investigations that involved religion, retaliation, and race ended in no-cause determinations, (55, 53, and 54 percent respectively, compared with 47 percent overall). Similarly, 41 percent of investigations involving familial status and 40 percent of investigations involving handicap as at least one of the bases for discrimination ended in conciliation or settlement, compared with 32 percent overall.

-
- Outcomes also differed by the subject matter, or issue involved. A greater proportion of investigations that resulted in a no-cause finding had discriminatory terms or refusal to rent as an issue (61 and 30 percent, respectively). Conversely, however, relatively few complaints determined to have no cause involved refusal to sell or noncompliance with design and construction as issues (4 and 1 percent, respectively).
 - Regional differences were also apparent in outcomes. Investigations completed in the Atlanta region (Region 4), for instance, were more likely to end in no-cause determinations—53 percent—than investigations in any other region. Similarly, investigations completed in the Denver region (Region 8) were more likely to end in conciliation or settlement. Finally, the overall percentage of investigations completed with a reasonable cause determination varied widely among regions, from as high as 10 percent in the Boston region (Region 1) to as low as 1 percent in the Fort Worth region (Region 6).

Complaint investigations that resulted in a determination of reasonable cause generally proceeded to the adjudication stage. Because of TEAPOTS data limitations, we were not able to determine the final resolutions (that is, the reasons for closing the cases, including decisions on whether or not an actual violation of the Act had occurred) of all complaints that reached the adjudication stage. Specifically, as table 3 shows, for 8 percent of investigations in which FHEO made a determination of reasonable cause and 30 percent of investigations in which a FHAP agency made a similar determination, information on the reason for closure was missing in TEAPOTS. For the remaining FHEO and FHAP agency investigations (those for which the reason for closure was available), we identified the following:

- The independent fact finder found that discrimination had occurred in about 3 percent of the FHEO cases and 7 percent of the FHAP agency cases.
- About one-third of all cases (FHEO and FHAP agency) resulted in a judicial consent order—that is, the parties negotiated a settlement, either alone or through an appointed settlement judge, which was submitted to the independent fact finder as a voluntary agreement to resolve the case.
- Of the FHEO cases, 46 percent were closed when the parties elected to go to court, about 6 percent resulted in conciliation or settlement, 2

percent resulted in administrative closure, about 1 percent resulted in judicial dismissal, and in less than 1 percent the independent fact finder found that no discrimination occurred.

- Of the FHAP agency cases, the independent fact finder dismissed 16 percent, 9 percent resulted in conciliation or settlement, 4 percent were closed administratively, and 4 percent resulted in a finding that no discrimination occurred.

Table 3: Types of Closures for Complaints for Which FHEO or FHAP Agencies Determined That There Was Reasonable Cause to Believe That Discrimination Occurred (Investigations completed in fiscal years 1996–2003)

| Types of Closures | FHAP agencies | | FHEO | | Total | |
|---|------------------|--------------|------------------------|-------------|--------------|-------------|
| | Number | Percent | Number | Percent | Number | Percent |
| Judicial consent order by ALJ or FHAP agency related fact finder | 591 | 30.5 | 230 | 32.0 | 821 | 30.9 |
| Parties elect to go to court | 0 | 0.0 | 330 | 45.9 | 330 | 12.4 |
| Judicial dismissal by ALJ or fact finder related to FHAP agency | 309 | 16.0 | 10 | 1.4 | 319 | 12.0 |
| Conciliation or settlement by FHEO or FHAP agency | 176 ^a | 9.1 | 44 | 6.1 | 220 | 8.3 |
| Discrimination found in legal proceedings of ALJ or fact finder related to FHAP agency | 134 | 6.9 | 24 | 3.3 | 158 | 5.9 |
| Administrative closure by FHEO or FHAP agency ^b | 74 ^c | 3.8 | 14 | 1.9 | 88 | 3.3 |
| No discrimination found in legal proceedings of ALJ or fact finder related to FHAP agency | 77 | 4.0 | 5 | 0.7 | 82 | 3.1 |
| Open case or information on adjudication decision missing ^d | 576 | 29.7 | 59 | 8.2 | 635 | 23.9 |
| Total | 1,937 | 100.0 | 719^e | 99.5 | 2,656 | 99.8 |

Source: GAO analysis of HUD data.

Note: Totals may not add to 100 percent due to rounding.

^aIncludes 145 FHAP agency cases coded in TEAPOTS as being closed through conciliation or settlement. However, FHEO officials are concerned that FHAP agencies are incorrectly coding what actually may be cases closed through judicial consent order.

^bIncludes complaints that were withdrawn by the complainant after the case was resolved.

^cIncludes three FHAP agency cases coded in TEAPOTS as being closed because a trial had begun. According to FHEO officials, there have been problems in the past with FHAP agencies coding these case closures incorrectly.

^dThe case is either still open in the adjudication process or TEAPOTS did not include a closure code.

^eIncludes 3 complaints, that had a determination of reasonable cause but were coded in TEAPOTS as having an adjudication closure code of no cause (one case) or DOJ settlement (two cases). According to FHEO officials, the coding for adjudication is likely incorrect.

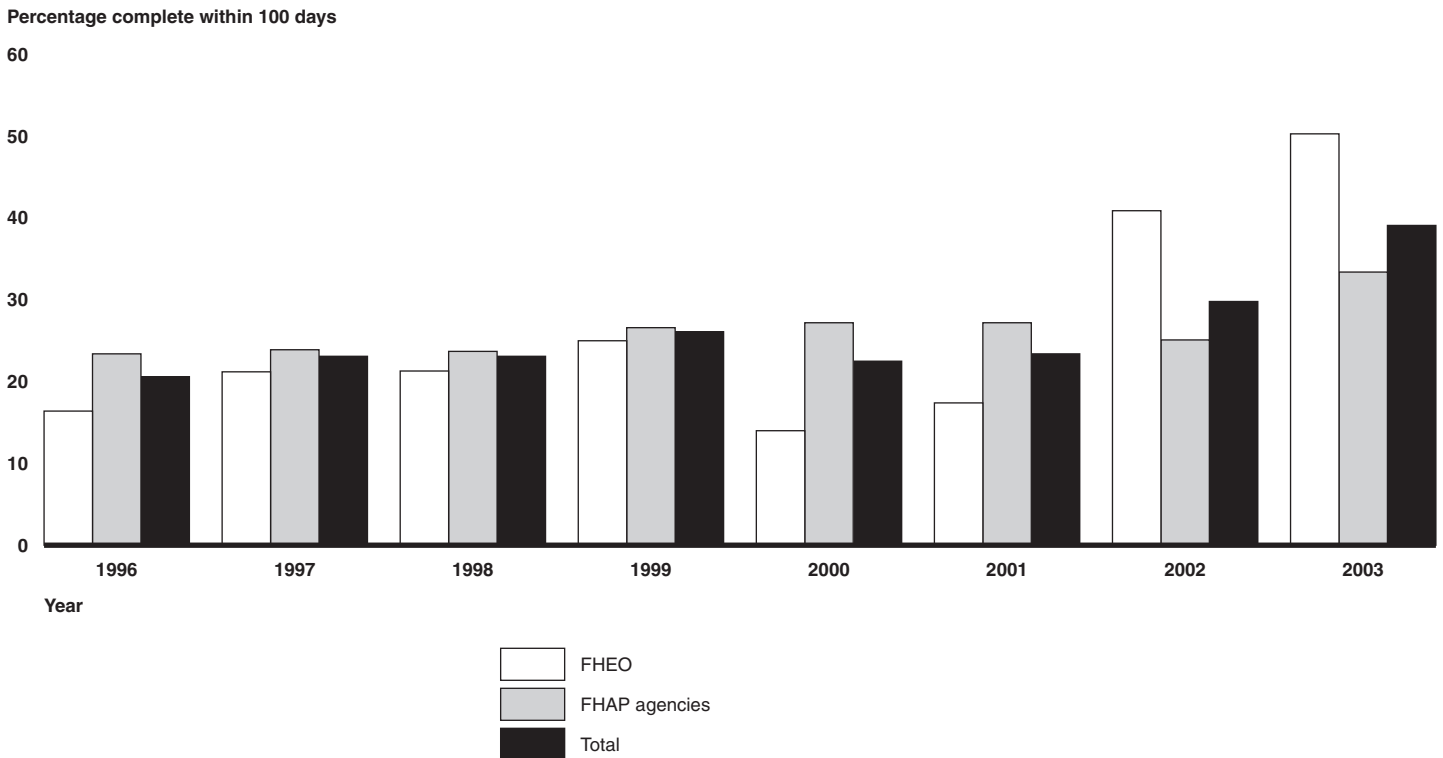
The Number of Investigations Completed within 100 Days Increased in 2001—2003

The numbers of investigations completed within 100 days by both FHEO and the FHAP agencies increased significantly after 2001 (fig. 9).³⁰ Some of the improvement in the number of FHEO investigations completed in 100 days may have been the result of an initiative aimed at reducing the number of aged cases in FHEO's inventory. FHEO undertook the initiative in 2001 after completing only 14 percent of its investigations within the 100-day timeframe in 2000. The number completed in 100 days rose in 2002, to 41 percent of all investigations.³¹ At the same time, the number of FHAP agency investigations meeting the 100-day benchmark remained fairly stable (23 to 33 percent) over the period 1996 to 2003, rising most markedly from 2002 to 2003 by more than 30 percent. In January 2004, FHEO established monthly efficiency goals aimed at monitoring the progress of the hubs in meeting both the 20-day intake and 100-day investigative timeliness benchmarks. It is too soon to determine what effect this initiative might have on the timeliness of investigations.

³⁰HUD requires that the time to complete an investigation be measured from the date a complaint is filed, reopened, or reentered (taken back from the FHAP agency)—whichever is most recent—to the date the investigation is closed.

³¹We found that in fiscal years 2002 through 2003, the most frequent month in which HUD reopened or reentered a fair housing complaint was September, the last month of the fiscal year. This practice had the effect of increasing the percentage of investigations that were aged less than 100 days for statistics reported at the end of the fiscal year. We report data on the age of complaints for investigations completed during the year.

Figure 9: Percentage of Investigations Completed within 100 Days, FY 1996–2003



Source: GAO analysis of HUD data.

Note: For this analysis, we use HUD’s method of measuring compliance with the 100-day benchmark for investigations—that is, the most recent of the dates the complaint was filed, reopened, or reentered.

Data Limitations Preclude Comprehensive Measurement of Time Taken by Each Stage of the Enforcement Process

While data were generally available to measure the length of both FHEO’s and FHAP agencies’ investigations, we found that reliable data were lacking on the intake and adjudication stages handled by FHAP agencies. First, HUD does not require FHAP agencies to report on intake activities, and FHAP agencies accounted for intake on 42 percent of all complaints filed in fiscal years 1996 through 2003. Second, while TEAPOTS contained data on the dates that inquiries were received for investigations completed by FHAP agencies, we question the reliability of these data. According to a FHEO official responsible for TEAPOTS, FHEO staff may have routinely used the date on which cases were transferred to FHAP agencies as the “initial inquiry” date. In addition, TEAPOTS data show that 20,226 (54

percent) of complaints investigated by FHAP agencies were filed the same day that the inquiries were received—that is, the intake stage began and ended on the same date. Third, HUD does not require FHAP agencies to report the results of the adjudication of closed investigations. Accordingly, for many complaints investigated by FHAP agencies that reached the adjudication stage, TEAPOTS did not show an end date for adjudication.³² Finally, TEAPOTS was missing these dates for some complaints investigated by FHEO as well. Using the data that were available, we measured the typical length of each stage using medians—that is, the number at the exact midpoint of the range of days required to complete each stage (or where there was an even number of observations, the mean or average of two at the midpoint).

TEAPOTS data indicate a median of 12 days for the intake stage (from the date of the initial inquiry to the date the complaint was filed) for cases handled by FHEO in 1996 through 2003.³³ The data showed that 35 percent of complaints investigated by FHEO were filed the same day that the claims or inquiries were received (that is, the intake stage began and ended on the same date), 28 percent within 20 days, and 31 percent within 21 days to 3 months of the date that the claim or inquiry was received. FHEO's new monthly efficiency reports aim to, among other things, monitor the hubs' progress in completing the intake process within 20 days.

