

# Reconstructing Fair Housing

National Council on Disability

November 6, 2001

National Council on Disability  
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**Reconstructing Fair Housing**

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The views contained in the report do not necessarily represent those of the administration, as this document has not been subjected to the A-19 executive branch review process.

## Letter of Transmittal

November 6, 2001

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit a report titled *Reconstructing Fair Housing*. This report is the fifth in a series of independent analyses by NCD of federal enforcement of civil rights laws.

The series grew out of NCD's 1996 national policy summit, which was attended by more than 300 disability community leaders from diverse backgrounds who called upon NCD to work with federal agencies to develop strategies for greater enforcement of existing disability civil rights laws. In March 1999, NCD produced its first report, *Enforcing the Civil Rights of Air Travelers with Disabilities*. The second report, *Back to School on Civil Rights*, on the enforcement of the Individuals with Disabilities Education Act, was issued in January 2000. In June 2000, NCD produced its third report, titled *Promises To Keep: A Decade of Federal Enforcement of the Americans with Disabilities Act*. The fourth report, *The Accessible Future*, on the status of enforcement of various federal laws dealing with electronic and information technology accessibility, was issued in June 2001. The enforcement reports to follow in this series will be on Section 504 of the Rehabilitation Act and the Civil Rights of Institutionalized Persons Act.

*Reconstructing Fair Housing* looks at the Fair Housing Amendments Act of 1988 (FHAA) and Section 504 as they relate to one key federal agency, namely, the U.S. Department of Housing and Urban Development (HUD). NCD's findings reveal that while the past several Administrations have asserted their support for the civil rights of people with disabilities, the federal agency charged with enforcement and policy development under the FHAA and Section 504 has been underfunded, understaffed, and lacking any consistent strategy and direction.

We recognize that your Administration is committed to eradicating fair housing discrimination and removing barriers to community living for people with disabilities. In a number of instances, you have indicated your commitment to Americans with disabilities. That commitment is articulated in your New Freedom Initiative; in the mandate you issued under Executive Order No. 13217, establishing an Interagency Council on Community Living; and, in the work of your Fair Housing Council.

As HUD Secretary Mel Martinez and Attorney General John Ashcroft stated so eloquently on April 11, 2001 (the 33rd anniversary of the Fair Housing Act): "Discrimination in housing simply will not be tolerated, and we will prosecute those who violate the Fair Housing

Act.” And in signing their pledge as members of the Fair Housing Council, they indicated, “As members of the President’s Fair Housing Council established by Executive Order 12892, we pledge to administer the programs of our Department or Agency in support of the Fair Housing Act of 1968 as amended in 1988 and aggressively fight to end housing discrimination because of race, color, national origin, religion, sex, familial status, or handicap.”

*Reconstructing Fair Housing* responds to the commitments of your Administration, as listed above, by providing a roadmap for addressing the shortcomings that have hampered FHAA and Section 504 compliance and enforcement until now. NCD is prepared to work with HUD and other stakeholders inside and outside the government to develop that strategy.

NCD stands ready to work on those and related matters.

Sincerely,

Marca Bristo  
Chairperson

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)

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# SECTION I

## Preface

This report, part of the National Council on Disability's (NCD's) series "Unequal Protection Under Law," examines in detail the way the U.S. Department of Housing and Urban Development's (HUD's) Office of Fair Housing and Equal Opportunity has handled complaints filed with it about illegal discrimination in housing and how it has used, or failed to use, its authority to secure compliance with the Fair Housing Act and Section 504.

By issuing this report, NCD recognizes the importance to people with disabilities of enforcement of these laws. Freedom from discrimination in looking for, and living in, housing remains one of the cornerstones of the American dream. The ability to choose a home without discrimination, to live in a home without interference, to seek and be granted reasonable accommodations where these are necessary, and to find and acquire accessible housing—these are essential first steps for people with disabilities to live in the mainstream of our country. When discrimination intervenes, it stigmatizes, isolates, and removes free choice and the opportunity to live as part of the community of all Americans.

This study describes HUD's administrative enforcement of the Fair Housing Act and Section 504. It covers HUD's enforcement and compliance work conducted under these laws, with particular emphasis on the rights of people with disabilities during the period roughly beginning with the passage of the Fair Housing Amendments Act in 1988 and ending on September 30, 2000. An evaluation of HUD's many housing programs, how these programs affect people with disabilities, and how HUD complies—or fails to comply—with these laws is beyond the scope of this report. The report also does not focus on the work of other federal agencies, including the Department of Justice, in enforcing these civil rights laws, and it does not cover private enforcement of either law.

This report is for everyone who supports effective, fair enforcement of civil rights laws. Certainly it is directed to leaders in the Administration and to Congress and the leaders at HUD who seek to improve the agency's management and operations.

It is for people with disabilities, so they can know more about how the government works to vindicate their rights and how the promise of enforcement has not yet been achieved for them and for others who encounter housing discrimination.

It is for housing providers and others whose conduct is frequently regulated by these laws and who are equally and adversely affected when administration of the laws is not prompt, reliable, and fair.

It is for the public, because the public is entitled to full, fair enforcement of civil rights laws, and is entitled to know the ways in which enforcement is, and is not, being effectively administered.

It is for those people in HUD's Office of Fair Housing and Equal Opportunity who remain committed to full, fair enforcement of the law and who recognize that, despite their best efforts, much work remains before the dream can be accomplished.

## **SECTION II**

### **Executive Summary**

The past 12 years of civil rights enforcement by the Department of Housing and Urban Development (HUD) have left America, and in particular people with disabilities, needing more. The late 1980s were characterized by a new commitment to equal housing opportunity: Congress passed the Fair Housing Amendments Act of 1988 (FHAA) and HUD finally promulgated regulations for the enforcement of Section 504 of the 1973 Rehabilitation Act. HUD was empowered to investigate and adjudicate discrimination complaints and to enforce compliance by recipients of federal funds. By the late 1990s, however, HUD had lost control of its own enforcement process, with investigations taking nearly five times as long as Congress mandated and with scarcely 100 cases annually concluding with findings of discrimination during each of the past six fiscal years.

Administrative enforcement of civil rights laws has been hampered by the failure of Congress and HUD to provide the level of resources that effective enforcement requires. Inconsistent and inadequate funding has caused some specific problems for HUD, especially concerning staffing and special enforcement initiatives. The bigger problem has been HUD's failure to provide consistent national leadership and management of the fair housing enforcement process. As a result, the promises of the fair housing laws have been empty for many Americans, with and without disabilities.

The primary focus of this report is the way in which HUD has conducted its administrative enforcement of the Fair Housing Act (FHA) and Section 504 of the 1973 Rehabilitation Act to counter discrimination in housing, and, in particular, HUD's record during the past 12 years in enforcing the rights of people with disabilities under these laws.

#### **A. Overview**

Housing discrimination undermines one of the fundamental premises on which our free society is based because it unfairly, and illegally, denies access to the accessible, affordable housing that people with disabilities need to live independent lives. Without effective and fair



enforcement of civil rights laws, people who are injured by housing discrimination lack recourse to remedies and rights that Congress passed in an express effort to achieve a country free from invidious discrimination. And without effective and fair enforcement of civil rights laws tied to increased education about those laws, people cannot know the ways in which discrimination may occur so they can avoid discriminating, and those that perpetrate discrimination will not be held accountable for their unlawful actions.

The absence of an effective fair housing enforcement system motivated Congress to pass the FHA and to invest HUD with strong authority to combat discrimination. This report concludes that ineffective enforcement has led to a loss of public trust that the protections of the FHAA and Section 504 will be enforced. When these important civil rights laws are not well enforced, individual victims of discrimination suffer, but the entire country also suffers as ignorance of, and disdain for, the laws increases. Nowhere is this more harmful than in the context of housing, where discrimination can have such a devastating impact on a person's ability to work, to attend school, to be involved in the civic life of the community, and to pursue all the variations on the American dream.

People with disabilities encounter illegal housing discrimination in many different ways: (1) inaccessible housing, (2) stereotypes about the ability to live independently, or (3) the inability to get modifications in rules or policies that have historically excluded people with disabilities. Housing discrimination artificially constricts the housing choice of people with disabilities; as a consequence, they may be forced to live in undesirable, dangerous, or unwelcoming neighborhoods. They may encounter harassment, intimidation, or unfair and illegal treatment.

At the same time, many in the housing industry seek answers to their questions about discrimination. Without answers to those questions, even unintentional discrimination may continue. This country still needs the prompt, effective civil rights law enforcement that impelled Congress to pass the FHA and Section 504.

In 1988, Congress, with strong bipartisan support, passed the Fair Housing Amendments Act, adding handicap and familial status (the presence of minor children in a household) as additional prohibited bases for discrimination and strengthening enforcement authority under the

law. Rights of people with disabilities to be free from discrimination in housing were considerably expanded because the amendments provided key protections to them and offered them, for the first time, rights to equal treatment and to reasonable accommodations in policies, procedures, and practices, and rights to have newly constructed multifamily housing designed and constructed to be usable by people with physical disabilities.

During the 1990s, people with disabilities increasingly filed discrimination complaints with HUD under the FHA, until they became the single largest group of complaints filed in fiscal years 1999 and 2000, amounting to nearly 42 percent of HUD complaints filed nationally.

During the same period, however, HUD's enforcement activities diminished. The number of complaints filed overall dropped dramatically, with the number of complaints in FY 2000 amounting to only 30 percent of their level in 1992. HUD's adoption of a new "claims" process designed to examine more closely potential complaints has resulted in many fewer complaints being filed and significant increases in the amount of time HUD takes to actually begin a complaint investigation.

The length of time HUD took to investigate cases increased dramatically from 1990 to 2000. The average age of complaints at their closure was 497 days in FY 2000, nearly five times the 100-day period that Congress set as a benchmark for projected case completion. There are significant regional variations in the duration of investigations as well.

HUD made some progress in its efforts to reduce the number of complaints that were "administratively closed" without a disposition during the mid-1990s. By FY 2000, however, that trend was reversing; about 20 percent of filed complaints were administratively closed, up from 15 percent in the mid-1990s. Between its claims process and its overuse of administrative closures, HUD is failing to deal effectively with many potential complaints.

Conciliations or settlements of complaints amount to close to half of the case resolutions. Investigations with findings of discrimination and decisions to pursue enforcement action can take more than a year and have been decreasing in number after reaching a relatively high point during the mid-1990s. The number of such decisions is only a small percentage of the cases HUD investigates. Decisions to dismiss cases with findings of no discrimination increased during the 1990s as well and often took longer than a decision to take enforcement action.

Overall, complaints involving discrimination based on disability are more likely to be settled by HUD, less likely to result in a finding that discrimination has occurred, and less likely to be dismissed after investigation compared with other cases. There are, however, wide and troubling differences in outcomes among HUD's various regional offices, suggesting that the kind of outcome a particular case reaches may be related to where a complaint is handled.

Even more troubling are the significant and serious deficiencies in HUD's overall history of enforcement. This study concludes that the devolution of case-processing responsibility combined with the leadership's attitude toward management and significant shortfalls in staffing and resources have caused these deficiencies. The last Administration's "hot case" and "doubling" enforcement action initiatives exacerbated these systemic flaws and made no discernable improvement in enforcement.

HUD's enforcement of Section 504 has been even more troubled. HUD had difficulties in adopting regulations implementing the law and its enforcement role. Funding has been limited for enforcement activities, and some significant successes in achieving compliance in individual situations have not been replicated.

There are only limited and inconsistent data by which to judge HUD's Section 504 enforcement efforts. The data that are available, however, show that both enforcement and compliance efforts have been marked by long delays resulting from the diversion of limited resources to other activities.

HUD has developed some important guidance, substantive and legal resources, and examples of good enforcement work. However, this information is not widely disseminated to HUD's own enforcement staff or to HUD program areas that could benefit from the information. In addition, this guidance has not been made available to individuals and entities affected by the law.

Good data collection systems and investigative management technology have been developed for FHA cases. Immediate expansion of these systems to support Section 504 enforcement and compliance work is an important priority for HUD.

The Fair Housing Initiatives Program (FHIP) was established by federal statute to fund private fair housing groups, state and local agencies, and advocates. FHIPs provide important

services to and products for people with disabilities. Unfortunately, because of poor record keeping and limited financial resources, FHIPs have been unable to produce or replicate these efforts.

FHIPs have raised concerns that HUD's management of the program has resulted in significant delays in providing funding to qualified recipients and a lack of focus on supporting the enforcement and education activities external to HUD that are a critical component of successful law enforcement.

Congress funds the Fair Housing Assistance Program (FHAP) to handle cases at state and local enforcement agencies. While regional differences exist, when compared to HUD, the 86 FHAP agencies have lower percentages of cases administratively closed and a higher percentage of complaints resulting in findings that the law has been violated. They are able to process complaints (including disability complaints) considerably more quickly than HUD. Despite reports of gaps in activity in cases and other performance issues, more effective HUD monitoring of FHAP could reasonably be expected to improve performance even more. Unfortunately, HUD has no sustained process for identifying and disseminating important lessons from the success of the FHAP operations.

This study found startling inadequacies in HUD's management operations and resources supporting enforcement over the past years. HUD's Strategic Plan, Annual Performance Plan, and Business and Operating Plan, all of which direct the priorities and activities of the Office of Fair Housing and Equal Opportunity (FHEO), have been seriously deficient in addressing enforcement and compliance activities, FHIP and FHAP performance, and efforts to improve the civil rights of people with disabilities. Significant work in improving the focus and content of HUD's planning is needed to drive the enforcement and compliance improvements recommended in this study.

Congress has failed to give HUD adequate appropriations to fund its enforcement and compliance activities. FHEO was staffed at lower levels in FY 2000 than it was in 1989, and increases in staff-to-manager ratios have impaired effective day-to-day management activity. The lack of financial resources has impaired staff training, travel, the ability to support education for the housing industry and the public, and funding for contracts and new initiatives.

This report concludes that HUD has a major challenge ahead of it to fulfill the promise of civil rights enforcement. Without staffing and funding resources, progress cannot and will not be made. Without strong and effective management of compliance and enforcement activities, combined with monitoring, training, technical assistance, and, if necessary, sanctions, progress cannot and will not be made. Without an organized, focused program, progress will not be made. The law is not the problem; the siting of enforcement activities at HUD is not the fundamental problem. The way in which the law is implemented is the problem confronting HUD and this country, and it is this problem that must be addressed now.

## B. Summary of Key Recommendations

This report makes a number of recommendations for improvement of HUD's administrative enforcement and compliance activities. These recommendations can be loosely grouped under five major categories:

- **The Administration, HUD, and Congress must improve the enforcement of disability rights guaranteed by the FHA and Section 504 of the Rehabilitation Act; ensure compliance by federal grantees; and make enforcement of disability rights laws a priority.**
- **The Administration, HUD, and Congress must ensure that current and future HUD budgets are increased so that adequate resources are provided for the enforcement of housing-related civil rights laws and for ensuring compliance by federal grantees.**
- **HUD must provide better guidance on the meaning of housing-related disability civil rights laws, including the FHA and Section 504, and must dramatically improve its collection of data about enforcement and compliance activities.**
- **HUD must improve its identification and dissemination of best practices concerning education, enforcement, and compliance activities.**

- **The Administration, Congress, and HUD (including its Office of Disability Policy and a National Consumer Advisory Committee) must work together to regain public trust in governmental enforcement and compliance activities.**

Detailed recommendations are summarized in Appendix I at the end of this report. But it is clear that prioritization among the many recommendations made for improvement requires, first and foremost, increased attention to and support of enforcement activities by our country's leadership. The degree of the deficiencies in many, if not most, aspects of the government's enforcement of these civil rights laws is so startling and so significant that change must be led from the very top levels of the Federal Government.

The next most significant group of recommendations focuses on addressing the lack of resources for HUD's civil rights enforcement activities. Without adequate resources, laws will not be effectively enforced. The absence of adequate numbers of staff, reliable funding streams for two statutorily created programs designed to advance enforcement, training and support funds, and data and technology funds have demonstrably hampered enforcement efforts in the past years.

HUD must gather, organize, and make available more information about the provisions of these laws and their interpretations and applications. Increased resources and funding could allow development of education, outreach, training, and technical assistance programs that would serve people protected against discrimination and particularly people with disabilities, housing providers, and others covered by the laws; HUD's own staff and program operations; and the general public. Increased education can both prevent discriminatory practices and reach victims of discrimination to advise them about their rights. Old and new cases, decisions, and interpretations can enable more effective enforcement as well as reducing or preventing discrimination.

HUD has undertaken positive enforcement and compliance activities during the period studied in this report, as have private fair housing groups and state and local enforcement agencies. The absence of effective systems to identify and replicate these best practices remains a major barrier to ongoing improvements in enforcement and compliance.

While following the recommendations described above should dramatically improve HUD's enforcement and compliance work, HUD must finally undertake specific actions that will help regain public trust in its work. The deficiencies that this report identifies have increased the reluctance of many to seek assistance from HUD and has helped create barriers to effective use of enforcement and compliance tools available to the government. The perception that HUD does not do its job efficiently or reliably must be dispelled, first by improved performance and then by affirmative steps to tell the Administration, Congress, advocates, and the public about its good work.

### **1. Improving Enforcement of Disability Rights and Ensuring Compliance by Grantees**

The new Administration and Congress should take positive action to address the deficiencies that this report identifies. Leadership and attention to enhancing civil rights enforcement from the Administration and Congress are critical to improvements in enforcing the laws that are designed to correct discriminatory practices.

Key elements to congressional and Administrative involvement include supporting—by funding, staffing, and management oversight—the efforts of the FHEO to enforce the laws. The office that has the sole responsibility for administrative enforcement of the FHA has fewer staff now than it did in 1989, when the FHAA was passed. It has less than half the staff dedicated to compliance activities that it did in 1989. The following are key recommendations in this area:

- Congress and the Administration should provide enhanced oversight to assess major deficiencies in enforcement and compliance, including evaluating the reasons the absolute number of cause findings, especially those in disability cases, have declined so precipitously; why there are wide variations on these indicators among the regional offices; why so many cases have been allowed to remain so much longer than the 100 days Congress set as a benchmark for case conclusion; and the ways in which screening of complaints before they are investigated may deter the pursuit of valid complaints.

- The Administration should request and Congress should allocate sufficient funding to ensure that there are adequate and qualified staff available to perform the tasks necessary for efficient enforcement.
- Congress and the Administration should support management initiatives that will focus—through HUD’s Strategic Plan, Annual Performance Plan, Business and Operating Plan, and other management tools—on improvements in day-to-day oversight and management of enforcement and compliance activities.
- The Secretary of HUD should act expeditiously to support each of these recommendations and should support expanding and strengthening the existing Office of Disability Policy (and include a National Consumer Advisory Committee) to provide input, guidance, and direction to the Secretary and to all of HUD’s program offices.
- FHEO should develop a comprehensive and organized Section 504 compliance program that should include, at a minimum, short- and long-term strategies for enforcing Section 504, a review of the successful ways that FHEO has worked with other HUD program offices to accomplish Section 504 compliance goals, establishment of systems for communication within HUD and with consumers and recipients, and coordination of the work of technical assistance, enforcement, and compliance and development of a systematic plan for improving responses to Section 504 complaints.

## **2. Dedicating Adequate Resources to Enforcement and Compliance Activities**

This report concludes that the lack of sustained, consistent resource support has seriously and adversely affected HUD’s ability to enforce civil rights laws. Inadequate numbers of intake, investigative, and mid-managerial staff, judged by standards identified in an independent study of Title VIII of the Civil Rights Act of 1968 (the FHA) enforcement, have contributed to ineffective enforcement and serious lapses in compliance activities. Lack of funds and staff for effective management of the Fair Housing Initiatives Program and the Fair Housing Assistance Program have caused shortfalls in their intended roles. Lack of contract funds has had serious effects on



HUD's ability to train its own staff, to develop new enforcement initiatives, and to support even minimal education and outreach activities.

The following are key recommendations:

- At a minimum, HUD should staff its Office of Fair Housing and Equal Opportunity with enough staff to ensure that each investigator carries no more than 15 cases at any one time. In addition, HUD should significantly increase its staff with persons knowledgeable about Section 504 investigations and compliance to ensure that it can maintain an effective Section 504 program without doing harm to its FHA enforcement and vice versa.
- HUD's Office of Counsel should evaluate its staffing of the fair housing and Section 504 function and ensure that there are adequate numbers of staff attorneys to support those functions.
- As part of its comprehensive effort to more effectively enforce the FHA, HUD should make much more extensive use of Secretary-initiated complaints.
- HUD should provide staff and other supportive resources that will enable FHEO to engage in monitoring of conciliation agreements and Voluntary Compliance Agreements. HUD should refer cases of noncompliance to the Department of Justice (DOJ) when compliance cannot readily be achieved.

### **3. Improving Policy Guidance and Data Collection**

A thorough understanding of civil rights laws is a basic requirement for fair enforcement. Those working to improve compliance must understand the nuances of the law, be up-to-date with new judicial and policy developments, and be able to apply the law consistent with its interpretations. This report describes serious shortfalls in HUD's provision of guidance for its own staff, the absence of systematized sources for policy and legal information about interpreting the laws, and even the lack of basic information about when the law applies.

In addition, HUD's current inability to provide even basic data about the products of its funded programs and about its enforcement and compliance outcomes allows differing and inconsistent interpretations and thereby can adversely affect the public and its own operations.

The following are key recommendations:

- FHEO’s Title VIII enforcement handbook should be completed, updated, and treated as binding guidance for enforcement of the FHA for HUD as well as for state and local agencies enforcing laws that are equivalent to the FHA.
- FHEO should develop a similar comprehensive manual that addresses Section 504 enforcement and compliance.
- FHEO should develop an ongoing system to gather and make generally available its interpretations of the FHA and Section 504. The Office of Counsel should undertake, in conjunction with this effort, a similar project to compile legal opinions, interpretative documents such as letters and memoranda, and key court decisions. Such a system should permit ready access to ensure consistent application of the law, and FHEO and the Office of Counsel should consider establishing a method to make these interpretive decisions available publicly.
- Congress and HUD should fund a Civil Rights Training Academy that will provide basic and advanced skills training and substantive, legal, and technical training first for HUD staff, then for FHAP and FHIP.
- HUD’s Secretary should strengthen the existing Office of Disability Policy and provide it with adequate staff and access to review program operations throughout HUD for compliance with the FHA and Section 504 and to advise the Secretary about corrective actions.
- FHEO should reinstate its process for issuing staff and interpretative guidance through memos, notices, and other mechanisms about new and important civil rights enforcement and compliance issues and make its guidance available to the public.

#### **4. Improving Identification and Dissemination of Best Practices**

As earlier recommendations are implemented, FHEO is expected to be able to collect and provide to others information about best practices in enforcement and compliance. Existing strategies that accomplish outstanding results should be recognized and honored.

- FHEO should develop systems that will permit it to identify outcomes and best practices among its regional offices, state and local enforcement agencies, and

private fair housing groups and make those materials and products accessible to its own staff, to other organizations, and to the public, where appropriate. In particular, FHEO should identify working strategies for community outreach (particularly to people with disabilities), intake, case processing, investigative strategies, and management techniques among its own staff and replicate them in other offices. A similar system should be developed to highlight products of state and local agencies and grantees. FHEO should memorialize unique enforcement and technical assistance efforts, compliance strategies, and other products through distribution of materials, training, and development of national initiatives.

- FHEO should identify the successful approaches it has used to address issues of Section 504 noncompliance and identify the resources and support necessary to apply those approaches to a national compliance strategy. FHEO should make its strategies public and use them to encourage general compliance as well as conduct compliance reviews.
- HUD should continue to explore ways in which it can use FHIP and contract funds to support collaborative work between full service fair housing agencies and organizations representing persons with disabilities.
- HUD should review and incorporate as many of the recommendations made by the Occupancy Task Force mandated by congressional action as are applicable to HUD's current programs and activities. It should determine whether the recommendations should be applied to programs and initiatives that did not exist when the recommendations were made in 1994 and the most effective ways of applying them.

##### **5. Regaining Public Trust in HUD's Enforcement and Compliance Activities**

Without implementation of the leadership, resource, communication, and best practices initiatives that this report recommends, HUD will not be able to regain the trust of the public. With tools that can be developed to focus attention on the many significant accomplishments of FHEO, however, HUD will be able to highlight its contributions to ending discrimination. If Congress provides adequate funding, HUD performs its enforcement and compliance functions

effectively, and the systems are in place to identify successful work, HUD's achievements will speak for themselves.

- HUD should develop and implement a system to make its interpretations of civil rights laws generally available. HUD should provide adequate staffing and funding to support this effort.
- HUD should focus its resources on securing resolution of (and compensation in) a broad range of fair housing complaints rather than focusing on settlement of cases designed primarily to garner the most publicity for the agency.
- HUD should maximize the use of its World Wide Web site to inform the public that HUD's funding programs require recipients to comply with the FHA and Section 504.
- FHIP should move expeditiously to develop a comprehensive, organized system to identify outcomes, information, and materials developed as a result of the program and to make them available to the public, especially to organizations and individuals who deal with fair housing issues.

### C. Future Prospects

The Administration has taken some actions, and HUD has initiated some disability-related changes since October 1, 2000, the end date for the information covered in this report, that suggest support for future improvements in fair housing enforcement.

President George W. Bush, Vice President Richard Cheney, and Attorney General John Ashcroft have indicated support for fair housing enforcement and, in particular, for increased emphasis on disability rights. While it is too early to say whether this renewed support will make a significant difference in improving enforcement, it is a promising start.

HUD Secretary Mel Martinez has demonstrated his recognition of the importance of disability rights early in his tenure by meeting with several major disability rights organizations. He has also taken steps to implement several key aspects of President Bush's New Freedom Initiative, designed to assist Americans with disabilities by increasing access to assistive technologies and promoting increased access to community life. Among the President's

initiatives are implementation of the American Homeownership and Economic Opportunity Act of 2000, which provides opportunities for Section 8 voucher holders, including people with disabilities, to use those funds for down payment assistance in the purchase of a home.

The lack of management focus and limited staffing and resources remain critical problems in fair housing enforcement. Secretary Martinez's expressed commitments to staffing realignments and increases in management oversight and the use of technology to improve HUD's activities show promise for future enhancements of fair housing work because they have the potential to address problems identified in this report.

HUD has reported that it has engaged in a variety of initiatives to enforce the FHA's design and construction requirements, including completing a review of model building codes and developing, with others, changes to the International Building Code to develop a stand-alone document that publishes access standards for housing. HUD has let a \$1 million contract to develop a new training curriculum to provide national training on the FHA's accessibility requirements to a wide audience of builders, developers, architects, and advocates consistent with congressional direction in the FY 2001 budget report language. If Congress approves funding, this project is anticipated to provide accessibility training and technical assistance in an organized way. HUD's Office of Fair Housing and Equal Opportunity also reported that it has conducted six new training activities on a variety of accessibility issues, including a session for the National Association of Attorneys General on access issues and one for BANC One on tax credit housing, with particular emphasis on accessibility and Section 504, as well as more general sessions in Honolulu, Hawaii; Providence, Rhode Island; Pinellas County and Clearwater, Florida; and Maryland. In addition, HUD has announced that it plans to conduct a self-evaluation, as required by Section 504, in FY 2001.

FHEO has advised NCD that it intends to revise the HUD Strategic Plan to include the following language: "Enhance Section 504 enforcement efforts through increased guidance and technical assistance to field staff; increase compliance/monitoring activities; and coordinate such efforts within HUD and other Federal agencies." FHEO has also advised NCD that it intends to revise its FY 2002 Annual Performance Plan (APP) to provide specific measures and indicators to reduce housing discrimination against people with disabilities and that it will "incorporate

compliance strategies to specifically address Title VI/Section 504 compliance reviews for people with disabilities in the FY 2003 APP.”

These are worthy activities. As detailed in this report, however, much more needs to be done. HUD needs to work continuously with its various stakeholders to ensure that management and program reforms recommended in this report are implemented. HUD needs to work alongside NCD as part of this process. HUD also needs to ensure that its work in this regard incorporates the knowledge generated by the Interagency Council on Community Living, as well as the groundbreaking work being conducted around the Olmstead Initiative by the Department of Health and Human Services. It is time to restructure fair housing.

## SECTION III

### The Fair Housing Act and Section 504: What Congress Intended

#### A. The Fair Housing Act

##### 1. Passage of the Law

While Congress did not prohibit disability discrimination in housing until 1988, it is important to understand the genesis of the antidiscrimination effort that resulted in the passage of the FHA in 1968. The structure and limitations of the FHA provided important lessons to Congress as it substantially revised the law in 1988.

Responding to the African-American civil rights struggle, the urban riots of 1967, and the release of the Kerner Commission report, the 90th Congress considered legislation that would extend the protections of the Civil Rights Act of 1964 to the realm of housing. The assassination of Dr. Martin Luther King Jr. on April 4, 1968, provided the final impetus to move the legislation forward. Final congressional approval came on April 11, 1968, and President Lyndon Johnson signed the bill into law on April 22, 1968. The FHA, also known as Title VIII of the Civil Rights Act of 1968, prohibited discrimination on the basis of race, color, religion, and national origin.

The FHA provides that “[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”<sup>1</sup> President Johnson reiterated this theme during the bill signing ceremony when he said, “Now, with this bill, the voice of justice speaks again. It proclaims that fair housing for all—all human beings who live in this country—is now part of the American way of life.” Despite this lofty prose, it would be 20 years before Congress extended protection to people with disabilities.

By its terms, the FHA applied to a broad range of discriminatory behavior, including the following:

- Refusing to sell, rent, negotiate for, “or otherwise make unavailable or deny” a dwelling.

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<sup>1</sup> 42 U.S.C. §3601.

- Discriminating in the “term, conditions, or privileges of a sale or rental” of a dwelling or in the “provision of services or facilities in connection therewith.”
- Making or publishing any discriminatory statement in regard to a sale or rental.
- Misrepresenting the availability of a dwelling.
- Inducing a person to sell or rent any dwelling by representations about the presence of members of a protected class in the neighborhood.
- Discriminating in the access to real estate services.
- Discriminating in housing financing or in financing-related transactions.

42 U.S.C. §3604.

But the FHA’s original enforcement scheme was weak. While HUD, state, and local human rights agencies were given the power to hold administrative hearings, they had the power only to investigate and seek to conciliate differences between the parties. Private litigation was authorized in federal courts,<sup>2</sup> but the relief was limited. Parties could only receive injunctive relief, actual damages, and not more than \$1,000 in punitive damages. An award of attorney’s fees was permitted only where the court determined that a plaintiff was unable to hire an attorney. As a consequence, individual victims of discrimination often found it difficult to stop discriminatory practices and to collect damages.

## **2. Legislative History of the Fair Housing Amendments Act of 1988**

Soon after passage of the FHA, efforts began in Congress to strengthen its enforcement provisions and to expand its coverage to other “protected classes.” After hearing significant testimony about discrimination on the basis of gender, Congress amended the FHA in 1972 to include “sex” as a protected class. Also beginning in the early 1970s, Congressional oversight hearings highlighted how the FHA’s weak enforcement mechanism frustrated its lofty purposes.<sup>3</sup>

In 1978, Congress considered legislation to give HUD greater enforcement power under the FHA, and in 1980, a bill toughening enforcement and expanding coverage to people with

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<sup>2</sup> In addition, the Attorney General was given authority to file lawsuits to halt any “pattern and practice” of discrimination, but this authority was used rarely prior to 1988.

<sup>3</sup> See *Federal Government’s Role in the Achievement of Equal Opportunity in Housing: Hearings before the Civil Rights Oversight Subcommittee of the House Committee on the Judiciary*, 92nd Cong., 1st and 2nd Sess. (1972).



disabilities passed in the House of Representatives, but fell prey to a filibuster in the Senate. For most of the next decade, the Administration and Senate leadership opposed comprehensive overhaul of the FHA and no legislation moved forward.

As early as 1983, bipartisan agreement began to form that HUD needed greater powers to enforce the FHA. In his message transmitting fair housing legislation to the Congress, President Ronald Reagan said:

Since its passage, however, a consensus has developed that the Fair Housing Act has delivered short of its promise because of a gap in its enforcement mechanism.

The gap in enforcement is the lack of a forceful backup mechanism which provides an incentive to bring the parties to the conciliation table with serious intent to resolve the dispute then and there. When conciliation fails, the Secretary has no place to go. In those few cases where good will is absent, the exclusive reliance upon voluntary resolution is, in the words of former Secretary Carla Hills, an “invitation to intransigence.”

Reform of the Fair Housing Act is a necessity acknowledged by all.<sup>4</sup>

In early 1987, with bipartisan support, the Fair Housing Amendments Act of 1987 was introduced in the House (H.R. 1158) and Senate (S. 558). After hearings, the House Judiciary Committee approved an amended version of the legislation on April 27, 1988.<sup>5</sup> The chief obstacle to passage concerned the expansive use of HUD administrative hearings as a means of enforcing the rights protected under the FHA. Some scholars believed that such administrative hearings would deny the Seventh Amendment right to a jury trial.<sup>6</sup>

On the House floor, Rep. Hamilton Fish (R-NY), one of the bill’s chief sponsors, offered a compromise on the enforcement issue that had been agreed to by civil rights leaders and the

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<sup>4</sup> U.S. House of Representatives, Committee on the Judiciary, *Report 100-711: The Fair Housing Amendments Act of 1988*, 100th Cong., 2nd Sess. (1988) (hereafter, House Report) reprinted at 1988 *U.S. Code Cong. & Admin. News* 2173, 2177–78, quoting Message from President Reagan transmitting the Proposed Fair Housing Amendments Act of 1983, July 12, 1983.

<sup>5</sup> The most authoritative source of legislative history of the FHAA is the House Report.

<sup>6</sup> See House Report, p. 2206.

National Association of Realtors.<sup>7</sup> Under the amendment, complainants and respondents in the HUD administrative process would have the option of removing a case to federal court, thereby preserving the right to jury trial. With this obstacle cleared, the bill passed on June 29, 1988, by a vote of 376-23. The Senate passed a similar version of the legislation on August 2, 1988, by a vote of 94-3. By September 13, 1988, with final differences reconciled, the Fair Housing Amendments Act was signed into law by President Reagan.

### **3. Expanding the Fair Housing Act to Cover Disability and Familial Status**

After nearly 20 years of debate, the FHAA expanded the original law to prohibit discrimination on the basis of disability<sup>8</sup> and “familial status.”<sup>9</sup> These new “protected classes” are entitled to the same level of protection from discrimination as race, color, religion, national origin, and sex.

The FHAA’s substantive additions are meant to protect people with disabilities from pervasive discriminatory practices that excluded them from large segments of the residential housing markets. The FHAA was “a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream.”<sup>10</sup>

The FHAA’s definition of disability is quite broad:

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<sup>7</sup> See 134 *Cong. Rec.* H4605-06, H4675-79 (1988).

<sup>8</sup> The Fair Housing Amendments Act of 1988, PL 100-430, codified at 42 U.S.C. §3601 et seq., prohibits, inter alia, discrimination on the basis of “handicap.” Other disability rights laws, such as the Rehabilitation Act of 1973 and the Americans with Disabilities Act, use this same definition for the term “disability.” Because of the expressed preference of people with disabilities for this latter term, this report will use “disability” instead of “handicap,” except where quoting directly from a statute, regulation, or court decision.

<sup>9</sup> Congress provided the following definition: “‘Familial status’ means one or more individuals (who have not attained the age of 18 years) being domiciled with—

- (1) a parent or another person having legal custody of such individual or individuals;
- or
- (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.” 42 U.S.C. §3602(k).

<sup>10</sup> *Helen L. v. DiDario*, 46 F.3rd 325, 333 n. 14 (3rd Cir.1995) (quoting House Report, p. 2179).

“(h) ‘Handicap’ means, with respect to a person—

- (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities,
- (2) a record of having such an impairment, or
- (3) being regarded as having such an impairment,

but such term does not include current, illegal use or addiction to a controlled substance as defined in section 802 of Title 21.”

42 U.S.C. §3602.

This definition includes mental illness, developmental disabilities, physical impairments, persons who test positive for HIV, persons who have AIDS, alcoholics, and persons recovering from addiction to an illegal drug as long as they are not currently using illegal drugs.

In addition to prohibiting discrimination on the basis of disability, the FHAA imposes three other obligations: reasonable accommodation, reasonable modification and design, and construction accessibility requirements.

The FHAA requires housing providers to make reasonable changes, or accommodations, in rules, policies, practices, or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. Reasonable accommodations may be necessary when someone is applying for housing, during tenancy, or to prevent eviction.

An accommodation can be requested at any time and is considered reasonable if it is practical and feasible and granting it will not impose an undue financial and administrative burden on the housing provider.<sup>11</sup> It is clear, however, that providers may have to absorb some

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<sup>11</sup> As a reasonable accommodation for people with disabilities, courts have required waivers in leases, contracts, rules, ordinances, restrictive covenants, zoning codes, and otherwise reasonable rules of many types when necessary to accommodate a disability. Examples of lease rules that courts have waived include the first-come, first-served rule for assignment of parking spaces; rule against pets; and lease provisions for charges and penalties. In requiring a waiver of rules, the FHA can also oblige a landlord to spend or forgo money. Reasonable accommodation concerning group homes can include the waiver of otherwise applicable zoning restrictions.

cost or administrative inconvenience in providing accommodations.<sup>12</sup> Accommodations that would result in a “fundamental alteration,” however, are not required.<sup>13</sup>

The FHAA also requires owners to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford the person full enjoyment of the premises. A landlord may, where it is reasonable to do so, make permission for a modification conditional on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.<sup>14</sup>

Finally, the FHAA requires that most multifamily buildings that are first occupied after March 15, 1991, meet certain adaptability and accessibility requirements.<sup>15</sup> Covered buildings (ground floor units in a building without an elevator and all units in a building served by an elevator) must include the following:

- A building entrance that is wide enough for a wheelchair and accessed via a route without steps.
- Accessible public and common-use areas.
- Doors that allow passage by a person using a wheelchair.
- An accessible route into and through all covered units.
- Light switches, thermostats, and other environmental controls in accessible locations.
- Reinforcements in bathroom walls for later installation of grab bars.
- Kitchens and bathrooms that allow a wheelchair to maneuver about the space.

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<sup>12</sup> See, e.g., *United States v. California Mobile Home Park*, 29 F.3rd 1413 (9th Cir. 1993); *Shapiro v. Cadman Towers*, 51 F.3rd 328 (2nd Cir. 1995).

<sup>13</sup> A housing provider can also defend against an accommodation that would result in a “fundamental alteration” of the provider’s business. For instance, the FHAA would probably not require a landlord to pay for a social worker or home-care worker to help a tenant live independently if the housing does not normally provide such assistance.

<sup>14</sup> 42 U.S.C. §3604(f)(3)(A).

<sup>15</sup> 42 U.S.C. §3604(f)(3)(C).

#### 4. The Administrative Enforcement Process

A victim can file an administrative complaint with HUD;<sup>16</sup> these complaints must be filed within one year of the alleged violation. Under the FHA, HUD can delegate its enforcement authority to a state or local agency whose laws are “substantially equivalent” to the FHA. As a result, HUD refers most administrative complaints to such entities, which are also known as FHAPs, because they are recipients of federal enforcement funding under the Fair Housing Assistance Program.<sup>17</sup> The time frames for filing complaints with FHAP agencies may be as short as 180 days.

As amended in 1988, the FHA provides that any person aggrieved by a discriminatory housing practice may file a complaint with HUD. The HUD Secretary is required to complete an investigation of such complaints “within 100 days after the filing of the complaint...unless it is impracticable to do so.”<sup>18</sup> Once these complaints are deemed filed and “perfected,”<sup>19</sup> an investigation ensues and the complaint is processed to conclusion in one of several ways: (1) administrative closure; (2) pursuant to a conciliation or settlement between the complainant and respondent; (3) a finding that no reasonable cause existed to believe discrimination occurred (hereafter, a “no cause” case); or (4) a finding of reasonable cause to believe discrimination had occurred (hereafter, a “cause” case).

By statute, HUD and FHAPs must attempt to bring complainants and respondents together in an attempt to conciliate fair housing complaints.<sup>20</sup> Although such conciliation is voluntary (and either side may refuse to conciliate without prejudicing its case), many parties

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<sup>16</sup> 42 U.S.C. §3612.

<sup>17</sup> See Table III-1 for states and localities with substantially equivalent agencies.

<sup>18</sup> 42 U.S.C. §3610(a)(1)(B)(iv).

<sup>19</sup> Before HUD begins to investigate a case, it must make the following determinations:

- The complaint was filed in a timely manner.
- The complainant has “standing” or the legal right to sue under the FHA.
- The respondent and dwelling involved are covered under the FHA.
- The issue involved and the basis of the alleged discrimination constitute illegal discrimination as defined by the FHA.

*Title VIII Complaint Intake, Investigation, and Conciliation Handbook* (8024.1), Chapter 3.

<sup>20</sup> 42 U.S.C. §3610(b).

choose this route because it is comparatively inexpensive and quick compared with an administrative hearing or litigation. HUD devotes a chapter of its intake manual to the mechanics of conciliation.<sup>21</sup>

If conciliation fails, HUD (or the FHAP) continues its investigation and eventually must determine whether there is reasonable cause to believe that discrimination has occurred.

If HUD finds cause, the Secretary “shall...immediately issue a charge on behalf of the aggrieved person...,”<sup>22</sup> who then has the option to have the matter decided by an administrative law judge or by a federal court. In either setting, the complainant is entitled to representation by a government lawyer.

After a contested hearing (before an administrative law judge or a federal court), a respondent who is found liable for discrimination can be ordered to stop illegal activity, pay compensatory damages, and pay punitive damages (in a court proceeding) or a civil penalty of up to \$55,000 (in a proceeding before an administrative law judge).

## **5. Other Enforcement Options**

In addition to strengthening administrative enforcement by HUD and FHAPs, Congress provided “an improved system for civil action by private parties and the Attorney General.”<sup>23</sup> The FHAA extended the statute of limitations from 180 days to two years and made it clear that victims of discrimination were not required to go through the administrative complaint process or to exhaust administrative remedies. The FHAA also removed the \$1,000 limit on the award of punitive damages because Congress “believe[d] that the limit on punitive damages served as a major impediment to imposing an effective deterrent on violators and a disincentive for private persons to bring suits under existing law.”<sup>24</sup>

The FHAA, while continuing the Justice Department’s “pattern and practice” jurisdiction, also gave the Attorney General authority to commence zoning or other land-use cases referred by

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<sup>21</sup> *Title VIII Intake, Investigation, and Conciliation Handbook* (8024.1), Chapter 11.

<sup>22</sup> 42 U.S.C. §3610(g)(2)(A).

<sup>23</sup> House Report, p. 2194.

<sup>24</sup> House Report, p. 2201 (citation omitted).

HUD, to commence breach-of-conciliation cases referred by HUD, and to enforce subpoenas. Congress also gave the Attorney General the power to seek monetary damages for aggrieved parties and to seek civil penalties up to \$100,000.

## **6. Private Fair Housing Enforcement Agencies**

Private fair housing enforcement agencies have played an increasingly important role in vindicating the rights protected by the Fair Housing Act. Some, but not all, of these groups are supported financially through the Fair Housing Initiatives Program (FHIP), which was established in 1987 to provide funding to public and private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. Through four distinct categories of funding, FHIP supports projects and activities designed to enhance compliance with the FHA and substantially equivalent state and local laws prohibiting housing discrimination. These activities include programs of enforcement, voluntary compliance, and education and outreach.

The day-to-day work of private fair housing groups involves education and outreach, complaint intake, assessment, investigation, testing, conciliation, and, in some cases, litigation. The existence of such organizations and their willingness to engage in aggressive advocacy has been a significant factor in protecting the rights of people affected by discriminatory practices. One measure of their effectiveness is the amount of compensation won for victims of discrimination. During the 1990s, these groups secured well over \$160 million in compensation through FHA litigation.<sup>25</sup>

## **B. Section 504 of the Rehabilitation Act of 1973**

### **1. Initial Passage of the Law**

In 1973, Congress reenacted the Rehabilitation Act,<sup>26</sup> which had been the federal legislative vehicle for providing rehabilitation services to people with disabilities. The law was first enacted to help veterans returning from World War I, and Congress continued to expand and

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<sup>25</sup> National Fair Housing Alliance and Fair Housing Center of Metropolitan Detroit, *\$160,000,000 and Counting*, June 24, 2000.

<sup>26</sup> 29 U.S.C. §794.

amend the law to address more than the health care needs of disabled veterans.<sup>27</sup> People with disabilities had engaged in civil disobedience during the Depression; they had established self-help groups during the 1950s; and organizations of parents created diagnosis-identified organizations, such as the United Cerebral Palsy Association, and the Muscular Dystrophy Association, in the 1940s and 1950s. Pressure from these groups resulted in the creation of a Federal Bureau for the Handicapped, which, in 1970, began providing funds to train special education teachers.<sup>28</sup>

During the civil rights activity of the 1960s and 1970s, disability activists adopted and adapted civil rights philosophy to their own lives and began an independent living movement that identified barriers as civil rights violations rather than medical problems. In 1973, Congress decided to address negative public attitudes toward people with disabilities by adding civil rights protections to the Rehabilitation Act. They modeled the protections on the 1964 Civil Rights Act.<sup>29</sup> The notion wasn't entirely new because, in the previous year, Senator Hubert Humphrey and Representative Charlie Vanik had tried to convince their colleagues to include the word "handicapped" in Title VI of the 1964 Civil Rights Act.<sup>30</sup>

President Gerald Ford finally agreed to a revised version of the bill after several failed attempts to win support from his as well as Richard Nixon's Administration, although he remained convinced that the cost of the programs would be excessive. The 1973 Rehabilitation Act included language that was nearly identical to that in the Civil Rights Act: "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

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<sup>27</sup> Joseph P. Shapiro, *No Pity*, Times Books, New York: 1993, pp. 61 ff.

<sup>28</sup> *Ibid.*, p. 64.

<sup>29</sup> Richard Scotch, *From Goodwill to Civil Rights*, p. 51. Temple University Press, Philadelphia, 1984.

<sup>30</sup> Edward D. Berkowitz, *Disabled Policy: America's Programs for the Handicapped*, Cambridge University Press, New York, 1987, p. 212.



## 2. Congressional Intent

After Congress had added civil rights language to the Rehabilitation Act in 1973, it held hearings and amended the Act extensively in 1974. One of the most important amendments was to expand the definition of those covered by the law from those whose condition caused “a substantial handicap to employment” to a much broader definition of disability that was not limited to employment.<sup>31</sup> That definition was reflected in Health, Education, and Welfare’s (HEW’s) regulations:

Handicapped persons means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.<sup>32</sup>

Another amendment resulted from the New York City Welfare Department’s refusal to make its buildings and programs accessible and usable by welfare beneficiaries with disabilities. The Welfare Department said it had followed HEW’s advice and modeled itself on the Social Security Administration. Both agencies were in buildings with stairs, had no materials in braille or on tape, and did not provide clients with sign language interpreters.

The Social Security Administration’s position was that Section 504 applied only to recipients of federal funds, not to the Federal Government itself. President Jimmy Carter responded by submitting legislation to Congress that resulted in the 1978 amendment to Section 504,<sup>33</sup> making its prohibitions equally applicable to entities that were “assisted by federal financial assistance” and that were “conducted by an Executive agency or by the United States Postal Service.”

The 1978 amendments also responded to critics who complained that Section 504 went too far. As a result, the 1978 amendments preclude coverage of those whose current use of

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<sup>31</sup> Susan Stefan, *Unequal Rights: Discrimination Against People with Mental Disabilities and the Americans with Disabilities Act*, American Psychological Association, Washington, DC, 2001, pp. 86.

<sup>32</sup> 45 CFR 84.3(j).

<sup>33</sup> See HUD memorandum from Robert Kenison to Lawrence Simons, Request for Opinion on 1978 Rehabilitation Act Amendments, March 13, 1980.

alcohol or drugs prevents the person from performing the duties of the job in question or whose employment would constitute a threat to the property or safety of others.

In addition, the 1978 amendments added several sections to the Rehabilitation Act. Section 505 makes the enforcement provisions of Title VI of the Civil Rights Act of 1964 applicable to Section 504. It permits attorneys' fees in court proceedings. Section 506 makes technical assistance for the removal of architectural, transportation, and communication barriers available, as well as making federal funds available for the removal of such barriers. Section 507 creates the Interagency Coordinating Council to oversee and coordinate federal agency activities. The agencies named are Education, Health and Human Services, Labor, Department of Justice, Office of Personnel Management, Equal Employment Opportunity Commission, and the Access Board.

Congress amended Section 504 again in 1985 to clarify that, contrary to the Supreme Court decision in *Atascadero v. Scanlon*,<sup>34</sup> Congress did intend that states could be sued under the Rehabilitation Act, and that they were not protected by 11th Amendment immunity. In 1987, Congress amended the law once again through the Civil Rights Restoration Act.<sup>35</sup> This amendment, also in response to a Supreme Court decision,<sup>36</sup> clarified that the definition of a "recipient of federal funds" included more than the business offices that handled the funds; rather, all the offices and programs of the recipient entity had to comply with the law. Thus, a mayor's Office of Housing that received federal funds would be required to comply with Section 504 through its housing development, redevelopment, code inspection, and other activities.

### **3. History of HUD's Section 504 Regulations**

In spite of Section 504's passage in 1973, HEW's publication of model regulations in 1977, and the NCD's repeated recommendations to HUD that it issue its own Section 504

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<sup>34</sup> 473 U.S. 234 (1985).

<sup>35</sup> 29 U.S.C. 794(b)(1).

<sup>36</sup> *Grove City College v. Bell*, 465 U.S. 555 (1984).

regulations,<sup>37</sup> HUD did not issue final regulations until June 1988. HUD was the last Executive agency to issue final regulations, and its ability to enforce the rights of individuals with disabilities in the housing and community development fields was compromised by their absence. The history of the regulations began simply enough, but quickly became mired in politics and philosophical disputes.

Pursuant to Executive Order 11914, HEW published its model Section 504 regulations in 1977. The Executive Order not only required HEW to publish the regulations, but it required all federal agencies to issue their own regulations expeditiously. HUD acted quickly and published its proposed rule for public comment in 1978. The regulations were still in their proposed form when President Reagan entered office in 1980.

One of the Reagan Administration's first acts was to require all agencies whose Section 504 regulations were pending to withdraw them. In July 1981, HUD published a Notice in the *Federal Register* notifying all recipients of HUD funds that they were to comply with Section 504. Because HUD had no regulations, the Notice advised recipients to rely on HEW's regulations for guidance.<sup>38</sup> In August 1981, HUD published a Notice in the *Federal Register* announcing that it was revising the proposed rules and they would be published soon.<sup>39</sup> HUD published this Notice because Paralyzed Veterans of America had sued Secretary Samuel Pierce for HUD's failure to issue regulations.

Neither of these Notices helped HUD enforce Section 504. In fact, some field offices told complainants that HUD could not investigate their complaints because of the absence of regulations, while other offices conducted investigations and negotiated relief for complainants. FHEO ceased conducting compliance reviews when HUD's Office of General Counsel advised it not to because the Department would not enforce the findings from complaint investigations

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<sup>37</sup> See, e.g., *Toward Independence*, National Council on the Handicapped, February 1986, pp. F-18ff.

<sup>38</sup> 46 *Fed. Reg.* 37088 (July 17, 1981).

<sup>39</sup> 46 *Fed. Reg.* 41716 (August 17, 1981).

without final regulations.<sup>40</sup> FHEO urged the Office of General Counsel to request an opinion from the Department of Justice as to HUD's authority to enforce Section 504. By a letter dated February 5, 1987, the Department of Justice confirmed that HUD did have the authority to conduct and enforce the findings resulting from both complaint investigations and compliance reviews, by relying on HUD's Title VI regulations for administrative hearings; by referring cases to the Department of Justice when the parties were unwilling to participate in administrative hearings; and by relying on the Health and Human Services (HHS, formerly HEW) Section 504 regulations.<sup>41</sup>

Meanwhile, HUD drafted and attempted to publish revised Section 504 regulations. On May 6, 1983, HUD published Interim Final 504 Regulations, which it republished on May 18, to become final on June 15. These regulations drew immediate and vociferous criticism for insulting people with disabilities, for being inconsistent with the model regulations, and for skirting the public comment requirements of the Administrative Procedures Act. A group of twenty public interest, religious, labor, and civil rights organizations met with HUD representatives and described the most egregious problems they found with the regulations. The groups also complained to the White House, and HUD announced on June 15, 1983, that the regulations would be treated as proposed rules and that it would accept public comments until September 6.<sup>42</sup>

Of the 1,258 comments that HUD received, only 11 were favorable. HUD sent a revised version of the rules to the Department of Justice, where the Civil Rights Division raised further

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<sup>40</sup> See, Abstract of Secretarial Correspondence, To: The Secretary, From: Antonio Monroig, Assistant Secretary for Fair Housing and Equal Opportunity, Subject: Action – Implementation of Secretarial Decision to Place All Section 504 Responsibilities in the Office of FHEO, Action By: ASAP or 8/19/83; Memorandum from Judith Brachman, Assistant Secretary, FHEO, and J. Michael Dorsey, General Counsel, For: All Regional Directors, OFHEO and All Regional Counsel, Subject: Section 504 of the Rehabilitation Act of 1973, (undated, probably March 1987); and Memorandum from Alan Greenwald, Deputy Under Secretary for Intergovernmental Relations, For: J. Michael Dorsey, General Counsel, Subject: Section 504 Analysis and Comment, May 22, 1987.

<sup>41</sup> Letter from William Bradford Reynolds, Assistant Attorney General, Department of Justice, to Stuart Sloame, Deputy General Counsel, HUD, February 5, 1987.

<sup>42</sup> Memorandum from Laurence D. Pearl, Director, Office of Compliance, to William Wynn, Deputy Assistant Secretary, FHEO, "Section 504 in FHEO—Past, Present and Future," July 22, 1983.

questions.<sup>43</sup> Finally, five years later, after Congress had revised the FHA to prohibit discrimination based on disability (among other changes) and after HUD had begun drafting regulations to implement the law, HUD published final Section 504 regulations on June 2, 1988.

Among the most contentious of the proposed regulations was one that permitted housing providers and managers to ask medical and social service staff whether a housing applicant with disabilities would be likely to diminish other tenants' enjoyment of the premises by adversely affecting their health, safety, or welfare or the physical environment or financial stability of the assisted housing. These questions did not apply to applicants without disabilities. Another section announced that HUD would prohibit only intentional discrimination, in spite of HEW, Department of Justice, and Supreme Court<sup>44</sup> guidance that Section 504 prohibited unintentional discrimination as well. Finally, while HUD officials were still insisting that 5 percent accessibility for new construction was adequate, Congress had already required 100 percent adaptability in new construction in the FHA.<sup>45</sup>

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<sup>43</sup> *Toward Independence*, p. F-19.

<sup>44</sup> *Alexander v. Choate*, 105 S.Ct. 712 (1985).

<sup>45</sup> The legislative history of the FHA describes the difference between FHA accessibility requirements and those of Section 504 as follows:

Accessibility requirements can vary across a wide range. A standard of total accessibility would require that every entrance, doorway, bathroom, parking space, and portion of buildings and grounds be accessible . . . . The Committee does not intend to impose such a standard. Rather, the Committee intends to use a standard of "adaptable" design, a standard developed in recent years by the building industry and by advocates for handicapped individuals to provide usable housing for handicapped persons without necessarily being significantly different from conventional housing. This subsection [840(f)(C)] sets forth certain features of adaptive design to be incorporated in new multifamily housing construction. Housing Committee on the Judiciary, Report 100-117, June 17, 1988, p. 26.

#### **4. HUD's Final Section 504 Regulations**

While HUD's final Section 504 regulations differ from HEW's model regulations, they are more similar than different. HUD removed many of the provisions from the proposed rule that caused the loudest uproar. The final regulations do not permit housing providers to determine if applicants or tenants are capable of "independent living."<sup>46</sup> Further, the regulations prohibit both intentional discrimination and discrimination by effect.

Unfortunately, HUD retained the 5 percent accessibility standard for new construction and imposed only limited responsibility on recipients who contract with others for the provision of housing. Thus, for example, public housing authorities were not required to ensure that their rental subsidies entitle tenants in private housing to the same level of accommodation as tenants living in public housing property. This created an internal inconsistency in the regulation, because the provision that HUD adopted from the HEW model prohibited recipients, such as housing authorities, from entering into contracts that have the effect of "subjecting qualified handicapped persons to discrimination on the basis of handicap."<sup>47</sup>

#### **5. The Administrative Enforcement Process**

HUD adopted the Title VI administrative enforcement process, as the HEW regulations had also done. Section 8.56 describes the method by which HUD may review a recipient's compliance with the regulations. HUD may initiate compliance reviews without reason, on a periodic basis, or because of a complaint or any evidence that the recipient is not following the regulations. HUD must notify the recipient of the compliance review, the timing of the on-site visit, which programs will be reviewed, and when the recipient will have an opportunity to respond to any findings. In addition to FHEO investigations, Section 8.56 requires program grant officials to review the recipient's compliance with Section 504 in the normal course of the grant management. If the compliance review is prompted by information of noncompliance, the review shall be conducted promptly.

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<sup>46</sup> HUD 504 Regulations, Preamble, 53 *Fed. Reg.* 20216, 20218.

<sup>47</sup> 24 CFR 84.4(b)(4).

In 1996, HUD published regulations (24 CFR Part 180) that describe the agency's consolidated hearing procedures for all civil rights matters, including Section 504. Any person who believes that she or he has been subjected to discrimination may file a complaint or may ask a representative to file a complaint. Such a person is not a party in the proceeding but may file a motion to intervene within 50 days of the filing of a charge. Members of a class of people who believe they have been subjected to discrimination may file a complaint for the class. The complaint must be filed within 180 days of the act of discrimination, although this time limit may be waived for good cause, and the contents of the complaint, according to Section 8.56 8(5), may be minimal. Recent changes in the complaint intake system have retitled such complaints "claims," and complaints will be accepted only after FHEO conducts an initial interview with the "claimant." (See Fair Housing Act discussion in Section III for a fuller description of the intake process.)

HUD is to notify complainants and recipients within 10 days of its receipt of the complaint. Twenty days thereafter, HUD is to determine whether the agency will accept the complaint. FHEO is to notify both the respondent and the HUD award official of the allegations, so that the respondent may reply within 30 days after service of the charge. Whenever possible, HUD officials are to attempt to resolve complaints informally. Within 120 days of the receipt of the complaint and failure to resolve the complaint informally, FHEO is to issue a Letter of Findings (LOF). The LOF must describe the violation, the remedy, a notice that the final investigative report is available, and a right to respond to the LOF by any party within 30 days. HUD is to respond to comments by parties within 20 days, and the reviewing civil rights official has 60 days in which to sustain or modify the LOF.

If neither party requests that HUD review the LOF, HUD must send a letter of compliance or noncompliance to the parties and to the HUD award official within 14 days after the respondent has been notified of his or her right to review. HUD shall continue efforts to resolve the complaint informally, and any agreements that this process produces shall be memorialized in a Voluntary Compliance Agreement (VCA). The regulations also prohibit retaliation and intimidation against complainants. HUD will treat complaints about either as new complaints.

If a VCA is not possible, an administrative hearing must commence 120 days after the issuance of a charge. Federal rules of evidence apply at the hearing. The hearing is held before an administrative law judge (ALJ), who must issue his or her initial decision within 60 days of the hearing. An ALJ may award a range of benefits, which include the following:

- Ordering the respondent to pay damages (including damages caused by humiliation and embarrassment).
- Injunctive relief.
- A civil penalty to vindicate the public interest for each separate and distinct discriminatory housing practice. Civil penalties may not exceed \$11,000 for a first offense, \$27,500 for a second offense, and \$55,000 if the respondent has two or more prior offenses.

If the ALJ finds that the respondent is responsible for a housing-related hate act, the ALJ takes this into account in favor of imposing the maximum penalty. Such an act is described in Section 818 of the FHA as a discriminatory housing practice that constitutes or is accompanied and characterized by actual violence, assault, bodily harm, or harm to property; intimidation or coercion that has such elements, or the threat or commission of any action intended to assist or be a part of any such act. Of course, if the ALJ determines that the respondent did not violate the law, he or she must dismiss the charge.

The ALJ's initial decision becomes the final agency decision if the Secretary does not alter it within 30 days. The Secretary may affirm, modify, or set aside in whole or in part the ALJ's initial decision or remand the case for further proceedings. Any adversely affected party may file a motion with the Secretary asking for modification or for setting aside the ALJ's initial decision within 15 days after the ALJ issues it. A statement of opposition to such a petition for review is due 22 days after the ALJ's initial decision. If the Secretary chooses to remand the case, the ALJ must issue another initial decision on remand within 6 days of the Secretary's remand. HUD must publicly disclose each final agency decision.

If the ALJ's initial decision provides for suspension of, termination of, refusal to grant, or refusal to continue federal financial assistance, it must be approved by the Secretary. Reasonable attorney fees and costs may be awarded to the prevailing party (except that no such award may be



made to HUD if the agency is the prevailing party). Any party adversely affected by a final decision may file a petition for review in the U.S. Court of Appeals under 42 U.S. Code section 3612(i) within 30 days. Termination of or refusal to grant or to continue federal financial assistance is subject to judicial review.

If voluntary compliance is not possible, HUD may follow the procedures for terminating federal financial assistance. Other compliance methods, however, include referral to the Department of Justice with recommendations to proceed to litigation, initiation of debarment proceedings (which may result in a recipient becoming temporarily or permanently ineligible to receive HUD grants or contracts), and proceedings under state and local law (see Section 8.57).

As with all other civil rights statutes dependent on a link to federal funding, HUD may not terminate funding before a final attempt to resolve the complaint informally is exhausted; an express finding is made on the record, after a hearing; the Secretary has approved the termination; and the Secretary has notified the relevant House and Senate committees and has given them 30 days to review the proposed termination of funds.<sup>48</sup>

Special rules apply when HUD proposes to terminate Community Development Block Grant funds. In that case, HUD must notify the governor or the executive of the local government and ask him or her to attempt to secure compliance. HUD must provide this notice at least 60 days before suspending, refusing to grant, or terminating the HUD funds.

Either HUD or the recipient may request a hearing (see Section 8.58). Hearings will be held in Washington, D.C., by an ALJ. The respondent has the right to be represented by counsel. Title V controls the conduct of the hearing (see 29 U.S.C. Sections 554–557). Technical rules of evidence do not apply, but the parties may be required to produce documents, including exhibits, affidavits, depositions, and admissions (see 24 CFR Section 8.67).

The ALJ issues a recommended decision to the Secretary. Either party may file objections to the judge's decision with the Secretary. The Secretary then issues a final decision (see Section 8.69). The Secretary's final decision may require termination or denial of federal financial assistance or may impose other penalties. At any time, the Secretary may restore the recipient to

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<sup>48</sup> 24 CFR 180.680(c), referring to 24 CFR 1.8(c).

full eligibility to receive federal funds if the Secretary is satisfied that the recipient has brought or will bring itself into compliance (see Section 8.59).

Subpart E of the regulations elaborates on the practice and procedure for the hearings. All records are to be public. The general counsel is to be a party to all proceedings. The ALJ will accept amicus curiae participation, but not as a party. Complainants are not allowed to be parties but may participate as amici curiae and may, in all events, be present at the hearing (see Section 8.628).

## **C. The Role of Federal, State, and Local Agencies in the Fair Housing Act Enforcement Process**

### **1. Introduction**

From passage of the FHAA in 1988 through FY 1993, the number of HUD Title VIII complaints more than doubled, but the average age to closure of HUD cases rose only slightly, from 96 days in FY 1989 to 113 days in FY 1993. During the next two years, even as fewer complaints were being received, processing times skyrocketed. By FY 1995, the average age to closure of a HUD case was 269 days.

During FY 1996, HUD modified the way in which housing discrimination complaints were received by the agency. Acting on recommendations from PriceWaterhouse,<sup>49</sup> the agency instituted a new procedure, by which it accepts “claims” of discrimination from aggrieved parties. These claims do not mature into “complaints” until they contain sufficient information to allow HUD to commence an investigation. While some claims of discrimination are determined

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<sup>49</sup> Seven years after the FHAA became effective, and FHEO had some experience with handling fair housing complaints, Assistant Secretary Roberta Achtenberg commissioned a PriceWaterhouse “business process redesign” of the Title VIII investigation process. A team of senior FHEO staff, composed of Headquarters and HUB (regional HUD office) staff, worked closely with PriceWaterhouse to describe existing practices and conduct a “gap analysis” to determine what steps had to be taken to improve the complaint processing and investigation system. The resulting report, *Focused Enforcement: The Business Process Redesign of the Title VIII Housing Discrimination Investigation Process*, was submitted to HUD on March 8, 1996. Many of its recommendations, discussed in this report, were adopted by HUD, including the claims process. Many others—including staffing recommendations, caseload limits and processing deadlines—were not. The authors believe that the PriceWaterhouse report, although it is five years old, continues to provide important insights about inefficiencies in HUD’s processing and investigation of fair housing complaints, and that its recommendations are an important foundation upon which to rebuild public trust in FHEO’s enforcement efforts.

to be complete upon receipt, and therefore are accepted as complaints, beginning in FY 1996, the number of complaints received by HUD declined precipitously as the number of claims rose dramatically.

In the spring of 2001, acknowledging that the claims process had failed to improve quality or case processing times, HUD scrapped the claims process altogether.<sup>50</sup> In its place, HUD appears to be reverting to an older process of determining initial jurisdiction and developing allegations of discrimination into complaints.<sup>51</sup> Because the change in policy is relatively new and HUD has not provided Title VIII data beyond FY 2000, it is impossible to gauge the effect of this new approach.

## **2. The Claims Process**

In its 1996 Report to Congress, HUD described the claims process as follows:

For purposes of this report, the key change is that FHEO no longer regards every inquiry made as a “complaint” triggering a full-fledged investigation....[Initially], the case is considered a “claim” and undergoes some preliminary investigation involving only the complainant and independent sources of information. Many cases drop out at this “claim” stage for a variety of reasons. For instance, the complainant may provide information indicating that the matter is really a landlord-tenant dispute rather than a fair housing dispute. Cases which survive this “claim” stage are considered “complaints” and receive full investigations, which result in a determination by FHEO as to whether there is or is not reasonable cause to believe the [Act] was violated.<sup>52</sup>

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<sup>50</sup> Because of this on-again, off-again approach, comparison of complaint intake numbers from year to year is somewhat more difficult. From FY 1989 through FY 1995, HUD reported the number of complaints received and the means by which each was resolved. From FY 1996 through FY 2000, HUD created a category called “claims” that was not subject to the 100-day processing requirement, and many of these claims never received full investigations. Because HUD did away with the claims process in early FY 2001, a statistical “asterisk” is necessary to explain the impact of the claims process on HUD caseloads during the intervening period.

<sup>51</sup> Floyd O. May, Acting Assistant Secretary for FHEO, described the new policy in this way: “We are no longer processing ‘claims’ as a part of the complaint intake process. Our present policy is to examine allegations when they come into the department to ascertain if we have jurisdiction to receive and process the allegation as a housing discrimination complaint.” (Interview, March 2001.)

<sup>52</sup> 1996 Annual Report to Congress on Fair Housing Programs, p. 2.

The claims process was designed to streamline intake and to ensure that HUD devoted its scarce resources to cases that merited full investigation.<sup>53</sup> In addition to eliminating allegations that weren't covered by Title VIII, the claims process also screens out cases in which a claimant alleges discrimination but cannot establish one of the elements of jurisdiction.<sup>54</sup> In its first full year of operation (FY 1997), the new process had a dramatic impact: 69.5 percent of all closures were dismissed as claims.<sup>55</sup> That pattern has persisted in subsequent years: for FY 1998 through FY 2000, closures of claims represented 77 percent, 74 percent, and 71 percent, respectively, of all HUD closures.<sup>56</sup>

The claims procedure had the inherent possibility of delaying resolution of fair housing cases. Time spent processing a claim did not count toward the 100 days in which FHEO is

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<sup>53</sup> Until early 2001, HUD maintained the *On-Line Assess Process Manual*, a 25-page guide designed to walk the intake worker through the steps of the claims assessment process. The *Manual* says: "The Assess process requires a more comprehensive development of facts from a potential complainant and from nonrespondent sources than previously obtained. The BPR study performed by PriceWaterhouse noted the importance to effective enforcement of gathering information as early in the process as possible and of reducing the number of nonjurisdictional or nonmeritorious complaints so that limited investigative resources can be devoted to complaints that genuinely reflect a Fair Housing Act claim. This process should include not only an interview or interviews of a potential complainant but may include collection and analysis of documents from the complainant, gathering public information about a potential respondent without contacting the respondent, interviewing the complainant's witnesses and documenting those interviews, and so forth. It frequently, but not always, should include consultation with counsel. Essentially, it is like a mini- and preliminary investigation." *Manual*, p. 2.

<sup>54</sup> See Table IV-1.

<sup>55</sup> Michael H. Schill and Samantha Friedman, "The Fair Housing Amendments Act of 1988: The First Decade," *Cityscape*, Vol. 4(3)(1997), p. 65.

<sup>56</sup> See Appendix IV-1. After reviewing a draft of this report, HUD suggested that "[p]rior to late FY 1995, these claims cases would have been part of the HUD inventory...and were valid cases just like complaints....The growth of claims is simply because HUD stopped screening out cases and tracked all potential complaints, with many remaining as claims instead of complaints." The implication of this statement is that there is some numerical congruence between claims closed after FY 1996 and "administrative closures" prior to FY 1996. However, as data later in this report bear out, the claims closure rate (consistently at or above 70 percent) was nearly three times the administrative closure rate in FY 1994 and FY 1995.

mandated to complete its investigation.<sup>57</sup> As a result of concerns about the timeliness issue, in May 1997, FHEO established a new time frame of 25 days for assessing claims and determining whether they would be converted to complaints or dismissed. Unfortunately, staffing and management reductions at FHEO have meant that many housing field offices (HUBs), or regional offices created by HUD, are failing to complete the assess process on time.<sup>58</sup>

### **3. HUD Conducts Its Fair Housing Act Responsibilities Through 10 Regional Offices**

For purposes of administering its responsibilities under the FHA, HUD has designated 10 HUBs, or regional offices:

<b>Region 1: Boston</b>	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
<b>Region 2: New York</b>	New Jersey and New York
<b>Region 3: Philadelphia</b>	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia
<b>Region 4: Atlanta</b>	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Puerto Rico
<b>Region 5: Chicago</b>	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin
<b>Region 6: Ft. Worth</b>	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas
<b>Region 7: Kansas City</b>	Iowa, Kansas, Missouri, and Nebraska

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<sup>57</sup> Audit Report, HUD Office of Inspector General, Report 98-SF-174-0002 (hereafter OIG), p. 11: "...the average age of 2,248 open [HUB] and 3,996 open FHAP investigations as of September 30, 1997, was 384 days and 321 days, respectively, and these figures do not include the average of 62 days that it takes to accept a claim."

<sup>58</sup> OIG, n. 57, pp. 10–11: "In 36 of 117 cases we reviewed, however, the delay between receipt of the claim and mailing of a perfected complaint to the complainant for signature was more than 25 days. In 20 cases this initial delay was more than 50 days. Further, we found that as of September 30, 1997, FHEO's 10 [HUBs] had 856 claims that had been open an average of 62 days. This inordinate delay does not count toward meeting the 100-day requirement under the Act. Forty percent (343 of 856) of these claims had been open more than 50 days. The Boston, Fort Worth, and San Francisco [HUBs] alone had 583 open claims with 392 (67 percent) over 50 days old."

**Region 8: Denver** Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

**Region 9: San Francisco** Arizona, California, Hawaii, and Nevada

**Region 10: Seattle** Alaska, Idaho, Oregon, and Washington

#### **4. Recent History of HUD Enforcement of Title VIII**

Throughout the 1990s, numerous reorganizations and special initiatives at FHEO complicated the task of enforcing fair housing rights through the Title VIII complaint process. Three of these deserve special mention: (1) the devolution of decision making from Headquarters FHEO to HUB directors; (2) HUD's reallocation of resources in FY 1997 and FY 1999 to emphasize "hot cases"; and (3) HUD's preoccupation from FY 1997 through FY 2000 with "doubling enforcement actions."

##### **a. Devolution of Authority to HUBs**

From FY 1989 until FY 1992, although HUBs conducted Title VIII investigations, HUD's Office of General Counsel (OGC) retained the authority to make determinations about whether cause existed to believe that discrimination had occurred. Thereafter, authority was transferred to Headquarters FHEO, with OGC concurrence required for every cause finding. This arrangement resulted in significant tension between FHEO and OGC staff, which has existed almost to the present time.<sup>59</sup> By FY 1994, HUBs were invested with authority to make recommendations for cause or no cause findings in most cases, but all these decisions were reviewed by Headquarters FHEO.

In early FY 1996, Deputy Assistant Secretary Susan Forward began to devolve full authority over cause and no cause decisions to the HUBs, and the HUBs have retained this authority up to the present.

In the early stages of devolution, Headquarters FHEO maintained strict performance standards for HUB directors. By FY 1997 and FY 1998, however, FHEO had lost some of its most capable managers and with them the ability to ensure quality control and a modicum of uniformity in practice among the 10 HUBs. As a consequence, significant differences among HUBs have emerged on such critical areas as numbers of complaints processed, proportion of

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<sup>59</sup> Interviews with senior HUD staff, March 2001.

cases with cause findings, and age of cases.<sup>60</sup> As a result of HUD's most recent reorganization (See Section VI) and the general devolution of authority to the HUBs, Headquarters FHEO has effectively divested itself of responsibility for oversight of the HUBs. The purported benefits of this devolution have been outweighed by the absence of a Headquarters FHEO office charged with reviewing the national enforcement landscape and assessing whether individual HUBs are doing their part to reach the goals outlined in HUD's Strategic Plan and Business Operation Plan (see Section VI).

One of the major findings of this report is that HUD has been slow to understand the ill effects of devolution and even slower to attempt to remedy them.

b. Hot Cases

As part of its effort to raise the visibility of the agency, HUD embarked in FY 1997 on a campaign to identify and publicize fair housing cases where HUD intervention resulted in visible and newsworthy relief to victims of discrimination. As a consequence, resources in many HUBs and at Headquarters were diverted to such "hot cases." Secretary Andrew Cuomo took a keen personal interest in this campaign, directing his staff to review HUB complaint logs regularly to identify hot cases and personally participating in many press conferences announcing the filing or settlement of complaints. During the initiative, HUB staff were required to send weekly hot case reports to Headquarters, to expedite investigations, and to participate in regular conference calls and media events. Known at Headquarters as "the drumbeat," Secretary Cuomo's effort resulted in almost daily press releases designed to portray the agency as very active in fighting discrimination. While most of these cases involved individuals who had been subjected to outrageous behavior by landlords or neighbors, a small number of the hot cases also dealt with systemic issues, such as alleged lending discrimination. HUD's March 1998 settlement with Texas-based AccuBanc is one such example.<sup>61</sup> A principal result of the hot case initiative was the diversion of the most skilled intake workers and investigators from existing cases to hot cases.

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<sup>60</sup> See Sections IV.B, IV.C, and IV.D.

<sup>61</sup> The conciliation agreement signed by AccuBanc Mortgage Corporation targets \$2.1 billion in mortgages over three years to minorities and low- and moderate-income families to enable them to become homeowners.

During more than three years of the campaign, FHEO enforcement staff actually declined by 9 percent,<sup>62</sup> and the average age of HUD cases increased from 350 to 497 days.<sup>63</sup> The hot case approach produced some major public victories, especially in the lending industry, which FHEO had not targeted before. But it also had a measurably negative impact on the routine enforcement business of HUD because of its decision to supplant the day-to-day enforcement rather than to supplement it with additional resources for hot cases.

c. Doubling Enforcement Actions

Beginning in FY 1997, as part of the President's Initiative on Race, HUD committed itself to "doubling enforcement actions" by FY 2000.<sup>64</sup> HUD defined enforcement actions as "issuance of a charge by HUD or referral by HUD to the Department of Justice for enforcement."<sup>65</sup> By early in FY 1998, HUD was actively soliciting comments about how its funding programs could incorporate incentives to support the doubling initiative.<sup>66</sup> Later in the same year, evidence began to emerge that the enforcement strategies of FHIP-funded agencies

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<sup>62</sup> See Charts VI-2 and VI-3.

<sup>63</sup> See Chart IV-14.

<sup>64</sup> In support of its goal to "[r]educe the incidence of discrimination based on race, national origin or disability," FHEO called for increasing the number of substantially equivalent state and local agencies and improvement of their case processing and remedial activities. The "status" of this objective was described as follows: "Lack of resources, combined with national implementation of a new case processing system, have impeded this initiative, which requires additional discretionary resources not available. New doubling enforcement initiative expected to accomplish significantly increased results." FHEO's Management Plan for FY 1997, available at <http://www.hud.gov/gpra/fheo.html>.

<sup>65</sup> Notice of Public Meeting and Request for Comments on Fair Housing Initiatives Program, *Federal Register*, December 8, 1997. 62 *Fed. Reg.* 64594.

<sup>66</sup> Notice of Public Meeting and Request for Comments on Fair Housing Initiatives Program, *Federal Register*, December 8, 1997: "The Department is also interested in suggestions regarding criteria and/or incentives to include in the FY 1998 FHIP Notice of Funding Availability (NOFA) to assist the Department in its efforts to double enforcement actions under the Fair Housing Act." Enforcement actions are defined as issuance of a charge by HUD or referral by HUD to the Department of Justice for enforcement. The Department will consider the comments received in response to this Notice when formulating plans for the disposition of funds appropriated for Fiscal Year 1998.



were being affected by the initiative.<sup>67</sup> HUD reported early success for the initiative.<sup>68</sup> The National Council on Disability issued a cautiously optimistic note in responding to the initiative:

Also as part of [the President's Initiative on Race], the President proposed and Congress approved a significant expansion in the Department of Housing and Urban Development's (HUD's) fair housing enforcement budget for Fiscal Year (FY) 1999. The approved budget for fair housing programs was \$40 million, up from \$30 million in FY 1998. NCD commends the President and Congress for recognizing the need to expand fair housing enforcement. NCD recommends that HUD use the increase in appropriations for fair housing to expand its enforcement of the Fair Housing Act and Section 504 of the Rehabilitation Act on behalf of people with disabilities. To the extent that HUD will be doubling enforcement efforts under the Fair Housing Act, for example, NCD recommends that HUD's efforts under Section 504 also be doubled."<sup>69</sup>

By 1999, however, critics such as the Citizens' Commission on Civil Rights began to express concern about the initiative, particularly with respect to its impact on HUD's ability to process Title VIII complaints.<sup>70</sup>

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<sup>67</sup> The Fair Housing Council of Orange County, California recounting its decision to pursue relief for multiple victims of familial status, race, and national origin discrimination, said: "Rather than proceeding with a lawsuit in federal court, Fair Housing decided to file with HUD, given HUD Secretary Andrew Cuomo's stated objective of doubling housing discrimination enforcement by his department. The announcement of the filing and the initiation of HUD's investigation took place at a HUD-organized press conference on January 15, 1998, the 69th anniversary of Dr. Martin Luther King Jr.'s birth. Secretary Cuomo participated in the press conference via satellite." (Press release, February 7, 2000.)

<sup>68</sup> A 1998 HUD press release said, in pertinent part, "As part of his One America Initiative, President Clinton also directed Cuomo to double enforcement actions brought against perpetrators of housing discrimination by the year 2000. HUD is now doubling its enforcement actions at a rate of 60 to 70 enforcement actions a month, compared with 25 to 30 enforcement actions during the Clinton Administration's first term. (Source: HUD press release, Cuomo Announces Groundbreaking Nationwide Audit of Housing Discrimination around Nation, [http://www.hud.gov/local/jkv/jkv98\\_5.html](http://www.hud.gov/local/jkv/jkv98_5.html).)

<sup>69</sup> National Council on Disability, *National Disability Policy: A Progress Report*, (November 1, 1997–October 31, 1998), Section B.3.b. The full text of the report can be found at <http://www.ncd.gov/newsroom/publications/policy97-98.html>.

<sup>70</sup> The Citizens' Commission on Civil Rights publishes biannual reports on the state of civil rights enforcement. In its 1999 report, *The Test of Our Progress: The Clinton Record on Civil Rights*

As part of the review of HUD's enforcement of Title VIII, NCD requested information from HUD about the doubling initiative. While HUD did not provide detailed data, it supplied a summary chart purporting to show that the agency had not only doubled its enforcement actions but had actually increased them by 135 percent. On its chart, HUD displays the following caption: "2,922 Enforcement Actions (135 percent of goal attained) after 51 months (100 percent of time) as of December 31, 2000." Chart III-1 summarizes HUD's data from its doubling effort:

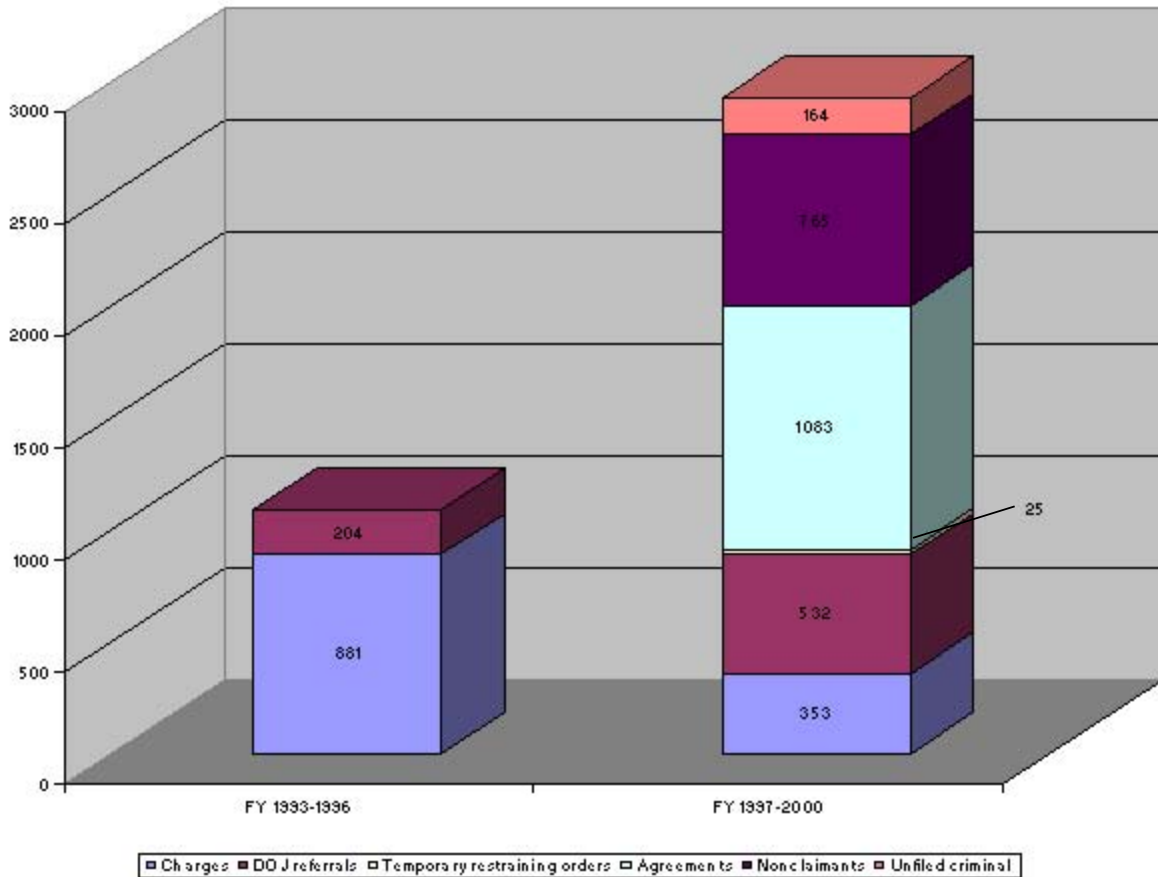
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(hereafter, CCCR 1999), the Commission said:

- "HUD has shown little improvement over the last two years in its ability to
1. process fair housing complaints effectively and expeditiously. While the number of complaints filed with HUD has risen, the percentage of cases charged—that is, cases where HUD has found discrimination—has declined precipitously. Surprisingly, this development has come in the face of President Clinton's public challenge to HUD to double the number of fair housing enforcement actions. Depressed levels of cause findings have resulted in an underutilization of the HUD administrative law judge process, and a steep decline in referral or 'election' cases filed by the Justice Department. Equally important, the backlog of over-age cases has remained largely unchanged despite efforts at management reform and attempts to improve the agency's computer and data systems....[F]unding is only effective in fighting discrimination if the enforcement mechanism and procedures of the agency work efficiently." (pp. 231–32.)