The median number of days for investigations (from the date the complaint was filed to the date the investigation was completed) was 259 for complaints investigated by FHEO (fig. 10).³⁴ The median number of days varied somewhat, depending on the outcome of the investigations (e.g., administrative closure, finding of reasonable cause, finding of no cause,

³²Specifically, of the 1,937 FHAP agency investigations that resulted in reasonable cause determinations, 575 (30 percent) had no date shown in TEAPOTS to indicate that the adjudication period had ended.

³³For the purpose of measuring compliance with the 100-day benchmark for investigations, HUD used the most recent of the dates a complaint was filed, reopened, or reentered (i.e., when HUD takes over an investigation from a FHAP agency). For the purposes of this section of the report, however, we used the date on which the complaint was filed in order to represent the elapsed time experienced by a complainant. That is, we measured the intake stage from the date the inquiry was received until the date the complaint was filed, and we measured the investigation stage starting with the date the complaint was filed.

³⁴In comparison, FHAP agencies took a median of 195 days to complete investigations during fiscal years 1996 through 2003. TEAPOTS contained complete information on filing and completion dates for 37,600 such FHAP agency investigations.

etc.). FHEO completed 61 percent of its investigations within a year of the date the complaint was filed.³⁵

We could not measure the time required to adjudicate all cases for which FHEO found cause. Specifically, of the 719 investigations for which FHEO determined that reasonable cause existed to believe that discrimination had occurred, TEAPOTS included data on 339 cases that were adjudicated within HUD. In these cases, the median time required to complete the adjudication process was 203 days. In an additional 330 cases, one or both parties elected to have their complaints heard in district court at the cause date, or shortly thereafter. For these individuals the enforcement process continued, but FHEO did not record the length of the judicial process.³⁶ TEAPOTS also did not have information on adjudication for 50 cases for which FHEO found cause.

Figure 10: Median Number of Days of the Three Stages of the Enforcement Process (Investigations completed by FHEO in fiscal years 1996–2003)



Source: GAO analysis of HUD data.

Note: For the purposes of this analysis, we measured the end of the intake stage and the beginning of the investigation stage using the date the complaint was filed. The median numbers of days shown are based on 19,312 inquiries that resulted in FHEO investigations completed during fiscal years 1996 through 2003, for which TEAPOTS included data on the date the inquiry was received and the date the resulting complaint was filed; 19,299 investigations completed during fiscal years 1996 through 2003, for which TEAPOTS included data on the date the complaint was filed and the date the investigation was completed; and 339 investigations completed during fiscal years 1996 through 2003 that were adjudicated within HUD, for which TEAPOTS included data on the date that FHEO determined there was reasonable cause and the date the adjudication stage was completed.

³⁵In comparison, FHAP agencies completed 80 percent of investigations within 1 year.

³⁶According to HUD officials, FHEO shares responsibility for inputting adjudication decisions into TEAPOTS with OGC and depends upon getting information about the adjudication of these cases back from DOJ.

Many Factors Can Influence the Length and Thoroughness of the Title VIII Enforcement Process

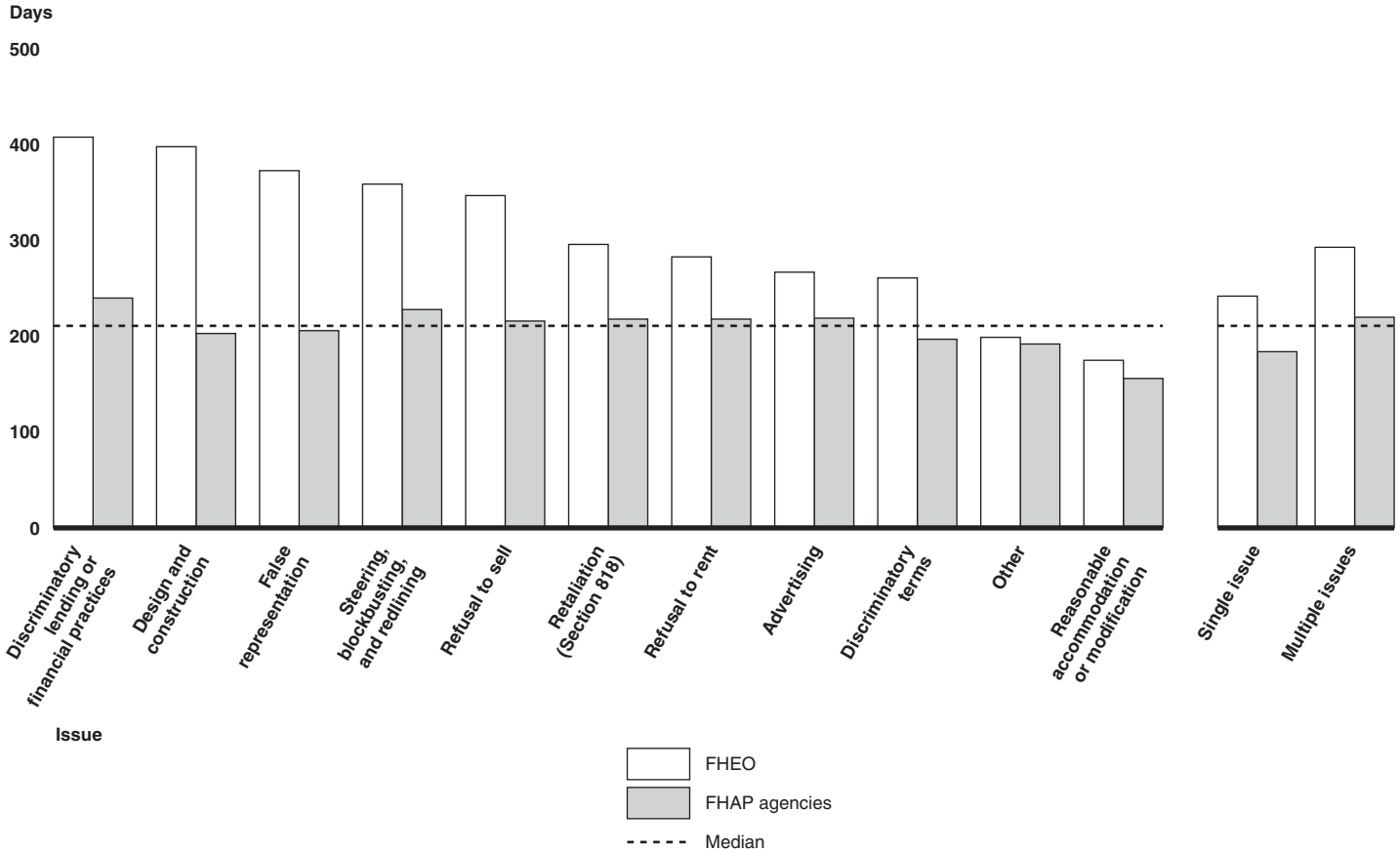
We found that numerous factors affected the length and thoroughness of the enforcement process. First, hub directors we surveyed said that the characteristics of complaints—certain issues, for example, and the presence of multiple bases—could increase the time needed for investigations, reduce thoroughness, or both. Second, both hub directors and FHEO and FHAP agency officials said that specific practices could make investigations shorter and more thorough. Third, hub directors and other officials pointed to human capital issues as potentially increasing the length and decreasing the thoroughness of investigations, including staff shortages, low skill levels, lack of training and guidance, and inadequate travel resources. Finally, hub directors noted that national performance goals could reduce the number of aged cases but had little effect on timeliness or thoroughness.

The Characteristics and Volume of Complaints May Affect Timeliness of the Enforcement Process

Most hub directors stated that the issue of a complaint had a great or very great effect on the amount of time required to complete the enforcement process. Complex issues such as refusing to provide insurance or credit could add time to investigations. For example, investigators might have to analyze statistics to determine if the complainant was treated differently from the norm. According to one director, some issues, such as failure to make reasonable accommodation, could require time for staff to conduct time-consuming on-site visits. In addition, some directors thought that complaints involving multiple issues could take longer to investigate.

Agency data tend to support some of the directors' observations (fig. 11). While investigations took a median of 211 days to complete during the period, the median for investigations involving discriminatory lending was 295 days; and for noncompliance with design and construction issues, it took 284 days. However, the median for investigations involving reasonable accommodation or modification was just 162 days.

Figure 11: Median Number of Days to Complete Investigations by Issue of Discrimination, FY 1996–2003



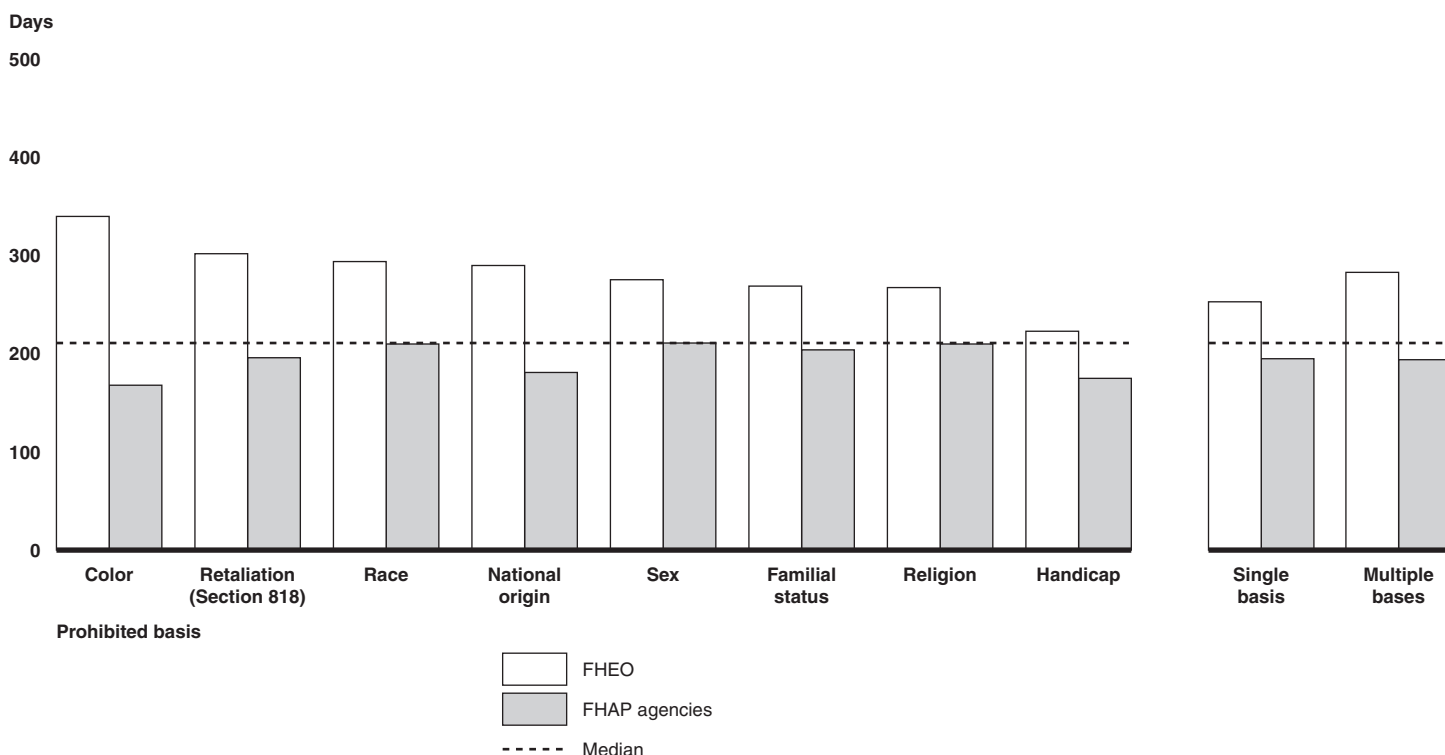
Source: GAO analysis of HUD data.