### Chart III-1

Progress During HUD National Enforcement Action Doubling Period,  
Progress FY 1997–December 31, 2000



Even a quick analysis indicates that HUD was not comparing apples to apples when it made its claim that it had exceeded its doubling objective. During the base period (FY 1993–FY 1996), HUD counted only charges and referrals to the Department of Justice, which totaled 1,085 “enforcement actions.” Had it used only these two categories for the comparison period (FY 1997–December 31, 2000, a total of 51 months, or 3 months longer than the base period), it would have had only 885 enforcement actions, a *reduction* of 18 percent compared with the base period figure.

Only by counting other categories, such as temporary restraining orders (TROs), agreements, nonclaimants, and unfiled criminal—none of which fit the agency’s initial definition of enforcement actions,<sup>71</sup>—could HUD have concluded that it had met or exceeded its target.

NCD interviewed several senior HUD staff members about the effect of the doubling effort on routine intake and investigation of Title VIII and Section 504 complaints and compliance reviews. They were very frank in their response that the doubling initiative had diverted resources away from the agency’s core enforcement functions and that Section 504 work had essentially ground to a halt during the initiative.<sup>72</sup>

## **5. State and Local Fair Housing Agencies**

Even before the FHAA, Congress had directed that states and localities with fair housing laws deemed “substantially equivalent” to the FHA, in terms of substantive coverage and enforcement provisions, were to handle their own administrative hearings. The Fair Housing Assistance Program (FHAP) is authorized by the FHA,<sup>73</sup> which permits the Secretary to use the services of responsible state and local agencies in the enforcement of fair housing laws and to reimburse these agencies for services rendered to assist HUD in carrying out the FHA.

Eligible grantees are state and local enforcement agencies administering statutes that HUD has certified as substantially equivalent to the federal statute. Funding is provided to substantially equivalent state and local agencies under FHAP to assist them in carrying out activities related to the administration and enforcement of their fair housing laws and ordinances. Such activities include complaint processing, training, implementation of data and information systems, and other special projects specifically designed to enhance the agency’s administration and enforcement of its fair housing law or ordinance.

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<sup>71</sup> See note 66 re: Notice of Public Meeting, December 8, 1997.

<sup>72</sup> Interview with senior HUD/FHEO staff member, March 2001.

<sup>73</sup> 42 U.S.C. §3610.

When Congress amended the FHA in 1988, 36 states and 76 local agencies had been certified by HUD as being “substantially equivalent.”<sup>74</sup> Recognizing that a transition period was necessary to allow these jurisdictions to amend their laws to conform to the FHAA changes, Congress extended the authority of then-certified agencies to continue to handle housing discrimination complaints, but Congress directed HUD to retain jurisdiction over complaints involving handicap and familial status where state and local laws did not provide protection on those bases. By September 13, 1992, the end of the transition period, the number of certified agencies declined dramatically, as states and localities failed or refused to modify their laws to conform to the FHAA.<sup>75</sup> As of March 2001, HUD had certified 32 states,<sup>76</sup> the District of Columbia, and 53 localities<sup>77</sup> as having substantially equivalent laws.

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<sup>74</sup> HUD has promulgated regulations for certification of substantially equivalent agencies, appearing at 24 CFR, Part 115. Performance standards are specified at 24 CFR §115.203. Pursuant to these standards, the following agencies have been denied certification: Elgin (Illinois) and Evanston (Illinois). These agencies have been denied but subsequently reinstated: Knoxville (Tennessee) and Hillsborough (Florida). Montana and Clearwater (Florida) amended their fair housing laws and, as a result, equivalency was terminated. Illinois and Kansas opted out of substantial equivalency. At various times since 1989, statewide agencies in Georgia, Indiana, Massachusetts, and Oklahoma had performance deficiencies or entered into improvement plans. (Source: HUD correspondence, December 22, 2000).

<sup>75</sup> Schill and Friedman, note 6: “In 1992, 7 states and 12 localities were certified as having laws substantially equivalent to the Fair Housing Act. By 1995 these numbers had increased to 38 States and 29 localities.”

<sup>76</sup> FHEO supplied researchers a document on March 9, 2001, titled “FHAP Agency Names and Addresses,” according to which the following states had been certified: Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

<sup>77</sup> FHEO supplied researchers with a document on March 9, 2001, titled “FHAP Agency Names and Addresses,” according to which the following localities had been certified: Asheville/Buncombe County (North Carolina), Austin (Texas), Boston (Massachusetts), Cambridge (Massachusetts), Cedar Rapids (Iowa), Charleston (West Virginia), Charlotte/Mecklenburg County (North Carolina), Dallas (Texas), Davenport (Iowa), Dayton (Ohio), Des Moines (Iowa), Dubuque (Iowa), Durham (North Carolina), Elkhart (Indiana), Fort Worth (Texas), Fort Wayne (Indiana), Garland (Texas), Gary (Indiana), Greensboro (North Carolina), Hammond (Indiana), Hillsborough County (Florida), Huntington (West Virginia), Jacksonville (Florida), Kansas City (Missouri), King County (Washington), Knoxville (Tennessee), Lawrence (Kansas), Lexington/Fayette County (Kentucky), Louisville/Jefferson County (Kentucky), Mason City (Iowa), New Hanover County (North Carolina), Olathe (Kansas), Omaha (Nebraska), Orange County (North Carolina), Orlando (Florida), Palm Beach County (Florida), Parma

Since FY 1980, HUD has provided financial assistance to state and local “substantially equivalent” agencies through FHAP to support complaint processing, training, technical assistance, data, and information systems and to provide incentives for states and localities to assume greater responsibility for administering fair housing laws. State and local agencies (often referred to as FHAPs) are reimbursed on a formula based on the number of fair housing complaints they handle.<sup>78</sup>

Except under unusual circumstances,<sup>79</sup> a complaint filed with HUD will be routinely referred to a state or local agency that HUD has certified as substantially equivalent. A complainant has little or no influence over this decision, and his or her complaint is effectively confined within the state or local FHAP system, with all the advantages and disadvantages of the track record of that particular FHAP agency. In states or localities that do not have FHAPs, HUD retains responsibility for processing claims and complaints.

Table III-1 provides information about where a complaint is likely to be processed. It demonstrates that FHAP agencies have processing authority for complaints in states and localities covering roughly 79 percent of the U.S. population and that HUD has processing authority over approximately 21 percent. These relative responsibilities should be borne in mind as the reader reviews the data, findings, and recommendations in this report.

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(Ohio), Phoenix (Arizona), Pinellas County (Florida), Pittsburgh (Pennsylvania), Reading (Pennsylvania), Rockland County (New York), Salina (Kansas), Seattle (Washington), Shaker Heights (Ohio), South Bend (Indiana), Springfield (Illinois), St. Petersburg (Florida), Tacoma (Washington), Tampa (Florida), Waterloo (Iowa), Winston-Salem (North Carolina), York (Pennsylvania).

<sup>78</sup> See note 305 and accompanying text.

<sup>79</sup> HUD will typically retain jurisdiction over complaints against recipients of federal funds where it is simultaneously investigating whether the recipient has violated Section 504.

**Table III-1: FHAP Regional Agencies**

<b>Region</b>	<b>FHAP Agencies [STATEWIDE AGENCIES IN CAPS; Local Agencies in Initial Caps] (as of March 2001)</b>	<b>Population Served by FHAPs (2000 CENSUS)</b>	<b>States in Region Without a Statewide Fair Housing Agency</b>	<b>Population Served by HUD (2000 Census)</b>
<b>1 Boston</b>	CONNECTICUT MASSACHUSETTS: Boston, Cambridge RHODE ISLAND VERMONT	11,411,808	MAINE NEW HAMPSHIRE	2,510,709
<b>2 New York</b>	NEW YORK: Rockland County	18,976,457	NEW JERSEY	8,414,350
<b>3 Phila- delphia</b>	MARYLAND DELAWARE DISTRICT OF COLUMBIA PENNSYLVANIA: Pittsburgh, Reading, York VIRGINIA WEST VIRGINIA: Charleston, Huntington	27,036,458		
<b>4 Atlanta</b>	FLORIDA: Hillsborough County, Jacksonville, Orlando, Palm Beach County, Pinellas County, St. Petersburg, Tampa GEORGIA KENTUCKY: Lexington/Fayette County, Louisville/Jefferson County NORTH CAROLINA: Asheville/Buncombe County, Charlotte/Mecklenburg County, Durham, Greensboro, New Hanover County, Orange County, Winston-Salem SOUTH CAROLINA TENNESSEE: Knoxville	45,961,208	ALABAMA MISSISSIPPI PUERTO RICO	11,100,368

<b>Region</b>	<b>FHAP Agencies [STATEWIDE AGENCIES IN CAPS; Local Agencies in Initial Caps] (as of March 2001)</b>	<b>Population Served by FHAPs (2000 CENSUS)</b>	<b>States in Region Without a Statewide Fair Housing Agency</b>	<b>Population Served by HUD (2000 Census)</b>
<b>5 Chicago</b>	ILLINOIS: Springfield INDIANA: Elkhart, Fort Wayne, Gary, Hammond, South Bend MICHIGAN OHIO: Dayton, Parma, Shaker Heights	27,499,945	ILLINOIS MINNESOTA WISCONSIN	22,574,571
<b>6 Ft. Worth</b>	LOUISIANA OKLAHOMA TEXAS: Austin, Dallas, Fort Worth, Garland	28,771,450	ARKANSAS NEW MEXICO	4,492,446
<b>7 Kansas City</b>	IOWA: Cedar Rapids, Davenport, Des Moines, Dubuque, Mason City, Waterloo MISSOURI: Kansas City NEBRASKA: Omaha Lawrence, Olathe, Salina (all in Kansas)	10,451,537	KANSAS	2,469,679
<b>8 Denver</b>	COLORADO NORTH DAKOTA UTAH	7,176,630	MONTANA SOUTH DAKOTA WYOMING	2,150,821
<b>9 San Francisco</b>	ARIZONA: Phoenix CALIFORNIA HAWAII	40,213,817	NEVADA	1,988,257
<b>10 Seattle</b>	WASHINGTON: King County, Seattle, Tacoma	5,894,121	ALASKA IDAHO OREGON	5,342,284
<b>United States</b>		223,393,431		61,043,485



## SECTION IV

### Enforcement of the Provisions of the Fair Housing Act

#### A. Introduction

At the request of the NCD, HUD supplied data concerning Title VIII (Fair Housing Act) complaints received by the agency and by state and local FHAPs. From this information, this report draws a number of general conclusions about HUD and FHAP processing of complaints, but also takes a closer look at how complaints of disability discrimination are handled as compared to other claims.

The efficacy of HUD's enforcement of the FHA can be measured in a number of ways. This section analyzes quantitative data concerning FHA complaints filed between FY 1989 and FY 2000 (the last year for which complete data are available). Five distinct subsections look at the data in different ways:

- The Complaint Intake subsection considers the raw number of complaints filed with HUD and with state and local fair housing enforcement agencies during the 12-year period.
- The subsection on Case Outcomes documents the way in which fair housing complaints are processed and provides details about how cases are closed. Specific attention is given to the number of cases closed by conciliation and by findings of "cause" and "no cause" to believe discrimination has occurred.
- The Case Processing Times subsection compares the actual experience of fair housing complainants with specific time benchmarks crafted by Congress when it passed the FHAA.
- A fourth subsection, dealing with monetary compensation, analyzes the monetary damages made available through conciliation of FHA complaints.
- A final subsection reviews the use of Secretary-initiated complaints and hearings before HUD administrative law judges in an effort to measure whether HUD has used the tools made available to it in the FHAA.

The use of these quantitative benchmarks, and the annual snapshots conveyed by the data, make possible an assessment of HUD’s enforcement of the FHA over the past 12 years. Findings and recommendations derived from this data are provided throughout the body of this report and summarized in Section II.

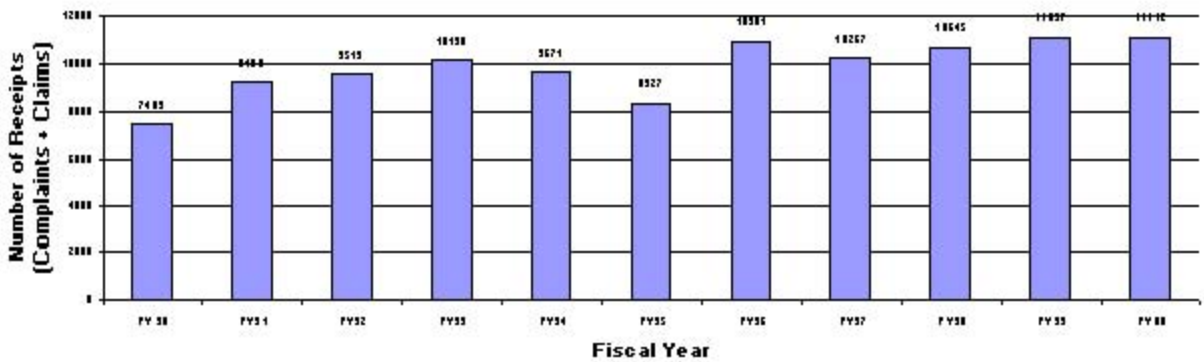
This report evaluates the trends in enforcement activity overall and compares the handling of disability complaints to others based on race, color, religion, national origin, sex, and familial status. The report also analyzes regional differences among HUD enforcement offices and among FHAP agencies.

## B. Complaint Intake

### 1. The Growth (or Stagnation) of Disability Complaints

The number of housing discrimination complaints filed with HUD and FHAP agencies has grown fairly steadily since passage of the FHAA (See Chart IV-1).

**Chart IV-1: Total Receipts (HUD and FHAPs)  
by Fiscal Year**

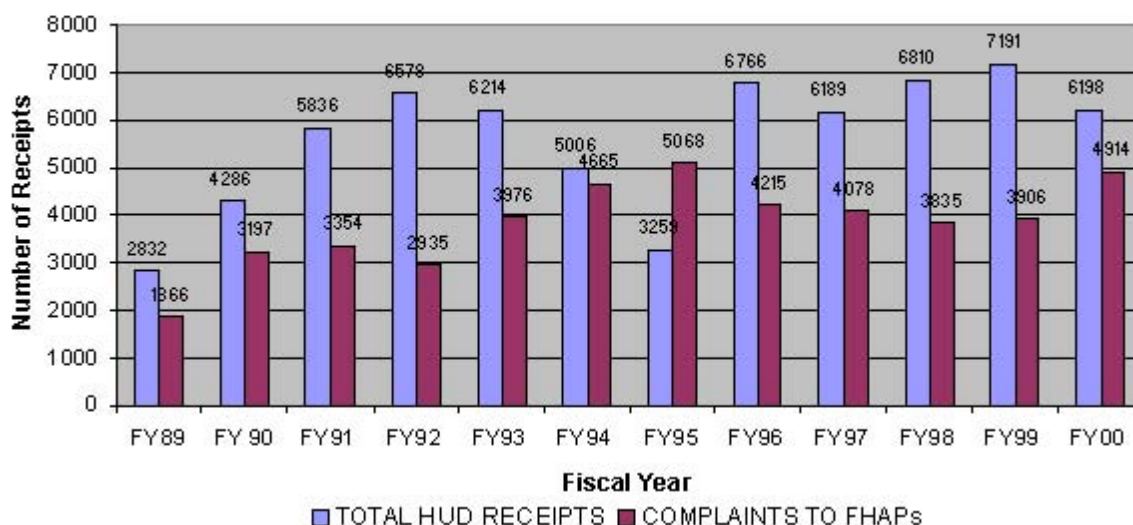


Given the clear evidence that housing discrimination is widespread,<sup>80</sup> it is surprising that complaints of housing discrimination have barely exceeded 11,000 nationally in any year since 1988.

**Finding IV.B.1:**                    **The number of discrimination allegations filed with HUD and state and local fair housing enforcement agencies is very low, given statistical and anecdotal evidence that housing discrimination is widespread.**

Historically, FHAP agencies have handled roughly 40 percent of the fair housing cases filed (see Chart IV-2).

**Chart IV-2: HUD Receipts v. FHAP Complaints**



<sup>80</sup> See, e.g., U.S. Commission on Civil Rights, *The Fair Housing Act of 1988: The Enforcement Report* (1994), pp. 1–4, and sources cited therein; Massey, Douglas S., and Nancy A. Denton, *American Apartheid* (Cambridge, MA: Harvard University Press, 1993). See also House Report 100-711, reprinted in 1988 *U.S. Code Cong. & Admin. News* 2173, 2176 (1988), referring to a 1985 estimate that “2 million instances of housing discrimination occur each year,” and other sources documenting widespread discrimination.

**2. HUD Has Complicated Its Reporting by Creating a New Category**

HUD’s case intake procedure (and the raw numbers in Charts IV-1 and IV-2) must be further explained. Prior to FY 1996, HUD accepted complaints of housing discrimination and investigated all of them. Beginning in FY 1996, HUD adopted a new approach, under which allegations of discrimination filed with the agency typically were considered “claims,” which were assessed to determine whether they were likely to constitute valid complaints. Between FY 1996 and FY 2000, the vast majority (roughly 75 percent) of these claims were closed without full investigation.<sup>81</sup> HUD, however, continued to report these claims to Congress and to the public as part of its workload.

**Finding IV.B.2.a: Three-quarters of all claims (4,210 of 5,924 in FY 2000) are dismissed without being converted to complaints and therefore are not subjected to full investigation.**

The difference between a claim and a complaint is outlined in Table IV-1.

**Table IV-1: Characteristics of “Claims” and “Complaints”**

	<b>Claim</b>	<b>Complaint</b>
<b>Definition</b>	<p>An allegation of housing discrimination filed with HUD that must undergo preliminary investigation involving only the complainant and independent sources of information. A claim will be converted to a complaint if this investigation establishes four “jurisdictional elements”:</p> <ul style="list-style-type: none"> <li>• It was filed within one year of the alleged discriminatory act.</li> <li>• The complainant has been or is about to be harmed by a discriminatory act.</li> <li>• The dwelling and respondent in question are covered by the FHA.</li> <li>• The discrimination complained of is prohibited under the FHA.</li> </ul>	<p>An allegation of discrimination filed with HUD or an FHAP that contains all four jurisdictional elements.<sup>82</sup></p>

<sup>81</sup> See Appendix IV-1.

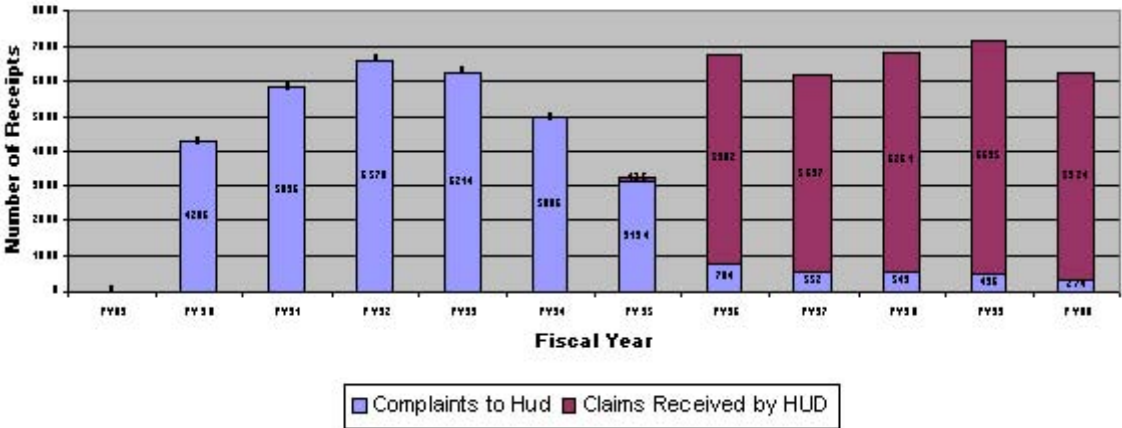
<sup>82</sup> Prior to FY 1996, complaints that lacked one or more essential elements to be treated as a potential violation of the FHA typically were disposed of as “administrative closures.”

	<b>Claim</b>	<b>Complaint</b>
<b>Processing Time</b>	HUD established processing benchmarks that require claims to be assessed within 25 days, which did not count toward the 100 days in which HUD must complete investigations on complaints.	By statute, agency must complete investigation within 100 days after filing “unless it is impracticable to do so.”
<b>Disposition</b>	If a claim fails to meet any of the four jurisdictional elements, or if the complainant or respondent cannot be found, it will be closed.	Following investigation, agency determines whether there is cause to believe discrimination has occurred.
<b>Period of Use</b>	FY 1996 through FY 2000	1968 through present

On first examination, HUD’s caseload appears to have stayed relatively level since FY 1991, but it is the growth of “claims” filed with HUD that has accounted for continued growth in HUD receipts. By this method, HUD was able to report an increasing caseload even as the absolute number of cases it was actually investigating dropped dramatically.

Complaints filed with the agency have declined from a high of 6,214 in FY 1993 (prior to HUD’s adoption of the claim/complaint dichotomy) to 784 in FY 1996 (the first full fiscal year during which “claims” were accepted) to 274 in FY 2000 (see Chart IV-3).

**Chart IV-3: HUD Receipts, FY 1989–2000**



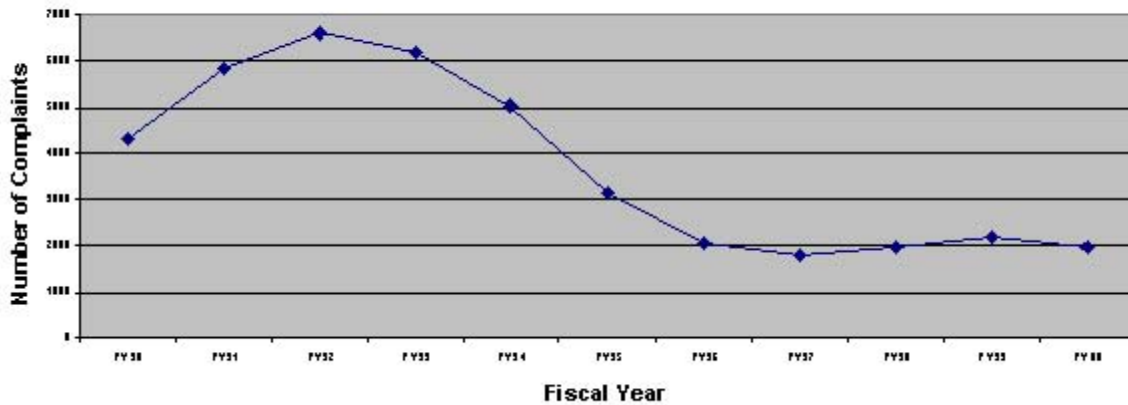
**Finding IV.B.2.b:** From FY 1996 through FY 2000, HUD reported both complaints and claims (whether dismissed or maturing into complaints) to Congress and the public. It is only through creative arithmetic that HUD has made it appear that fair housing receipts have not declined.

**Recommendation IV.B.2.a:** In reporting to Congress and the public, HUD should be required to distinguish between fair housing complaints and other receipts, such as claims or inquiries, so that a fair assessment of the agency's success can be made.

The dichotomy between claims and complaints can be confusing. It is more instructive to review the number of cases subjected to full-fledged investigation. After reaching a high of 6,578 in FY 1992, total HUD complaints investigated in FY 2000 fell to 1,988, or 30 percent of the FY 1992 level (see Chart IV-4).

After reviewing a draft of this report, HUD suggested that such a head-to-head comparison of complaints was not fair, because the agency had changed the criteria for what constituted a complaint. In essence, HUD said that cases that never got past the claims stage between FY 1996 and FY 2000 were cases it would previously have counted as complaints but that were closed administratively. There are two flaws in that logic, however. First, since FY 1994, administrative closures have not exceeded 29 percent (see Appendix IV-3), and have never approached the 75 percent rate at which claims have been closed (See Appendix IV-1). Second, the percentage of administrative closures of matured complaints remained between 15 percent and 21 percent throughout the five fiscal years HUD employed the claims process, demonstrating that the creation of the claims category did not significantly affect the administrative closure rate.

**Chart IV-4: Complaints Filed with HUD**



**Finding IV.B.2.c:** After HUD adopted a new intake process in FY 1996, emphasizing the assessment of claims to determine whether they warranted full investigation, the number of HUD complaints filed dropped even further. By FY 2000, complaints ( $N = 1,988$ ) were at 30 percent of their FY 1992 level.

**Finding IV.B.2.d:** On February 1, 2001, HUD abandoned its claims assessment process in favor of a system that gives investigators 20 days to process an inquiry to determine whether it will be filed as a complaint. HUD did not supply data by which the effectiveness of this new approach can be gauged.

**Recommendation IV.B.2.b:** Congress should closely monitor HUD’s new intake protocol to ensure that it does not inappropriately discourage the filing of fair housing complaints and does not inappropriately prevent the conversion of inquiries into complaints.

### 3. HUD Regional Offices Vary Widely in Complaint Intake

Beneath the raw numbers provided by HUD are significant variations in regional offices, or HUBs (see Table IV-2).

**Table IV-2: HUD Complaints Filed, by HUB**

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
<b>HQ</b>	0	0	0	0	0	0	2	5	2	30	4
<b>1. Boston</b>	244	232	289	139	123	119	101	107	80	57	79
<b>2. New York</b>	140	362	404	449	516	311	253	239	238	212	103
<b>3. Philadelphia</b>	273	430	590	540	299	84	71	59	52	69	62
<b>4. Atlanta</b>	452	766	558	373	475	257	160	161	109	331	431
<b>5. Chicago</b>	903	1061	893	806	642	519	342	348	408	382	372
<b>6. Ft. Worth</b>	688	943	1198	1047	803	555	331	197	222	291	164
<b>7. Kansas City</b>	304	468	636	462	403	434	162	185	349	396	281
<b>8. Denver</b>	225	292	381	300	355	198	147	99	77	107	103
<b>9. San Francisco</b>	808	950	1074	1440	961	271	220	227	303	163	97
<b>10. Seattle</b>	249	332	555	658	429	386	267	176	145	175	292
<b>NATIONAL</b>	4,286	5,836	6,578	6,214	5,006	3,134	2,056	1,803	1,985	2,213	1,988

The Chicago HUB has consistently filed large numbers of complaints, perhaps in part because it covers three very populous states without FHAP agencies whose combined population is twice the size served by the next largest HUB. Since the certification of the New York FHAP in 2000, complaints filed by the New York HUB have been cut in half. All the states in the Philadelphia region have FHAPs, so the number of complaints processed by HUD has been very low since FY 1995, comprising primarily cases involving a public housing authority or complicated issues. In addition, Secretary-initiated complaints (see Section IV.F.1, below) are included as part of the Philadelphia HUB's caseload.

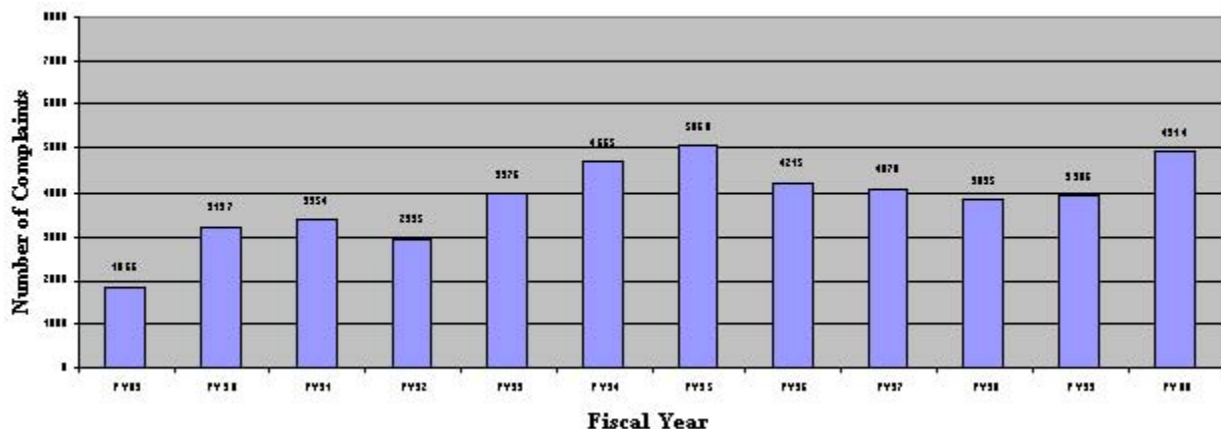
### 4. Growth in State and Local Agency Intake

FHAP agencies experienced steady growth in complaints from FY 1989 through FY 1995, notwithstanding the fact that many fewer agencies were deemed substantially equivalent between September 1992 and September 1995. Complaints to FHAP agencies dropped 23 percent from FY



1995 to FY 1999, in part because of the fact that the HUD claims process was eliminating cases that previously would have been referred to FHAPs as complaints (see Chart IV-5).

**Chart IV-5: FHAP Complaints, FY 1989–2000**



The certification of the New York State Division of Human Rights as a “substantially equivalent” agency in FY 2000 and its assumption of complaints previously handled by HUD may account, in part, for the 25 percent increase in FHAP complaints from the previous year.

**5. Disability Is the Fastest Growing and Largest Category Among Housing Discrimination Complaints**

HUD assumed responsibility for enforcing the disability provisions of the FHAA in March 1989, roughly halfway through FY 1989. That year, 489 complaints filed by the agency cited “handicap” as a basis of discrimination. That number grew each year through FY 1992. For the first time, in FY 1999 and FY 2000, disability complaints topped all others, followed by race and familial status. During those two fiscal years, allegations of disability discrimination appear in 42 percent of complaints filed with HUD (see Table IV-3).

**Table IV-3: Complaints Filed with HUD, by Protected Class**

<b>Protected Class</b>	<b>FY89</b>	<b>FY90</b>	<b>FY91</b>	<b>FY92</b>	<b>FY93</b>	<b>FY94</b>	<b>FY95</b>	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>	<b>FY99</b>	<b>FY00</b>
Race	903	1,437	2,212	2,805	2,861	2,348	1,443	872	779	924	818	793
Sex	310	470	577	862	886	670	478	214	205	214	158	177
Color	131	151	261	225	86	93	98	115	142	154	173	56
National Origin	167	318	457	648	799	600	347	286	257	240	221	222
Handicap	489	1,053	1,447	1,608	1,509	1,395	967	621	651	724	911	828
Familial Status	1,497	1,959	2,330	2,071	1,629	1,130	704	472	324	304	429	322
Religion	45	76	200	148	169	147	62	29	39	31	70	37

The growth of disability complaints cannot be attributed to a single cause, but is undoubtedly influenced by the growing recognition that people with disabilities are entitled to equal housing opportunity under the FHA. HUD has contributed to this effort through its support of private fair housing enforcement agencies under the FHIP program, awarding FHIP grants both to full-service enforcement agencies handling disability complaints and to other advocacy groups focused exclusively on education about, outreach to, and enforcement of the rights of people with disabilities. (See Section VI.) Over the past decade, the country has also experienced a measure of “cultural maturation” concerning disability rights. Increasing acknowledgment of the legitimacy of these rights, especially the right to reasonable accommodation under the FHA, may also have fueled the dramatic increase in disability complaints.

**Finding IV.B.5.a:**                    **Disability complaints now compose the largest percentage of HUD complaints. Complaints of disability discrimination have composed a growing percentage of HUD and FHAP receipts. In FY 1999 and FY 2000, nearly 42 percent of all HUD complaints included allegations of disability discrimination, more than any other protected class.**

**Finding IV.B.5.b:**                    **The growth of disability complaints cannot be attributed to a single cause but is undoubtedly influenced by the growing recognition that people with disabilities are entitled to equal housing opportunity under the FHA.**

**Finding IV.B.5.c:** HUD has contributed to the growth in disability complaints through its support of private fair housing enforcement agencies under FHIP. HUD has awarded FHIP grants to full-service enforcement agencies handling disability complaints and to other advocacy groups focused exclusively on education about, outreach to, and enforcement of the rights of people with disabilities.

**Recommendation IV.B.5:** HUD should continue to explore ways that it can use FHIP and contract funds to support collaborative work between full-service fair housing agencies and organizations representing people with disabilities.

**6. There Are Wide Regional Variations in HUD Disability Complaints**

There are significant differences between the HUBs with respect to the percentage of Title VIII complaints alleging disability discrimination (see Table IV-4). The best consistent performers have been the Boston, New York, and Denver HUBs, which have consistently higher percentages of disability complaints than the national average. The Seattle and San Francisco HUBs rebounded strongly in the past three fiscal years and are now among the leaders in percentage of disability complaints.

**Table IV-4: Percentage of HUD Title VIII Complaints That Allege Disability, by HUB and Fiscal Year**

(Shading indicates below national average)												
HUB	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
1. Boston	N/A	48	34.1	40.8	33.1	38.2	37	31.7	60.7	58.8	47.4	67.1
2. New York	N/A	45.7	24.6	35.6	30.1	34.5	38.9	43.5	43.5	40.3	41.5	42.7
3. Philadelphia	N/A	37	41.4	30	28.5	33.8	27.4	25.4	30.5	17.3	39.1	29
4. Atlanta	N/A	22.3	21	17.2	21.7	27.8	26.8	29.4	35.4	34.9	48.3	33.2
5. Chicago	N/A	22.9	20.5	23.1	22.6	27.9	30.8	25.7	31	30.9	30.1	30.6
6. Ft. Worth	N/A	14	17.5	15.9	21.1	22.4	23.8	29	30.5	31.5	57.4	45.7
7. Kansas City	N/A	30.3	36.3	26.4	24.7	32.3	28.3	25.9	34.6	32.1	31.6	34.5
8. Denver	N/A	26.2	31.2	33.3	34.3	42.5	47	36.7	46.5	40.3	33.6	48.5

HUB	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>9. San Francisco</b>	N/A	18.8	22.3	24.1	23	21.1	36.2	30.9	35.7	42.2	46	64.9
<b>10. Seattle</b>	N/A	25.7	25.6	22.2	21.6	21.9	26.9	24.7	26.7	47.6	54.3	57.9
<b>Nat'l Avg.</b>	N/A	24.6	24.8	24.4	24.3	27.9	30.9	30.3	36.1	36.6	41.5	41.6

While nearly every HUB has fallen below the national average in this category during at least one fiscal year, five of the HUBs are consistently below the national norm, giving rise to a concern that disability issues may not be getting appropriate attention. Despite leading the nation in overall complaints filed, the Chicago HUB has been at or below average for the past 11 fiscal years in terms of disability complaints. Atlanta and Ft. Worth have been below the national average nearly every year. Kansas City had above average disability caseloads in the early 1990s, but has been consistently (and significantly) below average for each of the past six fiscal years. Philadelphia’s performance must be explained, in part, by the fact that FHAP agencies serve all the jurisdictions in its region.

HUD has suggested that this variation among its regional offices may reflect the geographic distribution of people with disabilities across the country.<sup>83</sup> Data from the 1990 Census (summarized in Appendix IV-2), however, suggest that this may be a factor for only two HUBs. According to the Census, 10.4 percent of Americans report having a serious disability.<sup>84</sup> The Chicago HUB handles complaints from Illinois (9.3 percent of population reports a disability), Minnesota (8.6 percent), and Wisconsin (8.6 percent), all of which report lower than average incidences of disability. The Kansas City HUB serves a region where 8.7 percent of the population reports having a disability. However, the other two poor performers—Atlanta and Ft. Worth—serve populations that report rates of disability significantly above the national average.

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<sup>83</sup> HUD also suggested that other “regional differences” may affect the receipt of disability complaints but provided no detail on what those differences may be and no data to assess this claim. Advocates have suggested that one explanation for low disability rates is that people with disabilities have had a poor experience with the administrative enforcement process and have bypassed it in favor of federal court.

<sup>84</sup> <http://www.census.gov/hhes/www/disable/census/tables/tab1us.html>.

**Finding IV.B.6.a:** Throughout the 1990s, HUD devolved substantial authority to its HUBs and allowed them great autonomy to structure intake, complaint processing, investigation, and cause determinations.

**Finding IV.B.6.b:** In the mid- and late 1990s, Headquarters FHEO ceased its close oversight of HUB operations, opting instead for “remote monitoring.” The result has been significant differences in practice among HUBs, including markedly different treatment of disability complaints.

**Finding IV.B.6.c:** There is great variability in numbers of complaints (overall and on the basis of disability) filed by HUD’s 10 HUBs and by FHAPs that is not adequately explained by differences in populations served by each HUB.

**Finding IV.B.6.d:** The management style currently employed by Headquarters FHEO tends to reinforce significant regional variations in enforcement practice, resulting in different treatment of disability (and other) complaints depending on the state in which a complainant lives and whether the complaint is handled by HUD or by an FHAP.

**Recommendation IV.B.6.a:** HUD should assess the intake process at each HUB and at each FHAP to determine whether the historically low number of complaints (overall or on the basis of disability) reflects impediments for victims of discrimination in using the Title VIII administrative complaint system.

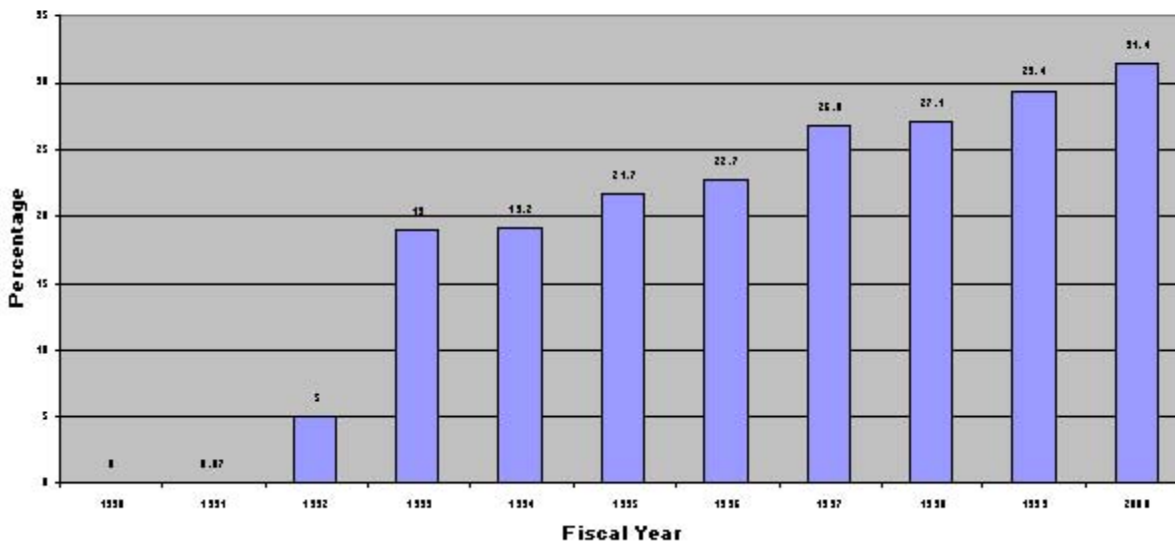
**Recommendation IV.B.6.b: HUD should identify best practices among HUBs and FHAPs concerning community outreach, intake, case processing, investigation, and cause determination and require HUBs and FHAPs that do not already do so to use them.**

**Recommendation IV.B.6.c: Headquarters FHEO should take active steps to deal with these regional differences so that the quality of justice does not depend on place of residence, or should assume greater central authority over the Title VIII complaint process.**

### **7. Disability Caseloads at State and Local Agencies**

Disability claims have represented a somewhat smaller percentage of the caseload of state and local FHAPs, as demonstrated by Chart IV-6.<sup>85</sup>

**Chart IV-6: Disability as Percentage of FHAP Complaints**



<sup>85</sup> During FY 1989 and FY 1990 (the two years following enactment of the FHAA), most FHAPs did not handle disability and familial status complaints, either because state or local law did not provide for coverage of these two new categories or because they had not developed the expertise or enforcement

While no single factor can explain why a smaller percentage of disability complaints is filed with FHAPs than with HUD, NCD believes that a relatively high number of disability complaints are filed against public housing authorities and other entities governed by Section 504 of the Rehabilitation Act, making it more likely that complaints are dually filed as Title VIII and Section 504 complaints, and are therefore more likely to be retained by HUD for investigation under both statutes.

As with HUD, the performance of FHAPs differs widely by region.<sup>86</sup> From FY 1990 through FY 2000, the strongest performers were San Francisco, Atlanta, and Chicago. This may be explained by the fact that these regions have the largest populations served by FHAPs. The Ft. Worth and Philadelphia FHAP regions have populations with higher than average rates of disability in the population, but similar to their HUD regional counterparts, they have subpar records in terms of disability complaints. The New York region did not have a certified FHAP prior to FY 2000 and represents a relatively small proportion of disability complaints over the 11-year period. The Denver and Seattle regions have the lowest percentage of disability complaints, but also the smallest populations served by FHAPs.

**Finding IV.B.7:                    There are significant differences between the HUBs with respect to the percentage of Title VIII complaints alleging disability discrimination. Five of the HUBs (Chicago, Atlanta, Ft. Worth, Philadelphia, and Kansas City) are consistently below the national norm, giving rise to a concern that disability issues may not be getting appropriate attention. The Chicago HUB, which historically files the greatest number of overall fair housing complaints, has been at or below average for disability complaints every year since the FHAA was passed.**

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capacity to handle them. For those two fiscal years, FHAPs contracted with HUD to handle disability and familial status claims. For that reason, complaints in these categories are reported as HUD cases rather than as FHAP cases.

<sup>86</sup> HUD made regional data available for FHAPs but not data on individual agencies, because analysis of individual FHAPs is beyond the scope of this report.

**Recommendation IV.B.7.a: HUD should assess the intake process at each HUB and at each FHAP to determine whether the historically low number of complaints (overall or on the basis of disability) reflects impediments for victims of discrimination in using the Title VIII administrative complaint system.**

**Recommendation IV.B.7.b: Headquarters FHEO should take active steps to deal with these regional differences so that the quality of justice does not depend on place of residence, or should assume greater central authority over the Title VIII complaint process.**

**8. Issues in Disability Claims and Complaints Filed with HUD and FHAPs**

Since the passage of the Civil Rights Act of 1968, HUD has kept data on “issues” in discrimination cases. In its current form (in place since at least 1988), HUD has used a three-digit code and a brief descriptive phrase to classify issues raised in complaints. Obviously, more than one issue may arise in a given complaint or claim. HUD and FHAP staff are asked to code each case with one or more issues (see Table IV-5).

**Table IV-5: HUD Case Issue Codes**

<b>Code</b>	<b>Issue</b>	<b>Code</b>	<b>Issue</b>	<b>Code</b>	<b>Issue</b>
300	Sales	380	Service/Facilities	450	Coercion/818
310	Rental	390	Poster	460	Zoning/Land Use
320	Advertisement	400	Refusing Insurance	470	Design/ Construction
330	False Representation	410	Steering	480	Criminal/901
340	Blockbusting	420	Redlining	490	Familial Status
350	Financing	430	Otherwise Deny Housing	500	Reasonable Modification
360	Brokerage	440	Other	510	Reasonable Accommodation



Allegations of disability discrimination come in many different forms, some of which are similar to other discrimination claims and some of which are unique to disability. In the former category are such frequently cited issues as refusal to rent or sell (Code 300 or 310 below); discrimination in the “terms, conditions or privileges of sale or rental of a dwelling, or in the provisions of services and facilities in connection therewith” (Code 380); or coercion/intimidation (Code 450). As with discrimination on other bases, these allegations can be proven with evidence of intentional discrimination or of disparate impact on a protected class.

With the passage of the FHAA, however, people with disabilities also enjoy protection against other acts and omissions that are specific to disability status. Beginning in 1990, HUD purported to track three categories that are virtually unique to disability: (1) noncompliance with design and construction requirements (handicap)(Code 470); (2) failure to permit reasonable modification (Code 500); and (3) failure to make reasonable accommodation (Code 510). These do not require proof of intentional discrimination or disparate impact and are therefore arguably less complicated to investigate. HUD also uses a fourth category—“Using ordinances to discriminate in zoning and land use” (Code 460)—that often but not always involves disputes affecting group homes for people with disabilities.

Before FY 1996, because of the insufficiency of HUD’s data collection systems and lack of oversight concerning how cases were coded at intake, these disability-specific categories were not often cited. Pursuant to HUD guidance, beginning in FY 1996, HUD and FHAPs made greater use of disability-specific categories. It is possible, therefore, to analyze in greater detail the specific types of discrimination claims embedded in these complaints. After HUD adopted its current data collection system—the Title VIII Paperless Office Tracking System (TEAPOTS)—and provided technical assistance and oversight concerning its use, frontline intake staff at HUD and at FHAPs have made much greater use of the disability-specific categories.<sup>87</sup>

The distribution of HUD cases across issue codes is displayed in Table IV-6.

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<sup>87</sup> As expected, these developments have been accompanied by significant declines in the use of Codes 310, 380, and 450, mentioned in the text.

**Table IV-6: HUD Cases Involving Disability Claims**

	<b>FY 1996</b>	<b>FY 1997</b>	<b>FY 1998</b>	<b>FY 1999</b>	<b>FY 2000</b>
Total Complaints Alleging Disability Discrimination	622	650	727	919	828
Zoning	42 6.7%	37 5.6%	51 7.0%	38 4.1%	69 8.3%
Design and Construction	27 4.3%	81 12.4%	137 18.8%	203 22.0%	76 9.1%
Reasonable Modification	0 0%	10 1.5%	17 2.3%	36 3.9%	30 3.6%
Reasonable Accommodation	11 1.7%	100 15.3%	236 32.4%	317 34.4%	345 41.6%

Similar changes in FHAP record keeping have yielded similar results, as shown in Table IV-7.

**Table IV-7: FHAP Cases Involving Disability Claims**

	<b>FY 1996</b>	<b>FY 1997</b>	<b>FY 1998</b>	<b>FY 1999</b>	<b>FY 2000</b>
Total Complaints Alleging Disability Discrimination	956	1,091	1,038	1,155	1,541
Zoning	2 *	4 *	3 *	3 *	14 1.0%
Design and Construction	28 2.9%	45 4.1%	78 7.5%	73 6.3%	139 8.8%
Reasonable Modification	0 0%	5 *	11 1.0%	29 2.5%	57 3.6%
Reasonable Accommodation	0 0%	41 3.7%	113 10.8%	315 27.2%	594 38.5%

\*—negligible in percentage terms

The sudden upsurge in reasonable accommodation claims between FY 1996 and FY 2000 might be attributable to more widespread use of TEAPOTS, closer attention by HUD and FHAP supervisory staff to properly classifying such claims, or the fact that more people with disabilities are effectively articulating requests for reasonable accommodation.

**Finding IV.B.8:                    Among HUD and FHAP disability complaints, reasonable accommodation is the most frequent issue, representing 41.6 percent of HUD cases and 38.5 percent of FHAP cases in FY 2000. Design and construction accessibility issues rank next (9.1 percent of HUD cases and 8.8 percent of FHAP cases).**

### C. Case Outcomes

HUD and FHAPs use four primary methods of closing fair housing complaints: (1) administrative closure, (2) conciliation, (3) no cause finding, and (4) cause finding.<sup>88</sup> The following sections analyze HUD data with respect to each type of case outcome.

#### 1. Cases Administratively Closed

Through FY 1993, more than 40 percent of all HUD complaints were ended by administrative closure, a catch-all category used by investigators when they could not complete the investigation of a case. HUD became concerned about the frequent use of this category and in September 1994 issued very explicit guidance discouraging the use of administrative closures.<sup>89</sup>

FHEO subsequently incorporated this guidance into HUD's *Title VIII Complaint Intake, Investigation, and Conciliation Handbook* (8024.01), which cautions investigators and supervisors as follows: "Administrative closures should be used neither casually nor routinely. It is critical that cases not be closed administratively except under specific circumstances" (Chapter 9, Section 9-1). Those limited circumstances include only situations in which an investigation

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<sup>88</sup> In cases where a cause finding is made, HUD and the FHAPs provide additional closing codes that are not immediately relevant to this analysis.

<sup>89</sup> Notice to Field Office Directors, Headquarters Office Directors, and Office of Investigations, from Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity, Concerning Administrative Closures of Cases Under the Fair Housing Act. Notice 94-1 (issued September 6, 1994).

cannot be completed because the complainant cannot be located or will not cooperate, where the complainant has decided not to proceed, or when a trial has commenced.

HUD reinforced this guidance by incorporating performance measures for rating FHEO managers and supervisors. From 1995 to 1996, supervisory personnel whose offices exceeded an administrative closure rate of 15 percent received lower scores on their performance appraisals. In FY 1997, the target rate dropped to 13 percent.<sup>90</sup> By enforcing accountability, HUD was able to reduce agencywide administrative closure rates from 48 percent in FY 1993 to 15 percent in FY 1997.<sup>91</sup> When the performance measures were deleted from appraisals in FY 1998, the administrative closure rate went back up to 19 percent. In FY 1999 it was 20 percent and in FY 2000, it had gone up to 21 percent. Throughout the study period, disability complaints are somewhat less likely than other HUD complaints to be coded as administrative closures.<sup>92</sup>

Staffing, management, and morale problems, which are described in greater detail in Section VI of this report, are the most likely cause of this upsurge in administrative closures. Understaffing also has exacerbated the “aged cases problem”; as cases age, they become more difficult to investigate and are more likely to be closed administratively.

**Finding IV.C.1: By enforcing accountability, HUD was able to reduce agencywide administrative closure rates from 48 percent in FY 1993 to 15 percent in FY 1997. When the performance measures were deleted from appraisals in FY 1998, the administrative closure rate went back up to 19 percent. In FY 1999, it was 20 percent, and in FY 2000, it had gone up to 21 percent.**

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<sup>90</sup> Interview with Sara Pratt, former (1993–1999) Director of the Office of Enforcement, FHEO May 31, 2001.

<sup>91</sup> In its response to an earlier draft of this report, HUD wrote the following: “What HUD did in FY 1995 and FY 1996 to reduce the administrative closures was first to pre-screen such cases (not logical, since it actually hid part of HUD’s legitimate workload), then to establish the Claims category.” (FHEO staff comments on National Council on Disability draft report, “Comments Regarding Data,” p. 6).

<sup>92</sup> See Appendix IV-3.

**Recommendation IV.C.1: HUD should establish and enforce accountability and job performance standards modeled on those in place during FY 1995 through FY 1997 to ensure that the administrative closure method is not overused.**

During the first two fiscal years (FY 1991 and FY 1992) that FHAP agencies handled disability complaints in appreciable numbers,<sup>93</sup> these complaints experienced a significantly higher rate of administrative closure than the typical FHAP complaint. FHAPs have been somewhat more successful than HUD in the past three fiscal years in reducing the percentage of cases closed administratively.<sup>94</sup> Since FY 1993, FHAPs have used administrative closure less often for disability cases than for cases in general, mirroring the practice at HUD.

**2. Cases Conciliated**

Prior to 1989, conciliation of housing discrimination complaints was one of the very few techniques available to HUD and FHAP agencies.<sup>95</sup> After passage of the FHAA—and the expansion of enforcement options—conciliation remains the most frequently used method of resolving complaints. By statute, HUD and FHAPs must attempt to bring complainants and respondents together to try to conciliate fair housing complaints (42 U.S.C. §3610(b)). Although such conciliation is voluntary (and either side may refuse to conciliate without prejudicing its case), many parties choose this route because it is comparatively inexpensive and quick compared with an administrative hearing or litigation.<sup>96</sup> HUD devotes a chapter of its intake

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<sup>93</sup> See note 87 and accompanying text.

<sup>94</sup> See Appendix IV-3. The decline in administrative closures can be explained, in part, by the fact that between FY 1996 and FY 2000, HUD screened all claims and forwarded only complaints to the FHAPs.

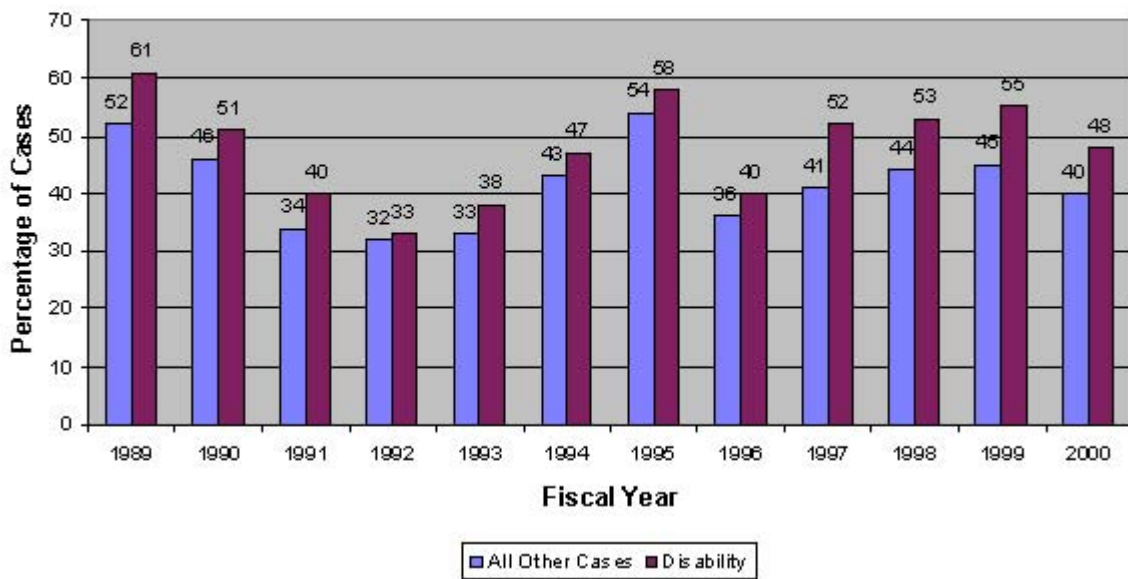
<sup>95</sup> House Report, p. 2177 (noting that before 1988 HUD “lack[ed] power even to bring parties to the conciliation table”).

<sup>96</sup> Formal conciliation of fair housing complaints is different from private settlement of disputes that occur outside the HUD or FHAP conciliation process. Under conciliation, HUD or the relevant FHAP brings the parties together and, if they are successful in compromising their differences, the agency supervises the entry of a conciliation agreement. Private settlements entered into outside the

manual to the mechanics of conciliation.<sup>97</sup> If conciliation fails, HUD (or the FHAP) continues its investigation and eventually must determine whether there is reasonable cause to believe that discrimination has occurred.

Chart IV-7 illustrates the extent to which HUD complaints have been closed through conciliation agreements.

**Chart IV-7: Cases Conciliated as Percentage of HUD Closures**



In FY 1989, more than half of all HUD complaints were resolved through conciliation. Conciliation as a means of closing HUD cases dropped below 35 percent in FY 1991, FY 1992, and FY 1993 before rising dramatically in FY 1994 (to 42 percent) and FY 1995

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administrative process may not have the force of law, and parties may be relegated to contract actions in state court to enforce their provisions. For this reason, HUD issued guidance in 1994 discouraging its investigators and conciliators from using or suggesting private settlements. See Notice to Field Office Directors, Headquarters Office Directors, and Office of Investigations, from Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity, Concerning Administrative Closures of Cases Under the Fair Housing Act. Notice 94-1 (issued September 6, 1994).

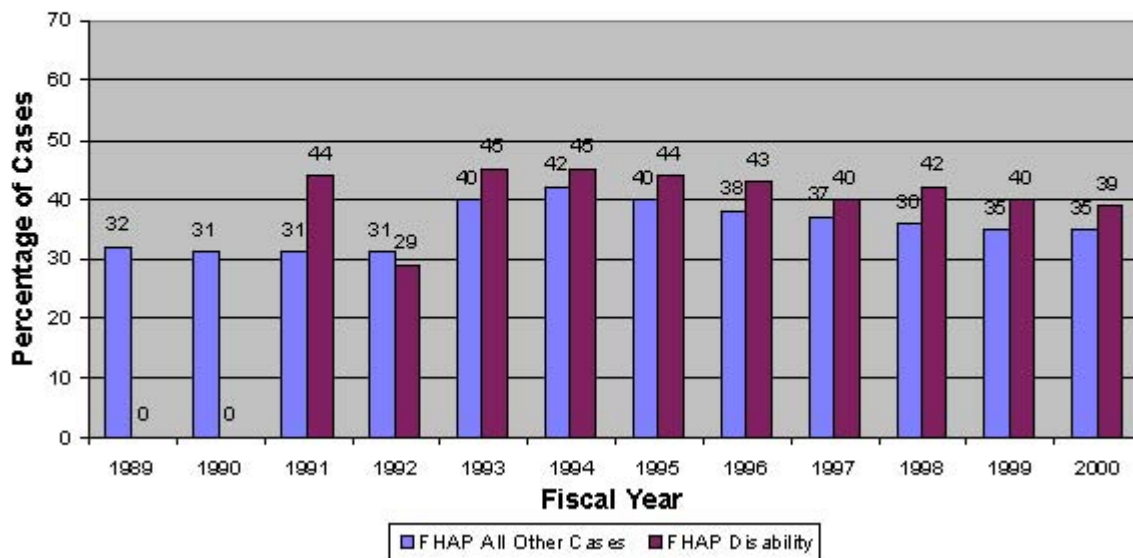
<sup>97</sup> *Title VIII Intake, Investigation and Conciliation Handbook* (8024.1), Chapter 11.

(to 52 percent). During every year since FY 1989, disability cases have been more likely than other cases to be closed by conciliation. During many years, the conciliation rate for disability cases is a full 10 percentage points higher than for all other protected classes.

There is no discernible historical trend showing divergence in conciliation rates among the HUBs. With respect to disability, the San Francisco and Chicago HUBs have had the largest number of conciliated complaints resulting in monetary compensation.

Conciliation is used somewhat less often by FHAPs (inching above 40 percent of all closures only in FY 1994). While FHAP disability complaints are more likely than FHAP nondisability complaints to be resolved by conciliation, FHAPs appear to rely on conciliation somewhat less than HUD, both in terms of disability cases and other cases (see Chart IV-8).

**Chart IV-8: FHAP Cases Conciliated:  
All Cases v. Disability**



It is not possible to isolate a single explanation for the greater use of conciliation in disability cases compared with all other cases. It may be that a greater percentage of disability cases involve single issues or a misunderstanding between home seekers with disabilities and housing providers over the scope of the FHA. Where such misunderstandings result in a

complaint being filed, conciliation may be the most effective way to educate both parties and resolve disputes quickly and cheaply.

Alternatively, the phenomenon may be explained by the availability of more sophisticated disability advocates who help people with disabilities use the conciliation process to achieve positive solutions to disputes. This theory is borne out in part by reviewing data on conciliated disability complaints that involve monetary compensation to complainants. Aggregating HUD and FHAP complaints demonstrates that the Chicago and San Francisco regions had the highest number of such cases. These regions have large numbers of sophisticated disability advocates. The Kansas City and Ft. Worth regions also have strong disability advocates and a reasonably large number of conciliated disability complaints with monetary compensation but low levels of per-case compensation.<sup>98</sup> Further investigation of this phenomenon is warranted but is beyond the scope of this report.

**Finding IV.C.2:**                    **During every year since FY 1989, disability cases have been significantly more likely than other cases to be closed by conciliation. While FHAP disability complaints are more likely than FHAP nondisability complaints to be resolved by conciliation, FHAPs appear to rely on conciliation somewhat less than HUD, in terms of both disability cases and other cases.**

### **3.     No Cause Findings**

If an allegation survived HUD's claims assessment process and matured into a complaint, it was investigated pursuant to the FHA. If conciliation fails and reasonable cause is found to believe that a violation of the FHA has occurred, HUD (or the FHAP) is required to issue a formal charge of discrimination.<sup>99</sup> If reasonable cause is not found, the complaint must be

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<sup>98</sup> See Table IV-20. Cross-referencing for average compensation in such cases, Chicago and San Francisco are consistently higher than the national average. Kansas City awards are two-thirds of the national average, and Ft. Worth awards are approximately 20 percent of the national average.

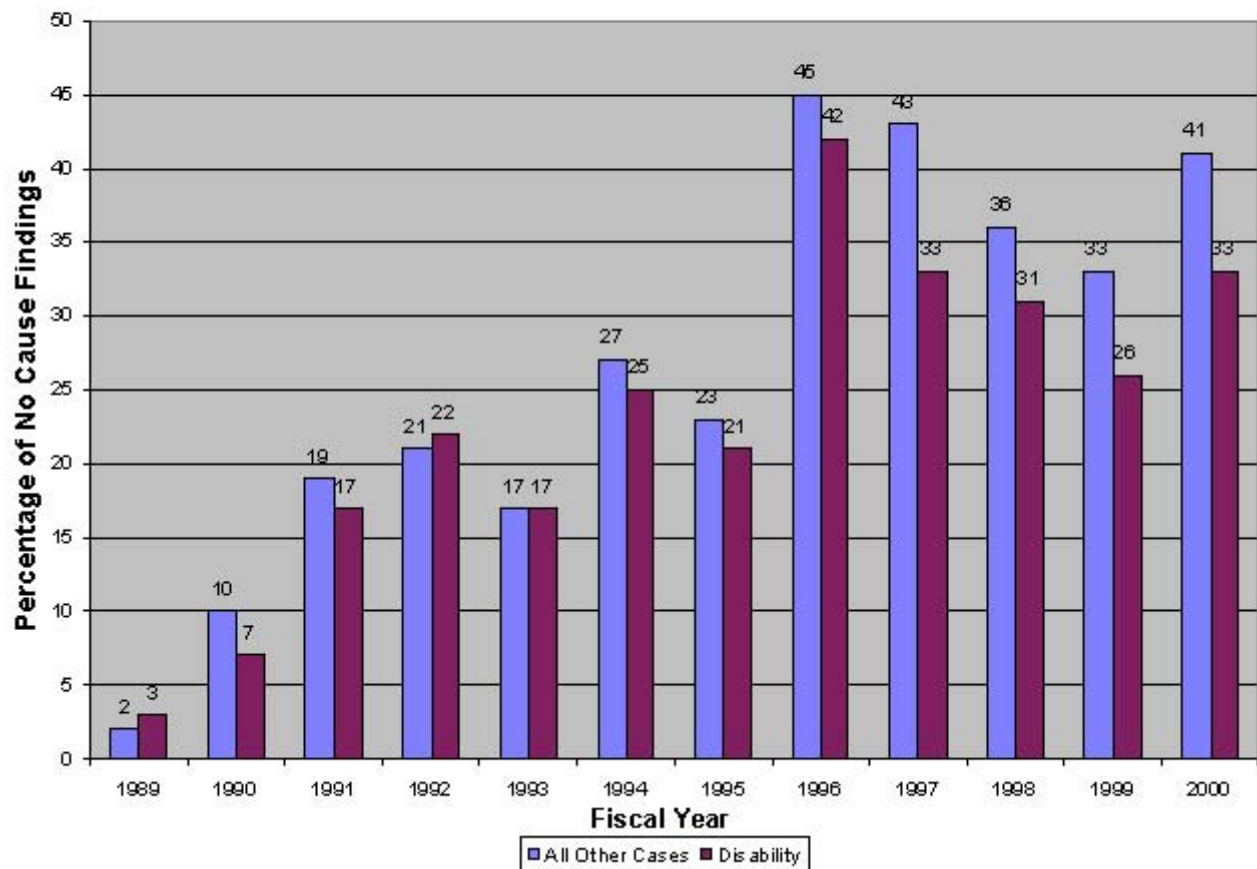
<sup>99</sup> 42 U.S.C. §3610(g)(2).



dismissed, and HUD is required to issue a public notification of the dismissal.<sup>100</sup> Despite the dismissal, the complainant retains his or her right to pursue the dispute through private litigation, but at substantially greater difficulty and expense than if the agency finds reasonable cause.

Chart IV-9 shows the percentage of “no cause” cases for HUD from FY 1989 through FY 2000, comparing all HUD complaints to disability complaints.

**Chart IV-9: No Cause Findings as Percentage of HUD Closures**



For the first several years after passage of the FHAA, HUD no cause findings did not exceed 20 percent of all closures. Then they reached 27 percent in FY 1994 and 23 percent in FY

<sup>100</sup> 42 U.S.C. §3610(g)(3).

1995. In FY 1996—the very year HUD adopted its claim/complaint dichotomy—no cause findings spiked to 45 percent of all closures, and they remained at 43 percent in FY 1997. This result is counterintuitive, as the claims process was designed to weed out allegations of discrimination that could not be fully documented. One would have expected that weeding out weaker cases would have led to a decline in the percentage of no cause findings. Rather, while HUD complaints dropped dramatically from FY 1995 to FY 1996 (from 3,134 to 2,056), the percentage of no cause closures nearly doubled (from 23 percent to 45 percent).

Two major factors explain the dramatic rise in no cause findings in FY 1996 and FY 1997. First, it was during those fiscal years that the effect of HUD’s strict guidance (and related performance measures) concerning administrative closures was first implemented and closely monitored. Investigators could no longer close large numbers of cases under the old method and were required to determine whether cause existed. Second, as the number of FHEO enforcement staff has decreased,<sup>101</sup> the average age of HUD cases has increased dramatically, to nearly 500 days.<sup>102</sup> As cases age, it becomes harder to marshal the evidence necessary to support a cause finding. As a result of these two pressures, it is likely that FHEO accepted the spike in no cause findings as a way to clear out its inventory of old cases.

Since FY 1989, disability complaints at HUD have been somewhat less likely than the average complaint to be dismissed as having no cause. That may result from the fact that HUD disability complaints are more likely to be resolved earlier in the process, especially through conciliation, and that fewer nonmeritorious cases are left at the cause/no cause decision point.

FHAPs have had a very different history with respect to no cause findings. From FY 1989 through FY 1992, FHAPs “no caused” more than 45 percent of all cases. The percentage dropped dramatically in the FY 1993 (to 28 percent), but has continued to rise each year since, reaching more than 50 percent during FY 2000 (see Chart IV-10). For some of the reasons discussed above, disability complaints are somewhat less likely than the average complaint to be closed

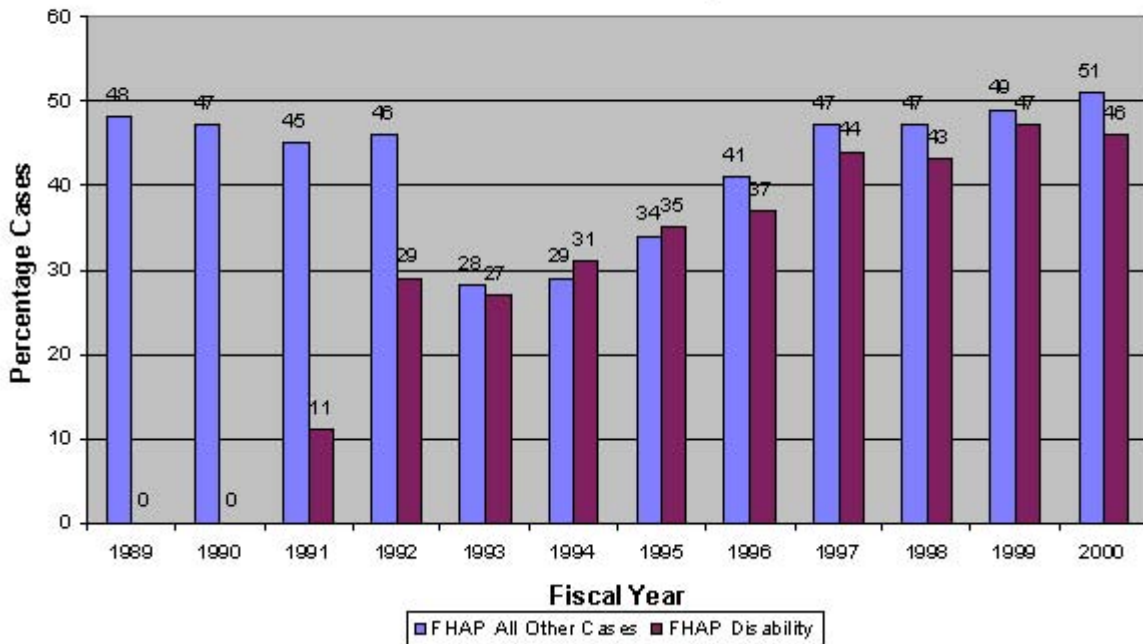
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<sup>101</sup> See Section VI.

<sup>102</sup> See Chart IV-14.

with a no cause finding. By comparison, HUD closes a significantly smaller percentage of complaints with no cause.

**Chart IV-10: FHAP No Cause Closures: All Cases v. Disability**



**Finding IV.C.3.a:**

Since FY 1996, HUD has closed at least one-third of its complaints (and FHAPs have closed at least 41 percent) with a finding that no cause existed to believe discrimination had occurred.

**Finding IV.C.3.b:**

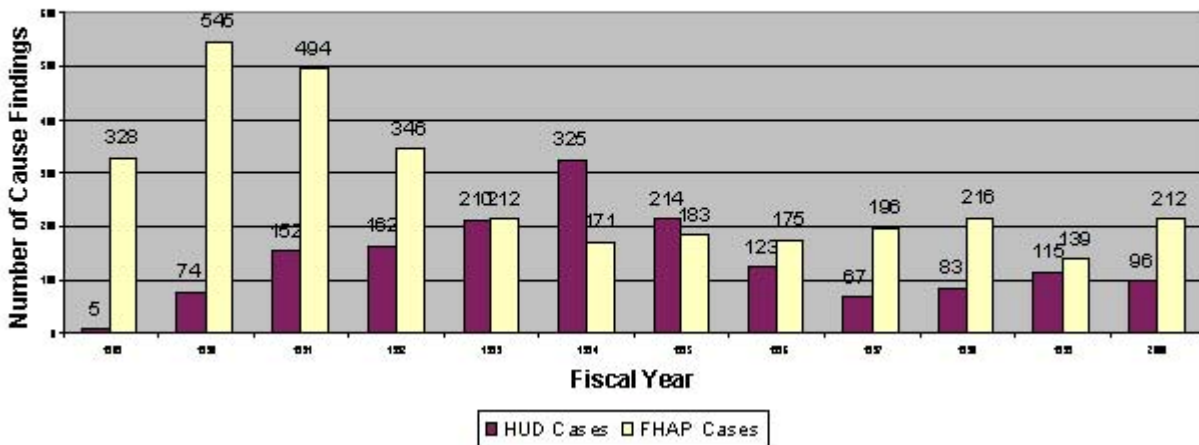
Since FY 1996, disability complaints were closed with a finding of no cause at a slightly lower rate. This may result from the fact that HUD disability complaints are more likely to be resolved earlier in the process, especially through conciliation, and that fewer nonmeritorious cases are left at the cause/no cause decision point.

#### 4. Cases in Which HUD Finds Cause to Believe Discrimination Has Occurred

HUD may, after conducting an investigation of a fair housing complaint, find reasonable cause to believe that discrimination has occurred. This threshold finding does not determine liability on the part of the respondent; rather, it invests the complainant with a set of rights to participate in an administrative or judicial hearing to determine liability (and, if relevant, to award monetary damages and other relief). The decision of whether to issue a charge is of critical importance to the complainant. It determines whether the case will proceed to trial or will be dismissed. The number of charges filed also serves as a barometer of HUD's willingness to find and prosecute discrimination.

Chart IV-11 graphically displays the gradual decline in overall cause findings by HUD and FHAPs since FY 1990.

**Chart IV-11: Cause Findings by Fiscal Year**



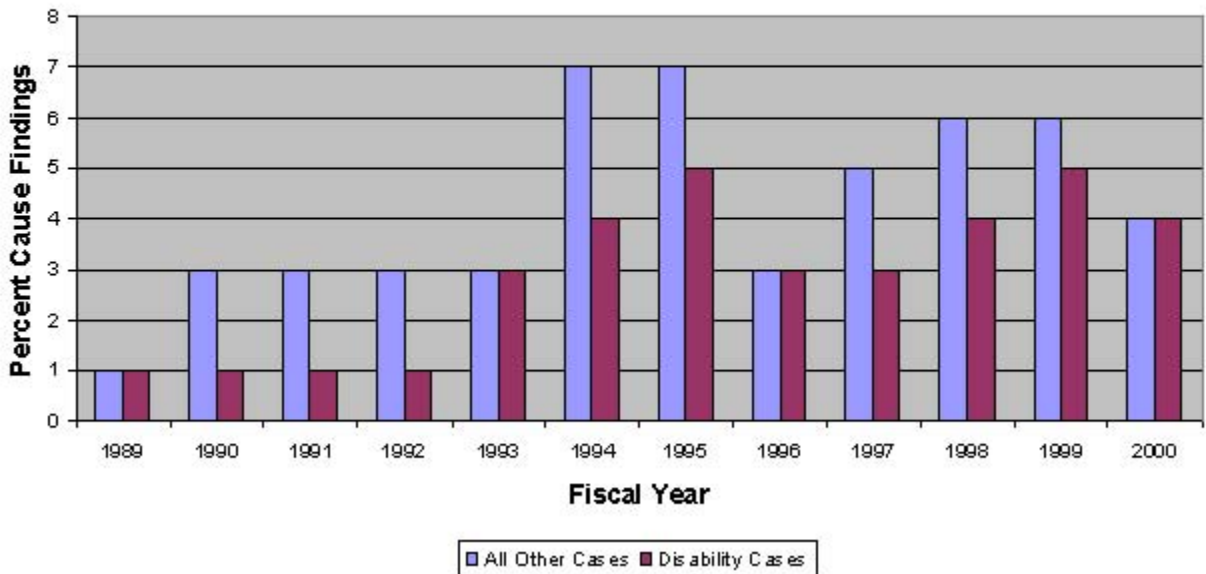
The absolute number of charges in all HUD cases declined from 213 in FY 1995 to 74 in FY 1997. The number went up to 82 in FY 1998 and to 115 in FY 1999 before declining to 96 in FY 2000.

For a number of years, outside observers have criticized the small number of cause determinations issuing from HUD.<sup>103</sup> One commentator has said:

What is most remarkable about the surge in complaints received by HUD from 1995 to 1997 is that it has been accompanied by a decrease in the number and percentage of cause findings. ... It appears that HUD investigators and regional counsel have inexplicably raised the bar for complainants to have their case heard by a fact finder, whether it be an administrative law judge or a federal jury.<sup>104</sup>

This finding is supported by Chart IV-12.

**Chart IV-12: HUD Cause Percentage:  
All Cases v. Disability**



During the year immediately following passage of the FHAA, HUD found cause in just 1 percent of all cases and in just under 1 percent of disability cases. Since then, disability

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<sup>103</sup> See, e.g., Christine Robitscher Ladd, “Federal Fair Housing Enforcement: The Clinton Record at the End of the First Term,” in Citizens’ Commission on Civil Rights, *The Continuing Struggle: Civil Rights and the Clinton Administration* (1997) (hereafter CCCR 1997), p. 224.

<sup>104</sup> CCCR 1999, note 70, p. 233.

complaints have lagged significantly behind the average HUD case in probability of cause finding.

**Finding IV.C.4.a:** Since FY 1990, complaints of disability discrimination have lagged significantly behind the average HUD case in probability of cause finding.

**Finding IV.C.4.b:** Of the 12,017 disability complaints filed with HUD from 1990 through 2000, the agency found reasonable cause to believe discrimination had occurred in just 284 cases, or 2.4 percent of all cases.

**Finding IV.C.4.c:** When HUD finds cause in only 1 out of 40 disability cases, it may be sending a message to the disability community that victims of disability discrimination are unlikely to secure relief through filing a HUD complaint.

**Recommendation IV.C.4.a:** HUD should take steps to improve its credibility with disability groups and advocates by aggressively pursuing disability discrimination complaints and widely publicizing favorable results.

The number of cause findings varies dramatically from region to region.<sup>105</sup> Table IV-8 demonstrates that variance during the past three fiscal years.

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<sup>105</sup> CCCR 1997, note 104, pp. 221, 224: “There remains enormous variation between the HUD enforcement regions in the processing of complaints—the percentage of charge and no charge determinations and the percentage of cases conciliated or administratively closed vary widely between, and even within, regions from year to year. ... Such great variation between regions appears to indicate inconsistency in the evaluation of fair housing complaints and in the administration of the fair housing complaint process generally.”

**Table IV-8: HUD Cause Findings, All Cases, Fiscal Years 1998–2000**

FY	1	2	3	4	5	6	7	8	9	10	Total
1998	1	13	7	2	14	8	11	2	4	20	82
1999	12	24	2	8	23	3	7	20	0	16	115
2000	3	28	1	6	17	3	6	9	15	8	96

Even with the transfer of New York State’s Title VIII complaints to the New York FHAP, the New York HUB has consistently charged more cases than any other HUB. The Chicago HUB, despite the fact that most of its region is served by FHAPs, has also consistently charged a large number of complaints. One would expect the Philadelphia HUB to be low because the region is entirely served by FHAPs. The most troubling findings are with respect to the Boston, Atlanta, Ft. Worth, and San Francisco HUBs, all with very few cause findings. Among other examples, during FY 1999, the San Francisco HUB did not find cause in a single case, and Ft. Worth “caused” only three cases. During FY 2000, the Boston and Ft. Worth HUBs found cause in only three cases each.

**Finding IV.C.4.d: HUD cause findings have declined dramatically, from 325 in FY 1994 to 96 in FY 2000.**

There are also significant differences among HUBs concerning the number of disability complaints and the percentage of cause findings in disability cases since the passage of the FHAA (see Table IV-9).

**Table IV-9: HUD Disability Complaints and Cause Determinations Thereon (1990–2000)**

HUB	Complaints	Cause Findings	Cause as % of Complaints
1	675	15	2.2
2	1,173	57	4.9
3	1,124	12	1.0
4	1,085	30	2.8
5	1,702	42	2.5
6	1,452	22	1.5

<b>HUB</b>	<b>Complaints</b>	<b>Cause Findings</b>	<b>Cause as % of Complaints</b>
<b>7</b>	1,237	11	0.9
<b>8</b>	841	18	2.1
<b>9</b>	1,670	54	3.2
<b>10</b>	1,058	23	2.2
<b>National</b>	12,017	284	2.4

In absolute numbers and in terms of percentage of caseload, the New York HUB ranked highest in disability complaints with cause findings (57 cause findings, or 4.9 percent of cases) and the Kansas City HUB ranked lowest (11 cause findings, or 0.9 percent of cases).

**Finding IV.C.4.e:**                    **There are significant differences among HUBs concerning the overall number of disability complaints and the percentage of cause findings in disability cases since FY 1990. In absolute numbers and in terms of percentage of caseload, the New York HUB ranked highest in disability complaints with cause findings over the 11-year period (57 cause findings, or 4.9 percent of its disability cases) and the Kansas City HUB ranked lowest (11 cause findings, or 0.9 percent of its disability cases).**

**Finding IV.C.4.f:**                    **Such regional variations are attributable to cultural differences between regions of the country and personnel assigned to the respective HUBs. The management style currently employed by Headquarters FHEO tends to reinforce significant regional variations in enforcement practice, resulting in different treatment of disability (and other) complaints depending on the state in which a complainant lives and whether the complaint is handled by HUD or by an FHAP.**



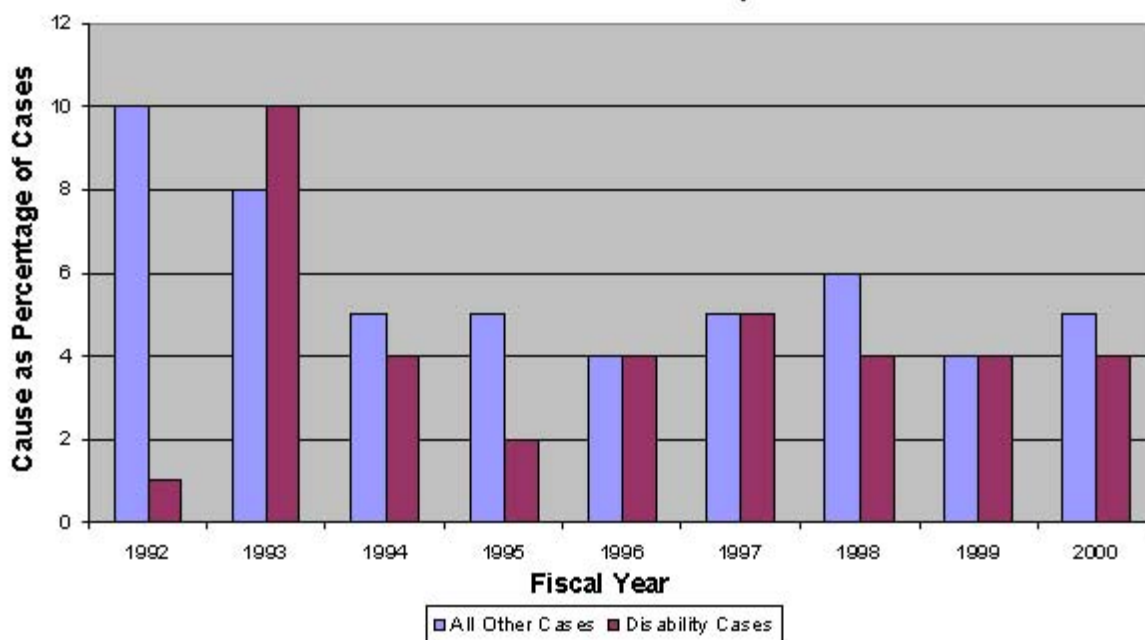
**Finding IV.C.4.g:** **Victims of discrimination are discouraged from using the Title VIII administrative process at HUD and FHAPs for a variety of reasons, including an unwelcoming intake process, inordinate delays in assessing and investigating claims, relatively small monetary awards achieved through HUD and FHAP conciliation, and a generalized sense that the administrative process rarely achieves results that outweigh the personal costs of filing a claim or complaint.**

**Recommendation IV.C.4.b:** **Congress should require HUD to conduct a study to determine why the absolute number and percentage of cause findings (especially those in disability cases) have declined so precipitously, and why there are such wide variations on these indicators among the HUBs.**

**Recommendation IV.C.4.c:** **Headquarters FHEO should take active steps to deal with these regional differences so that the quality of justice does not depend on place of residence, or should assume greater central authority over the Title VIII complaint process.**

As noted, FHAPs essentially handled no disability claims prior to FY 1992. From FY 1992 through FY 2000, FHAPs charged 347 of the 8,683 disability cases they handled, or 4 percent of total complaints (see Chart IV-13). This rate is considerably higher than the 2.4 percent rate for HUD-processed disability complaints for the same period. As shown in Chart IV-13, disability complaints experience a greater relative likelihood of being cause cases at FHAPs than at HUD.