Note: See notes to figure 6 for a discussion of issues covered under the Act.

Although directors generally did not believe that any particular prohibited basis had an effect on the length of investigations and thus on the enforcement process, one director did note that complaints involving multiple bases would likely increase the length of the enforcement process. We found that the median number of days required to complete investigations involving multiple bases was slightly higher than for single-issue investigations—217 days. The median number of days FHAP agencies needed to complete an investigation varied more across specific prohibited bases than it did for FHEO. For FHEO, the median length of investigations ranged from a low of 223 days (handicap) to 302 days (retaliation) (see fig.

12). For FHAP agencies, the median length of investigations ranged from a low of 175 days (handicap) to 211 (sex).

Figure 12: Median Number of Days Needed to Complete Investigations by Prohibited Basis, FY 1996–2003



Source: GAO analysis of HUD data.

Most directors stated that the volume of complaints received in their region had a great or very great effect on the length of the enforcement process. According to one director, a large volume of complaints created competing demands on staff time. Another director noted that the volume of complaints could lengthen the enforcement process if staff resources were in short supply.

Half (5) of the hub directors also believed that the volume of inquiries and complaints had a great or very great effect on the thoroughness of the enforcement process. One respondent noted that complex issues in a complaint or large volumes of complaints in a region might decrease the thoroughness of the process if resources were strained, staff were not

adequately skilled to accommodate the amount or level of difficulty of the work to be done, or both. Fewer directors (2 out of 10), said they believed that the basis of complaints had a great or very great effect on the thoroughness of the process. One director noted that, regardless of the factors involved, the thoroughness of the enforcement process should never be compromised.

Certain Practices Could Improve the Enforcement Process

As we have seen, some HUD and FHAP agency officials identified two intake practices that they believe shortened the enforcement process, increased its thoroughness, or both. The first—involving investigators in intake—was cited by 4 of the 10 HUD hub directors that responded to our survey. Further, officials at the FHAP agency that used the team intake and investigation approach noted that it had led to better investigations that were conducted in less time. The second practice—using CMS enforcement software—was credited by the FHAP agency that used it with facilitating both timeliness and thoroughness.

HUD and FHAP agency officials also cited several investigative practices that increased the thoroughness or decreased the length of the enforcement process or both. First, several HUD officials said that early and frequent OGC involvement was important to increasing the thoroughness of investigations. Second, some enforcement officials said that simultaneous conciliation and investigation might decrease the length of investigations. Third, some HUD hub directors said that using TEAPOTS affected the length and thoroughness of the process to a great or very great extent: specifically, 6 hub directors indicated that using the system increased the thoroughness of the enforcement process, decreased the length of the process, or both. Some officials, however, also told us that TEAPOTS could be improved, and one FHAP agency's CMS software offered an alternative system that the FHAP agency credited with reducing the length of its process and improving its thoroughness. The CMS software provides investigators more sophisticated tools than TEAPOTS offered for planning and conducting investigations. Finally, one hub official said that alternative mediation at the outset of the complaint process could help decrease the length of some complaint investigations.

Human Capital Challenges Also Affect the Enforcement Process

FHEO officials and others we interviewed identified human capital management challenges that had negatively affected the fair housing enforcement process, including the number and skill levels of FHEO staff, the quality and effectiveness of training, and other issues.

Number of Staff

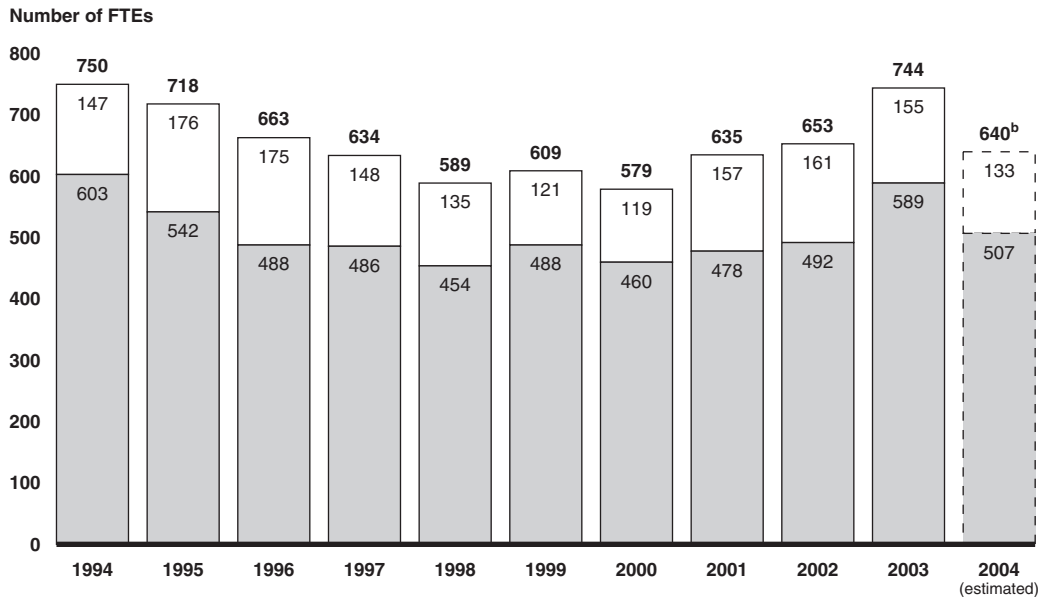
FHEO officials told us that hiring freezes had left a number of FHEO offices with chronic staffing shortages, especially among supervisors and clerical workers and that these shortages had never been fully resolved. The shortages affected not only enforcement of the Act, but also FHEO's other responsibilities, forcing managers to assume heavier caseloads and professional staff to perform administrative duties rather than concentrating on enforcement. Hub directors told us that hiring activity in the last 3 years had at least partially abated the chronic staffing shortages. However, they added that FHEO now faces the prospect of losing staff because a corrective action plan requires that FHEO, consistent with HUD's key workforce planning effort, have fewer employees than it currently has.

As figure 13 shows, the total number of full-time equivalents (FTE)³⁷ in FHEO has fluctuated over the last 10 years, falling from a high of 750 in fiscal year 1994 to a low of 579 in fiscal year 2000. In 2003, FHEO's FTEs rose once more to 744 after a concerted hiring initiative, although the workforce effort mentioned above suggested a level of 640. Currently, FHEO faces the challenge of meeting a mandatory ceiling of 640. FHEO comprised about 6 percent of HUD's total workforce until fiscal year 2002 and 7 percent in 2003, when FHEO directors received hiring authority for new staff.³⁸ FHEO staff have other responsibilities beyond enforcing Title VIII, including monitoring program compliance by housing providers receiving federal funds, performing Fair Housing Initiatives Program (FHIP) grant management, monitoring FHAP agencies, providing technical assistance, and performing education and outreach activities.

³⁷A full-time equivalent (FTE) is the number of regular hours a full time equivalent would work during a given year. For most years, an FTE equals 2,080 hours. The FTEs reported here represent the total number of hours worked by all FHEO or HUD staff during the year divided by 2,080.

³⁸FHEO expenses are paid out of the Salaries and Expenses fund. Figure 13 shows FHEO FTEs as a proportion of HUD's total FTEs, including those authorized by the Salaries and Expenses fund, the Working Capital Fund, the Office of Inspector General, and the Office of Federal Housing Enterprise Oversight accounts. From this point forward, FHEO staff will be discussed in the context of the Salaries and Expenses fund.

Figure 13: Number of FTEs, FHEO and HUD, FY 1994–2004^a



| | | | | | | | | | | | |
|--------------------------------|--------|--------|--------|--------|-------|-------|--------|--------|--------|--------|--------|
| Total HUD FTEs | 13,068 | 12,108 | 11,399 | 10,964 | 9,846 | 9,963 | 10,113 | 10,069 | 10,027 | 10,440 | 10,627 |
| FHEO FTEs as % of all HUD FTEs | 5.7% | 5.9% | 5.8% | 5.8% | 6.0% | 6.1% | 5.7% | 6.3% | 6.5% | 7.1% | 6.0% |

FHEO HQ FTEs
 FHEO field FTEs

Sources: HUD, Office of Budget, and Congressional Justifications.

^aIn fiscal year 1994, FHEO contained the function of the Office of Departmental Equal Employment Opportunity (ODEEO), which is responsible for planning and implementing the department's internal equal employment activities. HUD established ODEEO in 1995 as a separate program area. HUD moved ODEEO back under FHEO's responsibilities in fiscal years 2001 and 2002 and FHEO's FTE total for those years includes ODEEO's FTEs. The department moved ODEEO out of FHEO in fiscal year 2003, and the FTE total (744) for that year does not include ODEEO FTEs.

^bMandated ceiling for 2004.

FHEO hired 167 staff beginning in July 2002 as part of a departmental effort to reach its requested ceiling by September 30, 2002. That is, HUD was attempting to reach 9,100 FTEs at the end of fiscal year 2002, a number that would equal the approved fiscal year 2002 FTE level and the requested

fiscal year 2003 level.³⁹ FHEO's hiring initiative, like HUD's overall, was not in line with the department's workforce planning efforts. The most important of these, the Resource Estimation and Allocation Process (REAP), a series of department studies conducted from 2000 through 2002, to assess HUD's staffing requirements, recommended a total FTE ceiling for FHEO of 640.⁴⁰ As a result of HUD's hiring initiative, HUD had a staffing level of 9,395 at the beginning of fiscal year 2003—295 above the approved fiscal year 2002 and requested fiscal year 2003 levels.⁴¹ Therefore, HUD was forced both to reprogram more than \$25 million to cover the costs of the newly hired excess staff and to submit to Congress a corrective action plan consistent with REAP. HUD's Strategic Placement Plan, issued in January 2004, would reduce FHEO's excess staff to the mandated level of 640 FTEs by the end of fiscal year 2004 through voluntary and, if necessary, involuntary reassignments. However, as of February 2004, FHEO remained at 727 FTEs, and FHEO officials told us they did not know how they would meet the mandated level on schedule. The officials also expressed concern that they would lose many of their best staff through the voluntary reassignment plan.

Officials expressed concern not only with the insufficient number of staff but also the lack of staff at key positions. Some HUD managers said that due to unfilled supervisor positions in their regions, existing supervisors were not able to review materials as carefully as they could have with those positions filled. For example, one center director told us that investigators did not get supervisory input on initial investigative plans due to a vacant supervisory post. This center director said that the gap in supervision

³⁹Congress authorized a total of 10,297 FTEs for HUD for fiscal year 2003 to be funded through the Salaries and Expenses fund, the Working Capital Fund, the Office of Inspector General, and the Office of Federal Housing Enterprise Oversight accounts. This amount included 9,100 FTEs funded through the Salaries and Expenses account and 643 for FHEO. HUD later asked the Office of Management and Budget and Congress to increase the fiscal year 2003 FTE ceiling for the entire department, including 758 FTEs for FHEO.

⁴⁰The REAP study conducted in 2000 through 2002 suggested 660.2 FTEs for FHEO, but officials later revised this figure downward. Under the fiscal year 2003 Corrective Action Plan, FHEO received a prorated amount of 655.8 FTEs plus 5 FTEs for interns for a total of 660.8 FTEs. In its fiscal year 2004 request, FHEO received an additional 8.3 FTEs for a total of 669, and HUD removed ODEEO's 29 FTEs from FHEO, resulting in a ceiling of 640 for fiscal year 2004.

⁴¹U.S. Department of Housing and Urban Development, Office of the Inspector General, *Review of the Department of Housing and Urban Development's Staffing 9/30 Initiative*. 2003-AO-0004. (Washington, D.C.: August 14, 2003).

decreased the thoroughness and sometimes increased the length of investigations, as existing supervisors were unable to complete work in a timely manner.

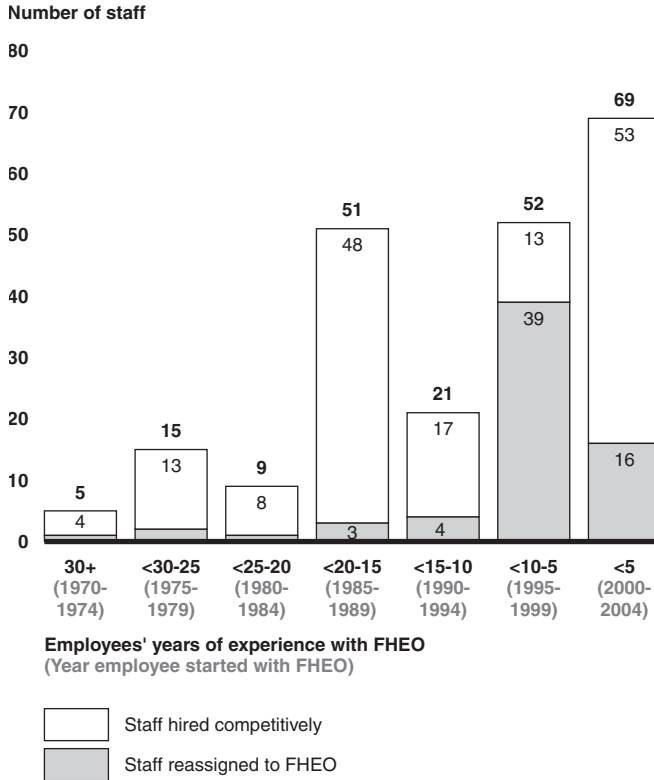
Staff Skills and Experience

Some hub directors and other officials we spoke with cited concerns about the noncompetitive reassignment of staff into FHEO. They noted that the level of staff skills could influence the length and thoroughness of the enforcement process and that the reassignment process had a generally negative impact on FHEO's overall skill levels. According to these officials, while many of the reassigned staff had worked at HUD for years, their skills were often not transferable to FHEO activities, which require specific analytical, investigative, and writing skills. Some directors cited the skills issue as a greater problem for FHEO than the actual numbers of personnel. FHEO's own internal review also cites concerns about reassigned employees' qualifications, skills, and work products and about the amount of time and supervision these employees require.⁴² FHEO documentation shows that 106 staff were reassigned to the program under various HUD realignments from 1998 to 2002.⁴³ Figure 14 shows the numbers of staff in the three hubs we visited by their years of experience with FHEO and reassignment status. Although FHEO has brought many new staff on board recently through competitive hiring, many staff in the hubs we reviewed came to the organization via noncompetitive reassignment.

⁴²HUD's internal QMR Program is a peer-review reporting system for evaluating HUD's field office operations. HUD began conducting QMRs in 2000 and had covered the majority of FHEO offices by 2003.

⁴³These realignments included the Community Builder Redeployment, the HUD 2020 Management Reform, the Office of Administration Redeployment, Cross Placement, and the Voluntary Reassignment Initiative.

Figure 14: Years of Experience with FHEO and Hiring/Reassignment Status of FHEO Staff, as of January 2004 (Chicago, Fort Worth, and New York Regions)



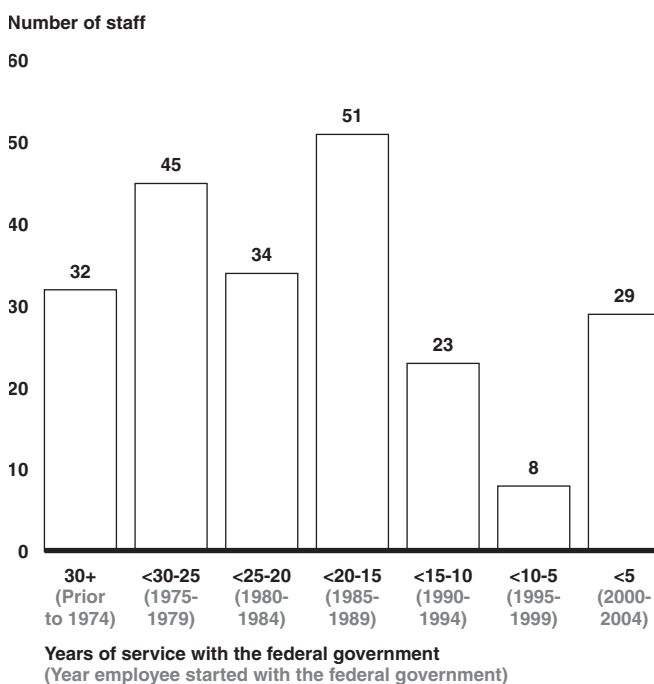
Source: GAO analysis of HUD data.

Although figure 14 shows that more than half of the FHEO staff currently located in the three sites we visited had fewer than 10 years of experience with FHEO, many have a significant number of years of federal service. Figure 15 shows a snapshot of the same FHEO employees in the three sites we visited by their years of federal service.⁴⁴ The figure demonstrates that half of the FHEO employees in the three sites we visited have 20 or more

⁴⁴Employees are eligible for 'optional' or immediate retirement under both the Civil Service Retirement System (CSRS) and the Federal Employee Retirement System (FERS) if they are 62 years of age with 5 years of federal service; age 60 with 20 years and, under the CSRS, age 55 with 30 years and, under the FERS, the Minimum Retirement Age with between 10 and 30 years. Under both systems, employees are eligible for 'early' retirement at any age if they have 25 years of service or are age 50 with 20 years of service.

years of federal service, and 14 percent have 30 or more years of federal service.

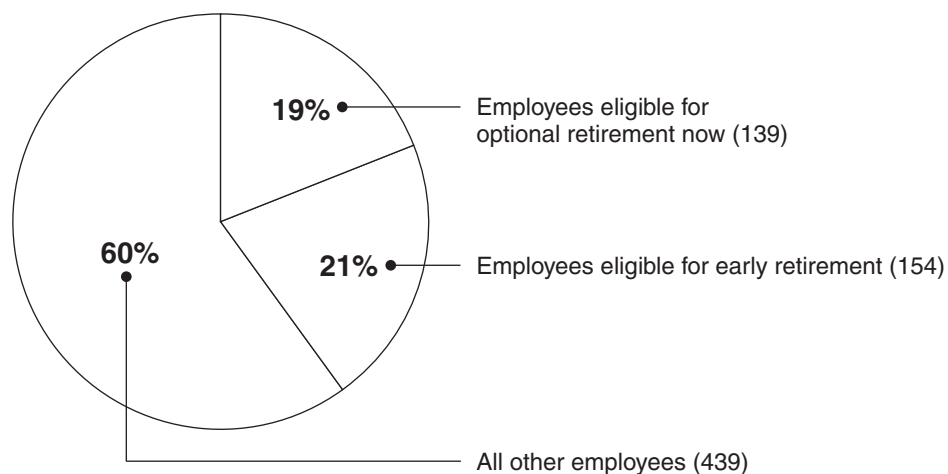
Figure 15: Years of Service with Federal Government of FHEO Staff, as of January 2004 (Chicago, Fort Worth, and New York Regions)



Source: GAO analysis of HUD data.

Retirement eligibility was an issue not only for the three sites we visited, but also for FHEO as a whole. Officials expressed concern about the loss of skilled and experienced staff to retirement, and personnel data provided by the HUD human resources staff show that 40 percent of FHEO employees overall were eligible for either early or immediate retirement in February 2004 (see fig. 16). Moreover, as we have noted previously, officials that we spoke with also expressed concern that current plans to eliminate a significant number of FHEO staff by voluntary reassignment could cause skilled workers to leave FHEO and seek opportunities elsewhere.

Figure 16: Retirement Eligibility for All FHEO Employees, as of February 2004



Total number of employees in FHEO: 732

Source: GAO analysis of HUD data.

Training

Providing effective training is another human capital challenge that FHEO faces. Half of the directors told us that the quality and effectiveness of training helped reduce the length of the fair housing enforcement process, and six said that it improved thoroughness. For example, some directors said that training serves to expedite investigations as staff gain more technical skills. Other directors said that training improves thoroughness because staff can recognize issues of discrimination and decide what evidence is needed to support complaints.

We heard concerns from FHEO staff, an ALJ, and others outside of HUD about the quality or availability of training for FHEO employees. Most staff we spoke with reported that they had received initial formal training for their positions, though not always in a timely fashion. A list of courses supplied by the HUD Training Academy, which provides the majority of formal training for FHEO, showed that the basic course in investigation had been offered annually in all but 1 of the last 5 years. However, depending on the hiring date, a new staff member might have to wait 1 year or more to attend the basic course. Potentially compounding this problem, hub directors told us that although training was available in fiscal year 2003, lack of travel funds sometimes prevented them from sending staff to training out of the area. Finally, budget data show that although FHEO had initial approval from the HUD Training Academy to spend \$416,000 for

training in fiscal year 2003, the HUD Training Academy reduced FHEO's training funds to \$200,000 as part of the department's overall efforts to reduce expenditures to cover the cost of excess staff hiring.

FHEO recognized the need for additional training by establishing the HUD Fair Housing Training Academy, which is slated to open in the summer of 2004. FHEO officials told us that they hope to standardize what the agency believes are uneven fair housing processes and practices implemented around the nation by FHEO and its FHAP agency partners, create a more professional group, and possibly reduce turnover rates at FHAP agencies by certifying attendees. Initially, however, the academy will serve staff from only FHAP agencies, not FHEO employees. Officials explained that FHAP agency funds would cover the costs of this initial training.

FHEO's human capital challenges are symptomatic of those facing HUD as a whole. FHEO, like the department and other federal agencies, is experiencing significant challenges in deploying the right skills in the right places at the right time, is facing a growing number of employees who are eligible for retirement, and is finding it difficult to fill certain mission-critical jobs—a situation that could significantly drain its institutional knowledge.

We have observed that federal agencies need effective strategic workforce planning to identify and focus on the long-term human capital issues that most affect their ability to attain mission results. We identified five key principles that strategic workforce planning should address, which include (1) involving top management, employees, and other stakeholders in developing, communicating, and implementing the strategic workforce plan; (2) determining the critical skills and competencies that will be needed to achieve current and future programmatic results; (3) developing strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies; (4) building the capability needed to address administrative, educational, and other requirements important to support workforce strategies; and (5) monitoring and evaluating the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic goals. In developing strategies to address workforce gaps, we reported that agencies should, among other things, consider hiring, training, staff development, succession planning, performance management, use of flexibilities, and other human capital

strategies and tools that can be implemented with resources that can reasonably be expected to be available.⁴⁵

We have reported in the past that HUD had not done the strategic workforce planning necessary to address its human capital challenges.⁴⁶ Like HUD, FHEO does not have a comprehensive strategic workforce plan to help it meet key human capital challenges. REAP, which estimates the staff needed to handle HUD's workload in each of its offices, does not include the extensive analysis involved in a comprehensive assessment. However, since we last reported, HUD contracted a technical adviser to conduct a comprehensive workforce analysis. Such an assessment would cover current workforce skills, anticipated skill needs, current and future skill gaps, and needed training and development that will be used to develop a comprehensive 5-year departmental workforce plan. Additionally, HUD plans to rollout over the next 3 years a customized human resources and training information system known as the HUD Integrated Human Resources and Training System (HIHRTS). HUD documentation says that the system will replace several legacy systems; will integrate all human resource information into one platform, making information available to managers for strategic planning and employee development; and helping ensure that HUD employees are used effectively.

Lack of Travel Funds Can Affect How Thoroughly Cases Are Investigated

Officials from headquarters and the sites we visited also told us that inconsistencies in the amount and availability of travel funds impaired the length and thoroughness of the fair housing enforcement process. As mentioned previously, in May 2003, Congress approved the reprogramming of funds within HUD to cover the cost of excess staff hiring, including a \$7.7 million reduction in travel funds. FHEO officials told us that following this reprogramming, they had no travel funds for up to 6 months, preventing investigators from making timely visits to the sites of complaints. Budget data show that FHEO has experienced larger decreases in travel funds than HUD as a whole. From fiscal year 2002 to 2003, HUD's allotment for travel decreased by 12 percent. FHEO's travel allotment, however, decreased by 17 percent over the same period. Directors reported

⁴⁵U.S. General Accounting Office, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: December 2003).