**Chart IV-13: FHAP Cause Percentage:  
All Cases v. Disability**



**Finding IV.C.4.g:** FHAP cause findings have declined from 545 in FY 1990 to 158 in FY 2000.

**Finding IV.C.4.h:** From FY 1992 through FY 2000, FHAPs charged 347 of the 8,683 disability cases they handled, or 4 percent of total complaints. This rate is 40 percent higher than the rate for HUD-processed disability complaints for the same period.

**Recommendation IV.C.4.d:** HUD should conduct an analysis to determine why FHAPs, on average, charge 40 percent more of the disability complaints they handle. HUD should identify and distill the practices that have led to this success and require their use by HUDs and FHAPs that do not already employ them.

This 40 percent figure, however, masks wide variations from region to region. For instance, FHAPs in the Boston region found cause in 8.7 percent of disability complaints, and Philadelphia

area FHAPs found cause in 8.0 percent. By contrast, Ft. Worth area FHAPs found cause in just 0.6 percent of all disability complaints, and those in the Seattle and Denver regions found cause in 2.5 percent and 2.7 percent of all disability cases, respectively, as shown in Table IV-10.

**Table IV-10: FHAP Disability Complaints and Cause Determinations Thereon (1990–2000)**

<b>HUB</b>	<b>Complaints</b>	<b>Cause Findings</b>	<b>% of Cause Findings</b>
<b>1</b>	790	69	8.7
<b>2</b>	145	7	4.8
<b>3</b>	912	35	3.8
<b>4</b>	1,412	33	8.0
<b>5</b>	1,224	85	6.9
<b>6</b>	907	6	0.6
<b>7</b>	840	34	4.0
<b>8</b>	515	14	2.7
<b>9</b>	1,541	54	3.5
<b>10</b>	397	10	2.5
<b>National Total</b>	8,683	347	4.0

**Finding IV.C.4.i:** There are wide and troubling variations from region to region among the FHAPs. For instance, Boston region FHAPs found cause in 8.7 percent of disability complaints, and Philadelphia area FHAPs found cause in 8.0 percent. By contrast, Ft. Worth area FHAPs found cause in 0.6 percent of all disability complaints, and those in the Seattle and Denver regions found cause in 2.5 and 2.7 percent of all disability cases, respectively.

**Recommendation IV.C.4.e:** Headquarters FHEO should take active steps to deal with these regional differences so that the quality of justice does not depend on place of residence. Alternatively, Headquarters should assume greater central authority over the Title VIII complaint process.

## **D. Case Processing Times**

### **1. Statutory and Regulatory Constraints**

The FHA requires HUD to complete its investigation of fair housing complaints “within 100 days after the filing of the complaint...unless it is impracticable to do so” (42 U.S.C. §3610(a)(1)(B)(iv)). HUD implemented its claims process in FY 1996, apparently in order to ensure better front-end assessment of allegations of discrimination and more efficient use of resources devoted to investigating jurisdictional complaints. In order to work properly, the claims process must adhere to strict time lines, both to ensure that complainants don’t have their cases delayed and to achieve the efficiencies HUD sought in the first place.

The claims process was designed to streamline the investigative process and ensure that HUD devoted its scarce resources to cases that merited full investigation. In its first year of operation (FY 1997), the new process had a dramatic impact: 69.5 percent of all closures were dismissed as claims.<sup>106</sup> That pattern has persisted in subsequent years: for FY 1998 through FY 2000, the figures are 77 percent, 74 percent, and 71 percent, respectively.<sup>107</sup>

The adoption of the claims procedure has the inherent possibility of delaying resolution of fair housing cases. FHEO makes it clear that time spent processing a claim does not count toward the 100 days in which FHEO is mandated to complete its investigation. As a result of concerns about the timeliness issue, FHEO established a new time frame in May 1997 of 25 days for assessing claims and determining whether they would be converted to complaints or dismissed. Unfortunately, staffing and management reductions at FHEO have meant that many HUBs are failing to complete the assessment process on time.<sup>108</sup>

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<sup>106</sup> Schill and Friedman, p. 65.

<sup>107</sup> See Appendix IV-1.

<sup>108</sup> OIG, note 57, pp. 10–11: “In 36 of 117 cases we reviewed, however, the delay between receipt of the claim and mailing of a perfected complaint to the complainant for signature was more than 25 days. In 20 cases this initial delay was more than 50 days. Further, we found that as of September 30, 1997, FHEO’s ten [HUBs] had 856 claims that had been open an average of 62 days. This inordinate delay does not count toward meeting the 100-day requirement under the Act. Forty percent (343 of 856) of these claims had been open more than 50 days. The Boston, Fort Worth, and San Francisco [HUBs] alone had 583 open claims with 392 (67 percent) over 50 days old.” It appears that the OIG selected these three HUBs at random.

Congress intended the administrative process under the FHA to be “economical and efficient,” and to provide unrepresented victims of discrimination with a speedy and comprehensive remedy.<sup>109</sup> In fact, many claimants and complainants experience the system as hostile and unwelcoming.<sup>110</sup>

In 1998, HUD’s inspector general reported on an audit of cases in three HUBs and three FHAPs. The audit sampled 117 complaints (all of which had matured from claims) and found that in 31 percent of cases, the 25-day assess deadline was not met. In 17 percent of cases, HUD had not mailed a perfected complaint to the complainant for signature with 50 days from receipt.<sup>111</sup> At the close of FY 1997, the inspector general found that the HUBs had 856 open claims with an average age of 62 days and noted that this “inordinate delay” does not even count toward the statutory requirement that HUD make a cause determination within 100 days of filing.<sup>112</sup>

Problems with the claims assessment process and with investigation of complaints have arisen, in part, because FHEO has lacked sufficient enforcement staffing and has not replaced the expertise it has lost through retirement and resignations.<sup>113</sup>

## **2. Actual Experience of Complaints and Claims**

Significantly, HUD met the 100-day statutory processing goal only in FY 1989, the first year after passage of the FHAA. It came close to meeting the goal in FY 1993, but processing times have climbed exponentially since then, with complaints during FY 2000 taking an average of 500 days to reach closure or cause determinations. The U.S. Commission on Civil Rights identified “aged cases” (those that have exceeded the 100-day threshold) as a significant problem

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<sup>109</sup> House Report, p. 2,178.

<sup>110</sup> OIG, p. 15 (referring to customer satisfaction measures).

<sup>111</sup> OIG, pp. 10–11.

<sup>112</sup> *Ibid.*

<sup>113</sup> See Section VI.

as early as FY 1991.<sup>114</sup> The HUD inspector general noted that delays in investigating cases caused serious, and perhaps irreparable, harm to complainants and respondents.<sup>115</sup> In 1999, the Citizens’ Commission on Civil Rights again drew public attention to the aged case problem.<sup>116</sup>

HUD data express the time it has taken the agency to process complaints of housing discrimination. Table IV-11 shows the average age of open disability complaints at the end of each fiscal year since passage of the FHAA.

**Table IV-11: Average Age (in Days) of Open HUD Disability Complaints, by Year**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
National Average	70	153	116	132	154	197	262	318	336	349	374	390

**Finding IV.D.2.a: At the end of FY 2000, a victim of disability discrimination could expect to have waited 13 months since the filing of a complaint and to have no clear indication how soon the complaint might come to a hearing or otherwise be resolved.**

The average age of open complaints may vary somewhat from the age of cases that have been closed, especially when the agency has directed its efforts at closing some of the oldest cases in its inventory. The data and charts on the following pages use “closed case” data to demonstrate the growing problem with aged cases. Closed case data from HUD data through FY 2000 indicate that the aged case problem is accelerating (see Chart IV-14).

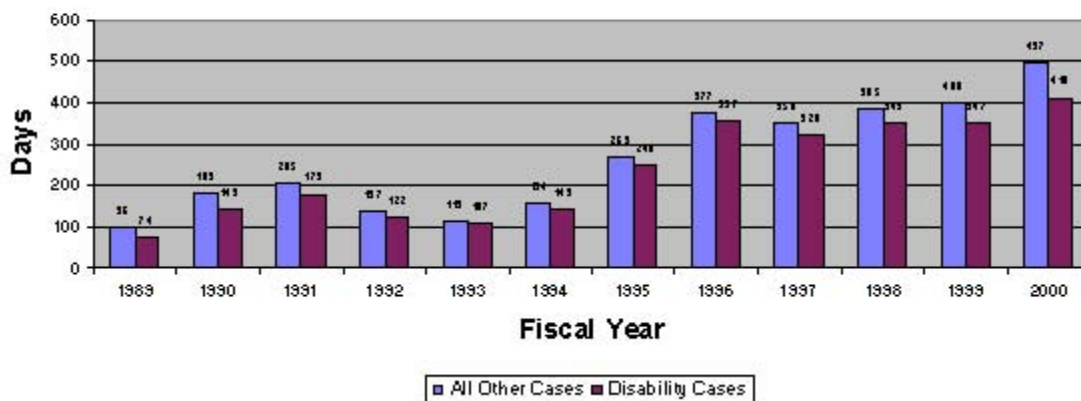
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<sup>114</sup> United States Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report* (September 1994), pp. 83–89.

<sup>115</sup> OIG, p. 14.

<sup>116</sup> CCCR 1999, p. 234: “The most recent data indicate that over-age cases remain a major problem. Overall, there has been little reduction in the backlog of over-age cases over the last two years. In 1996, HUD closed 2,660 over-age complaints, leaving a backlog at the end of 1996 of 1,459 over-age complaints. In 1997, HUD closed only 1,512 over-age complaints, leaving an inventory at the close of 1997 of 1,414 of these older complaints.”

**Chart IV-14: Age to Cause or Closure: All HUD Cases v. HUD Disability Cases**



HUD responded to this issue by stating that “everywhere that average age is discussed, the direct negative impact of the claims on the age of remaining HUD complaints is not addressed. The report simply states that the average time has increased dramatically; however, if claims were averaged in, the overall case age would be much less. Comparing average age during the claims years to preclaims years is a comparison of apples and oranges, and there is no recognition of this. Additionally, the explanation of not including claims time in complaints aging has never been included in discussions” (FHEO staff comments on National Council on Disability draft report, “Comments Regarding Data,” p. 3). The exclusion of claims (also known as “short cases” because they are typically closed before they are considered complaints) would drive up average case processing time, but the brunt of that change would have been felt in FY 1996, the first year the claims process was used and therefore the first year the average would have been inflated by the exclusion of short cases. After the institution of the claims process, average processing time went from 377 days to 497 days, an increase of 30 percent, calling into question HUD’s explanation.

**Finding IV.D.2.b:** The average age of HUD complaints, measured from filing to date of closure, has risen from 96 days in FY 1989 to 137 days in FY 1992 to 497 days in FY 2000.

**Finding IV.D.2.c:** The aging of complaints has occurred as the number of complaints investigated by HUD has declined by 70 percent.

**Recommendation IV.D.2: HUD should analyze its management practices to determine why case handling has become so inefficient, and should report its findings to Congress and the public.**

As borne out by Chart IV-13, disability claims, on average, have reached closure or cause determinations somewhat faster during each of the past 12 fiscal years. Even so, during the past four fiscal years, HUD has taken roughly 300 days to investigate such claims, or three times longer than prescribed by Congress.

HUD's Office of Inspector General (OIG) has pointedly said that "FHEO has not achieved its mission under the Fair Housing Act (Act) to investigate and resolve complaints of discrimination promptly."<sup>117</sup> The same report went on to make detailed findings about this phenomenon and its causes:

Insufficient supervisory oversight of its investigators and inadequate and inconsistent use of its management systems were the primary reasons that FHEO was unable to fully achieve its mission to promptly investigate and resolve discrimination complaints. ... FHEO has not taken sufficient action to assess failed controls that have allowed at least 70 percent of the [HUB] and FHAP investigations closed in the past two years to exceed 100 days.<sup>118</sup>

In 1997, the Citizens' Commission on Civil Rights spelled out how a dysfunctional enforcement system undermines public confidence in the Fair Housing Act:

HUD's backlog is again growing....[The backlog] serves as an important indicator to complainants and fair housing advocates of the likelihood of a prompt adjudication of the complainant's grievance. This, in turn, may well determine whether the complainant will decide to make use of the federal enforcement process.<sup>119</sup>

Two years later, concluding that "...the real problem is HUD's investigators' inability to identify relevant facts, analyze evidence, and apply the law in a reasonably expeditious

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<sup>117</sup> OIG, p. 6.

<sup>118</sup> OIG, p. 13.

<sup>119</sup> CCCR 1997, p. 221-22.



fashion,”<sup>120</sup> the Citizens’ Commission on Civil Rights describes the effect of an administrative enforcement system that is not functioning within the time frames mandated by Congress:

These [aged case] data are significant, for they serve as an important indicator of the likelihood that a complainant will receive a prompt adjudication. A complainant is entitled to know this information before deciding whether to use the government enforcement process or pursue a Fair Housing Act claim in federal or state court....[S]ince 1988, HUD has routinely allowed complaints to stagnate—many times for as much as a year past the 100-day limit. These delays are devastating. Witnesses disappear or die, memories become hazy, complainants lost heart, and defendants complain loudly at trial about the lack of a speedy and fair adjudicatory process.”<sup>121</sup>

**Finding IV.D.2.d:                    The aged case backlog serves as an important indicator to complainants and fair housing advocates of the likelihood of a prompt adjudication of the complainant’s grievance. This, in turn, may well determine whether the complainant will decide to make use of the federal enforcement process.**

**Finding IV.D.2.e:                    At the close of FY 1998, 69 percent of HUD’s pending complaints had exceeded the statutory 100-day maximum for investigation and determination of cause. At the close of FY 1998, 78 percent of HUD’s pending complaints had gone past 100 days. At the close of FY 1998, 68 percent of HUD’s pending complaints had surpassed the deadline. During these three fiscal years, the Denver HUB was the worst performer (81 percent of cases older than 100 days) and Kansas City was the best (44 percent of cases older than 100 days).**

**Finding IV.D.2.f:                    FHAP processing time to closure for all complaints came close to meeting the 100-day mandate during FY 1989 and remained below 140 days through FY 1993. Processing times rose**

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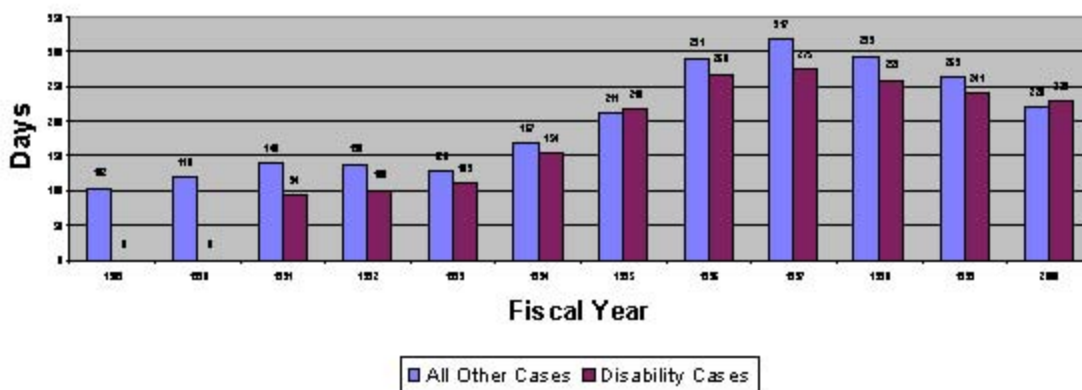
<sup>120</sup> CCCR 1999, p. 237.

<sup>121</sup> Ibid., pp. 233, 234.

steadily through FY 1997 (when they reached 317 days). Thereafter, they have declined nearly 30 percent; during FY 2000, FHAP complaints took an average of 220 days from filing to closure or cause determination.

FHAPs seem to be doing a better job concerning case processing times, but still have routinely exceeded the 100-day maximum since FY 1993 (see Chart IV-15).

**Chart IV-15: Age to Cause or Closure: All FHAP Cases v. FHAP Disability Cases**



The 1998 Audit Report of the Inspector General also found that inadequate oversight of FHAP agencies contributes to the aged case problem:

We found gaps of inactivity in about 70 percent of these cases where no investigative work was being done....The FHAP agency in California routinely sets investigations aside and would not do any investigative work until just weeks prior to reaching the one year statute of limitations for issuing accusations against respondents.<sup>122</sup>

**Finding IV.D.2.g:** FHAPs have been able to process fair housing complaints more quickly than HUD. In the last four years for which data are available, FHAPs have investigated and closed cases about 100 days faster than HUD. With respect to disability claims,

<sup>122</sup> OIG, p. 17.

**FHAPs work more quickly as well, averaging 75 fewer days than HUD per disability complaint.**

During August 2001, well after the close of the period analyzed in this report, NCD became aware of a concerted effort by HUD to close out aged cases in the HUD and FHAP inventories as quickly as possible.<sup>123</sup> While applauding the spirit of this effort, NCD cautions that care should be taken in closing such cases in a manner that fully respects the rights of complainants and that cases should not arbitrarily be assigned an administrative closure or no cause determination simply to close them out. Although no clear guidance has been given to the field on these matters, NCD expects that it will be forthcoming so that no victim of housing discrimination has his or her rights extinguished.

**3. Regional Variations on Aged Cases**

HUBs are required to provide information on the number of complaints that have not been investigated within the 100-day time frame mandated by Congress. The charts in Appendix IV-3 demonstrate that the Chicago HUB has consistent problems in meeting the deadline, while the Atlanta and Ft. Worth HUBs have had intermittent problems.

Table IV-12 provides another measure of HUD's aged case problem, by HUB and by fiscal year.

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<sup>123</sup> This direction was provided by Floyd May, Deputy Assistant Secretary for Operations and Management, FHEO, to HUD and FHAP personnel from Regions 1, 2, 3, and 4 at the Quad Regional Conference in Philadelphia, Pennsylvania, at a workshop titled "Effective Case Management Techniques and Dealing with Aged Cases," on August 9, 2001.

**Table IV-12: Average Age of Open HUD Disability Complaints,  
by HUB and by Year**

HUB	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>1</b>	52	125	84	135	250	226	96	119	160	296	397	179
<b>2</b>	65	156	102	100	162	159	303	263	317	422	470	571
<b>3</b>	68	179	72	80	190	347	477	508	508	471	212	255
<b>4</b>	60	179	199	232	113	145	291	364	373	403	291	312
<b>5</b>	82	174	150	239	167	169	186	289	355	331	364	414
<b>6</b>	85	140	90	131	171	205	231	260	268	192	209	293
<b>7</b>	66	101	76	90	89	96	163	233	260	145	153	183
<b>8</b>	60	114	144	117	121	137	300	407	403	568	558	678
<b>9</b>	70	142	82	104	145	268	263	328	331	342	555	669
<b>10</b>	70	180	177	126	174	268	293	330	398	334	373	279
National Average	70	153	116	132	154	197	262	318	336	349	374	390

FHAP processing time to closure or cause for all complaints came close to meeting the 100-day mandate during FY 1989 and remained below 140 days through FY 1993. Processing times rose steadily through FY 1997 (reaching 317 days). Thereafter, they have declined nearly 30 percent; during FY 2000, FHAP complaints took an average of 220 days from filing to closure or cause determination.

HUD suggests that “[t]he FHAPs’ average age of complaints and its ability to close complaints more quickly is directly related to HUD’s handling the intake process on all cases referred to the agencies. In FY 2000, of the 11,211 cases received, HUD received 8,231 (73 percent) and FHAP agencies received 2,980. FHAP agencies processed 2,980 complaints because 1,990 of the cases that HUD received (and on which it did intake) were then referred to the agencies for completion” (FHEO staff comments on National Council on Disability draft report, “Comments Regarding Data,” p. 8). Other data in this report show that FHAPs received 4,914 cases during FY 2000, roughly approximating the figures above (2,980 + 1,990 = 4,970). In other words, 40 percent of the complaints received by FHAPs were initially processed by HUD, presumably from what would have been considered claims. FHAPs undoubtedly benefited from this practice, because they could begin processing the merits of the complaint without having to establish the initial jurisdictional elements. But because HUD also processed its own claims

before considering them complaints (and did not count this initial time toward the 100-day limit), it had the same advantage as the FHAPs with respect to case processing times.

With the exception of FY 2000, FHAP disability complaints have been processed somewhat faster to closure or cause determination (see Table IV-13).

**Table IV-13: Average Age of Open FHAP Disability Complaints, by HUB and by Year**

Region	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>1</b>	0	0	0	9	56	93	124	165	162	168	178	241
<b>2</b>	0	0	0	0	0	0	0	0	0	0	0	58
<b>3</b>	0	0	0	0	157	277	338	417	437	427	332	284
<b>4</b>	0	0	86	77	195	223	212	214	225	284	375	367
<b>5</b>	0	228	0	55	125	127	242	338	255	305	292	38
<b>6</b>	0	0	11	48	104	144	94	114	135	103	139	125
<b>7</b>	0	0	0	53	80	185	359	419	355	312	303	303
<b>8</b>	0	0	0	6	110	123	136	222	193	188	176	524
<b>9</b>	0	0	0	55	118	138	128	156	171	197	200	272
<b>10</b>	0	0	0	0	0	32	137	283	348	421	288	230
National Average	0	228	72	58	129	179	224	281	262	268	271	287

Congress has recently taken a renewed interest in dealing with the problem of aged cases at FHAPs. In making recommendations for funding of FHAPs, the House Appropriations Committee wrote: “Funding has been provided above the request for case processing and related activities to enable FHAP agencies to continue to make progress in reducing the backlog of existing cases which remain unsolved for over 100 days.”<sup>124</sup> This congressional attention and additional funding are remarkable, given that FHAPs in FY 2000 are taking an average of only 220 days from filing to resolve complaints. It is almost as if Congress is unaware that HUD’s aged case problem—at 497 days from filing to closure—is much more critical.

**Finding IV.D.3: Congress appears to be unaware of the scope of HUD’s aged case problem and the effect it has on complainants and public confidence in the administrative enforcement system.**

<sup>124</sup> House Report 107-159, p. 40 (filed July 25, 2001).

**Recommendation IV.D.3: Congress should closely scrutinize HUD’s aged case portfolio and provide oversight and funding to correct it.**

**4. Age to Closure**

As previously mentioned, HUD and the FHAPs use four primary methods of closing fair housing complaints: (1) administrative closure, (2) conciliation, (3) no cause finding, and (4) cause finding. The following pages analyze case processing times for the last three of these categories. At every stage of the process, HUD and the FHAPs are failing to meet the time lines set out in the FHA. The 100-day letters referred to tell only a part of the story; once a case exceeds 100 days from filing, there are no ongoing requirements that HUD or a FHAP report to complainants or respondents about the status of the case. Often, when investigations take more than 500 days, the dearth of communication with the parties effectively sends the message that no work is being done toward resolving the underlying complaint.

**Finding IV.D.4.a: Congress required the HUD Secretary to send the 100-day letters only where it was “impracticable” to complete an investigation within 100 days, but the drafters of the FHAA did not anticipate that such a large percentage of the inventory would exceed the statutory deadlines. At present, the 100-day letters are the rule, rather than the rare exception Congress intended. In essence, the letters have become a formality observed in almost every case. HUD’s intermittent reporting of these facts to Congress may have made it more difficult for the oversight committees to understand and respond to the aged case crisis.**

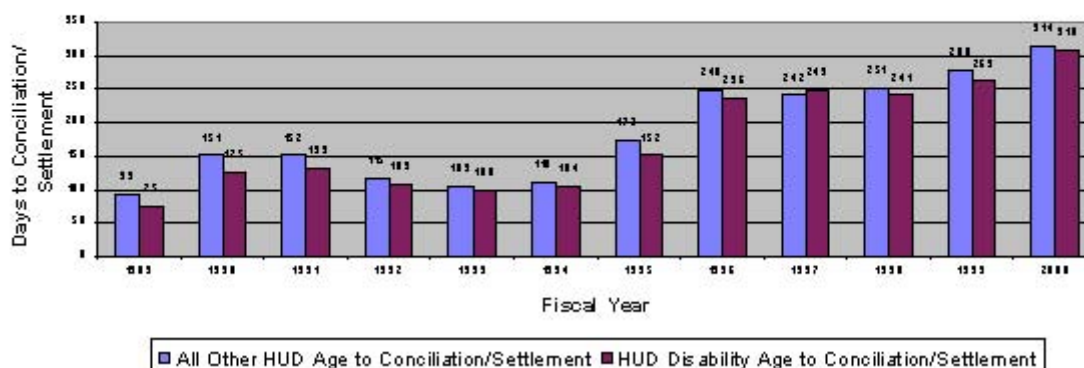
**Finding IV.D.4.b: At every stage of the process, HUD and the FHAPs are failing to meet the time lines set out in the FHA. The 100-day letters tell only a part of the story; once a case exceeds 100 days from filing, there are no ongoing requirements that HUD or an FHAP report to complainants or respondents about the status of a case. Often, when investigations take more than 500 days, the dearth of communication with the parties effectively sends**

**the message that no work is being done toward resolving the underlying complaint.**

a. Age to Conciliation

Even the simplest kind of case, in which both complainant and respondent agree to conciliate their differences, has historically taken HUD much longer than 100 days. In fact, the use of the claims process—which was supposed to weed out weaker cases and leave more staff time to deal with cases that had some merit—caused average conciliation time to swell from 172 days in FY 1995 (pre-claims process) to 314 days in FY 2000 (see Chart IV-16).

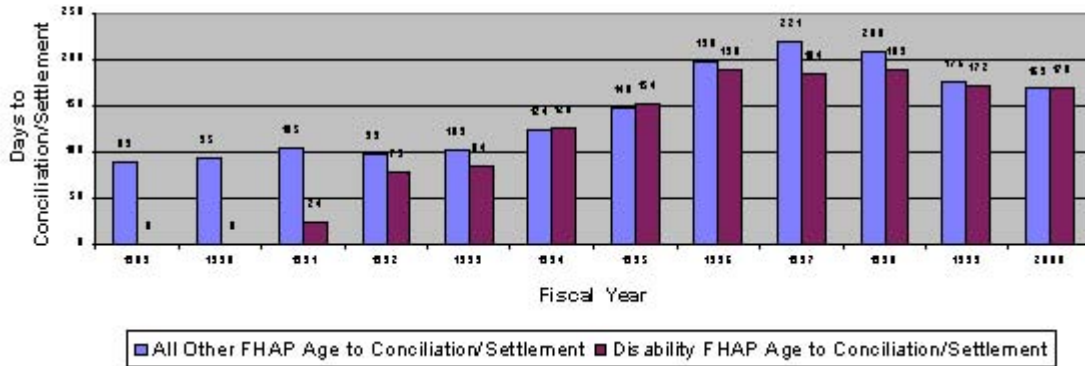
**Chart IV-16: HUD Age to Conciliation/Settlement: All Cases v. Disability**



Through FY 1994, HUD was able to conciliate cases in 150 days or fewer. Beginning in FY 1995, the time it took to resolve complaints began to increase dramatically, finally reaching 314 days in FY 2000. There appears to be no clear correlation between the prevalence of conciliations and the time expended to close a conciliated case. For example, in FY 1992, HUD successfully conciliated 2,058 cases, or 32 percent of all complaints (582 of these cases alleged disability discrimination, representing 33 percent of all such cases). That year, the average age of all conciliated cases was less than 100 days. This was accomplished at a time when FHEO had 309 full-time equivalents (FTEs) devoted to enforcement. In FY 2000, HUD conciliated only 904 cases, or 41 percent of all complaints (324 of these complaints alleged disability discrimination, representing 48 percent of all conciliated cases). The FY 2000 average age of conciliated cases was 314 days at a time when HUD had 319 FTEs devoted to enforcement.

During the past two fiscal years, FHAPs have been able to conciliate cases four to five months faster than HUD (see Chart IV-17).

**Chart IV-17: FHAP Age to Conciliation/Settlement:  
All Cases v. Disability**



**Finding IV.D.4.c:**

Through FY 1994, HUD was able to conciliate cases in 150 days or fewer. Beginning in FY 1995, the time it took to resolve complaints began to increase dramatically, finally reaching 314 days in FY 2000. There appears to be no clear correlation between the prevalence of conciliations and the time expended to close a conciliated case. For example, in FY 1992, HUD successfully conciliated 2,058 cases, or 32 percent of all complaints (582 of these cases alleged disability discrimination, representing 33 percent of all conciliated cases). That year, the average age of all conciliated cases was less than 100 days. This was accomplished at a time when FHEO had 309 FTEs devoted to enforcement. In FY 2000, HUD conciliated only 904 cases, or 41 percent of all complaints (324 of these complaints alleged disability discrimination, representing 48 percent of all conciliated cases). The FY 2000 average age of conciliated cases was 314 days, at a time when HUD had 319 FTEs devoted to enforcement.



**Finding IV.D.4.d:** During the past two fiscal years, FHAPs have been able to conciliate cases four to five months faster than HUD.

**Recommendation IV.D.4.a:** HUD should analyze its management practices to determine why case handling has become so inefficient and should report its findings to Congress and the public.

**Recommendation IV.D.4.b:** HUD should identify best practices among HUBs and FHAPs concerning the rapid conciliation of cases (especially disability cases) and require HUBs and FHAPs that do not already do so to use these practices.

b. Age to No Cause

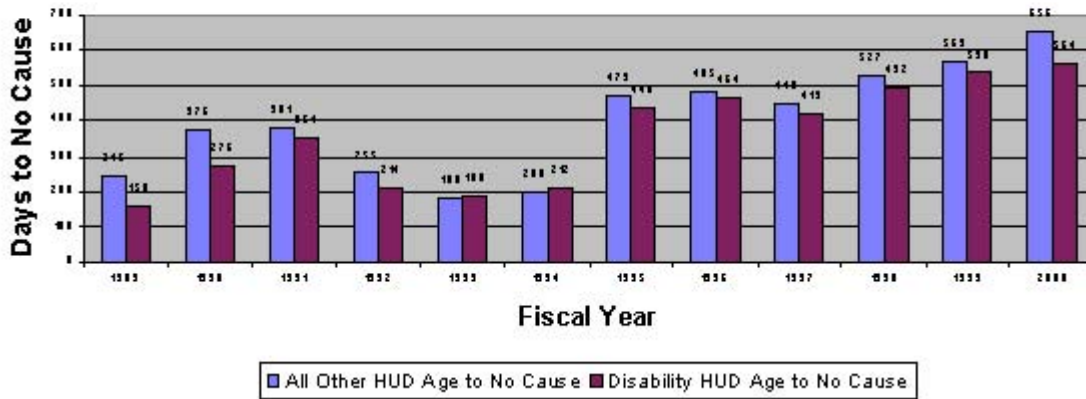
As with conciliated cases, HUD has taken longer and longer to close complaints with findings of no cause. In order to make a no cause finding, HUD has to fully investigate a complaint and conclude that no reasonable person could determine that there was probable cause to believe discrimination had occurred.

The time HUD has taken to make no cause determinations has skyrocketed in recent years. In FY 2000, it took HUD 656 days to “no cause” a case, inexplicably 30 percent longer than it took to find cause,<sup>125</sup> even though both findings are predicated on the same kind of investigation (see Chart IV-18).

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<sup>125</sup> See Chart IV-19.

**Chart IV-18: HUD Age to No Cause:  
All Cases v. Disability**



The claims process appears not to have helped HUD reach no cause decisions faster. In fact, at the end of the five-year claims period, no cause decisions took 35 percent longer than during the first year.

**Finding IV.D.4.e:** In FY 2000, with 319 enforcement FTEs, it took HUD more than 650 days on average, and about 570 days for a disability case, to reach a finding of no cause.

**Finding IV.D.4.f:** By contrast, over the past four fiscal years, FHAPs have actually brought down the average time to reach a finding of no cause to 258 days, or more than a year faster than HUD in FY 2000.

**Finding IV.D.4.g:** The aging of cases amounts to a self-inflicted wound: The longer it takes HUD to process a case, the more likely witnesses and evidence will evaporate, the more likely a case will remain idle in HUD’s inventory, and the more likely HUD will have to consign it to administrative closure or terminate it as a no cause case.

**Recommendation IV.D.4.c:** HUD should determine how FHAPs have been able to reach determinations of no cause in less than half the time it takes

**HUD and should implement practices to ensure that HUD cases are treated as expeditiously.**

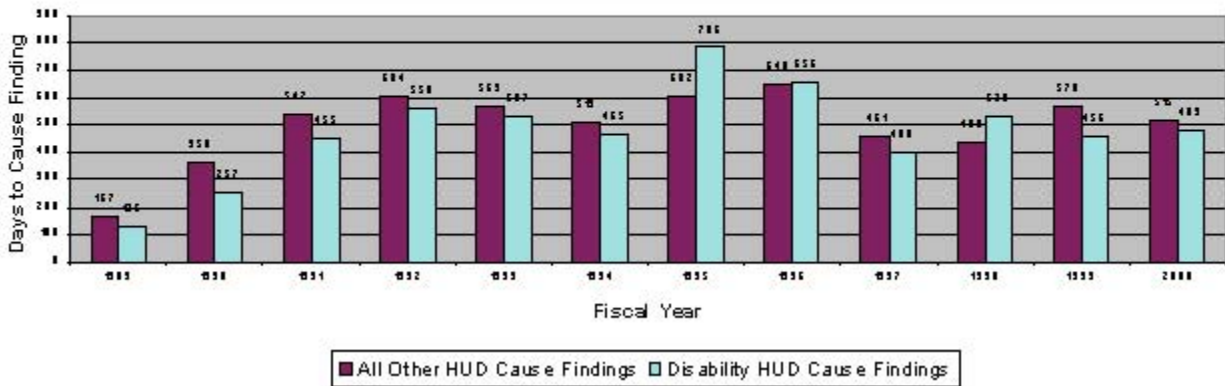
**Recommendation IV.D.4.d: Congress should earmark funding for HUD to substantially reduce its aged case portfolio and to ensure that the problem does not recur.**

c. Age of Cause Cases

HUD takes five times as long to make cause determinations as Congress intended when it passed the FHAA, although they require at least the same level of investigation as no cause cases. In FY 2000, HUD made cause determinations about 150 days faster on average (and 75 days faster on average for disability complaints).

Chart IV-19 demonstrates that it has consistently taken HUD a long time to reach a cause determination.

**Chart IV-19: Age of HUD Cause Findings:  
All Cases v. Disability**



As indicated, FHAPs have been able to process fair housing complaints more quickly than HUD. In the last four years for which data are available, FHAPs have investigated and closed cases about 100 days faster than HUD. With respect to disability claims, FHAPs work more quickly as well, averaging 75 fewer days than HUD per disability complaint. Like HUD in FY 2000, FHAPs appear to be making cause determinations slightly faster than no cause determinations (see Appendix IV-4).

**Finding IV.D.4.h:** HUD takes five times as long to make cause determinations as Congress intended when it passed the FHAA, although they require at least the same level of investigation as no cause cases. In FY 2000, HUD made cause determinations about 150 days faster on average (and 75 days faster on average for disability complaints).

**Recommendation IV.D.4.e:** HUD should analyze the success of FHAPs in reaching cause determinations more quickly than the HUBs and should require HUBs to incorporate these best practices.

**Recommendation IV.D.4.f:** Congress should require HUD to take immediate steps to assess the reasons for the aged case problem at HUBs and FHAPs. Congress should then provide adequate funding to support a corrective plan to ensure that investigations and cause or no cause determinations are made within 100 days of a complaint being filed.

#### E. Financial and Other Relief Made Available to Victims of Discrimination

The following tables reflect only HUD- and FHAP-conciliated cases, which are the only cases for which HUD supplied data. The tables do reflect monetary and other relief secured through ALJ proceedings or representation in court by the Department of Justice. While total compensation in fair housing cases has gone up (see Table IV-14), it appears to be going to fewer and fewer people (see Table IV-15).

Further analysis of the data suggest that a very small number of cases are resulting in significant monetary awards. When a handful of very large settlements between FY 1997 and FY 2000 are excluded (including a single fair lending settlement that yielded \$21 million in monetary relief), the average award per case is exceedingly modest (see Table IV-16).

Over the past 12 years, the average conciliated disability case has brought very modest monetary relief to complainants. HUD conciliations have yielded an average of \$6,732 per case; FHAP conciliations have resulted in average compensation of \$3,932 (see Table IV-17).

**Table IV-14: Total Monetary Compensation, by Year**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	1990-2000
HUD	N/A	1,601,480	1,800,530	2,261,365	2,267,044	1,951,853	2,429,975	4,407,300	9,679,627	6,512,145	6,206,601	23,883,090	63,001,010
FHAP	N/A	362,477	491,628	579,441	557,363	1,004,242	1,845,421	3,973,947	3,227,795	3,863,689	2,565,150	1,514,056	19,985,209
National Total		1,963,957	2,292,158	2,840,806	2,824,407	2,956,095	4,275,396	8,381,247	12,907,422	10,375,834	8,771,751	25,397,146	82,986,219

**Table IV-15: Number of Cases with Monetary Compensation, by Year**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	1989-2000
HUD	218	828	920	997	951	883	758	632	471	349	461	400	7868
FHAP	229	401	438	544	421	611	987	1067	1042	893	652	590	7875
National Total	447	1229	1358	1541	1372	1494	1745	1699	1513	1242	1113	990	15743

**Table IV-16: Average Compensation in Conciliated Cases (in dollars)**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Race/HUD	2,697	2,905	3,106	4,314	2,908	2,022	4,603	14,940	57,416	25,371	8,929	7,277
Race/FHAPs	1,310	1,207	1,570	1,235	1,932	2,240	2,354	2,552	6,060	2,085	4,903	3,008
Sex/HUD	780	1,354	3,058	2,393	2,447	2,784	4,736	17,710	4,534	3,156	17,553	7,337
Sex/FHAPs	1,632	1,205	672	1,284	1,284	1,521	1,551	1,326	2,118	1,716	2,067	1,998
Color/HUD	925	1,206	4,339	971	1,249	1,773	3,483	58,189	7,958	112,708	10,370	13,587
Color/FHAPs	1,880	1,624	1,698	1,652	4,046	1,860	5,076	1,807	19,796	4,205	2,264	2,266
Origin/HUD	7,544	1,308	1,327	1,276	1,976	2,278	5,763	29,748	160,683	74,552	91,081	781,366
Origin/FHAPs	1,582	588	941	2,402	701	2,521	1,768	1,429	16,625	3,175	1,936	1,034
Handicap/HUD	799	2,738	1,732	2,550	3,304	2,696	4,604	21,344	11,975	15,727	6,741	10,112
Handicap/FHAPs	0	0	0	228	1,707	860	3,737	1,556	2,381	10,588	4,742	2,518
Familial Status/HUD	1,564	2,057	2,512	2,221	3,483	3,183	2,381	2,200	3,141	3,524	2,740	3,934
Familial Status/FHAPs	0	0	514	1,326	1,542	2,087	1,480	8,051	1,920	2,251	2,510	1,924
Religion/HUD	0	433	1,452	3,308	1,621	1,250	1,003	941	1,458	2,686	7,250	1,700
Religion/FHAPs	2,874	569	800	1,329	422	317	2,659	1,052	1,672	1,851	1,051	1,063

**Table IV-17: Average Compensation per Conciliated Case, 1989–2000  
(in dollars)**

<b>Basis/Processing Authority</b>	<b>Compensation Per Case</b>
Race/HUD	9,191
Race/FHAPs	2,638
Sex/HUD	5,234
Sex/FHAPs	1,518
Color/HUD	18,492
Color/FHAPs	4,329
Origin/HUD	68,006
Origin/FHAPs	3,298
Handicap/HUD	6,732
Handicap/FHAPs	3,932
Familial Status/HUD	2,587
Familial Status/FHAPs	3,033
Religion/HUD	1,637
Religion/FHAPs	1,520

**Finding IV.E.1:**                    **With respect to monetary compensation to victims of discrimination, total compensation and average compensation have increased, but largely because of a small number of large settlements in fair lending and design and construction cases. Excluding a single lending settlement in FY 2000, total compensation and average compensation per HUD case would have fallen to historic lows.**

**Finding IV.E.2:**                    **Monetary compensation seems to be benefiting fewer and fewer complainants, declining from a high of 997 HUD cases in FY 1992 to only 400 HUD cases in FY 2000. FHAPs followed a similar path, from a high of 1,067 cases in FY 1996 to only 590 cases in FY 2000.**

**Finding IV.E.3:**                    **Among HUD-processed complaints since 1989, average disability compensation (\$6,732 per conciliated case) ranks**

**fourth behind national origin, color, and race. Among FHAP-processed complaints since 1989, average disability compensation (\$3,932 per conciliated case) ranks second behind color.**

**Recommendation IV.E.1: HUD should focus its resources on securing resolution of (and compensation in) a broad range of fair housing complaints rather than focusing on settlement of cases designed primarily to garner the most publicity for the agency.**

**Recommendation IV.E.2: HUD should identify best practices in each area above and attempt to replicate these practices across its enforcement programs. For example, if a region or FHAP is doing a particularly good job regarding quick processing or good conciliations or high levels of monetary compensation or good disability outreach, HUD should try to bottle it and make it available to the entire fair housing community, beginning with HUBs and FHAPs but including FHIPs and other advocates.**

As with other indices, compensation in conciliated cases varies dramatically from HUB to HUB (see Table IV-18). The highest average awards have come from Atlanta, Denver, and Chicago. These averages appear to be higher because of the settlement of four design and construction cases credited to Atlanta (FY 1996 and FY 1997), Denver (FY 1998), and Chicago (FY 1996). Without these, average awards would have been significantly lower.

FHAPs experience similar variations (see Table IV-19). FHAPs in the Atlanta region have the highest cumulative average from FY 1989 through FY 2000, influenced in part by a design and construction settlement in FY 1998.

In response to a draft of this report, HUD suggested that the performance of HUBs and FHAP regions might be influenced by the geographic location of strong disability advocacy organizations. While NCD did not have sufficient data to determine the validity of this hypothesis, it attempted to test it in light of its own knowledge that there were such advocacy



organizations in Chicago, Denver, and Philadelphia. If the hypothesis were correct, one might expect to see larger numbers of disability complaints and higher monetary compensation per case at both HUD and FHAPs in those regions, which is not the case (Table IV-20).

**Table IV-18: Monetary Compensation in HUD Conciliated Disability Cases, by Year, by HUB  
(Average Compensation per Case)**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Cumulative Average 1989–2001
Boston	798	796	6,190	1,313	1,487	950	15,732	6,975	2,022	11,010	2,775	1,944	3,933
New York	0	1,597	957	7,924	1,376	17,000	1,523	1,871	2,834	5,805	13,544	1,978	4,706
Philadelphia	0	709	1,581	9,768	7,512	5,623	7,992	23,026	6,300	30,937	9,193	0	7,975
Atlanta	650	347	2,597	2,625	574	4,113	2,768	113,456	154,370	3,000	7,884	5,418	17,931
Chicago	322	2,217	768	1,780	1,514	1,725	3,074	68,441	6,439	9,972	4,830	4,300	8,731
Ft. Worth	500	1,150	1,161	685	333	1,081	2,417	2,066	845	930	3,265	1,550	1,493
Kansas City	847	7,693	1,306	4,072	3,111	943	2,390	576	7,005	17,353	6,745	6,837	4,251
Denver	68	293	624	827	1,859	1,745	1,215	2,903	2,616	57,455	4,751	30,042	9,175
San Francisco	963	6,808	1,960	808	1,927	5,533	18,424	2,526	11,119	9,075	14,207	15,337	8,468
Seattle	1,685	1,702	490	2,635	12,895	1,053	2,146	2,624	5,937	1,969	5,410	3,237	3,633
National	799	2,738	1,732	2,550	3,304	2,696	4,604	21,344	11,975	15,727	6,741	10,112	6,732

**Table IV-19: Monetary Compensation in FHAP Conciliated Disability Cases, by Year, by HUB  
(Average Compensation per Case)**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Cumulative Average 1989–2001
Boston	0	0	0	0	1,175	1,604	2,853	2,461	1,992	2,060	4,321	6,368	3,212
New York	0	0	0	0	0	0	0	0	0	0	0	795	795
Philadelphia	0	0	0	0	381	1,519	9,731	2,281	5,720	4,762	12,114	1,098	5,346
Atlanta	0	0	0	0	1,642	946	1,342	671	1,215	74,367	19,279	1,637	16,451
Chicago	0	0	0	233	5,013	609	1,264	1,462	1,318	1,181	1,799	1,148	1,319
Ft. Worth	0	0	0	226	181	286	853	1,475	268	1,280	2,462	982	1,154
Kansas City	0	0	0	0	263	595	332	650	684	827	2,770	1,287	1,261
Denver	0	0	0	0	375	391	1,407	971	1,090	1,985	2,783	1,827	1,260
San Francisco	0	0	0	0	7,948	1,870	7,623	1,551	4,531	5,756	1,814	3,205	3,840
Seattle	0	0	0	0	0	0	876	2,849	1,338	1,066	6,18	1,397	1,439
National	0	0	0	228	1,707	860	3,737	1,556	2,381	10,588	4,742	2,518	3,932

Note: Until recently, the New York and Seattle regions had few, if any, FHAPS. Also, prior to FY 1992, conciliation of all disability cases was handled by HUD.

**Table IV-20: Comparison of HUD and FHAP Regions with Respect to Monetary Compensation**

<b>HUB/ REGION</b>	<b>HUD CONCILIATED DISABILITY CASES</b>			<b>FHAP CONCILIATED DISABILITY CASES</b>		
	<b># CASES WITH MONETARY COMPENSATION FY 1989-2000</b>	<b>TOTAL COMPENSATION FY 1989-2000</b>	<b>AVERAGE COMPENSATION FY 1989-2000</b>	<b># CASES WITH MONETARY COMPENSATION FY 1989-2000</b>	<b>TOTAL COMPENSATION FY 1989-2000</b>	<b>AVERAGE COMPENSATION FY 1989-2000</b>
Boston	95	\$373,629	\$3,933	71	\$228,045	\$3,212
New York	75	352,981	4,706	3	2,385	795
Philadelphia	86	685,832	7,975	86	459,725	5,346
Atlanta	92	1,649,687	17,931	100	1,645,155	16,451
Chicago	207	1,807,323	8,731	120	158,220	1,319
Ft. Worth	133	198,596	1,493	126	145,341	1,154
Kansas City	216	918,225	4,251	89	112,196	1,261
Denver	139	1,275,355	9,175	87	109,604	1,260
San Francisco	135	1,143,164	8,468	212	814,231	3,840
Seattle	153	555,585	3,633	64	92,112	1,439
NATIONAL	1,331	\$8,960,650	\$6,732	958	\$3,767,014	\$3,932

No clear pattern emerged from this analysis. The Kansas City HUB had the highest raw number of disability conciliations, but its per-case monetary relief was well below the national average. Chicago, with the largest HUD-served population of any HUB, had the second highest number of cases and a per-case amount above the national average. Denver had a moderate number of cases, but its conciliation awards were higher than any other HUB except Atlanta (which had two large design and construction settlements). Philadelphia had fairly few HUD disability conciliations (as would be expected, given that every state in its service area has an FHAP) but monetary compensation above the national average. On the FHAP side, San Francisco, Ft. Worth, and Chicago led in terms of complaints filed, but Atlanta, Philadelphia, and San Francisco had the highest per-case compensation.

Neither Illinois nor Chicago has substantially equivalent agencies, so it is not surprising that FHAPs in the Chicago region have very few disability conciliations and very low settlement awards. Colorado and Pennsylvania, however, do have FHAPs, so one would expect the existence of strong disability groups in Denver and Philadelphia to move these FHAPs to the top of the list. In fact, FHAPs in the Philadelphia region have a fairly small number of these cases, with monetary compensation well above the national average. FHAPs in the Denver region have few disability conciliations and very small monetary settlements.<sup>126</sup>

In addition to monetary relief, HUD also keeps data on the number of cases in which complainants use conciliation to get “housing relief,” typically defined as getting a rental unit or being able to purchase a home as a result of the conciliation. The number of cases in which complainants in the HUD system are getting housing relief has gone down dramatically since FY 1992 (see Appendix IV-5).

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<sup>126</sup> Private fair housing groups in the Philadelphia region have litigated a significant number of disability cases, with monetary awards ranging from \$1,500 to \$525,000. The Denver region has seen much less involvement in disability litigation. See National Fair Housing Alliance and Fair Housing Center of Metropolitan Detroit, *\$160,000,000 and Counting* (June 24, 2000), pp. 45, 46, 57, 80, 89–90, and 92.

## **F. Other Enforcement Options**

### **1. Secretary-Initiated Complaints**

As part of its design to strengthen the ability of HUD to eradicate housing discrimination, Congress authorized fair housing complaints initiated by the Secretary. The FHAA provides:

The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.<sup>127</sup>

This authority is particularly important in cases where a bona fide complainant is unlikely to come forward, either because of the personal peril involved or because a discriminatory practice harms a fairly large number of individuals but the damages to each may be difficult to calculate. In this latter sense, the Secretary-initiated complaint parallels the “pattern and practice” jurisdiction that has been available to the Department of Justice since 1968.

FHEO recognized the appropriateness of a Secretary-initiated complaint in at least one other context: the request by a complainant to withdraw a complaint based on a private settlement. In 1994 guidance, FHEO noted its disfavor toward such settlements entered into without HUD supervision, especially with respect to discriminatory practices that may affect the public interest rather than the interest of just one individual. In such instances,

If the relief for the complainant is as good as relief which could have been accomplished through the conciliation process, the complaint may be closed. However, consideration of whether or not systemic relief should have been provided should also occur. ... A Secretary-initiated complaint to address policy or practice issues unresolved by the individual settlement may be recommended as a result of this review. ... If the relief for the complainant appears to be inadequate, the agreement should be evaluated also to determine whether it contains provisions by which the complainant gives up legal rights to pursue an administrative complaint. If the agreement contains such a provision, and if it is worded broadly enough to cover the events that are the subject of the complaint, it may bar further action even if the relief is clearly inadequate, unless it was fraudulently or illegally induced. Consult with counsel if there is any question regarding the effect of particular language. If the

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<sup>127</sup> 42 U.S.C. §3610(a)(1)(A)(iii).

language serves as a bar, the case should be closed, using the same considerations described regarding withdrawals without resolution, including, specifically, the assessment of the case to determine whether a Secretary-initiated complaint may be appropriate to address matters that involve the public interest.<sup>128</sup>

In its FY 1997 Management Plan, FHEO explicitly endorsed the expanded use of Secretary-initiated complaints. One of its action plans reads as follows:

Reduce the incidence of discrimination based on race, national origin or disability by initiating at least 10 Secretary-initiated complaints or systemic investigations designed to address homeownership or low income rental housing issues.<sup>129</sup>

Despite the availability of this enforcement tool, there have been only two Secretary-initiated complaints in the field of disability since 1988, both design and construction cases that were settled after issuance of charges of discrimination.<sup>130</sup> No action was taken to pursue the action plan described in FHEO's FY 1997 Management Plan. In fact, FHEO operated as if it lacked the authority altogether.<sup>131</sup>

**Finding IV.F.1: Despite clear authority in the FHAA, HUD has used the Secretary-initiated complaint option on only two occasions.**

**Recommendation IV.F.1: As part of its comprehensive effort to more effectively enforce the FHA, HUD should make much more extensive use of Secretary-initiated complaints.**

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<sup>128</sup> Memorandum from Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity, Administrative Closures of Cases under the Fair Housing Act, September 6, 1994.

<sup>129</sup> FHEO's Management Plan for FY 1997, available at <http://www.hud.gov/gpra/fheo.html>.

<sup>130</sup> *Mansfield v. Sundial Apartments*, HUD No. 10-92-0340-8 (HUD Secretary May 19, 1992) and *Mansfield v. Shawntana Development Corp.*, HUD No. 09-91-2048-3 (HUD Secretary September 26, 1991).

<sup>131</sup> At a July 25, 2001, meeting with NCD, FHEO claimed that there were four open Secretary-initiated complaints, one of which involved a design and construction matter. FHEO declined to identify these cases, even by name, and declined to provide redacted versions of the complaints themselves.

## 2. Proceedings Before Administrative Law Judges

While Congress was very concerned about the constitutional issues related to administrative hearings for fair housing complaints, very few cases have actually been adjudicated by ALJs.<sup>132</sup> HUD reports that ALJs have handled a total of 508 cases from FY 1989 through FY 2000. Of this number, 375 were resolved by consent order and 35 were dismissed by the ALJ. Of the remaining 98 cases<sup>133</sup> that received full ALJ hearings, discrimination was found to have occurred in 80, and a finding of no discrimination was made in 18.

The underuse of the ALJ system has troubled commentators. In its 1999 report, the Citizens' Commission on Civil Rights found:

The number of cases tried to decision before HUD administrative law judges (ALJs) decreased substantially over the last two years. This decline was due to a decrease in the number of cases charged and an increase in the number of complainants and respondents electing to have charged cases prosecuted by the Department of Justice. In 1996, parties elected to have 70 percent of charged cases handled by the Justice Department. In 1997, the election rate decreased slightly, but still remained at the surprisingly high rate of 61 percent. The end result has been an underutilization of the HUD administrative law judge hearing process that in recent months has, sadly, left HUD's highly competent and skilled ALJs all but looking for more work.<sup>134</sup>

Those cases that were heard by ALJs "were more likely to be resolved on the merits; almost one in five were decided in favor of the complainant; and 3.5 percent were decided for the

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<sup>132</sup> In the January 27, 2000, *Federal Register*, HUD published a final rule concerning Civil Penalties for Fair Housing Act Violations. In that rule, HUD said: "To date, the number of entities who actually become respondents in Fair Housing Act cases before ALJs is extremely small. ... For example, in FY 1994, the year when the most administrative fair housing cases (through 1997) were docketed, of the 325 cases HUD charged, 220 elected to be heard in federal court, leaving only 115 to be heard by the ALJs. Of these cases, civil penalties were only assessed against an even fewer number: after hearings in 15 cases, and as part of a consent order in another 12 cases, for a total of 27 cases, or 8.3 percent of the cases docketed. The average civil penalty was \$3,727.77."

<sup>133</sup> HUD's Web site, at <http://www.hud.gov/alj/aljalpha.cfm>, says that 102 ALJ decisions have been rendered, while HUD statistical data supplied to the authors indicate that there have been 98.

<sup>134</sup> CCCR 1999, p. 234.



respondent. ... Rates of settlement ... [were] 67.7 percent of the cases that remained within the jurisdiction of the ALJs in HUD.”<sup>135</sup>

HUD reports that 72 of its 508 ALJ cases (roughly 14 percent) involved allegations of disability discrimination. Of this number, 55 were resolved by consent order, 8 resulted in ALJ dismissals, 9 in findings of discrimination, and none in findings of no discrimination. While consent orders are public documents, they are not generally available, and review of them was beyond the scope of this report. HUD lists only 13 disability ALJ decisions on its Web site: <http://www.hud.gov/alj/aljhandi.cfm>. Ten of these resulted in findings that discrimination had occurred, and two resulted in dismissals by the ALJ. There were no reported ALJ decisions in disability cases during 1989, 1990, 1996 and 1999.

Table IV-21 provides details on the outcomes of those 12 cases.

**Table IV-21: Outcomes in ALJ Disability Cases**

<b>Fiscal Year</b>	<b>Case Name (Decision Date)</b>	<b>Outcome</b>	<b>Damages</b>	<b>Civil Penalty</b>
<b>1991</b>	<i>Secretary v. George</i> (8/16/91)	Discrimination	\$1,000	\$500
<b>1991</b>	<i>Secretary v. Williams</i> (3/22/91)	Discrimination	\$1,000	\$500
<b>1992</b>	<i>Secretary v. Dedham Housing Authority</i> (11/15/91)	Discrimination	\$12,100	\$10,000
<b>1993</b>	<i>Secretary v. Mercantile-Safe Deposit &amp; Trust Co.</i> (6/10/93)	Dismissed	N/A	N/A
<b>1993</b>	<i>Secretary v. Ocean Sands</i> (9/3/93)	Discrimination	\$19,871	\$3,500
<b>1994</b>	<i>Secretary v. Burns</i> (6/17/94)	Discrimination	\$81,556	\$1,600
<b>1994</b>	<i>Secretary v. Riverbay</i> (9/8/94)	Discrimination	\$2,500	\$5,000
<b>1995</b>	<i>Secretary v. Jankowski &amp; Lee Associates</i> (6/30/95)	Discrimination	\$2,500	\$2,500
<b>1997</b>	<i>Secretary v. Dutra</i> (11/12/96)	Discrimination	\$5,659	\$5,000

<sup>135</sup> Schill and Friedman, p. 72.

<b>Fiscal Year</b>	<b>Case Name (Decision Date)</b>	<b>Outcome</b>	<b>Damages</b>	<b>Civil Penalty</b>
<b>1997</b>	<i>Secretary v. Pheasant Ridge (10/25/96)</i>	Discrimination	\$50,452	\$20,000
<b>1998</b>	<i>Secretary v. Perland (3/30/98)</i>	Discrimination	\$15,916*	\$3,000
<b>2000</b>	<i>Secretary v. Blue Meadows Limited Partnership (7/5/00)</i>	Dismissed	N/A	N/A

\* Includes a contingent retrofit fund of \$10,000.

**Finding IV.F.2.a:**                    **The relative dearth of cause findings has meant that few complaints ever reach an ALJ hearing.**

**Finding IV.F.2.b:**                    **Because of the low caseloads, the expertise of HUD ALJs is drastically underused.**

**Recommendation IV.F.2:**    **As part of a comprehensive plan to more effectively enforce the FHA, HUD should strive to increase its use of ALJs by processing cases more quickly and issuing charges in a greater percentage of cases.**

## **SECTION V**

### **HUD's Enforcement of Section 504**

#### **A. Introduction**

##### **1. Scope of the Section 504 Discussion**

The U.S. Department of Housing and Urban Development has multiple Section 504 responsibilities that affect the grants and contracts that it awards. The Offices of Public and Indian Housing, Single Family Housing, Multifamily Housing, and Community Planning and Development have issued regulations, notices, and handbooks that address civil rights issues, and each is responsible for coordinating its civil rights obligations with HUD's FHEO. FHEO has primary responsibility for enforcing the FHAA, Section 504, and the other civil rights laws that apply to recipients of federal funds.

This report is limited to FHEO's operations, and this section focuses on FHEO's Section 504 complaint investigations and its Section 504 post-grant award compliance reviews. It is important to note that FHEO's Section 504 responsibilities, however, are much more extensive. Since its creation, FHEO has been responsible for providing civil rights guidance to the entire agency and to HUD's thousands of grant recipients. It has done so by reviewing proposed regulations and handbooks, describing the civil rights implications of internal and external program guidance and proposed legislation, and reviewing thousands of responses to HUD's annual Notices of Funding Availability. This report will address those actions as they relate to FHEO's external enforcement responsibilities.

This report will not analyze how HUD's programs, practices, and policies have shaped and affected disability discrimination in the real estate and community development industries. HUD awards grants, contracts, and mortgages worth trillions of taxpayer dollars every year. HUD's influence is enormous, and it is critical to understand how its policies and practices affect the housing choices of people with disabilities. Another report that addresses those issues would

provide an important context for this focused report on FHEO's enforcement of the disability rights laws.

## **2. Section 504 Provides Relief Not Available Under the Fair Housing Act**

Why is Section 504 important if the FHA also prohibits disability discrimination? While the FHA applies to all housing, including housing subsidized with federal funds, Section 504 adds requirements to the use of its funds that the FHA does not. Except for the accessibility requirements that the FHA applies to new multifamily housing, the FHA describes prohibited conduct, but it does not prescribe specific steps that must be followed.

Section 504's regulations do prescribe specific steps, and they impose specific requirements on the housing providers and political entities that accept federal funds. For example, recipients are required to conduct self-evaluations of their programs and make existing properties accessible. Section 504 regulations also require recipients to pay for the modifications and accommodations their tenants and beneficiaries require.

Because Section 504 requires HUD to ensure that its funds are being spent in nondiscriminatory ways, it does not have to wait for a complaint to be filed. Instead, it may initiate its own post-award reviews, called compliance reviews, that may lead the agency and the subject of the review to sign a Voluntary Compliance Agreement (VCA), through which the recipient agrees to specific actions, within specified time limits, to bring itself into compliance with Section 504.

Section 504 also gives HUD enforcement options that the FHA does not. For example, HUD may condition the receipt of any further funds; it may sue the recipient for specific performance; it may assign the recipient to a suspended or limited denial of participation status; it may initiate binding arbitration proceedings; it may initiate administrative proceedings before an ALJ; and it may, as its ultimate power, suspend or terminate the recipient's HUD funds. Thus, Section 504 is as important as and is potentially a more powerful civil rights tool than the FHA.

### 3. Section 504 Emphasizes Voluntary Compliance

Unlike the FHA, Section 504 applies *only* to those who receive federal funds. This difference has had a major impact on the structure of HUD's Section 504 enforcement program. Every federal agency has the authority to terminate the receipt of federal funds if the agency finds that the recipient has violated Section 504. To ensure that agencies use that remedy as a last resort, Congress has required them to give recipients extensive opportunities to correct the violation, even after a full hearing and an adverse decision.<sup>136</sup> Congress further requires that the Secretary notify the appropriate House and Senate committees before terminating any funds. HUD provided NCD with no document indicating that HUD has ever terminated federal funds on the basis of Section 504. In that regard, HUD's record is consistent with those of other executive agencies.<sup>137</sup>

Section 504's emphasis on voluntary compliance has led HUD to be very deferential in its Section 504 enforcement activities. With the FHA, if the parties do not agree to conciliation and

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<sup>136</sup> 42 U.S.C. 2000d-1(1988). Section 8.59(j) reflects HUD's emphasis on informal resolutions and voluntary compliance:

It is the policy of the Department to encourage the informal resolution of matters. The responsible civil rights official may attempt to resolve a matter through informal means at any stage of processing. A matter may be resolved by informal means at any time. If a letter of findings making a preliminary finding of noncompliance is issued, the responsible civil rights official shall attempt to resolve the matter by informal means.

<sup>137</sup> Reviewing the Federal Government's enforcement of Title VI, Section 504's model, the U.S. Commission on Civil Rights said:

Although the use of voluntary agreements is an important tool for effecting compliance under Title VI, total reliance on this mechanism by the Federal agencies, to the exclusion of administrative sanctions, appears to have seriously diminished their overall enforcement effectiveness and credibility.

*Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, A Report of the U.S. Commission on Civil Rights, 1996, p.175.

HUD's investigation uncovers sufficient evidence to prove that the law was violated, the statute requires the agency to proceed to enforcement and spells out the remedies available to the fact finder. Under Section 504, if HUD determines that a violation has occurred, the ultimate remedy available is to withhold the violator's federal funds—a remedy fraught with so many hurdles that it has never been used.

The emphasis on voluntary compliance has affected not simply the conduct of complaint investigations and compliance reviews but also HUD's pre-award enforcement program. These "front-end reviews" involve FHEO staff determinations as to the grant applicant's civil rights compliance status. They are usually desk audits but may include on-site visits, and they have provided FHEO offices with valuable information about cities, housing developers, and other recipients of HUD funds.

A thorough analysis of this part of HUD's enforcement program was beyond the scope of this project. HUD did not provide any document to indicate that enforcement action resulted from these reviews, however, and HUD's discussion of actions regarding the reviews spoke instead of the value of technical assistance and voluntary compliance. This was consistent with both the statutory provisions for informal resolutions of adverse civil rights findings and the emphasis that HUD has placed on voluntary compliance throughout its Section 504 program.

## B. Overview of Section 504 Enforcement

Until 1988, when HUD published its Section 504 rules, race discrimination accounted for the majority of its work, through Title VI of the Civil Rights Act of 1964, Section 109 of the Community Development Block Grant of 1974, and the FHA of 1968. When Congress enacted the FHAA in 1988, it added people with disabilities to the protected classes. HUD published its Section 504 regulations the same year, and its responsibilities for training its staff, publishing guidance, and providing technical assistance in and outside the agency increased dramatically.

By the mid-1990s, HUD had gained some experience in enforcing the disability rights laws, but it continued to face difficult resource and management issues. Not only was the FHA generating more than five times the number of Section 504 complaints it had been since 1988, but Congress was eliminating more and more of the funding for affordable housing. This

permitted cities and housing providers to blame tighter housing markets rather than discrimination for rising rates of homelessness among people with disabilities and families with children.<sup>138</sup> In 1994, FHEO reached its highest staffing and resource levels. It created a separate Disability Rights Division, and it expanded and reorganized its Fair Housing and Section 504 enforcement programs in the field and in Headquarters.

In 1995, HUD created an Office of Disability Policy at the secretarial level. Its purpose was to raise the visibility of disability rights throughout HUD. Its goals were to make HUD's funding policies consistent with the civil rights laws and to press the agency to require recipients of HUD funds to do the same.

In 1997, FHEO began its campaign to double its enforcement of the FHA. This effort resulted in an emphasis on FHA complaints, to the detriment of Section 504 staff and resources. Almost all complaint investigations slowed to a crawl, and staff that would have worked on Section 504 complaints and compliance reviews were drafted into the doubling effort.

Once the doubling effort ended in 2000, FHEO initiated a number of Section 504 enforcement training and departmentwide coordination efforts. It took these actions with reduced numbers of staff as HUD responded to the Administration's governmentwide downsizing initiative. FHEO moved the pre-award civil rights reviews of funding applicants out of FHEO to other HUD offices in an effort to focus its limited resources on enforcement efforts.<sup>139</sup> It joined with DOJ to combine training with a limited number of compliance reviews, and it began to focus on creating a credible data collection system. FHEO's staffing levels are lower now than they were 10 years ago, and the Administration had not named an Assistant Secretary for FHEO as of August 2001. The future direction of HUD's Section 504 enforcement program therefore remains uncertain.

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<sup>138</sup> See, e.g., HUD's annual reports to Congress on worst-case housing needs. Also see *Priced Out in 2000: The Crisis Continues*, Technical Assistance Collaborative and Consortium for Citizens with Disabilities, Boston, MA, June, 2001; and *Out of Reach*, National Low Income Housing Coalition, Washington, DC, September 2000.

<sup>139</sup> "An Evaluation of the Fiscal Year 2000 Civil Rights Front-End and Limited Monitoring Review Process," May 2001, attached to a letter from David Enzel, FHEO, to Merrily Friedlander, DOJ, June 15, 2001.

## C. Data

Unlike the previous section, which described HUD's enforcement of the FHA, this section is not replete with graphs and charts. In order to compare staffing ratios with numbers of complaints, to decipher enforcement trends, and to measure success in terms of numbers of beneficiaries helped, it is necessary to have data. The data must be reliable, consistent, and retrievable.

HUD has created the Title Eight Automated Paperless Office Tracking System (TEAPOTS) system to measure its enforcement of the FHA. TEAPOTS did not exist in 1988, when the FHAA was first enacted, and it took many years before a combination of leadership support, the assistance of an independent consultant, sustained and excellent staff work, and sufficient resources enabled FHEO to create its current fair housing data system. In contrast, HUD's enforcement of its Section 504 responsibilities is not reflected in a reliable, usable, and adequately funded data collection system.

FHEO did provide NCD with Section 504 data, and it is possible to glean some information from that data. But it is revealing that FHEO produced the data originally in response to external requests. It did not indicate that it used the data as a method of obtaining information about its own efforts to enforce Section 504. It did not provide any documentation to show that it used the data to plan compliance reviews or to correct under- or overemphasis on a particular set of recipients or for training, budgeting, or coordinating Section 504 and other civil rights efforts.

The failure to collect, maintain, and benefit from effective data was evident when FHEO and the Office of Public and Indian Housing undertook a joint enforcement effort in 1994. The goal was to help all of the 3,338 public housing authorities make their housing and programs accessible to and usable by tenants with disabilities. (This effort is described more fully later in this section.) Because FHEO had no existing method of collecting the results of the effort, it created a specific data collection survey.<sup>140</sup> The survey was staffed by a single person who, without sufficient resources or support, was unable to obtain responses from each of the field

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<sup>140</sup> See footnote 197 and associated text.



offices. The report was never disseminated to the field; it was never shared with FHEO's enforcement offices; and its findings were not made part of FHEO's planning activities.

Shortly before HUD published the Section 504 regulations, FHEO established the Section 504 Complaints Computer Tracking System (TRACE). Assistant Secretary Judith Brachman sent a memo instructing all regional directors to enter all Section 504 complaint data into the system.<sup>141</sup> Three months later, Headquarters sent another memo to the field, this time to the Section 504 coordinators, advising them that the computer system for tracking Section 504 complaints was called MCATS—Management and Complaint Automated Tracking System—and that all Section 504 complaint and compliance data were to be entered into this system.<sup>142</sup>

Unfortunately, neither TRACE nor MCATS was user-friendly. FHEO staff in Headquarters and the field were frequently frustrated by their efforts to enter data into the systems. One of their many problems was that no matter how much data had been entered, if it was necessary to correct a mistake, all of the data had to be reentered.<sup>143</sup> The information technology staff was too small to be able to provide the support necessary to maintain the systems, and in the mid-1990s, Headquarters scrapped them. Data maintenance had always been inconsistent and unreliable, but it was not until the TEAPOTS system for fair housing complaints had been in use for several years (see Section IV) that FHEO began, in FY 2001, to incorporate Section 504 data into the TEAPOTS system. Even now, TEAPOTS collects complaint information only, when it could also collect compliance review data.

**Finding V.C.1:                    TEAPOTS does not include enough information about Section 504 complaints and compliance reviews to permit it to be used as a planning and evaluation document. FHEO has just begun to add Section 504 to TEAPOTS. TEAPOTS may need to be expanded to include data about Section 504 compliance**

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<sup>141</sup> TAG 88-1: Section 504 Complaints Computer Tracking System (TRACE) 10/16/87.

<sup>142</sup> Memorandum, Peter Kaplan to Section 504 Regional Coordinators, "Section 504 Complaint System," January 27, 1988; Peter Kaplan to All FHEO Regional Directors, "Section 504 Management and Complaint Automated Tracking System (TRACE)," August 24, 1988.

<sup>143</sup> Interviews with HUD staff between December 2000 and May 2001.

**reviews for it to be a fully effective data collection system. FHEO has not had sufficient resources to create effective data collection systems or to provide adequate IT support services to FHEO staff to enable them to provide reliable, consistent data or to use FHEO's data systems effectively.**

**Recommendation V.C.1: FHEO should make its data systems a priority. HUD should fund FHEO's data systems and resources adequately. FHEO should determine whether to add fields to TEAPOTS that would make it as effective a data system as possible for planning, coordinating, and evaluating purposes.**

Instead of relying on TRACE and MCATS, FHEO's Section 504 enforcement data appears to have been generated from salary and expense reports developed as part of HUD's budget requests to Congress, civil rights implementation reports to the Office of Coordination and Review of the DOJ, Annual Reports to Congress pursuant to FHA requirements, and annual reports to the U.S. Commission on Civil Rights. Unfortunately, the data are not consistent from one report to the next. For example, one year's report may show complaints received while the next year's report tracks complaints investigated.<sup>144</sup> Nor has FHEO systematized its data collection in a way that controls for the variables that result when Headquarters staff ask for information at different times of the year, from different staff, in offices with varying levels of resources to devote to data collection. The differences among the various data sets is apparent from Tables V-1 and V-2, and they were too inconsistent to be used as the basis for any but the most general conclusions.

For some years, the salaries and expenses reports reflect the number of complainants assisted; in other years, the reports reflect the number of complaints received or the number of complaints investigated. For still other years, Section 504 complaints are listed as 504/age discrimination complaints or 504 complaint/compliance reviews, or simply as 504 complaints,

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<sup>144</sup> Ibid.

with no indication as to whether the reported figure represents the number of complaints received, investigated, closed, or held over from the previous year.

It is also difficult to compare the number of complaints reflected in the salaries and expenses reports with the civil rights implementation reports that HUD transmitted to the DOJ Office of Coordination and Review annually. The numbers reported in the implementation reports vary from the numbers in the salaries and expenses reports and are themselves internally inconsistent. Some years, the numbers are simply estimates.

With sufficient time and resources, it may be possible to reconstruct the number of Section 504 complaints that FHEO received, the number that it investigated, and the number that it charged. It would then be possible to identify trends and compare hours of staff time with budget amounts and numbers of cases. Based on the data that FHEO supplied, however, it is not possible to provide that information in this report. The charts reproduced below, therefore, are subject to many interpretations.

HUD's annual reports to Congress, titled *The State of Fair Housing*, provide baseline information on complaints and compliance reviews (see Tables V-1 and V-2).

**Table V-1: State of Fair Housing–Complaints**

<b>Category</b>	<b>FY 1990*</b>	<b>FY 1991</b>	<b>FY 1992</b>	<b>FY 1993</b>	<b>FY 1994</b>	<b>FY 1995**</b>	<b>FY 1996</b>	<b>FY 1997</b>	<b>FY 1998</b>
504 Complaints	212	146 (rec'd) 200 (closed)			568 (rec'd)		228 (accepted)	206	207
Title VI Complaints	113	248 (rec'd) 276 (closed)			251(accepted)		143 (accepted)	74	105
109 Complaints	27	13 (rec'd)			51		100 (accepted)		
109/ Title VI Complaints								141	153
Age Complaints							102 (accepted)		
ADA Complaints							9 (accepted)	4	4
ADA/504 Complaints								62	134
Total Complaints			547 (rec'd) 279 (closed)	513 (rec'd) 453 (closed)	870 (accepted)	no data available	582 (accepted)	487 (accepted)	613

\* 1990 figures are for complaints that were investigated and resolved. \*\* Only Title VIII data reported in 1995. HUD reports that 417 investigations were completed in FY 1994 but does not specify the category of the complaints.

**Table V-2: State of Fair Housing–Compliance Reviews**

<b>Category</b>	<b>FY 1990*</b>	<b>FY 1991</b>	<b>FY 1992</b>	<b>FY 1993</b>	<b>FY 1994</b>	<b>FY 1995**</b>	<b>FY 1996</b>	<b>FY 1997</b>	<b>FY 1998</b>
504 Compliance Reviews		12		22 (initiated) 17 (closed)	32 (initiated)				
Title VI Compliance Reviews		68		55 (initiated) 37 (closed)	53 (initiated)				
109 Compliance Reviews				1 (initiated) 2 (closed)	3 (initiated)				
Total Compliance Reviews (not by statute)							131	126	126

\* 1990 figures are for complaints that were investigated and resolved.

\*\* Only Title VIII data reported in 1995.

Table V-3 combines data from HUD annual budget submissions to Congress and data reported to the U.S. Commission on Civil Rights, yielding perhaps the most complete (and most accurate) information about the number of complaints and compliance reviews that FHEO handled from 1989 through 1999. Unlike Tables V-1 and V-2, this table does not show a remarkable rise in complaints in 1994. Instead, Table V-3 reflects half as many Section 504 complaints and either half as many Section 504 compliance reviews or an increase of two, depending on the data source. On the other hand, 1995 shows the highest number of Section 504 complaints and compliance reviews for the 10-year period (380 complaints and 155 compliance reviews). The Section 504 numbers continue to be higher for both complaints and compliance reviews from 1995 through 1999.

The other interesting data in Table V-3 reflect the generally increasing numbers of ADA complaints and compliance reviews. The table reflects none until HUD reports receiving 42 ADA complaints (and no compliance reviews) in 1994, 17 complaints in 1995, 107 in 1996, 150 in 1997, down to 62 in 1998, and 64 in 1999.

Since HUD's ADA responsibility is to enforce Title II, which concerns cities and other political entities, one would expect to see a rise in Section 109 complaints and compliance reviews for the same years that ADA activity increased. The table does seem to reflect that fact, although logic may not be the source of the coincident rise in numbers. By 1996, the largest number of Section 109 compliance reviews that HUD reports it conducted was six. Yet the number jumps to 30 in 1997, is 30 again in 1998, but drops to 3 in 1999.

**Table V-3: FHEO Salaries and Expenses Documents and  
October 2000 U.S. Commission on Civil Rights Draft Report**

Category	FY 198 9	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
504/Age Complaints	227	228	117	281	285	285	380	218	250	206	225
Title VI/109 Complaints	32	92	267	270	147	228	193	143	175	74	144
109 Complaints						48	38	103	175	67	21
504/Age Compliance Reviews	12	9	14	2		21 34	155 *	121 *	150	150	38
VI/109 Compliance Reviews	72	0									
VI Compliance Reviews		25	36	10	7	7 21	12	51	100	100	39
109 Compliance Reviews			0	0		2	2	6	30	30	3
ADA Complaints				0	0	42	17	107	150	62	64
ADA Compliance Reviews						0	0	10**	40	40	32
504 Complaints/Compliance Reviews					285						

\* Includes 100 reviews conducted of Voluntary Compliance Agreements signed with housing authorities that had failed to implement needs assessments and transition plans as requested by 24 CFR 8.25(c), and includes 41 reviews for approval or dis-approval of designated housing allocation plans, submitted pursuant to the 1992 Housing and Community Development Act.

\*\* Includes compliance reviews resulting from the accessibility campaign launched in FY 1996.

504 only                      Title VI only                      USCCR                      Started  
Note: Beginning in 1996, each reported incident of discrimination is investigated under all applicable statutes. This will result in some incidents under investigation being counted under more than one category of complaint received or review conducted.

Table V-4 reflects HUD's implementation reports filed with DOJ. On the one hand, too much information is missing to be able to draw any conclusions from the numbers in this table. On the other hand, the data do reflect two important facts. First, for 1993, it appears that FHEO sent two implementation reports to DOJ a month apart, and the numbers differ. The February 1994 report indicates that HUD received a total of 492 complaints; the March 1994 report indicates that the number is 551. Both numbers were for 1993 and a year old. The reason for the discrepancy is unexplained but not unusual.

Second, the report consists of answers to detailed questions that DOJ asks of all Executive agencies responsible for enforcing program-related civil rights statutes. The questions ask for the number of unresolved complaints at the beginning and end of the fiscal year; the reasons for closing complaints; the number of complaints closed before investigation, after investigation, and with and without findings; the resulting enforcement actions; the number of findings for action that was and wasn't taken; the number of pre- and post-award reviews and their results; the number of housing units that were the subject of FHEO actions; and salary, expense, and workload data.

If it were possible to obtain implementation reports for each year from 1989 through 2000 and to confirm the accuracy of the answers that HUD provided to DOJ, it would be possible to create a detailed picture of HUD's program-related civil rights enforcement efforts for the past decade. Unfortunately, DOJ was not able to provide us with a complete set of documents, and the unreliability and inconsistency of the data would continue to pose serious research problems.



**Table V-4: Implementation Reports (E.O. 12250)**

Category of Complaint Received	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
Section 504	286		472	253*	356* 325**			218			225
Title VI	3		430	157*	161* 141**			143			144
Section 109	12				N/R* 26**			2			1
Total Complaints				315*	551* 492**			582	487	431	730
Title VI and 109								101			164
Age								10			
504 & ADA								102			286
ADA				5*	34*			5			3

\* From March 1994 implementation report, p. 46

\*\* From 2/94 implementation report

Investigated

Field reports only

In 1998, FHEO created a system for collecting information about compliance reviews. The first report, issued on December 21, 1998,<sup>145</sup> provided the case number, the recipient's name, the jurisdiction of the review, the date it was initiated, the dates of the letters of finding, letters of determination, and Voluntary Compliance Agreements. It also included a column for "status/concerns." FHEO produced only this one report, and it is unclear if other reports exist.

In fiscal year 2000, FHEO began maintaining a List of Voluntary Compliance Agreements. These lists are arranged by HUB and identify the name and location of the recipient, the jurisdictional basis of the VCA, its expected date of expiration, whether Headquarters has a copy of the VCA, and whether the VCA resulted from a complaint or compliance review.

A review of FHEO's April 20, 2000, VCA list provides a snapshot of compliance activity around the country.<sup>146</sup> All of Seattle's VCAs are based on compliance reviews, while all of San Francisco's are based on Section 504 or Title VI complaints. Texas has many more VCAs than any other office, and the Colorado HUB has none. The Philadelphia office has VCAs with housing authorities, assisted housing providers, redevelopment agencies, and cities, while the Fort Worth and Kansas City HUBs have entered into VCAs only with housing authorities.

The February 1, 2001, list reflects the following information:

Boston HUB – Twenty-two VCAs; 21 based on complaints; 1 on compliance review of a housing authority. Twenty are Section 504 or Section 504 and Title VIII VCAs.

New York HUB – Six VCAs, all based on compliance reviews; 3 signed with housing authorities; 3 signed with assisted housing providers. Five are Section 504 VCAs.

Philadelphia HUB – Twenty VCAs; 14 based on housing authority reviews and 6 based on complaints. Seventeen are Section 504 VCAs and most are Section 504 and ADA.

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<sup>145</sup> Memorandum from Cheryl D. Kent, Director, Program Compliance and Disability Rights Support Division, to Sara K. Pratt, Director, Office of Enforcement, re: Compliance Review Data, December 21, 1998.

<sup>146</sup> See Appendix for detailed data. The relatively large number of VCAs in Texas stems from the *Young v. Martinez* litigation discussed later in this section.

Atlanta HUB – Six VCAs; 4 based on reviews of housing authorities; 2 based on complaints. Two are Section 504 VCAs.

Chicago HUB – Sixteen VCAs; 5 based on reviews of housing authorities, 11 based on complaints. Fifteen are Section 504 VCAs.

Ft. Worth HUB – Twelve VCAs; 6 based on housing authority reviews, 6 on complaints. Seven are Section 504 VCAs.

East Texas Office – Fifty-two VCAs; all are Section 504, Title VI, and Title VIII.

Denver HUB – No active VCAs.

San Francisco HUB – Seventy-six VCAs (27 of which are with the Riverside, California, Department of Building and Safety),<sup>147</sup> all based on complaints. Forty-two are Section 504 VCAs; several are combined with Title VIII or ADA.

Seattle – Eleven VCAs; 6 based on reviews of housing authorities, 3 reviews of assisted housing providers, 1 cooperative, and 1 housing and community development council. All are Section 504 or Section 504 and Title VI VCAs.

**Finding V.C.2:** **FHEO has not developed an adequate, consistent, and reliable data system for its Section 504 enforcement actions. As a result, it has not been able to learn from its successes or its mistakes, make the best arguments for adequate funding, plan or allocate resources in a reasonable way, or justify the actions that it has taken or proposes to take.**

**Recommendation V.C.2:** **FHEO should add the same Section 504 complaint and compliance review data to the data system it currently**

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<sup>147</sup> These VCAs result from a HUD investigation of complaints that Riverside County was selectively prosecuting building code violations against predominantly Latino trailer home parks.