⁴⁶U.S. General Accounting Office, *HUD Human Capital Management: Comprehensive Strategic Workforce Planning Needed*, [GAO-02-839](#) (Washington D.C.: July 2002).

that interruptions in travel funds in fiscal year 2003 had impeded efforts to plan and manage investigations. Directors also told us that uncertainties regarding the department's ultimate annual appropriations amount had forced headquarters to limit travel funds at the beginning of fiscal years and prevented them from establishing a firm annual travel budget. Without this budget, directors said, they could not plan for the travel that would have helped reduce the length of investigations.

Directors reported using several methods to stretch their travel funds, including curtailing and delaying travel, limiting the time investigators could spend in the field, catching up on needed travel when funds became available at the end of the fiscal year, reducing travel for FHEO's other responsibilities outside of fair housing enforcement, and asking investigators from offices closer to the site of the complaint to assist with the investigation. Some investigators told us that they had used their own vehicles or funds for site visits and conducted desk investigations. At the same time, budget data show that hub directors' routine meetings consumed an increasing share of FHEO's travel budget from fiscal year 2001 to 2003. Director's meetings utilized 13 percent of FHEO's travel expenditures of approximately \$900,000 in fiscal year 2003.⁴⁷

Performance Goals May Affect the Length of Investigations

Hub directors we visited told us that while FHEO's national performance goals have helped reduce the number of aged cases, these goals have had a negligible impact on the thoroughness of the fair housing enforcement process and could create competing demands for staff time. Performance reports show that the percentage of aged fair housing complaints for HUD nationwide has declined steadily since fiscal year 2000, exceeding the national goals in fiscal year 2001 through 2003.⁴⁸ For example, in fiscal year 2003, the national goal was a 25 percent maximum for aged cases and

⁴⁷Up significantly from 2 percent of total travel expenses in fiscal year 2001 and 7 percent in fiscal year 2002.

⁴⁸U.S. Department of Housing and Urban Development, *Performance and Accountability Report: Fiscal Year 2003*, pp. 2-121. In fiscal year 2000, HUD's percentage of aged cases nationally was 82 percent. In fiscal year 2001, the goal called for a maximum of 40 percent; FHEO's actual percentage was 37 percent. For 2002, the corresponding percentages were 35 and 29 percent, respectively.

FHEO achieved 23 percent.⁴⁹ However, there are no national goals that directly relate to the thoroughness of investigations or the fair housing enforcement process. Regardless, some directors told us that although they strive to meet performance goals, they are more motivated by the statute's 100-day benchmark and the need to provide good customer service.

Directors also cited a tension between the need to meet the 100-day benchmark and the simultaneous need to conduct a thorough investigation and said that at times one goal cannot be achieved without some cost to the other. One director stated that while mindful of the 100-day benchmark, she would not close a case to meet the time limit unless she felt that the investigation had been thorough. Directors told us that the existence of overall performance goals for FHEO could exacerbate the problem of competing demands. For example, annual goals routinely set achievement targets in FHEO's area of responsibility outside of Title VIII enforcement, including program compliance review, monitoring FHIP and FHAP agencies grantees, increasing the number of substantially equivalent agencies, and providing training on accessibility and handicap rights. The time and resources needed to meet these targets could increase the challenges involved in meeting Title VIII commitments in a timely and thorough manner.

Conclusions

The fair housing enforcement process provides a framework for considering complaints of housing discrimination. However, persons who have experienced alleged discrimination in housing can sometimes face a lengthy wait before their complaint is resolved. Because flexibility is built into the process, enforcement practitioners have devised a variety of practices for processing inquiries and complaints, some of which could improve the timeliness and thoroughness of investigations. Our limited look at enforcement operations at FHAP agencies and FHEO centers within 3 of FHEO's 10 regions revealed practices that could potentially expedite cases if they were adopted elsewhere. Further, many FHEO hub directors told us they believed that every stage of the fair housing enforcement process could be improved. However, practitioners may be unaware of such practices because FHEO has not taken steps to identify

⁴⁹According to HUD's *Performance and Accountability Report: Fiscal Year 2003*, FHEO achieved 19 percent maximum aged cases, however, a HUD official told us this figure is incorrect because it omits open aged cases, which are with OGC, and that the correct figure is 23 percent.

those practices that hold the promise of improving the fair housing enforcement process.

Because of data limitations—specifically, data that are of questionable reliability, missing, or not currently collected—FHEO does not know how much time individuals face from the day they make an inquiry to the day they learn the outcome of their cases, particularly when FHAP agencies handle the investigation. Without comprehensive, reliable data on the dates when individuals make inquiries, FHEO cannot judge how long complainants must wait before a FHAP agency undertakes an investigation. Similarly, without comprehensive, consistent, and reliable data concerning the dates that complaints are finally decided, HUD cannot determine how long the intended beneficiaries of the Act typically wait for a decision. Data that provide a comprehensive view of the enforcement process from start to finish for both FHEO and FHAP agencies could help HUD target problem areas and improve management of the enforcement process. TEAPOTS provides a platform that FHEO and FHAP agencies may use for recording these key enforcement data.

FHEO's human capital challenges serve to exacerbate the challenge of improving enforcement practices. Human capital management issues at both HUD and FHEO are an immediate concern. FHEO's planned reduction in staff and other human capital factors may affect its ability to enforce fair housing laws. To meet such challenges, HUD managers will need to continue their efforts to analyze workforce needs and to develop a workforce planning process that makes the best use of the department's most important resource—the people that it employs now and in the future. A comprehensive strategic workforce planning process that builds on the five principles that we have observed at other federal agencies will help FHEO and other departmental programs identify and focus their investments on the long-term human capital issues that most affect the agency's ability to achieve its mission.

Recommendations

To improve the management and oversight of the fair housing enforcement process, we recommend that the HUD Secretary direct the Assistant Secretary of FHEO to take the following 4 actions:

- establish a way to identify and share information on effective practices among its regional fair housing offices and FHAP agencies;

-
- ensure that the automated case-tracking system includes complete, reliable data on key dates in the intake stage of the fair housing enforcement process for FHAP agencies;
 - ensure that the automated case-tracking system includes complete, reliable data on key dates in the adjudication stage of the fair housing enforcement process for both FHEO and FHAP agencies;
 - ensure that the automated case-tracking system includes complete, reliable data on the outcomes of the adjudication stage of the fair housing enforcement process for FHEO and FHAP agencies; and
 - ensure that hubs enter cause dates into the automated case-tracking system in a consistent manner.

Further, we recommend that the Secretary take the following action:

- In developing HUD's 5-year Departmental Workforce Plan, follow the five key principles discussed in this report. As part of the comprehensive workforce analysis, ensure that HUD fully considers a wide range of strategies to make certain that FHEO obtains and maximizes the necessary skills and competencies needed to achieve its current and emerging mission and strategic goals with the resources it can reasonably expect to be available.

Agency Comments and Our Evaluation

We provided a draft of this report to HUD for its review and comment. We received written comments from the department's Assistant Secretary for Fair Housing and Equal Opportunity. These comments, which are included in appendix IV, indicated general agreement with our conclusions and recommendations. The Assistant Secretary noted that FHEO has already begun to take steps to improve the quality and timeliness of the fair housing enforcement process. Specific planned actions that are consistent with our recommendations include (1) implementing a new Business Process Redesign review; (2) establishing a reporting requirement addressing post-cause results; and (3) enhancing, in conjunction with the department, FHEO's efforts at workforce analysis. The Assistant Secretary commented that FHEO would take a close look at all of the report's recommendations. HUD's comments also included several suggestions to enhance clarity or technical accuracy. We revised the report to incorporate these suggestions and have included them in this report where appropriate.

As agreed with your offices, unless you publicly release its contents earlier, we plan no further distribution of this report until 30 days after its issuance date. At that time, we will send copies of this report to the Chair of the Senate Committee on Banking, Housing and Urban Affairs; the HUD Secretary; and other interested congressional members and committees. We will make copies available to others upon request. In addition, this report will also be available at no charge on our Web site at <http://www.gao.gov>.

Please contact me or Mathew J. Scirè at (202) 512-6794 if you or your staff have any questions concerning this report. Key contributors to this report were Emily Chalmers, Rachel DeMarcus, Tiffani Green, M. Grace Haskins, Marc Molino, Andrew Nelson, Carl Ramirez, Beverly Ross, and Anita Visser.

David G. Wood

David G. Wood
Director, Financial Markets and
Community Investment

Scope and Methodology

Our engagement scope was limited to fair housing investigations conducted under Title VIII of the Civil Rights Act of 1968, as amended, rather than fair housing activities under Section 504 of the Rehabilitation Act of 1973 or Title VI of the Civil Rights Act of 1964.

To describe the fair housing enforcement process, we reviewed the legislation, regulations, and the Office of Fair Housing and Equal Opportunity's (FHEO) guidance for intake, investigation and adjudication of fair housing complaints. We also interviewed officials at FHEO headquarters who are responsible for oversight and policymaking. In addition, we conducted site visits and structured interviews with key FHEO and Fair Housing Assistance Program (FHAP) agency officials, including FHEO hub, FHAP agency, and center directors; intake staff; investigators and attorneys. We selected 3 of the 10 FHEO hubs and 8 of the 18 centers for site visits (table 4). We selected the hub sites on the basis of (1) the number of "aged" cases within the region, (2) the total number of complaints received, (3) the ratio of FHEO investigations to all investigations, and (4) the number of organizational components—that is the number of centers and offices within the hub. We ranked each hub on the basis of whether they were among the 3 hubs with the highest values, the 3 with the lowest values or the 4 hubs with the middle values for the dimensions we measured. We also visited at least one FHAP agency in each of the selected hub regions.

Table 4: FHEO Hubs Selected for Site Visits

| Location | Percentage of aged cases | Number of complaints received | HUD investigations as a percentage of all investigations | Number of organizational components |
|---|--------------------------|-------------------------------|--|-------------------------------------|
| Chicago Hub Centers Detroit Columbus Chicago | Medium | High | Medium | High |
| Fort Worth Hub Centers Fort Worth New Orleans Austin | High | Medium | High | High |
| New York Hub Centers New York City Newark | Low | Medium | Low | Medium |

Source: GAO analysis of HUD data.

To describe the trends in FHEO data on the numbers, characteristics, outcomes, and length of fair housing investigations, we used data from FHEO’s automated case-tracking system (TEAPOTS). Specifically, we obtained data on inquiries and claims made and investigations completed as of September 2003, for each fiscal year from 1996 through 2003. Using these data, we computed the following:

- number of inquiries and claims made,
- number of complaints filed,
- number and outcome of investigations completed,
- percentage of investigations completed within 100 days, and
- median length of each enforcement stage.

For the purposes of measuring the percentage of investigations completed within 100 days, we measured the time elapsed between the most recent of the date filed, date reopened, or date reentered and the date the investigations were either transferred to the Department of Justice, closed administratively, conciliated or settled, found to have reasonable cause, or found not to have reasonable cause.

To assess the reliability of TEAPOTS data we used, we examined (1) the process FHEO and FHAP agencies use to capture and process inquiry and complaint information and (2) the internal controls over the TEAPOTS database that store and retrieve this information. We interviewed the system's managers, reviewed documentation of and reports produced by the system, compared some of our results to summary reports previously produced by FHEO, and performed basic reasonableness checks on TEAPOTS data. Missing values and fields, inconsistencies between fields, and out-of-range values in fields were infrequent and did not pose a material risk of error in our analysis. We concluded that the data we analyzed were sufficiently reliable for the purposes of this report. However, we encountered several limitations in the TEAPOTS data that prevented us from using them to fully describe the trends in the numbers, characteristics, and outcomes of fair housing investigations. Because of indications that TEAPOTS data may either be incomplete or inconsistent regarding the dates that inquiries were made, and the dates that an independent fact finder ultimately determined that discrimination did or did not occur, we were unable to provide complete information on one of our report objectives. Specifically, we were unable to report on the average time taken by two phases of the enforcement process for cases handled by FHAP agencies.

In attempting to determine the average time needed to complete each stage of the fair housing enforcement process, we relied on data from TEAPOTS. Specifically, we obtained TEAPOTS data on complaint investigations completed from 1996 through 2003 by FHEO and FHAP agencies and attempted to measure (1) the time elapsed between a complainants' first contact with either the FHEO or a FHAP agency and the date that the complaint was filed; (2) the time elapsed between filing a complaint and completing an investigation; and (3) the time elapsed between completing an investigation and the final disposition, the end of the adjudication process. Because of inconsistent intake data and missing adjudication data, we were unable to determine the average time that had been required to complete the first and last stages of the complaint process for cases handled by FHAP agencies.

To determine the factors that could influence the length and thoroughness of Title VIII investigations, we interviewed FHEO and FHAP agency officials responsible for management, intake, investigation, and legal matters at selected field locations. We also surveyed the 10 FHEO hub directors. Appendix II reproduces our questionnaire. We also reviewed and analyzed information concerning the allocation, numbers, experience, and

tenure of FHEO staff, including Quality Management Reviews and Resource Estimation and Allocation Process analyses. In addition, we interviewed officials and staff responsible for implementing the fair housing process at selected fair housing enforcement hubs and selected centers within these hubs. We also reviewed reports on HUD human capital challenges prepared by GAO, the HUD Inspector General, and other relevant sources

Hub Directors' Survey Questions and Responses



United States General Accounting Office

Survey of Regional HUB Directors in the U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity

Introduction

The U.S. General Accounting Office (GAO) is currently reviewing HUD's Fair Housing Enforcement efforts. As part of this review, we have visited a number of Fair Housing and Equal Opportunity (FHEO) offices to talk with enforcement management and staff.

To ensure the broadest coverage, GAO is now conducting this survey of all 10 regional FHEO HUB Managers.

The purpose of this survey is to identify the factors that HUD fair housing enforcement practitioners believe impact the length and thoroughness of the Title VIII fair housing enforcement process including intake, investigation, and adjudication.

Definitions

In the survey, we use the following terms:

Length: The amount of time that elapses between the date a Title VIII complaint is received at HUD as an inquiry and the date that the complaint is resolved (e.g., administrative closure, conciliation, adjudication through ALJ hearing, or other means).

Thoroughness: The extent to which accurate and complete evidence is collected and analyzed to enable staff (investigators, attorneys, etc.) to recommend and make the appropriate resolution.

Subject matter/issue: As used in the HUD Title VIII Investigations Handbook (p. 3-24), subject matters and issues include items such as rentals, sales, lending, and redlining.

Prohibited basis of discrimination: As used in the HUD Title VIII Investigations Handbook

(p. 3-44), this term covers race, color, religion, sex, national origin, familial status, and handicap.

Instructions

For all questions, please consider the conditions in your **entire HUB region**, including centers and sites.

If you are using the Microsoft Word format, please save it to your computer and enter your answers directly into the form. To use the .PDF format, please save it to your computer, print it out and enter your answers by hand. You may e-mail a completed copy of the Word version of the survey to _____ at _____, or if you like, you may print out a completed copy of either the Word or .PDF version and fax it to _____ at _____ at least one day before the interview. Your follow-up interview has been scheduled for:

During the interview, we will ask you to read and discuss your answers, providing examples to the extent possible.

If you have any questions about this survey or the GAO study, please contact _____ at _____ or e-mail her at: _____

Thank you for your participation.

**Appendix II
Hub Directors' Survey Questions and
Responses**

1. To what extent do the following factors influence the amount of time it takes to complete the Title VIII fair housing enforcement process?

We understand that many things can affect the length of the process. However, we ask that when responding to each specific factor, you hold all others constant and check the box that comes closest to your "best answer." Check one box for each row.

NUMBER OF RESPONSES DISPLAYED FOR EACH ANSWER

| Characteristics & Volume of Complaints | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | IF GREAT OR VERY GREAT EXTENT- Does this make the enforcement process: | | |
|--|-------------------|--------------|-----------------|-------------|---------------------|--|---------|------------|
| | | | | | | Longer | Shorter | It Depends |
| A. Subject matter/issue of discrimination | 4 | 5 | 1 | 0 | 0 | 9 | 0 | 0 |
| B. Prohibited basis of discrimination | 1 | 1 | 5 | 3 | 0 | 2 | 0 | 0 |
| C. Volume of inquiries and complaints | 2 | 6 | 2 | 0 | 0 | 6 | 1 | 1 |
| Staffing Levels, Skill & Resources | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | Longer | Shorter | It Depends |
| D. Number of staff | 3 | 4 | 2 | 1 | 0 | 3 | 3 | 1 |
| E. Level of skill among staff | 7 | 3 | 0 | 0 | 0 | 3 | 4 | 3 |
| F. Amount and availability of training funds | 1 | 2 | 5 | 2 | 0 | 1 | 2 | 0 |
| G. Quality and effectiveness of training | 1 | 5 | 4 | 0 | 0 | 1 | 5 | 0 |
| H. Amount and availability of travel funds | 4 | 2 | 3 | 1 | 0 | 4 | 0 | 2 |

**Appendix II
Hub Directors' Survey Questions and
Responses**

| Human Capital Management & Planning | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | Longer | Shorter | It Depends |
|--|--------------------------|---------------------|------------------------|--------------------|----------------------------|---------------|----------------|-------------------|
| I. Annual performance management goals set for your Region | 2 | 3 | 2 | 1 | 2 | 0 | 3 | 2 |
| J. The annual Director's Elements set for you as a HUB Director | 1 | 2 | 4 | 1 | 2 | 1 | 2 | 0 |
| K. Succession planning | 0 | 4 | 0 | 3 | 3 | 4 | 0 | 0 |
| L. Workforce analysis (Alignment of staff skill with mission accomplishment) | 1 | 4 | 3 | 1 | 1 | 4 | 1 | 0 |
| M. REAP/TEAM | 3 | 0 | 1 | 2 | 4 | 2 | 1 | 0 |
| Other | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | Longer | Shorter | It Depends |
| N. Please specify. (Type in the shaded blank below.) | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |

2. To what extent do the following factors influence the ability of your staff to thoroughly complete the Title VIII fair housing enforcement process? We understand that many things can affect the thoroughness of the process. However, we ask that when responding to each specific factor, you hold all others constant and check the box that comes closest to your "best answer." *Check one box for each row.*

| Characteristics & Volume of Complaints | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | IF GREAT OR VERY GREAT EXTENT- Does this cause the enforcement process to be conducted: | | |
|---|--------------------------|---------------------|------------------------|--------------------|----------------------------|--|------------------------|-------------------|
| | | | | | | Less Thoroughly | More Thoroughly | It Depends |
| | | | | | | | | |

**Appendix II
Hub Directors' Survey Questions and
Responses**

| | | | | | | | | |
|---|--------------------------|---------------------|------------------------|--------------------|----------------------------|------------------------|------------------------|-------------------|
| A. Subject matter/issue of discrimination | 2 | 3 | 3 | 0 | 2 | 4 | 1 | 0 |
| B. Prohibited basis of discrimination | 1 | 1 | 4 | 3 | 1 | 2 | 0 | 0 |
| C. Volume of inquiries and complaints | 1 | 4 | 2 | 2 | 1 | 4 | 1 | 0 |
| Staffing Levels, Skill & Resources | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | Less Thoroughly | More Thoroughly | It Depends |
| D. Number of staff | 1 | 4 | 1 | 2 | 2 | 2 | 2 | 1 |
| E. Level of skill among staff | 2 | 6 | 1 | 0 | 1 | 4 | 1 | 3 |
| F. Amount and availability of training funds | 1 | 2 | 2 | 3 | 2 | 1 | 2 | 0 |
| G. Quality and effectiveness of training | 0 | 6 | 2 | 1 | 1 | 0 | 6 | 0 |
| H. Amount and availability of travel funds | 4 | 2 | 2 | 1 | 1 | 3 | 2 | 1 |
| Human Capital Management & Planning | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | Less Thoroughly | More Thoroughly | It Depends |
| I. Annual performance management goals set for your Region | 2 | 1 | 1 | 2 | 4 | 2 | 1 | 0 |
| J. The annual Director's Elements set for you as a HUB Director | 1 | 1 | 2 | 2 | 4 | 2 | 0 | 0 |
| K. Succession planning | 1 | 1 | 1 | 0 | 7 | 1 | 1 | 0 |

**Appendix II
Hub Directors' Survey Questions and
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| | | | | | | | | |
|---|--------------------------|---------------------|------------------------|--------------------|----------------------------|------------------------|------------------------|-------------------|
| L. Workforce analysis (Alignment of staff skill with mission accomplishment) | 2 | 2 | 3 | 0 | 3 | 1 | 3 | 0 |
| M. REAP/TEAM | 1 | 1 | 1 | 1 | 6 | 1 | 1 | 0 |
| Other | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | Less Thoroughly | More Thoroughly | It Depends |
| N. Please specify. (Type in the shaded blank below.) | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |

3. To what extent do the following enforcement practices impact the overall length of the Title VIII fair housing enforcement process (or to what extent would they impact the length of the process, if your office does not practice them)? We understand that many things can affect the length of the process. However, we ask that when responding to each specific practice, you hold all others constant and check the box that comes closest to your "best answer." *Check one box for each row.*

| | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | IF GREAT OR VERY GREAT EXTENT- Does this make the enforcement process: | | |
|--|-------------------|--------------|-----------------|-------------|---------------------|--|---------|------------|
| | | | | | | Longer | Shorter | It Depends |
| Title VIII Enforcement Process | | | | | | | | |
| A. Involving investigators in the intake process | 1 | 3 | 1 | 2 | 3 | 1 | 3 | 0 |
| B. Involving regional counsel's office in planning and monitoring investigations | 1 | 3 | 3 | 1 | 2 | 0 | 4 | 0 |
| C. Using TEAPOTS as a tool for planning, conducting, and monitoring investigations | 1 | 3 | 4 | 2 | 0 | 0 | 4 | 0 |

**Appendix II
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| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| D. Continuing to conduct investigations while in conciliation | 3 | 3 | 2 | 1 | 1 | 0 | 6 | 0 |
|---|---|---|---|---|---|---|---|---|

4. To what extent do the following enforcement practices impact the overall thoroughness of the Title VIII fair housing enforcement process (or to what extent would they impact the thoroughness of the process, if your office does not practice them)? We understand that many things can affect the thoroughness of the process. However, we ask that when responding to each specific practice, you hold all others constant and check the box that comes closest to your "best answer." Check one box for each row.

| | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent | IF GREAT OR VERY GREAT EXTENT- Does this cause the enforcement process to be conducted: | | |
|--|-------------------|--------------|-----------------|-------------|---------------------|---|-----------------|------------|
| | | | | | | Less Thoroughly | More Thoroughly | It Depends |
| Title VIII Enforcement Process | | | | | | | | |
| E. Involving investigators in the intake process | 1 | 2 | 1 | 4 | 2 | 1 | 2 | 0 |
| F. Involving regional counsel's office in planning and monitoring investigations | 1 | 3 | 3 | 2 | 1 | 0 | 4 | 0 |
| G. Using TEAPOTS as a tool for planning, conducting, and monitoring investigations | 2 | 2 | 2 | 3 | 1 | 0 | 4 | 0 |
| H. Continuing to conduct investigations while in conciliation | 1 | 2 | 1 | 2 | 4 | 0 | 3 | 0 |

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5. To what extent could practical improvements be made to each of the following Title VIII activities that would reduce the amount of time required to complete the entire process? Please consider any ideas or practices that differ from HUD's current enforcement process and that, with proper funding and training, would improve the overall length of the process. You will have an opportunity to share these ideas and practices during our follow-up interview. Check one box for each row.

| | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent |
|--|-------------------|--------------|-----------------|-------------|---------------------|
| Title VIII Enforcement Process | | | | | |
| A. Intake stage | 3 | 1 | 0 | 4 | 2 |
| B. Investigation stage (including the conciliation process) ^a | 4 | 1 | 2 | 3 | 0 |
| C. Adjudication stage ^a | 3 | 3 | 2 | 1 | 1 |

6. To what extent could practical improvements be made to each of the following Title VIII activities that would improve the overall thoroughness of the entire process? Please consider any ideas or practices that differ from HUD's current enforcement process, and that, with proper funding and training, would improve the overall thoroughness of the process. You will have an opportunity to share these ideas and practices during our follow-up interview. Check one box for each row.

| | Very Great Extent | Great Extent | Moderate Extent | Some Extent | Little or No Extent |
|--|-------------------|--------------|-----------------|-------------|---------------------|
| Title VIII Enforcement Process | | | | | |
| A. Intake stage | 3 | 0 | 1 | 3 | 3 |
| B. Investigation stage (including the conciliation process) ^a | 4 | 1 | 0 | 4 | 1 |
| C. Adjudication stage ^a | 3 | 1 | 1 | 3 | 2 |

7. Please describe any noteworthy practices that your office uses in each stage of the Title VIII fair housing enforcement process. (If you are using the Word version of this survey, please type your answers in the shaded blanks.)

| Intake Stage |
|--------------|
| |

**Appendix II
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| |
|---|
| Investigation Stage (including the conciliation process)^a |
| |
| Adjudication Stage^a |
| |

^aSome hub directors may have defined the investigation and adjudication stages differently than other directors.