**maintains to track its enforcement of the FHA. In addition, FHEO should systematize the requests, timing, and storage of data that it must collect for its annual reports to Congress, to the Department of Justice, and to the U.S. Commission on Civil Rights.**

**Recommendation V.C.3: FHEO should review the data collection system that the Office of Coordination and Review uses to collect governmentwide Section 504 data from all federal agencies and consider how best to collect, maintain, and use the HUD data and make it available to the public. FHEO should provide adequate resources to its data collection system and to the IT staff that support it.**

**Recommendation V.C.4: Headquarters should involve field staff in solving the data collection and data maintenance problems. The data system should be able to identify common enforcement problems and discrimination trends to enable FHEO and HUD to target enforcement activities.**

#### **D. No Significant Section 504 Enforcement Occurred Before HUD Published Its Final Section 504 Regulations in 1988**

Congress enacted Section 504 in 1973. However, HUD did not publish regulations until 1988. While some department officials believed that HUD had the authority and the responsibility to enforce the statute, others believed that it could not do so until HUD issued regulations. It was not a period of strong disability rights enforcement.

In 1976, the White House issued an Executive Order requiring the U.S. Department of Health, Education and Welfare (HEW) to issue general standards for other departments and agencies of the Federal Government to follow in developing their own regulations.<sup>148</sup> HEW did so in 1977. The following year, HUD published a proposed set of Section 504 regulations. Ten

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<sup>148</sup> Executive Order 11914 (41 *Fed. Reg.* 17871, April 28, 1976).

years later, in June 1988, HUD issued final Section 504 regulations. (See Section III. B. for a discussion of the history of the regulations.)

Until HUD published its final Section 504 regulations, regional office responses to complaints were inconsistent and agency officials took few actions to enforce the statute, believing they could not do so until HUD had issued its own Section 504 regulations. In 1980, Paralyzed Veterans of America (PVA) sued HUD and other agencies<sup>149</sup> that had taken a similar position. The court agreed with PVA's argument and required the agencies to publish a notice in the *Federal Register* advising all of their recipients that they were required to comply with Section 504 and that they were to rely on HEW's model regulations for guidance.<sup>150</sup> HUD published the notice in 1981.<sup>151</sup>

Thereafter, HUD accepted and investigated Section 504 complaints. Pursuant to advice from the Office of General Council (OGC), however, FHEO did not enforce any findings resulting from its investigations. Instead, when an investigation resulted in findings that the recipient had violated the statute, HUD referred the case to DOJ. Furthermore, the OGC interpreted the *Paralyzed Veterans* decision as applying only to complaints that individuals had filed with FHEO. It therefore advised FHEO not to initiate compliance reviews, saying that neither the agency nor the recipients had sufficient guidance as to what would constitute a violation of the statute and the model regulations.<sup>152</sup>

FHEO disagreed with the OGC's opinion and urged counsel to seek guidance from DOJ asking whether HUD had the authority not only to investigate complaints but to make and enforce Section 504 findings of noncompliance and to initiate compliance reviews in the absence of departmental regulations.<sup>153</sup> DOJ assured HUD that it did have enforcement authority. DOJ

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<sup>149</sup> In addition to HUD, the Executive Order applied to the Departments of Defense, Commerce, Interior, and Agriculture, and to the General Services Administration, National Endowment for the Humanities, Civil Aeronautics Board, and National Science Foundation.

<sup>150</sup> *Paralyzed Veterans of America v. Smith*, 1981 WL 284 (C.D. Cal. June 17, 1981).

<sup>151</sup> 46 *Fed. Reg.* 37088 (July 17, 1981).

<sup>152</sup> Abstract of Secretarial Correspondence, Antonio Monroig to the Secretary, re: Action—Implementation of Secretarial Decision to Place All Section 504 Responsibilities in the Office of FH&EO, August 19, 1983.

<sup>153</sup> Letter from Stuart Sloame, Deputy General Counsel, to William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, Department of Justice, October 9, 1986.

recommended that HUD and its recipients rely on the model regulations as of 1981 and Section 504 case law before that.<sup>154</sup> In spite of the response, FHEO did not begin to conduct compliance reviews until two years later, after it had issued Section 504 regulations and had published a compliance review manual.<sup>155</sup>

## **E. Budget and Staff**

### **1. Budget and Staff Before Publication of Final Section 504 Regulations**

Lack of money, lack of staff, and lack of interest in Section 504 at the secretarial level contributed to the difficulty that FHEO faced in administering any Section 504 activities before 1989. NCD received no information from HUD indicating whether any funds were used to enforce Section 504 before 1981. In 1981, Congress appropriated \$900,000 for HUD to spend on Section 504 implementation activities, but HUD returned it all to the Treasury.<sup>156</sup>

In 1982, Congress again allocated \$900,000 for HUD's Section 504 enforcement and related independent living activities. HUD returned all but \$9,000 and announced that it intended to use the much smaller amount to produce a public service film starring Kermit the Frog and Miss Piggy, popular puppets from a children's television program. HUD abandoned its plan after negative responses from members of Congress and the disability community.<sup>157</sup>

From 1981 through 1983, the Undersecretary for Intergovernmental Relations was responsible for "all advocacy and policy activity concerning the handicapped, including chronically mentally ill, alcoholics, and drug addicts, should they be included in that

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<sup>154</sup> Letter from William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, Department of Justice, to Stuart C. Sloame, Deputy General Counsel, HUD, February 5, 1987.

<sup>155</sup> FHEO Civil Rights Implementation Updates for FY 1988 and FY 1989, transmitted by letter from Judith Brachman, Assistant Secretary, FHEO, to Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, February 7, 1989. Ms. Brachman describes HUD's 504 enforcement before 1988 as "minimally acceptable." (Introduction.)

<sup>156</sup> Memorandum from Laurence Pearl to William Wynn, re: Section 504 in FHEO: Past, Present, and Future, July 22, 1983.

<sup>157</sup> According to HUD Public Affairs staff at the time, the film was to be broadcast on the Christian Broadcasting Network. See Citizens' Commission on Civil Rights, *One Nation, Indivisible: The Civil Rights Challenge for the 1990's*, Govan and Taylor, editors, Washington, DC, 1989, p. 485.

definition.”<sup>158</sup> FHEO was responsible for “assisting on issues of discrimination,” and the Office of Housing was to draft the Section 504 regulations. It wasn’t until 1984 that Section 504 “policy and advocacy activity” was placed in FHEO.<sup>159</sup>

Headquarters was to review and return all compliance review findings of Section 504 violations in an average of six months and all complaint findings of Section 504 violations in an average of three months.<sup>160</sup> FHEO Headquarters failed to meet those deadlines every year until it changed the policy in the mid-1990s to permit the field to make its own noncompliance findings. Until that happened, many noncompliance findings remained at Headquarters for years in suspended states of investigation and review.<sup>161</sup>

From 1984 through 1987, FHEO’s Section 504 implementation and enforcement budget, not including salaries, was \$100,000 annually. Two full-time staff in Headquarters managed all Section 504 activities, and each of the 10 regional offices was allotted one half-time professional slot for this purpose. During that period, staff conducted investigations, but did not initiate any enforcement actions.<sup>162</sup> Instead, the field staff referred all noncompliance findings to the two staff in Headquarters for review and potential referral to DOJ. The two were also responsible for responding to all congressional and public inquiries about Section 504, technical assistance to HUD programs, Architectural Barriers Act complaints, proposed legislation, program guidance, and internal disability employment matters. They had no secretarial support.<sup>163</sup>

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<sup>158</sup> Memorandum from Philip Abrams, Assistant Secretary for Housing, to Dr. June Koch, Undersecretary for Intergovernmental Relations, re: Proposed Handicapped Program Regulations, July 7, 1981.

<sup>159</sup> Abstract of Secretarial Correspondence from Antonio Monroig, Assistant Secretary, FHEO, re: Implementation of Secretarial Decision to Place All Section 504 Responsibilities in the Office of FHEO, August 19, 1983.

<sup>160</sup> *Ibid.*, p.23.

<sup>161</sup> Interviews with HUD staff between December 2000 and May 2001.

<sup>162</sup> See “Program Compliance Accomplishments in Section 504, July 1981–July 1983,” and “OFHEO Section 504 Accomplishments and Activities, 1984 & 1985,” for descriptions of the training, technical assistance, policy development, and grant award activities. HUD did not provide NCD with enforcement data.

<sup>163</sup> Memorandum from Peter Kaplan to Judith Brachman, Implementation of Section 504 Program, Request for Staff Support for the Section 504 Unit, September 12, 1988.

In an effort to establish some Section 504 expertise in the regional and field offices, FHEO Assistant Secretary Antonio Monroig issued a memorandum August 1984 instructing regional field directors to designate a current staff person in each regional and field office as a Section 504 coordinator.<sup>164</sup> The memorandum listed the coordinators' duties as being the regional liaison with constituency groups; collecting information on complaints, compliance agreements, and outreach activities; providing technical assistance; coordinating all disability rights issues; and providing training. It states, "We anticipate that the Section 504 coordinators' responsibilities will not be time-consuming or burdensome."<sup>165</sup>

Three years later, Monroig's successor, Judith Brachman, sent another memo to the regional directors, saying, "It has come to our attention, through performance reviews and conversation with regional staff, that this system has not been as effective as it must be if we are to have a successful Section 504 compliance program."<sup>166</sup> The memorandum requested the names of the coordinators and provided a new list of their responsibilities.

Conversations with various FHEO staff indicate that Headquarters lent minimal attention to the function and role of the coordinators, and their value in implementing the Section 504 enforcement program varied widely. In January 1988, FHEO headquarters staff used the proposed Section 504 regulation as the basis for training the 10 Section 504 coordinators on disability issues. Thereafter, most regional directors relied on the coordinators as resource staff for providing technical assistance to HUD staff and to the public, if the coordinators had the time, given their other responsibilities. In some offices, the coordinator had significant responsibility for shaping the Section 504 program; in others, the coordinator was criticized for working on disability at all.<sup>167</sup>

## **2. Budget and Staff After Publication of the Section 504 Regulations**

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<sup>164</sup> Memorandum for Regional Administrators, from Antonio Monroig, re: Designation of Section Coordinators, August 8, 1984.

<sup>165</sup> *Ibid.*

<sup>166</sup> Memorandum from Peter Kaplan through Judith Brachman, Assistant Sec. for FHEO, to Regional Directors, TAG 87-10: Responsibilities of Regional Section 504 Coordinators, June 29, 1987.

<sup>167</sup> Interviews with HUD staff between December 2000 and May 2001.



Although Section 504 had been enacted in 1973, the Section 504 regulations and the FHAA regulations appeared in 1988 and 1989 within six months of each other. The resulting attention and willingness on the part of HUD to enforce its two sets of regulations produced twice the funding for Section 504 “implementation services,” from \$100,000 in FY 1987 to \$196,000 in FY 1988 and 1989, and \$532,000 in FY 1990. FHEO had to stretch that funding to cover a significant share of HUD’s Architectural Barriers Act responsibilities, internal Section 504 training, training and technical assistance to HUD recipients, policy development, an internal Section 504 self-assessment, internal employment issues, and management training.<sup>168</sup>

According to HUD’s February 1989 Implementation report to DOJ, FHEO’s Section 504 goal was to conduct two public housing compliance reviews per region, process Section 504 complaints, provide training to HUD staff on Section 504 requirements, and conduct a public information campaign through town meetings. The change from “a minimally acceptable level of activity”<sup>169</sup> to a credible Section 504 enforcement program resulted in part from HUD’s having finally issued Section 504 regulations. It also resulted from the increased attention that the FHAA brought from Congress and the civil rights community to HUD.

Unfortunately, it has been impossible to draw many conclusions from the Section 504 data that HUD produced. From 1988 to 2000, HUD has not had one consistent data collection system. For example, starting in 1991, FHEO salaries and expenses data no longer used the term “implementation services” and instead listed the amount of funds received for “Section 504 technical assistance.” The funds budgeted for 1991 are listed at \$271,000 and, for succeeding years, \$94,000 (1993), and \$20,000 (1994). FHEO did not provide data that listed funding for Section 504-specific “implementation services” or “technical assistance” after 1994. The 1994 figure represented “contracts to provide the support needed to address in-house complaint investigations and provide technical expertise on more complex issues.”<sup>170</sup> It is not possible to determine what the Section 504 expenditures were for or how much HUD spent on Section 504 enforcement activities. Nor do the salaries and expenses reports break out either the number of

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<sup>168</sup> R. Govan, W.L. Taylor, Report of the Citizens Commission on Civil Rights, *One Nation Indivisible: The Civil Rights Challenge for the 1990's*, Washington, D.C., 1989.

<sup>169</sup> See note 158.

<sup>170</sup> Salaries and Expenses, FHEO, Budget Activity 6, Actual [Budget]1994, Budget Estimate 1995, p. U-11.

dollars dedicated to or staff assigned to Section 504 enforcement activities. What does seem to be clear is that every field office, as well as Headquarters FHEO, has carried a backlog of Section 504 complaints since the issuance of the regulations.<sup>171</sup>

To ensure that Section 504 received at least some resources after the publication of the regulations, FHEO established a Section 504 Unit in its Headquarters Office of Program Compliance in 1988. The two full-time staff dedicated to Section 504 activities from 1984 through 1987 were joined by two more full-time employees, one full-time temporary, one contract interpreter, and one student intern.<sup>172</sup> Unfortunately, the Section 504 Unit was assigned many more tasks than Section 504 enforcement. These included responding to Architectural Barriers Act complaints and complaints filed under Section 109 of the Community Development Block Grant Act, coordinating the Section 504 town meetings, providing technical assistance to the field and Headquarters on pre-award reviews, reviewing all departmental policies and regulations from a Section 504 perspective, responding to congressional inquiries, developing and providing Section 504 training for FHEO managers and staff, and creating a Section 504 federally conducted program.<sup>173</sup>

In spite of the small size of the unit, FHEO succeeded in meeting its goal of conducting 13 three-day town meetings around the country from 1989 through 1991, as well as developing desk guides for Section 504 complaint investigations and compliance reviews, conducting training for managers on their Section 504 responsibilities and training for the Section 504 coordinators, producing training manuals, monitoring contracts for the production of technical guidance for specific HUD programs, and sponsoring a joint Public and Indian Housing/FHEO conference on the housing rights of individuals with mental disabilities.<sup>174</sup>

Headquarters Section 504 staff were frequently reassigned to work on nonenforcement matters that were of urgent concern to the Secretary and the Administration. Thus, for example,

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<sup>171</sup> See Implementation Reports to the Department of Justice, 1988 through 2000.

<sup>172</sup> HUD Civil Rights Implementation Updates, FY 1988 and FY 1989, February 7, 1989.

<sup>173</sup> FY 1988 and 1989 Implementation Plan Updates from Judith Brachman, FHEO Assistant Secretary, to Stewart Oneglia, Chief, Coordination and Review Section, Department of Justice, February 7, 1989, pp. 24–27, and conversations with HUD staff.

<sup>174</sup> FY 1988 and FY 1980 Implementation Updates, February 7, 1989; FY 1990 through FY 1993 Implementation Plan Update.

the National Association of Home Builders pressured HUD to clarify the accessibility requirements of the FHAA. The FHEO staff who were most familiar with accessibility issues were also the Section 504 staff. On June 15, 1990, HUD published proposed fair housing accessibility guidelines, and on March 6, 1991, it published the final guidelines. For most of the period leading up to the publication of the proposed guidelines until well after their publication in final form, at least one and sometimes two of the four-person Section 504 staff worked full time on them. The same staff have continued to act as resources for ongoing structural accessibility interpretations, and FHEO has not assigned or hired additional staff to address the unmet Section 504 enforcement work.

HUD issued its Section 504 regulations in 1994. (These regulations implemented Congress's 1978 amendment of Section 504. The amendment required federal agencies to conduct their own operations according to the same Section 504 mandates they applied to the recipients of their funds.) The same FHEO staff who were charged with providing guidance and support to field operations were also responsible for the drafting, publication, and implementation of these regulations. Information indicating how HUD has enforced these rules or how much FHEO time they have absorbed is limited to the data appearing in FHEO's implementation reports to DOJ. It seems clear from the documents that FHEO did not receive an increase in staff or other resources to enforce the new Section 504 regulations.

Recently, FHEO has tried to increase the number of investigators who enforce Section 504, while not losing any FHA staff. First, FHEO abandoned the specialist model in favor of training staff to be generalists. As one HUD official explained, "We got what we got. We do the best with what we got." Thus, all investigators are expected to be as comfortable conducting Section 504 compliance reviews as FHA complaint investigations.

To reinforce the generalist approach, Headquarters has undertaken several actions. It has initiated the creative concept of combining training and compliance reviews by walking trainees through actual compliance reviews. To enable FHEO staff to expand compliance reviews beyond housing authorities, it has published a draft manual on investigating private housing providers who receive HUD funds.

Headquarters' decision to work with field staff on specific compliance reviews and to add a training component to the effort was reinforced by DOJ in 1998. The DOJ Office of Coordination and Review published a massive *Investigation Procedures Manual for the*

*Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* in September 1998. FHEO and DOJ staff developed a training and compliance review schedule that resulted in FHEO's initiating compliance reviews in several different locations that field staff subsequently and quickly completed, with letters of findings and voluntary compliance agreements.

In recent interviews, FHEO officials in Headquarters spoke enthusiastically about continuing to combine training with investigations. They indicated that field staff are supportive of the training and investigation approach but complained about the time constraints being too limiting. For these compliance reviews, on-site time has been limited to a single day, with FHEO emphasizing quick investigations and timely issuance of findings. The current theory is that some findings resulting in some relief for some complainants soon after the initiation of the compliance review is a better result than well-developed findings that are issued years after the on-site review.

The draft *Assisted Housing Provider Compliance Review Manual* that FHEO staff published on May 25, 2000, has been a useful component of FHEO's new coordinated training and investigation approach. The majority of compliance reviews, as this section discusses later, have focused on housing authorities and not on private owners of assisted housing. Because the number of assisted housing units dwarfs the number of public housing units, both should be monitored for civil rights compliance.

This manual is notable for its detailed and user-friendly approach. It is arranged in steps rather than chapters and includes forms that help the investigator understand the timing and relationship of the data while collecting it. The manual makes it clear that disability, race, and national origin data are to be collected. Simultaneously, this guidance reflects the multistatute policy that FHEO adopted in the mid-1990's, which is more fully described later in this section. The advantages of reviewing all of a recipient's civil rights responsibilities during one compliance review has made the reviews much more effective compliance and enforcement tools. The manual has translated the policy into easily understood tasks. It constitutes an important part of the training/investigation method that had been missing.

**Finding V.E.2.a:** **FHEO has drafted an *Assisted Housing Provider Compliance Review Manual* that provides a detailed approach, is easy to follow, and has been effectively combined with on-site**

compliance reviews. FHEO has not finalized the manual, nor has it developed similar manuals for reviews of other recipients, such as states, cities, and agencies that receive funding from the Office of Community Planning and Development. FHEO has combined compliance reviews with training.

**Recommendation V.E.2.a:** FHEO should finalize the *Assisted Housing Provider Compliance Review Manual* and should publish similar manuals for each type of recipient. The development of the manuals should accompany increased resources for continued training and compliance reviews. The manuals should contain instructions on contacting local advocacy groups, tenant organizations, and any other local group that has experience with the recipient; inviting the contacts to submit information before the compliance review or meeting with the compliance team before the review; and obtaining information from FHEO after the compliance review, for the purpose of developing methods of encouraging and helping the recipient to comply with Section 504.

**Recommendation V.E.2.b:** FHEO should continue to combine training with compliance reviews. It should review the merits and problems of the approach and address them both. Some of the issues to review are the amount of on-site time; the number of FHEO staff involved; coordination and staff from field and Headquarters program offices, and inclusion of general or regional counsel staff, Department of Justice staff, or staff from other federal or state agencies, such as the Environmental Protection Agency and the Departments of Education and Transportation.

**Recommendation V.E.2.c:** FHEO should continue to target its compliance reviews based on number of complaints, input from advocates and recipients, news articles, and current Department of Justice guidance.

**Finding V.E.2.b:** The Section 504 enforcement program has never been adequately staffed in Headquarters or in the field, nor has it been provided with adequate resources.

**Recommendation V.E.2.d:** The Section 504 enforcement program must be fully staffed in Headquarters and in the field, and should be adequately funded to support a departmentwide Section 504 enforcement program.

## F. FHEO Reorganizations

During the mid-1990s, HUD twice reorganized FHEO. Both actions had major impacts on the enforcement of Section 504. As we noted earlier, when HUD published its Section 504 and FHAA regulations in 1988 and 1989, FHEO created a Fair Housing Enforcement Office. It conducted all of its other civil rights responsibilities, including Section 504 enforcement, through the Offices of Program Compliance, Program Standards and Evaluation, and later, in the early 1990s, the Office of Quality Assurance. In the field, one director was responsible for all enforcement and compliance work under all of HUD's civil rights laws.

The 1994 reorganization separated enforcement of the FHA from enforcement of the other civil rights laws. In Headquarters, the change resulted in the creation of the Program Compliance and Disability Rights Office, which included an office devoted entirely to disability rights.<sup>175</sup> In the field, the change was even more significant. For the first time, FHEO placed two directors in each field and regional office: one for fair housing enforcement (Fair Housing Enforcement Center) and the other for program compliance (Program Operations Compliance Center). The new organization resulted in 10 Fair Housing Enforcement Centers, 10 Program Operations and Compliance Centers, and 28 smaller Program Operations and Compliance

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<sup>175</sup> *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs, A Report of the U.S. Commission on Civil Rights* (June 1996), p. 328 ff., citing a letter from R. Achtenberg, Assistant Secretary, FHEO to F. Isler, Acting Assistant Staff Director, U.S. Commission on Civil Rights, November 10, 1994.

Centers. The staff of all the offices were no longer required to report to the HUD regional directors, reporting instead directly to FHEO.

Similar to Headquarters, the larger Program Operations Compliance Centers were divided again into compliance and enforcement divisions. Each compliance center conducted post-award compliance reviews and monitored VCAs. The Operations Division monitored program compliance with the civil rights laws through pre-award reviews, provided technical assistance to grantees, reviewed program applications, and reviewed the work of FHIPs.

The U.S. Civil Rights Commission criticized the reorganization for being too fragmented and too complex, especially with regard to coordinating enforcement of Title VI.<sup>176</sup> Nonetheless, FHEO adopted this reorganization for a variety of reasons. First, because the FHAA and the Section 504 regulations had been issued within six months of each other, some method was necessary to keep all of FHEO's Section 504 and other program-related civil rights enforcement resources from being swallowed by the much larger number of fair housing complaints.

Second, a variety of pressures convinced HUD to give increased attention to program-related civil rights enforcement. These pressures included HUD's efforts to resolve nearly 20 race discrimination lawsuits—some of them decades old—for establishing or maintaining racially segregated public housing around the country; the White House's promotion of "customer-friendly" government actions that required more effective working relationships between agencies and their constituencies; and increased publicity and pressure from civil rights advocates, especially disability rights activists and housing providers serving low-income and homeless families, making the heightened attention to program-related civil rights enforcement appropriate.

FHEO was not able to staff the Program Operations Compliance Centers at their promised levels. At least from 1994 to 1996, however, FHEO and HUD leadership gave Section 504 enforcement enough backing and support to enable its staff to generate some model and replicable enforcement actions. These included coordinated and complex compliance reviews that resolved long-standing interpretation conflicts and corrective relief from at least one large city that had never complied with several Section 504 requirements.<sup>177</sup>

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<sup>176</sup> *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, U.S. Commission on Civil Rights, Washington, DC, June 1996.

<sup>177</sup> See footnotes 205–207 and associated text.

In 1997, the White House had begun to pressure HUD to double its FHA enforcement efforts and simultaneously required it to reduce its staff. HUD reorganized FHEO's structure by eliminating the Program Operations Compliance Centers; returning to a single, regional enforcement director; cutting staff; and requiring all staff to be responsible for investigating all of FHEO's statutes. The plan's "reorganizational statement" describes the change:

Under the proposed structure, for the first time, field FHEO components will perform all core functions at the lowest organizational levels, thereby empowering field managers to choose from a range of civil rights actions when responding to local needs. All functions and services will now be conducted wherever FHEO has a presence. This creates a multidisciplinary service unit which will enable FHEO to deliver all of the program and statutory elements related to fair housing when it deals with housing providers and HUD program participants.<sup>178</sup>

In fact, Headquarters devoted significantly fewer resources to Section 504 enforcement after the 1997 reorganization.<sup>179</sup> FHEO described the reorganization as a necessary response to the White House request that it double its fair housing enforcement effort. Headquarters staff who had been working with field staff on investigations stopped most of their Section 504 enforcement work. As one FHEO official said, "The doubling effort affected everything. We had to pull back on compliance reviews, monitoring, everything. It did have the effect of raising the Secretary's knowledge of fair housing cases, however."<sup>180</sup>

Because of the pressure to double the enforcement numbers, many FHA complaints against recipients of HUD funds were resolved for the individual complainants but did not trigger the more time-consuming development of VCAs. Such agreements could have resulted in changes to the recipients' overall programs, policies, and practices. Some offices tried to meet the doubling effort while also generating VCAs, but the results were mixed.<sup>181</sup> It was only when the doubling effort ended, in January 2001, that FHEO staff in Headquarters and the field began

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<sup>178</sup> Susan M. Forward, General Deputy Assistant Secretary, FHEO, Memorandum for The Secretary: Proposed 2020 Management Reform Plan for the OFHEO, September 17, 1997.

<sup>179</sup> See Chart VI-4.

<sup>180</sup> Interviews with HUD staff between December 2000 and May 2001.

<sup>181</sup> *Ibid.*



to devote attention to Section 504 again, this time to aged Section 504 complaints and to compliance reviews assisted by Headquarters staff.

## **1. Numbers**

FHEO's data reflect what FHEO staff said: During the doubling effort, from 1997 to 2001, the resources available to Section 504 complaint investigation and compliance reviews were shifted to fair housing complaint investigations. In 1995, FHEO reported processing 380 Section 504 complaints. The number for 1999 was 225.<sup>182</sup> HUD's October 6, 2000, TEAPOTS report showed 964 open Section 504 complaints.

The fact that FHEO reports a 400 percent increase in Section 504 complaints from 1999 to 2000 may be an accurate count of the number of aged Section 504 cases that accumulated while the doubling effort lasted, and the lower number may reflect the number of Section 504 complaints that FHEO received in 1999.

The compliance work that did continue during the doubling effort placed an emphasis on conducting a small number of joint Title VI and Section 504 compliance reviews, and were initiated by Headquarters staff. While some reviews resulted in monetary damages to remedy Title VI problems, the compliance reviews yielded policy and practice changes through VCAs for Section 504 violations but no monetary damages. FHEO's failure to assess recipients for monetary damages is puzzling. The regulations clearly authorize HUD to seek damages to make victims of discrimination whole,<sup>183</sup> and DOJ confirmed HUD's authority to seek damages under Section 504 when HUD's General Counsel was skeptical.<sup>184</sup>

Even where Headquarters initiated and lent staff to specific reviews, FHEO devoted too few resources to this effort to make an impact with more than a few recipients. That is, when the office identified enforcement problems or opportunities, it would develop a plan, take action, and

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<sup>182</sup> U.S. Commission on Civil Rights, *Draft Report on Funding Federal Civil Rights Enforcement*, October 6, 2000.

<sup>183</sup> 24 CFR 8.52 and 8.58(j).

<sup>184</sup> Letter from William Bradford Reynolds, Department of Justice, to Peter Kaplan, FHEO/HUD, July 24, 1987, and letter from William Bradford Reynolds to Robert Kenison, Associate General Counsel, HUD, July 25, 1987, recommending the following regulatory language: "If a recipient has discriminated against persons in a program or activity funded under this part, the recipient must take remedial action to make whole all identifiable victims."

then fail to sustain the action or the necessary support. FHEO's limited staff, the short turnaround time for pre-award reviews, and the demand for higher numbers of FHA enforcement actions made it very difficult for FHEO to sustain, much less expand or monitor, its earlier Section 504 enforcement efforts.

Only in East Texas, when the plaintiffs in *Young v. Pierce*<sup>185</sup> brought HUD back into court for having failed to conduct Title VI compliance reviews of the 70 housing authorities in the lawsuit, was FHEO able to complete a significant number of compliance reviews. Although the case focused on race and Title VI, HUD applied its multistatute investigation policy. As a result, FHEO was able to identify and correct Section 504 violations as well.

**Finding V.F.1:**                    **HUD has not coordinated its Section 504 enforcement responsibilities to take advantage of critical program or departmental efforts. It does not have a method for conducting ongoing discussions about the impact of departmental actions and policies on Section 504 enforcement. It does not work with other federal or state agencies or with the Justice Department Office of Coordination and Review. It does not communicate regularly and effectively with consumers or their representatives or with the agencies and advocates who represent them on their discrimination, housing, or community development issues.**

**Recommendation V.F.1:** **FHEO should develop a Section 504 program that includes short-term and long-term strategies and goals for enforcing Section 504; a review of the successful ways FHEO has coordinated with other HUD offices; establishment of systems for communicating within HUD and with consumers and recipients; evaluation methods; coordination of its technical assistance branch, its FHA branch, and its Section 504 enforcement branch; review, evaluation, and plans for improving responses to, investigations of, and enforcement of**

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<sup>185</sup> *Young v. Pierce*, 685 F. Supp. 975 (E.D. Tex. 1988), discussed later in section.

**Section 504 complaints; review of, evaluation of, and plans for a compliance program that results in rational and effective use of compliance reviews; and sufficient resources to implement a Section 504 program.**

**G. Section 504 Enforcement Emphasis on Public Housing**

HUD's civil rights laws apply to all of the recipients of its grant and contract funds. The recipients include city agencies, nursing homes, for-profit and nonprofit housing developments, retirement communities, and state housing finance agencies, among many others. Yet, in the past decade, HUD has predominantly focused its enforcement of recipients' civil rights obligations on public housing authorities. Many housing authorities receive all their funding from HUD, making them appropriate targets for investigation. This singular focus, however, has resulted in an overly limited Section 504 enforcement program.

The many reasons for and implications of HUD's enforcement emphasis on public housing authorities are beyond the scope of this report. One of the reasons for the emphasis, however, was the *Young v. Pierce* (now *Young v. Martinez*) litigation that was filed in 1980,<sup>186</sup> alleging that HUD was responsible for the racial segregation of public housing in East Texas. HUD allocated substantial staff and resources to defending the litigation and responding to court orders. HUD's desire to avoid similar lawsuits was one reason it chose to focus its enforcement on public housing authorities.

While federal agencies have broad discretion in selecting recipients and subrecipients for compliance reviews, they may not select only one type of recipient, such as housing authorities. According to DOJ regulations, federal agencies are required to maintain "an effective program of post-award reviews."<sup>187</sup> DOJ suggests specific criteria for agencies to consider for their compliance review program:

- Issues targeted in your agency's strategic plan.
- Issues frequently identified as problems faced by program beneficiaries.

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<sup>186</sup> FY 1988 and 1989 Implementation Plan Update, p. 1.

<sup>187</sup> Department of Justice Civil Rights Division Coordination and Review Section, *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes*, Washington, DC, September 1998, p. 174 (citing 28 CFR Sec. 42.407[c]).

- Geographical areas you wish to target because of the many problems you know beneficiaries are experiencing or because your agency has not had a “presence” there for some time.
- Issues raised in a complaint or identified during a complaint investigation that could not be covered within the scope of the complaint investigation.
- Problems identified to your agency by community organizations or advocacy groups that are familiar with actual incidents to support their concerns.
- Problems identified to your agency by its block grant recipients.
- Problems identified to your agency by other federal, state, or local civil rights agencies.<sup>188</sup>

Several of FHEO’s field offices have used some of these criteria to plan their compliance reviews. Because HUD has focused almost exclusively on housing authorities, however, FHEO has not applied these criteria in an effective compliance program for other HUD recipients. Furthermore, HUD has selected different criteria for identifying targets of compliance reviews than those recommended by DOJ. HUD did not provide NCD with data to explain its more limited criteria or to indicate any communication between HUD and DOJ on this matter.<sup>189</sup>

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<sup>188</sup> Ibid., p. 176.

<sup>189</sup> In response to the draft of this report, HUD provided NCD with the following information:

*Increasing/Expanding Section 504 Compliance Reviews:* In FY 2001, FHEO will increase the number of compliance reviews conducted by 25 percent over the previous fiscal year. Also, FHEO will expand the universe of recipients for Section 504 compliance reviews beyond public housing authorities to include HUD assisted-housing recipients. These reviews will examine whether HUD recipients have designated a Section 504 Coordinator; have completed their Transition Plan; have made structural changes to achieve program accessibility; are providing reasonable accommodations; and have complied with other applicable provisions of Section 504. Where violations of Section 504 are found, HUD will take appropriate and necessary steps under Section 504 to effect voluntary compliance. If voluntary compliance cannot be achieved, appropriate enforcement action will be taken. FHEO anticipates including a similar goal in future Business Operating Plans that would increase the number and scope of such reviews.

*Identification of Recipients for Reviews:* FHEO Field Offices will select recipients for compliance reviews based on risk factors such as (1) number of claims or complaints received; (2) inspection scores from the Real Estate Assessment Center; (3) evidence of property rehabilitation; (4) newspaper articles; and (5) any other information.

**Finding V.G.1:** FHEO has not developed a standardized system for determining when compliance reviews of HUD recipients would advance FHEO's and HUD's civil rights goals. HUD and DOJ criteria for identifying targets of compliance reviews have not been used consistently by field offices and have not been used at all by field offices that have not conducted compliance reviews or have targeted only housing authorities.

**Recommendation V.G.1:** HUD's compliance program should include all HUD recipients and should be an integral part of its goal of affirmatively furthering fair housing. FHEO's compliance program must be based on articulated criteria that can be measured and communicated within FHEO and HUD and to recipients and the public. HUD must ensure that each of its program offices provides FHEO with relevant information about the compliance of its recipients and cooperates with FHEO in its compliance program.

Nonetheless, FHEO's emphasis on housing authorities has yielded important benefits for the Section 504 and fair housing enforcement programs. Through years of interaction with the Office of Public and Indian Housing (PIH), that office has achieved the most thorough understanding of its recipients' Section 504 obligations and a closer working relationship with FHEO. As we discuss later in this section, PIH and FHEO published joint guidance, issued joint notices, and initiated enforcement actions together. Rarely was FHEO successful in achieving this level of cooperation with other HUD programs.

Soon after HUD published the Section 504 regulations, FHEO's first significant interoffice cooperative publication resulted from a 1990 Federal District Court decision. In the Northern District of New York, the court relied on the Section 504 regulations to find that the Rochester housing authority had violated the law when it required applicants to meet a "capable of independent living" standard. The housing authority's defense rested on HUD's Public Housing Handbook, which conflicted with the Section 504 regulations. Secretary Jack Kemp publicly supported the Section 504 regulations on a radio broadcast, which resulted in

widespread publicity. Further, FHEO and PIH issued a joint memorandum to their staff to follow the Section 504 requirements, and PIH published a notice for public housing agencies about its correction of its handbook.<sup>190</sup>

## H. Joint Initiatives Between FHEO and Office of Public and Indian Housing

When each of the agencies issued Section 504 regulations, they understood that both technical assistance and time would be necessary before recipients could bring their facilities and programs into compliance with Section 504. HUD's regulations thus required that each recipient conduct a self-evaluation within a year of the date the regulations were published and correct any programmatic problems that it found.<sup>191</sup> The rule also required recipients to evaluate their buildings and make any structural changes necessary to make them accessible.<sup>192</sup> Public housing authorities were required to determine whether the needs of their tenants and applicants for accessible housing had been met and, if they had not, how to meet those needs by 1992.<sup>193</sup>

FHEO continued its relatively successful relationship with PIH by publishing a Joint Notice to Housing Authorities about their Section 504-mandated self-evaluation, needs assessment, and transition plan responsibilities. The notice was published on August 15, 1994.<sup>194</sup> The goal of the PIH/FHEO Notice was to ensure that housing authorities had met these requirements or that they take immediate action to comply with Section 504. For housing authorities that had not yet complied, the notice advised that they had missed the deadline and could obtain a final extension until July 11, based on "extraordinary circumstances," if the Secretary granted it.

HUD notified all 3,338 housing authorities that they were required to meet the extension requirements of the notice if they had not already met their Section 504 responsibilities. Those who had not met their obligations were required to sign corrective action orders with PIH, and

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<sup>190</sup> Handbook 7465.1, REV-2, *Public Housing Occupancy: Admission*, July 1991.

<sup>191</sup> 24 CFR 8.51.

<sup>192</sup> 24 CFR 8.21, 8.23, 8.24, 8.25.

<sup>193</sup> 24 CFR 8.25.

<sup>194</sup> HUD Notice, PIH 94-56, Section 504 Compliance and Extensions for Extraordinary Circumstances, August 15, 1994.

VCAs with FHEO. The corrective action orders made explicit the requirement that if a housing authority applied for modernization funding, it could use the funding only for work that was necessary to complete Section 504 structural changes. The number of Section 504 compliance reviews increased substantially from 21 in 1993 to 155 in 1994 (see Table V-3 for Section 504). The VCAs gave FHEO a basis for enforcing the regulatory requirements. That is, if the housing authority violated the terms of its VCA, FHEO was authorized to refer the authority to DOJ for having breached its agreement.

FHEO concluded that 66 percent, or 2,217 housing authorities, had completed the Section 504 process. Of these, 104 signed VCAs, but the field offices “closely followed” only 17 of the VCAs.<sup>195</sup> According to HUD data, HUD did not refer a single housing authority to DOJ, even when a housing authority breached its VCA.

FHEO was also not able to collect accurate data on this effort. When FHEO attempted to determine the outcome of its joint work with PIH by conducting a survey of the field offices in 1997, it received no information from FHEO field offices concerning 22 percent of the housing authorities. Nor were the data that were collected reliable. For example, data from all of Region I are missing, possibly because the office failed to respond to the survey questionnaire. Region II data were included in the report, but the VCA that office signed with the New York City Housing Authority in December 1996 was missing. Finally, by the time Headquarters collected the data, FHEO was already under a mandate to shift its focus, resources, and staff away from Section 504 and other federally assisted civil rights acts to enforcement of the FHAA. FHEO data do not reflect that it conducted any further study of the 1994 PIH/FHEO Notice.

The Joint Notice was an efficient way to communicate with recipients. It brought the program and enforcement offices together for the purpose of determining how well housing authorities understood their Section 504 responsibilities and how closely they were following them. It allowed PIH and FHEO to resolve problems of interpretation and implementation in the context of specific housing authority responses. It could have resulted in effective enforcement actions. It could have formed the basis for continuing PIH-FHEO implementation of the Section 504 regulations. It could have resulted in the creation of an invaluable body of data about every

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<sup>195</sup> FHEO, Office of Program Operations and Standards, Status Report on Public Housing Section 504 Needs Assessment Transition Plans Rehabilitation, June 1997.

housing authority in the country. It could have formed one of the pillars of an organized Section 504 enforcement program. It did not.<sup>196</sup>

**Finding V.H.1:** FHEO and PIH have conducted joint ventures that have not been documented. Their results are therefore not available for planning, budgeting, technical assistance, or further joint ventures.

**Recommendation V.H.1:** FHEO and its departmental partners should document and evaluate their joint efforts. FHEO and PIH should make their joint report available within HUD and to the public. To the extent possible, FHEO and PIH should issue documents reflecting past coordinated efforts. Both offices should institute a system to ensure that future efforts are similarly recorded and made public.

**Finding V.H.2:** Enforcement of Section 504 is a departmental responsibility. Without the support of HUD leadership and the cooperation of HUD's program offices, FHEO has limited ability to ensure the law's enforcement.

**Recommendation V.H.2:** HUD should establish a secretarial-level office whose responsibility is to conduct a "civil rights impact statement" for each of its initiatives. Similar to an environmental or

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<sup>196</sup> As a result, newer HUD programs, such as HOPE VI, 42 U.S.C. 1437(f), are operating without information as to how many accessible public housing units were created because of the Joint Notice and are being lost and not replaced. The goal of HOPE VI was to raze "severely distressed" public housing. HUD promoted the use of townhouses to replace large, multistory apartment buildings. Unfortunately, HUD's FHA regulations exempt townhouses from accessibility requirements, a problem that HUD apparently ignored. According to PIH Notice 95-10, "HUD intends for HOPE VI to be the laboratory for the reinvention of public housing . . . by blending public housing units into more diverse and mixed-income communities." HOPE VI could have provided a perfect opportunity for HUD to expand the supply of affordable, accessible housing. Instead, HUD appears to have no idea how many accessible units it destroyed; how many of those were created as a result of PIH's and FHEO's cooperative efforts in 1994–1995 to encourage housing authorities to meet their Section 504 responsibilities; and how many tenants with disabilities have been permanently displaced because of the loss of accessible units. Like many private developers, HUD is now making limited efforts to correct its error. See footnote 226 and associated text.



**business impact statement, the civil rights analysis will clarify whether a funding program's decision, action, or interpretation will affect its civil rights program and whether it will promote, hinder, or have no impact on the accomplishment of HUD's civil rights goals.**

## I. Broadening the Enforcement Agenda Through Coordination and Multistatute Reviews

During the mid-1990s, FHEO made a concerted effort to reach out to other departmental offices to resolve policy inconsistencies, generate departmentwide strategies, and incorporate fair housing goals in grant-making programs.<sup>197</sup> FHEO first tried to make its own program compliance enforcement strategy more efficient. Headquarters issued uniform procedures for reviewing Section 504 Letters of Determination; developed and conducted sessions on Advanced Disability Training, building on the training that had preceded it; and obtained the assistance of the OGC on a variety of legal and statutory issues<sup>198</sup> in order to buttress the broader scope that Congress returned to civil rights agencies through the Civil Rights Restoration Act of 1987. Headquarters also consulted with various field offices before it issued guidance on conducting multistatute complaint investigations and on identifying targets for compliance reviews. FHEO issued the latter guidance in 1995 and the multistatute guidance in 1996.<sup>199</sup>

The intent of the guidance was to signal a change in the direction that compliance reviews had taken. Beginning with the publication of the Section 504 regulations, FHEO had focused on housing authorities and their compliance with either 504 or Title VI. The new guidance and assistance from Headquarters were intended to yield multijurisdictional compliance reviews. The intent was also to help the field initiate compliance reviews based on current complaints and information from FHEO reviews of funding applicants' and recipients' civil rights compliance. For example, the field offices of Community Planning and Development (CPD) waited for

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<sup>197</sup> See 1994 and 1995 Annual Reports to Congress on Fair Housing Programs.