Tables Corresponding to Data Depicted in Figures 1-12

Table 5: Claims and Inquiries Received by FHEO, FY 1996–2003

| | Claims | Inquiries | Total |
|--------------|---------------|---------------|---------------|
| 1996 | 4,614 | 0 | 4,614 |
| 1997 | 4,333 | 0 | 4,333 |
| 1998 | 4,791 | 1 | 4,792 |
| 1999 | 4,831 | 1 | 4,832 |
| 2000 | 4,445 | 2 | 4,447 |
| 2001 | 1,323 | 3,140 | 4,463 |
| 2002 | 0 | 4,628 | 4,628 |
| 2003 | 0 | 5,417 | 5,417 |
| Total | 24,337 | 13,189 | 37,526 |

Source: GAO analysis of HUD data.

Note: Data also represented in figure 2.

Table 6: Fair Housing Complaints Filed, FY 1996–2003

| | FHAP Agencies | FHEO | Total |
|--------------|---------------|---------------|---------------|
| 1996 | 4,213 | 2,055 | 6,268 |
| 1997 | 4,057 | 1,819 | 5,876 |
| 1998 | 3,792 | 2,026 | 5,818 |
| 1999 | 3,888 | 2,251 | 6,139 |
| 2000 | 4,823 | 2,150 | 6,973 |
| 2001 | 5,034 | 1,975 | 7,009 |
| 2002 | 5,079 | 2,568 | 7,647 |
| 2003 | 5,397 | 2,739 | 8,136 |
| Total | 36,283 | 17,583 | 53,866 |

Source: GAO analysis of HUD data.

Note: Data also represented in figure 3.

**Appendix III
Tables Corresponding to Data Depicted in
Figures 1-12**

Table 7: Prohibited Basis of Fair Housing Complaints Filed with FHEO and FHAP Agencies, FY 1996–2003

| | 1996 | | 1997 | | 1998 | | 1999 | | 2000 | | 2001 | | 2002 | | 2003 | |
|-----------------|--------------|------|--------------|------|--------------|------|--------------|------|--------------|------|--------------|------|--------------|------|--------------|------|
| | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. |
| Race | 2,729 | 43.5 | 2,562 | 43.6 | 2,638 | 45.4 | 2,457 | 40 | 2,801 | 40.2 | 2,745 | 39.2 | 3,000 | 39.3 | 3,198 | 39.4 |
| Handicap | 1,577 | 25.2 | 1,740 | 29.6 | 1,766 | 30.4 | 2,082 | 33.9 | 2,398 | 34.4 | 2,438 | 34.8 | 2,888 | 37.9 | 3,166 | 39 |
| Familial Status | 1,578 | 25.2 | 1,306 | 22.2 | 1,165 | 20 | 1,163 | 18.9 | 1,281 | 18.4 | 1,248 | 17.8 | 1,238 | 16.2 | 1,297 | 16 |
| National Origin | 810 | 12.9 | 693 | 11.8 | 660 | 11.4 | 690 | 11.2 | 818 | 11.7 | 903 | 12.9 | 930 | 12.2 | 1,052 | 13 |
| Sex | 780 | 12.4 | 698 | 11.9 | 644 | 11.1 | 559 | 9.1 | 729 | 10.5 | 812 | 11.6 | 870 | 11.4 | 935 | 11.5 |
| Color | 470 | 7.5 | 589 | 10 | 429 | 7.4 | 277 | 4.5 | 285 | 4.1 | 317 | 4.5 | 186 | 2.4 | 180 | 2.2 |
| Retaliation | 142 | 2.3 | 123 | 2.1 | 180 | 3.1 | 184 | 3 | 286 | 4.1 | 411 | 5.9 | 401 | 5.3 | 408 | 5 |
| Religion | 95 | 1.5 | 116 | 2 | 113 | 1.9 | 145 | 2.4 | 163 | 2.3 | 155 | 2.2 | 204 | 2.7 | 241 | 3 |
| Total | 6,268 | | 5,875 | | 5,813 | | 6,138 | | 6,972 | | 7,004 | | 7,624 | | 8,111 | |

Source: GAO analysis of HUD data.

Notes: Data also represented in figure 5.

Columns do not total to 100 percent because complaints may have more than one basis.

**Appendix III
Tables Corresponding to Data Depicted in
Figures 1-12**

Table 8: Issue Covered Under the Act for Complaints Filed with FHEO and FHAP Agencies, FY 1996–2003

| | Total | | 1996 | | 1997 | | 1998 | | 1999 | | 2000 | | 2001 | | 2002 | | 2003 | |
|---|---------------|------|-------|------|-------|------|-------|------|-------|------|-------|------|-------|------|-------|------|-------|------|
| | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. |
| Discriminatory terms | 31,466 | | 3,932 | 62.7 | 3,775 | 64.2 | 3,539 | 60.9 | 3,586 | 58.4 | 3,961 | 56.8 | 4,008 | 57.2 | 4,213 | 55.1 | 4,452 | 54.7 |
| Refusal to rent | 15,011 | | 2,274 | 36.3 | 1,775 | 30.2 | 1,417 | 24.4 | 1,699 | 27.7 | 1,962 | 28.1 | 1,990 | 28.4 | 2,014 | 26.3 | 1,880 | 23.1 |
| Reasonable accommodation or modification | 5,954 | | 11 | 0.2 | 154 | 2.6 | 367 | 6.3 | 685 | 11.2 | 1,018 | 14.6 | 1,020 | 14.6 | 1,357 | 17.8 | 1,342 | 16.5 |
| Retaliation (Section 818) | 6,990 | | 857 | 13.7 | 699 | 11.9 | 863 | 14.8 | 855 | 13.9 | 887 | 12.7 | 777 | 11.1 | 942 | 12.3 | 1,110 | 13.6 |
| Advertising | 3,854 | | 257 | 4.1 | 286 | 4.9 | 408 | 7.0 | 611 | 10.0 | 645 | 9.3 | 649 | 9.3 | 558 | 7.3 | 440 | 5.4 |
| Discriminatory lending or financial practices | 2,876 | | 238 | 3.8 | 293 | 5.0 | 291 | 5.0 | 246 | 4.0 | 359 | 5.2 | 427 | 6.1 | 492 | 6.4 | 530 | 6.5 |
| False representation | 1,405 | | 175 | 2.8 | 150 | 2.6 | 193 | 3.3 | 163 | 2.7 | 189 | 2.7 | 159 | 2.3 | 169 | 2.2 | 207 | 2.5 |
| Refusal to sell | 1,788 | | 153 | 2.4 | 156 | 2.7 | 203 | 3.5 | 181 | 3.0 | 260 | 3.7 | 261 | 3.7 | 288 | 3.8 | 286 | 3.5 |
| Design and construction | 1,418 | | 55 | 0.9 | 126 | 2.1 | 215 | 3.7 | 278 | 4.5 | 219 | 3.1 | 152 | 2.2 | 154 | 2.0 | 219 | 2.7 |
| Steering, blockbusting, and redlining | 605 | | 51 | 0.8 | 53 | 0.9 | 68 | 1.2 | 62 | 1.0 | 93 | 1.3 | 80 | 1.1 | 79 | 1.0 | 119 | 1.5 |
| Other | 4640 | | 498 | 8.0 | 437 | 7.4 | 516 | 8.9 | 650 | 10.6 | 517 | 7.4 | 421 | 6.0 | 727 | 9.5 | 874 | 10.7 |
| Single issue | 36,287 | | 4,300 | 68.6 | 4,176 | 71.1 | 3,969 | 68.2 | 3,912 | 63.7 | 4,579 | 65.7 | 4,748 | 67.7 | 5,076 | 66.4 | 5,527 | 67.9 |
| Multiple issues | 17,574 | | 1,968 | 31.4 | 1,700 | 28.9 | 1,847 | 31.8 | 2,226 | 36.3 | 2,393 | 34.3 | 2,261 | 32.3 | 2,570 | 33.6 | 2,609 | 32.1 |

Source: GAO analysis of HUD data.

Notes: Data also represented in figure 6.

Columns do not total to 100 percent because complaints may involve more than one issue.

Appendix III
Tables Corresponding to Data Depicted in
Figures 1-12

Table 9: Number of Investigations Completed by FHEO and FHAP Agencies, FY 1996–2003

| | FHAP Agencies | FHEO | Total |
|--------------|----------------------|---------------|---------------|
| 1996 | 4,737 | 3,190 | 7,927 |
| 1997 | 4,430 | 1,921 | 6,351 |
| 1998 | 4,038 | 1,449 | 5,487 |
| 1999 | 3,806 | 1,963 | 5,769 |
| 2000 | 4,216 | 2,336 | 6,552 |
| 2001 | 4,846 | 3,089 | 7,935 |
| 2002 | 5,860 | 2,474 | 8,334 |
| 2003 | 5,667 | 2,877 | 8,544 |
| Total | 37,600 | 19,299 | 56,899 |

Source: GAO analysis of HUD data.

Note: Data also represented in figure 7.

Table 10: Outcomes of Fair Housing Investigations Completed by FHEO and FHAP Agencies, FY 1996–2003

| | Administrative Closure | | Reasonable Cause | | Conciliation or Settlement | | No Cause | | Transfer to DOJ (FHEO only) | | Total Num. |
|--------------|-------------------------------|-------------|-------------------------|-------------|-----------------------------------|-------------|-----------------|-------------|------------------------------------|-------------|-------------------|
| | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | Num. | Per. | |
| 1996 | 1,454 | 18.3 | 293 | 3.7 | 2,833 | 35.7 | 3,323 | 41.9 | 24 | 0.3 | 7,927 |
| 1997 | 896 | 14.1 | 262 | 4.1 | 2,316 | 36.5 | 2,844 | 44.8 | 33 | 0.5 | 6,351 |
| 1998 | 812 | 14.8 | 300 | 5.5 | 1,971 | 35.9 | 2,349 | 42.8 | 55 | 1 | 5,487 |
| 1999 | 833 | 14.4 | 290 | 5 | 2,057 | 35.7 | 2,412 | 41.8 | 177 | 3.1 | 5,789 |
| 2000 | 929 | 14.2 | 324 | 4.9 | 2,301 | 35.1 | 2,892 | 44.1 | 106 | 1.6 | 6,552 |
| 2001 | 1,104 | 13.9 | 405 | 5.1 | 2,325 | 29.3 | 3,958 | 49.9 | 143 | 1.8 | 7,935 |
| 2002 | 1,087 | 13 | 409 | 4.9 | 2,464 | 29.6 | 4,285 | 51.4 | 89 | 1.1 | 8,334 |
| 2003 | 1,035 | 12.1 | 373 | 4.4 | 2,912 | 34.1 | 4,126 | 48.3 | 98 | 1.1 | 8,544 |
| Total | 8,150 | 14.3 | 2,656 | 4.7 | 19,179 | 33.7 | 26,189 | 46 | 725 | 1.3 | 56,899 |

Source: GAO analysis of HUD data.

Note: Data also represented in figure 8.

Appendix III
Tables Corresponding to Data Depicted in
Figures 1-12

Table 11: Percentage of Investigations Completed within 100 Days, FY 1996–2003

| | FHAP Agencies | | FHEO | | Total | | Total Investigations complete |
|--------------|---------------|-------------|--------------|-------------|---------------|-------------|-------------------------------|
| | Num. | Per. | Num. | Per. | Num. | Per. | Num. |
| 1996 | 1,110 | 23.4 | 524 | 16.4 | 1,634 | 20.6 | 7,927 |
| 1997 | 1,060 | 23.9 | 407 | 21.2 | 1,467 | 23.1 | 6,351 |
| 1998 | 957 | 23.7 | 308 | 21.3 | 1,265 | 23.1 | 5,487 |
| 1999 | 1,014 | 26.6 | 491 | 25 | 1,505 | 26.1 | 5,769 |
| 2000 | 1,145 | 27.2 | 328 | 14 | 1,473 | 22.5 | 6,552 |
| 2001 | 1,316 | 27.2 | 539 | 17.4 | 1,855 | 23.4 | 7,935 |
| 2002 | 1,471 | 25.1 | 1,011 | 40.9 | 2,482 | 29.8 | 8,334 |
| 2003 | 1,893 | 33.4 | 1,448 | 50.3 | 3,341 | 39.1 | 8,544 |
| Total | 9,966 | 26.5 | 5,056 | 26.2 | 15,022 | 26.4 | 56,899 |

Source: GAO analysis of HUD data.

Note: Data also represented in figure 9.

Appendix III
Tables Corresponding to Data Depicted in
Figures 1-12

Table 12: Median Number of Days to Complete Investigations by Issue of Discrimination FY 1996–2003

| | FHAP Agencies | FHEO | Overall |
|---|--------------------------|-------------|----------------|
| Discriminatory terms | 197 | 261 | 214 |
| Refusal to rent | 218 | 283 | 234 |
| Reasonable accommodation or modification | 156 | 175 | 162 |
| Retaliation (Section 818) | 218 | 296 | 245 |
| Advertising | 219 | 267 | 231 |
| Discriminatory lending or financial practices | 240 | 408 | 295 |
| False representation | 206 | 373 | 250 |
| Refusal to sell | 216 | 347 | 242.5 |
| Design and construction | 203 | 398 | 284 |
| Steering, blockbusting, and redlining | 228 | 359 | 265.5 |
| Other | 192 | 199 | 194 |
| Single issue | 184 | 242 | 199 |
| Multiple issues | 220 | 293 | 240 |

Source: GAO analysis of HUD Data.

Note: Data also represented in figure 11.

Appendix III
Tables Corresponding to Data Depicted in
Figures 1-12

Table 13: Median Number of Days Needed to Complete Investigations by Prohibited Basis, FY 1996–2003

| | FHAP Agencies | FHEO | Overall |
|-----------------|--------------------------|-------------|----------------|
| Race | 210 | 294 | 230 |
| Handicap | 175 | 223 | 190 |
| Familial Status | 204 | 269 | 219 |
| National Origin | 181 | 290 | 209 |
| Sex | 211 | 275.5 | 226 |
| Color | 168 | 340 | 191 |
| Retaliation | 196 | 302 | 216 |
| Religion | 210 | 267.5 | 224 |
| Single Basis | 195 | 253 | 211 |
| Multiple Bases | 194 | 283 | 217 |

Source: GAO analysis of HUD data.

Note: Data also represented in figure 12.

Comments from the Department of Housing and Urban Development



ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

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

April 6, 2004



Mr. David G. Wood
Director, Financial Markets and
Community Investments
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Wood:

Thank you for the opportunity to comment on GAO's draft report entitled "Fair Housing: Opportunities to Improve HUD's Oversight and Management of the Enforcement Process" (GAO-04-463).

HUD appreciates the conscientious and professional work of your staff in analyzing the complaint-handling processes of the Office of Fair Housing and Equal Opportunity (FHEO) and the Fair Housing Assistance Program (FHAP). We value their constructive insights into improving our enforcement process.

Out of our desire to continually improve the quality and timeliness of our enforcement process, we had already implemented the following measures: (1) a revised Title VIII Investigator's Handbook to better enumerate our procedures for receipt of complaints and the conduct of investigations; (2) new processes to improve the timely completion of inquiries; (3) joint training between FHEO investigators and attorneys from HUD's Office of General Counsel (OGC) to promote collaborative investigations and to promulgate handbook guidance; and (4) FHAP attorney training to facilitate idea sharing and consistency of enforcement.

FHEO is also beginning a new Business Process Redesign (BPR) review. This BPR will look at the practices of all ten Hubs and some FHAP agencies. It will allow HUD to catalog the most effective enforcement techniques in every region. These results will be used to further address the report's recommendations. HUD's Fair Housing Training Academy will also enhance investigations in the ways suggested in your report. The Academy will teach effective investigation techniques to FHAP investigators throughout the country and create greater consistency in fair housing enforcement. We initiated this project in 2003, and it will be ready for implementation in the summer of 2004.

Your first recommendation covers gathering and sharing information on effective intake and investigation techniques from Hub offices and FHAP agencies. FHEO's quarterly Hub Directors meetings and biennial Fair Housing Initiatives Program (FHIP)/FHAP policy conferences will continue to serve as a vehicle for sharing this kind of information. Further, FHEO's planned BPR will facilitate the identification of effective intake and investigation techniques. In addition, we will explore ways of developing a more systematic plan for gathering and making this information available.

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**Appendix IV
Comments from the Department of Housing
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In response to your second, third, and fourth recommendations, all of which relate to case tracking, the Department recognizes the importance of improving the data collection of inquiries made to FHAP agencies and of adjudications and case outcomes where FHEO or a FHAP agency has found reasonable cause. HUD is committed to improving data collection to obtain information on HUD post-cause outcomes. In the case of FHAP agencies, however, HUD does not reimburse for receiving and processing inquiries or for adjudicating fair housing cases, but only for the complaint investigation. Without providing additional funding to cover the costs, data entry requirements at those earlier stages may be burdensome for FHAP agencies; however, we will build in reporting requirements to document post-cause results.

The fifth recommendation concerns HUD's 5-year Departmental Workforce Plan and advises HUD to consider a wide range of strategies to make certain that FHEO obtains the necessary skills and competencies needed to achieve its current emerging mission. HUD has initiated a comprehensive strategic workforce planning process that incorporates methodology approved by the Office of Personnel Management and used by other federal agencies. In fiscal year 2003, HUD contracted the services of a technical adviser to conduct a comprehensive workforce analysis of its major program offices.

The comprehensive workforce analysis for FHEO is scheduled to begin in April 2004. As part of the analysis, the contractor will assist FHEO managers in developing a five-year projection of its future mission, along with an assessment of future demands for its products, services, staffing levels, and core competency requirements. The workforce planning effort will include FHEO's headquarters and field offices. The workforce analyses and plans for HUD's major program offices are scheduled for completion by July 2004. The plans will be used to develop the Five-Year Comprehensive Departmental Workforce Plan, which is scheduled for completion by September 30, 2004.

HUD has included the strategic workforce planning effort as a major component of the Department's Five-Year Strategic Human Capital Management Plan and the supporting Human Capital Implementation Plan. These plans include specific action items and metrics to promote the Department's human capital goals and objectives.

HUD is also making steady progress toward the implementation of the HUD Integrated Human Resources and Training System (HIHRTS). HIHRTS will provide managers easy access to critical information to support the full spectrum of human capital management including strategic planning, staffing and recruitment, employee development, and performance management.

The following statements in your draft report require clarification or correction:

1. The report states, "During the investigation stage, FHEO investigators try to collect enough evidence to make a 'reasonable cause' determination, that is, to determine if reasonable cause exists to believe that the respondent violated the Act." (Page 11). This is an improper characterization that implies that investigations are biased to reach a pre-determined outcome. The statement should be revised to read "During the investigation stage, FHEO investigators collect evidence in order to determine whether reasonable

cause exists to believe that a discriminatory housing practice has occurred, or is about to occur.” This characterization occurs at several other places in the report, specifically on page 3, page 8, and in the Section Heading on page 11.

2. In several places, the report refers to the three stages of the fair housing enforcement process as intake, investigation and adjudication. It is important to remember that the second stage involves not only investigation, but also conciliation, which is required by the Fair Housing Act. This is not an incidental point, as conciliation is the second most common outcome for a fair housing complaint.

3. On pages 12 and 13, the discussion of the requirement that headquarters Office of General Counsel (OGC) concur in cause and no cause determinations is inaccurate, *see*, 67 Fed. Reg. 44234 (2002). We recommend the first paragraph on page 12 be revised as follows:

With the concurrence of the Regional Council, the Hub Director issues a determination of reasonable cause and directs the Regional Council to issue a ‘charge’ on behalf of the aggrieved person. The charge is a short written statement of the facts that led FHEO to the reasonable cause determination. If the Hub Director decides that no reasonable cause exists to believe that a discriminatory housing practice has occurred, then, upon concurrence of the Regional Council, the Hub Director dismisses the complaint.

4. An issue closely related to the above is contained in the enforcement process flow chart at page 9. Under the “Investigation complete” portion of the flow chart, we recommend the following revision:

With the concurrence of the Regional Council, FHEO will issue a determination of reasonable cause. The Regional Council will then issue a charge of discrimination, and file the charge with the Office of ALJs and notify the parties of the filing of the charge.

5. On page 13, the second sentence of the second paragraph should be revised to read, “An investigation is considered complete, and the 100-day deadline ends, when a Hub Director makes a cause or no cause determination in which the Regional Council concurs.”

6. The first paragraph on page 23 conveys the impression that FHAP agencies file more complaints than FHEO. This is incorrect. FHEO receives inquiries, perfects them, files the complaint, and then, as required by an Memorandum of Understanding with the FHAP agency, refers the complaint to the FHAP agency for investigation. Through this process, HUD files more fair housing complaints, while FHAP agencies investigate more.

The Department agrees that greater and earlier collaboration between FHEO and OGC could improve investigation quality and timeliness. To implement this, each Hub Director and

**Appendix IV
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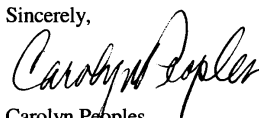
Regional Counsel have signed a Memorandum of Understanding (MOU) to detail their working relationship, as noted in the report. FHEO and OGC have discussed the possibility of developing a standard process for all regions. Recognizing the value of teamwork, FHEO and OGC will work toward executing one MOU to facilitate a more collaborative enforcement process.

We would like to add our own emphasis to the statement in the draft report that FHEO's enforcement responsibilities extend beyond Title VIII. FHEO must conduct investigations and compliance reviews under Title VI, Section 504, Section 109, and other civil rights authorities that apply to recipients of HUD financial assistance. The Hub Director's comment about FHEO performance goals for non-Title VIII work (page 50) raises a concern about the potential for some offices to have a singular focus on Title VIII enforcement at the expense of our other responsibilities.

Finally, the Department would like to note its concern at the draft report's observation that a FHAP agency encouraged parties to opt for state court so that the agency would not have to commit resources to the administrative process. Steering parties to one forum is inconsistent with the Fair Housing Act's enforcement framework and the neutral role FHEO and FHAP agencies should play with respect to forum selection. We note also that FHAP agencies have access to HUD funds that could help ease the cited resource concerns.

Again, we appreciate the opportunity to comment on the draft report. We will take a close look at all of your recommendations and, to the extent possible, incorporate them into our efforts to improve the timeliness and effectiveness of our enforcement. Should you or your staff have any questions or require additional information, please contact Floyd O. May, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity at (202) 708-4211.

Sincerely,



Carolyn Peoples
Assistant Secretary for
Fair Housing and Equal Opportunity

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