<sup>198</sup> Notice, FHEO 96-1: Multijurisdictional Complaints.

<sup>199</sup> Memorandum for All Directors, FHEO, from Roberta Achtenberg, Assistant Secretary, FHEO, re: Compliance Reviews for 1995, January 1995.

FHEO to certify that cities, states, and other recipients were in compliance with the civil rights laws. Without the certification, CPD would not approve entitlement grants, such as Community Development Block Grant (CDBG) funds, or competitive grants, such as (Housing for People with AIDS) HOPWA funds.

FHEO always provided the certifications and CPD always released the funds, certainly for the entitlement funds. But many field offices conducted time-consuming and thorough reviews of the recipients and provided valuable technical assistance to them explaining how they were violating the civil rights laws and suggesting corrective action. Often FHEO staff would tell CPD staff of their findings and their recommendations and would base their compliance certifications on the city's agreement to adopt corrective action. The same CPD staff and the same FHEO staffer often worked with the same recipients year after year, so that corrective action that wasn't taken in one year would be recommended again for the next.<sup>200</sup>

Surprisingly, this information was more freely shared between FHEO and CPD than between FHEO staff conducting pre-grant award reviews and FHEO enforcement staff. As a result, FHEO lost valuable enforcement opportunities to focus compliance reviews on data FHEO had already collected and often serious but complex civil rights violations that had already been identified. This problem was one of the reasons for the creation of the Program Operations Compliance Centers. With sufficient staff reporting to a director whose only responsibility was funding related civil rights laws, the theory was that he or she would be able to implement an enforcement program that took advantage of all available information, whether it was collected during front-end reviews or complaint investigations, and that could be coordinated with the FHA enforcement staff as well.

Many field offices believed that the correct goal was to conduct a compliance review of every housing authority in their jurisdiction, regardless of its size, its remoteness, its resources, or specific complaints and allegations about other recipients' civil rights violations. The new guidance alone was not enough to change that belief, but it was a necessary first step whose impact might have been greater if FHEO had the time and resources to follow through. Instead, at the end of 1996 and beginning of 1997, the effort to double the number of fair housing cases drew the majority of FHEO's enforcement resources.

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<sup>200</sup> Discussions with HUD staff.

For a brief time before the doubling effort, FHEO conducted a limited version of such a compliance review program that reflected its 1995 and 1996 guidance on targeting compliance reviews and conducting multistatute reviews. It began with Headquarters program compliance staff identifying recipients, typically housing authorities, that were the focus of litigation, a serious complaint, or a number of serious complaints. Headquarters staff contacted the lead office in the field and designed the compliance review with them. Headquarters staff assembled teams consisting of knowledgeable and productive investigators from around the country, added them to the local staff, created the schedule, identified the tasks for each part of the schedule, and joined in the investigation.

The goals of these compliance reviews were to make them multijurisdictional, if possible, expeditious, accurate, and responsive to the complaints. While the number of these compliance reviews was not large, they did accomplish their goals and reflected much better results, for several regions, than those generally conducted without Headquarters support and assistance. For example, a 1998 HUD Inspector General review of 33 compliance reviews in four field offices that did not follow the new model found that 17 remained incomplete “for long periods of time,” that “FHEO did not ensure that corrective action was actually taken,” that management and data collection systems “were lacking,” and that the compliance reviews were inefficient because they “did not result in resolving known discriminatory practices by program participants.”<sup>201</sup>

Headquarters resumed this approach to compliance reviews after the doubling effort ended. Although the number of Headquarters- and field-coordinated reviews has remained small and the effort has been understaffed, FHEO has initiated a number of creative approaches to maximizing the resources that it does have.

**Finding V.I.1.a: FHEO limited compliance reviews to housing authorities for many years. It investigated only Title VI or Section 504 compliance when it could have investigated both simultaneously. When FHEO adopted its multistatute approach and issued multijurisdictional guidance, compliance reviews became more efficient. Except for a brief period, FHEO’s compliance review strategy in many field offices was to review every housing authority and to review every one**

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<sup>201</sup> OIG, note 57.

again. FHEO's efforts to create a compliance review strategy that used reviews to focus on known civil rights problems was logical and effective. The effort ended when FHEO staffing levels were reduced and remaining staff and resources for compliance reviews were diverted to FHA complaint investigations.

**Recommendation V.I.1.a:** FHEO should adopt an expanded version of its previously successful compliance review strategy as part of its Section 504 program. It should target its compliance reviews according to enforcement strategies that have had the greatest likelihood of accomplishing specific programmatic goals, and it should conduct multistatute reviews. The goals should include expanding recipients' understanding of and compliance with Section 504 requirements; coordinating with HUD program offices and expanding their ability to ensure recipients' compliance with Section 504; and increasing the public's knowledge of and support for Section 504 and related civil rights laws.

**1. Intradepartmental Cooperation Leads to More Accessible Units in New York**

Under the aegis of the Program Operations Compliance Center organization, FHEO succeeded in identifying and addressing some of the most complex issues in its Section 504 enforcement history during this period. One of them was the New York City Housing Authority's (NYCHA's) compliance with Section 504. A group of public interest organizations had sued NYCHA on behalf of tenants and applicants with disabilities. Although HUD was not a party to the suit, FHEO, PIH, and General Counsel staff formed a Headquarters team to address the numerous and fundamental issues that the NYCHA litigation presented.

The housing authority disputed the regulatory requirement that at least 5 percent of its apartments be accessible to people with mobility impairments and that an additional 2 percent be

usable by tenants with vision and hearing impairments.<sup>202</sup> NYCHA contended that the number of tenants with disabilities, people with disabilities on the waiting list, and people with disabilities among the eligible population didn't justify the 5 percent and 2 percent thresholds. They insisted that enough of their 181,000 units were accessible to meet the need and that the New York PIH and FHEO offices had given them many waivers because of the age of the buildings. Finally, NYCHA had an undisputed backlog of more than 13,000 requests for reasonable accommodations from current tenants.

Although PIH and FHEO had coordinated on several Section 504 guidance and enforcement matters before, the OGC had never taken as active a role. With its assistance, it was possible to add a statistician from the Office of Policy, Development and Research to the team. He and NYCHA conducted simultaneous analyses that convinced both HUD and the housing authority that it needed a minimum of 9,000 fully accessible apartments. The age of the buildings and the size of the elevators led to more disputes that required a specific elevator accessibility study. The results of the study led to NYCHA's agreement to expand the number of accessible units in nearby buildings when the original buildings were too old or too narrow to generate the required 5 percent.

Similar issues arose during the course of nearly a year of negotiation, study, surveys, and policy clearance within HUD. The effort resulted in a VCA that put NYCHA on firm management reform and construction/rehabilitation schedules, and that included modification and accommodation tenant request forms that other housing authorities have since adopted.<sup>203</sup> The members of HUD's NYCHA team hoped that they would be able to replicate their successful team approach that included FHEO, OGC, the Office of Policy, Development and Research, and the appropriate program office. Unfortunately, changes in Administration internal leadership and HUD's downsizing did not result in systematizing this approach.

**Finding V.I.1.b: FHEO successfully obtained one of the most extensive VCAs in its history by working in conjunction with OGC and PIH. The team received full support from departmental and program leadership. Without that support, the team would not have had**

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<sup>202</sup> 24 CFR 8.32.

<sup>203</sup> Voluntary Compliance Agreement between the New York Housing Authority and HUD, December 6, 1996.

**the time, the resources, or the authority to develop solutions to enforcement and program interpretation problems that had prevented earlier compliance efforts. The NYCHA approach could have been replicated with other housing authorities, but HUD did not provide the necessary resources to do so.**

**Recommendation V.I.1.b: FHEO should review the approach that resulted in the NYCHA VCA and determine what resources and support would be necessary to apply it to other recipients. FHEO should also publish its evaluation of the NYCHA approach and use it to further its training, technical assistance, and enforcement efforts.**

**2. Broad Array of Enforcement Tools Protects Relief in Pinellas County, Florida**

A more recent example of effective intradepartmental coordination was the compliance review and extensive VCA that FHEO and PIH developed for the Pinellas, Florida, Housing Authority in 1997. FHEO had received complaints that the housing authority awarded Section 8 vouchers on the basis of race; failed to provide the same maintenance services to its African-American tenants as its white tenants; failed to respond to requests for reasonable accommodations; required tenants with disabilities to pay for necessary accessibility modifications of housing authority property, including the purchase and installation of ramps and grab bars; and had not conducted the transition plan that the Section 504 regulations required.

The VCA was creative and extensive. HUD withheld the Comprehensive Grant funds from the housing authority until it conducted its accessibility survey and submitted a report to HUD indicating how it planned to meet the Title VI and Section 504 requirements of the VCA, with specific time deadlines. It required the housing authority to employ an “agreement monitor” to notify all tenants and Section 8 participants of the VCA as well as of the new policies the VCA required the housing authority to generate, and to invite members of the African-American and disabled communities to open meetings of the housing authority and to participate in its VCA activities. Finally, the VCA was unique in listing a much broader array of enforcement options available to HUD if the housing authority failed to comply with the terms of the

agreement. The options included binding arbitration, referring the housing authority to DOJ for violating its annual contributions contract with HUD or for civil rights violations or to seek specific performance of the agreement's terms; and withholding the housing authority's funds.

HUD did not provide NCD with documents indicating whether the housing authority complied with the agreement or whether the local HUD office fulfilled its monitoring responsibilities. If the housing authority did not comply, HUD also did not provide documentation indicating whether it invoked any of the enforcement mechanisms that it listed in the agreement. Because HUD could have referred the housing authority to DOJ for having failed to conduct the self-evaluation and needs assessment required by Section 504 (discussed earlier in this chapter), rather than developing a Voluntary Compliance Agreement, HUD probably decided that another VCA was as likely as a court order—and certainly easier to develop—to compel the housing authority to end decades of civil rights violations.

### **3. Working in Partnership with Local Advocacy Group Wins Broad Relief in Austin**

Another highly effective but unreplicated VCA signed during this period followed a complaint about the failure of the city of Austin, Texas, to comply with its Section 504 obligations. The disability rights advocacy group Americans Disabled for Attendant Programs Today (ADAPT), located in Austin, filed its complaint in 1995. Two years later, after an investigation and lengthy negotiations with the city, FHEO and Austin signed a VCA. The city agreed to amend its Consolidated Plan to make housing needs for persons with disabilities a priority; to deny funding to housing projects that could not be made accessible; to develop incentives for city contractors to build or rehabilitate housing that contains more than 5 percent accessible units; and to provide Section 504 training to all management staff, among other provisions.

According to the city's May 15, 2000, Summary Report, the city complied with all of these requirements. In addition, it enacted a visitability ordinance requiring the entrance and one bathroom in newly built homes be usable by individuals with mobility impairments; contracted with an accessibility expert to ensure that current and future multifamily rental housing complies with the FHA and Section 504; established a barrier-removal fund for existing single-family homes; and established the SMART Housing Initiative. As the report explains,

SMART stands for Safe, Mixed-income, Accessible, Reasonably priced, and Transit-oriented. The Mixed Income component will provide incentives to projects that may provide upwards of 10 percent SMART Housing, bringing Visitability and Accessibility to units that receive no federal funding. This will expand accessibility beyond those projects receiving CDBG and HOME funds, particularly to single-family projects and multifamily projects that are not regulated by Section 504 standards.

HUD did not provide documentation indicating that it has required any other city to comply with Section 504 in similar ways. FHEO's efforts with Austin were successful because it worked with a strong local advocacy group, the field office received continuous support for its efforts from Headquarters, and the city was willing to work with both HUD and the local advocacy agency.

**Finding V.I.3.a:** FHEO's Austin VCA is replicable, but no other FHEO agreement with a city accomplishes as much. The probable reasons for the breadth of the VCA and its successful implementation are a combination of Headquarters support, dedicated field staff, willing city officials, and, possibly most important, a local advocacy group that knew the city, understood Section 504 and the FHA, and persisted with both FHEO and the city until it achieved the goals of its complaint.

**Recommendation V.I.3.a:** FHEO should replicate the resources and sustained support that were necessary to bring the city of Austin into compliance with Section 504. FHEO should encourage staff to work with local agencies and advocacy groups in identifying discrimination issues, forging solutions, and monitoring agreements.

**Recommendation V.I.3.b:** HUD should enforce the Section 504 responsibilities of cities, counties, and states to ensure that all of their programs and activities meet the regulatory requirements. For example, every city should ensure that 5 percent of the city's housing program is fully accessible to residents with mobility impairments. See,



**for example, the city of Austin’s program. Every state should ensure that all its programs promote the ability of individuals with cognitive and mental disabilities to gain access to the same benefits and services as all other state residents.**

## **J. HUD Has Often Failed to Enforce VCAs**

In spite of the focus on housing authorities, FHEO did not refer any of them, or any other recipients who had signed VCAs, to DOJ for having failed to comply with the terms of the VCA. When recipients violate VCAs, FHEO’s response has been to “work with” the recipient and, if necessary, to draft a second VCA. FHEO staff are not trained, however, to treat VCAs as contracts that, once breached, may be the basis for administrative action, such as limiting, conditioning, or terminating further financial assistance, and for referral to DOJ. Instead, as the 1997 Accountability Report explains, “[a]s a result of [compliance] reviews, a large portion of HUD recipients are better informed about Title VI and 504, thus increasing the likelihood for increased compliance under these laws in the future with regard to the provision of accessible and desegregated housing.”<sup>204</sup>

As this report indicated earlier, FHEO’s failure to enforce VCAs results from several factors. Section 504 emphasizes voluntary compliance and negotiated settlements. In addition, disagreements between FHEO staff and regional counsel and the absence of good working relationships among many offices contributes to the problem (see Section IV for a discussion of this issue). Finally, enforcing VCAs requires a diversion of significant time and resources that, in an agency strapped for both, has been difficult to muster.

**Finding V.J.1: When recipients violate VCAs, HUD does not take enforcement action against them. HUD treats VCAs as “educational documents” and the compliance review process as an “educational process” rather than as a means of enforcing civil rights laws.**

**Recommendation V.J.1: All VCAs must be enforced after their time limits expire and the recipient has not fulfilled the VCA’s terms. FHEO shall**

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<sup>204</sup> HUD FY 1997 Accountability Report, p. 44, March 27, 1998.

**immediately forward the VCA to the Office of General Counsel for enforcement. The OGC shall initiate administrative proceedings within two months of receiving the referral from FHEO. OGC and FHEO shall give the recipient one month to comply with the terms of the VCA before initiating enforcement actions.**

**Recommendation V.J.2: FHEO must develop protocols with the grant-award program to ensure that if funds are granted they be conditioned upon the recipient's correcting the violations according to an existing VCA. HUD should make clear that failure to comply with the terms of the VCA shall result in enforcement and temporary denial of all future funds to the recipient, including funds that have been approved but are awarded on a periodic basis.**

**Recommendation V.J.3: HUD should publish all VCAs on the HUD Web site and include the name of the FHEO contact for questions from the public and other recipients.**

#### **K. HUD Initiates Multistatute Compliance Reviews**

FHEO also initiated a multistatute approach to its enforcement activities. Because investigators had to go on-site to investigate claims of racial discrimination, FHEO leadership saw the benefit of combining Title VI and FHA investigations with Section 504 investigations. This approach was successful in another major FHEO-PIH initiative that addressed race discrimination litigation in Texas. The *Young v. Pierce* [685 F. Supp. 975 (E.D. Tex. 1988)] case accused HUD of establishing and maintaining racially segregated public housing in East Texas. HUD decided to open a separate office in Beaumont, Texas, to work only with the East Texas housing authorities. Both FHEO and PIH staffed the office.

From 1998 to 2001, FHEO and PIH completed their investigations of the 70 housing authorities covered by the litigation. The housing authority properties ranged in size from 10 to

568 units. Although the litigation raised only Title VI claims, FHEO and PIH decided to investigate the housing authorities' compliance with Section 504. After issuing 54 Letters of Findings and executing 16 VCAs, the FHEO Beaumont office found 90 percent of the housing authorities had Section 504 violations, ranging from the absence of accessible units to debris making accessible paths non-navigable.<sup>205</sup> There is no reason to believe that the East Texas housing authorities are not representative of Section 504 compliance by housing authorities nationwide.

**Finding V.K.1:** **FHEO has successfully operated under the multistatute guidance for several years. The results of investigating a recipient's compliance with two or more civil rights laws simultaneously has had obvious efficiency benefits for the recipient, the beneficiaries, and HUD.**

**Recommendation V.K.1:** **HUD should continue to follow the multistatute guidance. The agency should conduct an evaluation of how the field offices use the guidance, identify any differences, and develop guidance to address gaps and to reinforce successful outcomes. HUD should also define successful outcomes in terms of numbers of beneficiaries assisted, timeliness of the operation, satisfaction of the parties involved, funds and time spent, and replicability of the effort.**

Beyond the obvious enforcement benefits of the East Texas reviews, the approach helped FHEO and the new Beaumont Office accomplish important internal goals. It gave them an opportunity both to obtain baseline measures of racial and disability integration in its housing authorities and to apply the disability rights laws consistently over a specific geographic area, and it proved that the fair housing doubling effort could include Title VI and Section 504 compliance reviews as well as FHA complaint investigations.

HUD's 1997 Accountability Report indicates that 90 VCAs that had resulted from combined Section 504 and Title VI compliance reviews were signed in 1997, although the report

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<sup>205</sup> Conversation with FHEO staff, May 9, 2001.

does not indicate how many of those were signed with East Texas housing authorities.<sup>206</sup> Because FHEO's data collection systems for compliance reviews, VCAs, and Section 504 enforcement generally has been inconsistent, it is difficult to draw any conclusions from these numbers. It seems fairly safe, however, to conclude that most of the Section 504 compliance reviews and VCAs concluded in the mid-1990s resulted from joint PIH-FHEO coordination. The other major program funding offices, Community Planning and Development and Housing, did not play significant roles in supporting or promoting HUD's fair housing or Section 504 regulations, according to HUD data.

Thus, apart from the two HUBs that are not conducting compliance reviews, six of the remaining eight HUBs continue to review only housing authorities, in spite of receiving complaints about city agencies, assisted housing providers, and other recipients of HUD funds. It is encouraging that two of the HUBs and Headquarters have initiated compliance reviews of recipients other than housing authorities. It is hoped that Headquarters will not only continue to collect this data from the field but will use it to further a compliance review program that is more closely connected with HUD's continuing devolution of discretion to its field offices.

## L. Guidance

FHEO issued a fair number of technical assistance guidance (TAG) memoranda before HUD adopted Section 504 regulations. Some were published in the *Federal Register*, but the majority were guidance memoranda that Headquarters issued to the field. Of these, about half answered enforcement questions and the other half reflected either court decisions or legal analyses and conclusions that interpreted Section 504.<sup>207</sup>

After the publication of the Section 504 regulations, FHEO continued to publish TAGs, but instead of increasing, the number of TAGs decreased substantially.<sup>208</sup> The last TAG that FHEO provided was dated October 10, 1991. FHEO continued to provide guidance within HUD

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<sup>206</sup> HUD, FY 1997 Accountability Report, pp. 44-45.

<sup>207</sup> See Appendix V-1 for a complete list of guidance memoranda.

<sup>208</sup> See Appendix V-1.

and between Headquarters and field offices, but in different venues and for different audiences. HUD did not replace TAGs with an alternative system of cataloging policy interpretations of Section 504. Moreover, the TAGs were never maintained, indexed, or cataloged to enable HUD staff or the public to use them to solve recurring or new problems. As a result, many of HUD's decisions, especially those that have not been published in the *Federal Register*, are not retrievable by HUD staff or by the public.

Having operated without a unified or retrievable guidance system, HUD staff throughout the department have addressed and solved some of the same issues over and over again, without knowing how the department addressed the issue before and without any guarantee that one office's solution was consistent with another's. For example, in 1986 and 1987, FHEO issued TAGs addressing the interface of Section 504 and the Section 202 Program for the Elderly and Handicapped.<sup>209</sup> In spite of this guidance, and because it was not easily accessible, FHEO staff around the country and in Headquarters continued trying to balance Section 202 program requirements with Section 504 requirements.

When the Corporation for Supportive Housing tried unsuccessfully to get the Office of Community Planning and Development and FHEO to explain apparent contradictions between the civil rights laws and Section 202 and other assisted housing programs, the HUD offices declined to provide any answers in writing. Instead, all of the San Francisco regional office directors reviewed and commented upon the corporation's responses to its own questions.<sup>210</sup> Copies of the book are circulating within HUD, and it has become very popular among supportive housing providers around the country.

**Finding V.L.1: FHEO has not maintained in any systematic way the Section 504 guidance that it has issued. It has not maintained the systems that once existed, and it has not created a system for maintaining such guidance now. It is critical that the source for policy decisions, the decisions themselves, and the resulting guidance be continually available to HUD staff and to the public.**

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<sup>209</sup> See TAGs 86-9, 87-11, and 88-5.

<sup>210</sup> Corporation for Supportive Housing, *Between the Lines: A Question and Answer Guide on Legal Issues in Supportive Housing*, Oakland, CA, 2000.

**Recommendation V.L.1:** FHEO should create a method as soon as possible for collecting all Section 504 policies, guidance, notices, and interpretive materials in a single location. Each of the documents should be identified by issuance date, location (i.e., where it first appeared), history, and current force. FHEO should allocate sufficient resources to this project so that a system of locating and maintaining such information can be established and maintained. FHEO should make these historical documents and future documents available to HUD staff and to the public in a user-friendly format that is searchable by word or concept.

## **M. Civil Rights Conflicts Within the Department**

### **1. HUD's Narrow Definition of "Recipient" Limits Civil Rights Enforcement**

HUD has adopted policies that limit its ability to investigate recipients other than housing authorities. For example, when HUD defined "recipients" in its Section 504 regulations, it concluded that housing providers who accepted federal rent subsidies were not "recipients of federal funds." Instead, HUD adopted the position that the housing authorities responsible for administering rental certificate programs were the only recipients. Private and assisted housing providers who accepted the subsidies were contractors with the housing authorities (see 24 CFR 8.28). As a result of this decision, FHEO rarely conducted compliance reviews of any recipients other than housing authorities, in spite of information that HUD received and data that it collected that reflected ongoing violations of disability rights and race discrimination by private and assisted housing providers.<sup>211</sup> HUD's protection of private, subsidized housing providers has led directly to the decreasing supply of affordable housing for which individuals with disabilities are eligible.

**Finding V.M.1:** HUD has too narrowly defined "recipient" to exclude housing providers who benefit from federal financial assistance. HUD's assigning housing authorities with the responsibility of

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<sup>211</sup> See, e.g., Citizens Commission on Civil Rights, *Lost Opportunities: The Civil Rights Record of the Bush Administration Mid-Term*, Chap. XXI and passim, Washington, DC, 1991.

**monitoring private housing providers' compliance with the civil rights laws has been unworkable.**

**Recommendation V.M.1: HUD should review its policy decision and issue an interpretation of the responsibilities of federally subsidized private housing providers that is effective and enforceable.**

**2. Elders, Nonelders with Disabilities, and the Secretary's Office on Disability Policy**

As with all Executive agencies, HUD has faced the difficult problems of coordinating its civil rights enforcement policies with its grant-making responsibilities. This issue has been exacerbated in HUD by a number of conflicting public policy goals. One of these has been the integration mandate of the civil rights laws and the mandate that public agencies ensure the safety of "vulnerable populations." This conflict attained national attention, beginning in the 1980s, in the context of HUD's housing programs for "the elderly and the handicapped."<sup>212</sup> The conflict led to statutory, regulatory, advisory, and enforcement issues that have yet to be resolved.

During the 1980s, the numbers of nonelderly tenants with disabilities increased in housing that Congress had created for them and for tenants 62 and older. As funding decreased for low-income housing and as more and more individuals with disabilities sought affordable housing, the number of housing units available to accommodate low-income applicants dropped to one-third of the need.<sup>213</sup> The press carried sensational stories of elders threatened by individuals with disabilities and Congress's forsaking its promises of the 1970s to house low-income elders. In addition, a number of federal court decisions, beginning with *Brecker v. B'nai Brith Housing Development Fund*,<sup>214</sup> adopted HUD's argument that those who housed individuals with disabilities needed specific expertise for different kinds of disabilities.

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<sup>212</sup> See, e.g., Section 202 Housing, 12 USC 1701q; 24 CFR 885.1.

<sup>213</sup> HUD, Office of Policy Development and Research, *Worst-Case Housing Needs*, Reports to Congress, 1980–1990; statement of Barry Zigas, President, National Low-Income Housing Coalition, before the House Subcommittee on Housing and Community Development, March 31, 1992; and annual NLIHC reports.

<sup>214</sup> *Brecker v. Queens B'nai Brith Housing Development Fund*, 798 F.2d 52 (2d Cir. 1986).

HUD's position directly contradicted its own Section 504 regulations. The regulations prohibit limiting tenants with disabilities to programs created specifically for them (24 CFR Sec.8.4(b)(viii)(3)); denying a dwelling to a tenant because of a disability, which occurred in housing programs limited to people with specific types of disabilities (Sec. 8.4(b)(vii)); and providing different or separate housing to tenants or to a class of tenants without proof that doing so is "necessary" (Sec. 8.4(b)(iv)). Most important, Section 8.4(c)(1) permits individuals and classes of individuals with disabilities to be excluded from housing *only* if federal law or a presidential Executive Order limits the housing to a different class of individuals. An example of such a program is Housing Opportunities for Persons with AIDS (HOPWA), in which applicants with disabilities other than AIDS may be denied housing.

The impact of this position on FHEO's ability to enforce the Section 504 regulations was significant. If HUD had not taken this position, FHEO could have investigated complaints and helped HUD resolve internal policy and regulatory conflicts on the basis of objective and verifiable data. HUD could have developed a body of law that would have enhanced the civil rights protections of its beneficiaries and provided valuable guidance to its recipients. Unfortunately, confusion and misinformation persist within HUD and among recipients, providers, and beneficiaries.

The confluence of these issues led to changes that affected, and continue to affect, FHEO's ability to enforce the disability rights laws, especially against assisted housing providers. In 1990, with HUD and the Administration's support, Congress changed the definition of elderly to eliminate nonelders with disabilities from housing programs that had previously housed both populations.<sup>215</sup> Two years later, Congress amended the Section 202 program to eliminate the eligibility of nonelders with disabilities, and created the Section 811 program.<sup>216</sup> The new program provides funding for rental subsidies and for assisted housing for people with disabilities only. Consistent with the disability rights laws, the legislation does not allow providers to distinguish among disabilities in their application process unless they receive specific permission to do so.<sup>217</sup> Yet, across the country, HUD offices of housing are advising the

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<sup>215</sup> Cranston-Gonzalez National Affordable Housing Act of 1990, Public Law 101-625.

<sup>216</sup> Housing and Community Development Act of 1992, Public Law 102-550.

<sup>217</sup> 24 CFR 891.410(c)(2)(ii).



811 providers that they are to follow pre-1990 Section 202 rules. As a result, housing for applicants with specific disabilities are the norm rather than the exception.

Having hobbled its own Section 504 enforcement program, HUD continued to recommend legislation that undermined those regulations. For example, HUD strongly supported, and Congress enacted, more changes in the Housing and Community Development Act of 1992 that have diminished the availability of housing for and the rights of nonelders with disabilities. Public housing authorities were permitted to designate their elderly housing as elderly only if HUD approved their plans to do so. Private housing providers who received HUD subsidies were given even more leeway and were permitted to cease accepting any but elderly tenants. They did not need HUD's approval to do so. Although the legislation required HUD to issue guidance for private housing providers, HUD never did so. As a result, HUD's Office of Housing did not enforce protections for low-income tenants, and FHEO and the Office of Housing gave private housing providers conflicting information as to their responsibilities.<sup>218</sup>

Several studies have been commissioned to study the impact of these changes. The most recent concluded that housing providers accepted nonelders with disabilities most frequently in poor neighborhoods and into troubled housing. Elders, in contrast, were the exclusive tenants in good neighborhoods, in well-maintained housing, regardless of the laws and regulations and with little HUD oversight.<sup>219</sup> This practice has civil rights implications; yet, in spite of repeated requests to do so, HUD has never effectively reviewed and addressed or acknowledged the impact of its interpretations on HUD's own civil rights enforcement program and regulations or on the worsening housing crisis for low-income renters protected by the civil rights laws.<sup>220</sup>

The 1992 law also resulted in HUD's creation of the Occupancy Task Force. Congress required that the members of the task force represent elders, individuals with disabilities, public and assisted housing providers, HUD officials, and others who had been involved in the elder-disability debates. The task force issued consensus recommendations as to how HUD might conform its program and civil rights regulations and policies. The Office of Public Housing

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<sup>218</sup> Report to Congress, *Assessment of the Loss of Housing for Non-Elderly People with Disabilities*, prepared for HUD by Abt Associates, Cambridge, MA, December 2000.

<sup>219</sup> Ibid.

<sup>220</sup> See, e.g., Technical Assistance Collaborative, *Priced Out in 2000*, Boston, MA, June 2001.

adopted many of the recommendations, while the Offices of Housing and Community Planning and Development did not.<sup>221</sup>

The task force recommended that both the public housing and the assisted private housing offices require landlords to develop written procedures for providing reasonable accommodations to tenants. It recommended that the Community Planning and Development Office condition the grant of funds on the community's submission of a credible fair housing plan and compliance with it. It recommended that all of HUD's program offices provide housing recipients with the marketing techniques developed by the task force to ensure that accessible units would be occupied by families with mobility impairments.

**Finding V.M.2.a: HUD's Occupancy Task Force issued numerous recommendations in 1994 as to how the funding programs could incorporate disability rights requirements into their operations. The Offices of Housing and Community Planning and Development did not adopt the majority of the recommendations. The recommendations resulted from agreement among public and private housing providers, advocates for elders and people with disabilities, and management organizations.**

**Recommendation V.M.2.a: HUD should review and incorporate as many of the Occupancy Task Force recommendations as are applicable to HUD's current Housing and Community Planning and Development programs. It should determine whether the recommendations can be applied to programs and initiatives that did not exist in 1994 and the most effective ways of applying them.**

These conflicts focused the disability community's attention on housing issues in several ways. In addition to the work that FHEO and PIH accomplished, HUD established the Secretary's Office on Disability Policy. Created in 1995, it was the first secretarial-level office in

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<sup>221</sup> FHEO conducted two-day training sessions in 11 cities that incorporated many of the Occupancy Task Force recommendations that the Office of Public Housing had adopted. FHEO was unable to mount a similar training effort with the Offices of Housing and Community Planning and Development because these offices did not respond to the Occupancy Task Force recommendations.

HUD's history to focus on the rights of individuals with disabilities. While it did not address enforcement issues per se, it brought disability advocates into regular meetings with Secretaries Henry Cisneros and Andrew Cuomo. The meetings alone raised the visibility of the disability focus on HUD's programs. The office was also able to resolve some of the rights-program conflicts and succeeded in incorporating disability rights goals into both HUD staff performance reviews and Notices of Funding Availability.<sup>222</sup>

**Finding V.M.2.b:**                **The Secretary's Office on Disability Policy brought Section 504 and fair housing disability issues to the attention of HUD's leadership. It encouraged the Secretary and his staff to meet with disability rights advocates, and it resulted in greater recognition among program staff of the implications of program regulations and guidance for individuals with disabilities.**

**Recommendation V.M.2.b:** **HUD should maintain the Secretary's Office on Disability Policy. HUD should assign it joint oversight with the Office of Administration, FHEO, and the Office of General Counsel for HUD's Section 504 federally conducted responsibilities insofar as necessary to ensure that no HUD program operates in inaccessible buildings; that HUD conducts an effective self-evaluation of its policies, regulations, guidance, and practices; and that HUD drafts an employment needs assessment, develops a transition plan to correct deficiencies, and secures sufficient funding to implement the recommendations from its assessments and evaluations.**

**Recommendation V.M.2.c:** **The Office on Disability Policy should have a director with experience in disability rights. The director should have at least one staff person for each of HUD's offices, including FHEO. Each staff person shall be familiar with the operations**

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<sup>222</sup> For example, HUD Notice H 98-29, June 10, 1998, gives five bonus points to applicants for Section 811 funding if at least 51 percent of their boards are individuals with disabilities (p. 4). Also see note 236 for more examples.

**and statutory responsibilities of the particular office. The staff person responsible for FHEO shall maintain continuing communication with the Assistant Secretary of FHEO and shall ensure that the two offices coordinate their activities. The office shall be responsible for conducting a “disability impact study” of HUD’s major initiatives, which will include specific recommendations for changes, expansions, and consultation with the civil rights community.**

**3. HOPE VI’s Adoption of Townhouses to Replace Large Public Housing Buildings Has Significantly Reduced the Number of Accessible Units in the Public Housing Inventory.**

Congress created the HOPE VI program for the purpose of “transforming public housing projects into mixed income, diverse, and stable neighborhoods.”<sup>223</sup> Unfortunately, HUD did not include individuals with disabilities in the design process, nor did it consider the impact of promoting the use of townhouses as the major design style to replace large, multifamily structures. Instead, HUD decided to replicate “the most stable and admired traditional neighborhoods,” or neighborhoods consisting “largely of two-story houses, often with raised front porches, which have been a barrier to people with mobility impairments.”<sup>224</sup>

As a result of the work of the Secretary’s Office on Disability Policy and pressure from disability advocacy groups, HUD is now recommending, but not requiring, that HOPE VI projects include modified single-story homes; condominiums; co-ops with first-floor accessible flats; and two-story homes with elevators or lifts.<sup>225</sup>

**N. The Most Recent Years: 1998–2001**

**1. FHEO and Departmentwide Coordination**

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<sup>223</sup> *Strategies for Providing Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership*, Urban Design Associates, prepared for HUD’s Office of Public Housing Investments, Public and Indian Housing, January 2000.

<sup>224</sup> *Ibid.*, p. 1.

<sup>225</sup> *Ibid.*, p. 2.

The loss of resources and staff to the doubling campaign was only one of the pressures that forced FHEO to rethink its Section 504 enforcement efforts. The second source of pressure came from the disability community. Through FHEO directly and through the Secretary's Office on Disability Policy, the disability community was able to communicate its demands for more effective enforcement of the civil rights laws throughout HUD. While the community received far less than it requested, FHEO and HUD did make some changes.

FHEO joined the Offices of Housing and Community Planning and Development to issue notices to their recipients reminding them of their civil rights responsibilities. The first notice addresses recipients' responsibilities to "affirmatively further fair housing."<sup>226</sup> The notice requires compliance with the new construction requirements of the FHA and warns recipients that if they fail to conduct an Analysis of Impediments to Fair Housing Choice and to take appropriate actions to address the findings of the analysis, HUD "may...reject the Consolidated Plan." Presumably, HUD will not award funds to a recipients whose plans have been rejected. HUD does not make that clear in the notice, nor does it explain the process it will adopt to deny funds to recipients. Because recipients include cities whose size entitles them, by statute, to Community Development Block Grant and other HUD funds, the notice's silence with regard to the procedure it will adopt or the weight of evidence that it will require to reject a city's Consolidated Plan undermines the credibility of the threat. It would be encouraging if either the offices of CPD or FHEO are permitted to hire staff to enforce the notice. Nonetheless, the message is welcome and long requested by civil rights advocates. The notice also responds to House Appropriations language by encouraging recipient cities and states to adopt building codes that incorporate the accessibility provisions of the FHA. That, too, is welcome.

The Office of Community Planning and Development recently issued two additional notices.<sup>227</sup> Both address accessibility and program requirements of Section 504, the FHA, and the

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<sup>226</sup> 65 *Fed. Reg.* 76660, HUD-CPD Formula Programs: Assisting Persons with Disabilities—Recipients' Affirmatively Furthering Fair Housing Responsibilities and Involvement of Persons with Disabilities in Planning Actions, December 7, 2000.

<sup>227</sup> Notice CPD-00-09, December 26, 2000, "Accessibility Notice: Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act and their applicability to housing programs funded by the HOME Investment Partnerships Program and the Community Development Block Grant Program"; Notice CPD-00-10, December 26, 2000, "Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds – Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Architectural Barriers Act." The Office of Public and Indian Housing issued a similar notice in 1999, Notice PIH 99-52: "Accessibility

Americans with Disabilities Act (ADA). Because CPD grant recipients communicate most frequently with CPD staff and read CPD documents, HUD's inclusion of civil rights information in these notices is appropriate and may be effective if the offices are adequately staffed to, if necessary, monitor compliance, answer recipients' questions, provide technical assistance, and initiate enforcement actions.

These notices, along with a similar notice issued by the Office of Housing,<sup>228</sup> follow DOJ guidance from January 28, 1999, to enlist recipients of block grant funding in civil rights enforcement efforts.<sup>229</sup> The year before, HUD proposed rules pursuant to the FHA as to how recipients of CDBG funds could "affirmatively further fair housing."<sup>230</sup> HUD withdrew the rules after a sustained negative response from CDBG fund recipients, led by the National League of Cities.<sup>231</sup> It is hoped that the current Administration will embrace DOJ's guidance and assist FHEO in enforcing these recent notices.

HUD has also begun to include civil rights guidance in its funding publications. For example, HUD created the SuperNOFA (Notice of Funding Availability) in 1998 for the purpose of consolidating the application process of dozens of grant programs.<sup>232</sup> Both FHEO and the

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Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968; and the Fair Housing Act of 1988."

<sup>228</sup> Notice H 01-02, 2/06/01, "Compliance with Section 504 of the Rehabilitation Act of 1973 and the Disability/Accessibility Provisions of the Fair Housing Act of 1988."

<sup>229</sup> Memorandum from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, DOJ, to Executive Agency Civil Rights Directors, re: Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant-Type Programs, January 28, 1999.

<sup>230</sup> Fair Housing Performance Standards for Acceptance of Consolidated Plan Certifications and Compliance With Community Development Block Grant Performance Review Criteria, Proposed Rule, 63 *Fed. Reg.* 57882 (October 28, 1998).

<sup>231</sup> In a December 16, 1998, letter to Sally Katzen, Office of Management and Budget, Frank Shafroth, on behalf of the League, the Conference of Mayors, the Council of State Legislators, and the National Governors' Association, complained that "this proposed rule would grant HUD the unilateral, unbridled, and unchecked authority to determine whether a city or state has cured impediments to fair housing, both within and outside of its control. ... and would allow the agency to withhold critical block grants." HUD has never issued regulations that specifically implement the 1974 law's requirement that CDBG funds be used "to affirmatively further fair housing."

<sup>232</sup> In the Foreword to the 1999 *Connecting with Communities: A User's Guide to HUD Programs and the 1999 SuperNOFA Process*, Secretary Cuomo described the SuperNOFA as a single

Secretary's Office on Disability Policy successfully encouraged HUD to incorporate civil rights guidance in the NOFAs.

This change had the salutary effect of notifying applicants for HUD funds of disability and other civil rights requirements in a way that was directly connected to the funding system.<sup>233</sup> The drawback to this approach was that only those who applied for specific HUD grants in the specific year learned of HUD's policy. Had the policy been systematically codified, as TAGs had been in the 1980s, posted on the Web, or published in the *Federal Register*, the public and HUD staff would have been better served.

**Finding V.N.1.a: HUD has, for the past three years, included specific civil rights information in its Notices of Funding Availability (NOFAs). The information is limited and is not preserved in any form other than NOFAs. It has also issued notices to program recipients about civil rights obligations in the context of specific HUD grant programs.**

**Recommendation V.N.1.a: HUD should continue to include civil rights requirements, especially Section 504 and other funding-related requirements, in NOFAs and other communications with recipients. HUD should maintain the information in a retrievable system for recipients and the public. HUD should assign sufficient staff**

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application containing "in one place, all of HUD's competitive grant programs in three areas: housing and community development, economic empowerment, and targeted housing and homeless assistance. That's a total of more than \$2.4 billion in available funds."

<sup>233</sup> See, e.g., HUD's FY 2000 Continuum of Care and HOPWA [Housing Opportunities for Persons with Aids] Application. Providers had mistakenly required tenants in Safe Havens programs to participate in the provider's services program. The application addressed this issue saying, "Safe havens do not require participation in services and referrals as a condition of occupancy" (p.15). Even in the Supportive Housing Program description, the NOFA reverses years of contrary advice from the Office of Housing, saying, "to the extent possible [in the Supportive Housing Program], HUD encourages providers to develop housing programs which do not require participation in specific services as part of their tenancy requirements." (ibid.). Also see, Questions and Answers: A Supplement to the 2000 Continuum of Care Homeless Assistance NOFA and Application, in the same application package, for more examples of regulatory interpretation and guidance.

In the 1998 SuperNOFA for the same grants, HUD introduced the concept of "visitability," encouraging applicants to build and rehabilitate housing with an entrance at grade and with doors wide enough for wheelchair passage. 63 *Fed. Reg.* 23988, 23995 (April 30, 1998).

**and resources to the grant programs and to FHEO, both to provide adequate technical assistance for voluntary compliance and to make the enforcement warnings credible.**

Both before and after HUD issued policy guidance through the SuperNOFAs, various HUD offices, including FHEO, used a variety of different vehicles to construe the application of Section 504: letters from FHEO and from the Office of General Counsel in response to questions, notices circulated internally and published in the *Federal Register*, internal memoranda, guidance documents in Q&A format, training materials, and correspondence with other agencies.<sup>234</sup> These materials, however, are not collected in one place, are not cross-indexed, and are not searchable.

In 2001, HUD established a Section 504 Web site on HUD's Web page: [www.hud.gov/fhe/504/sect504.html](http://www.hud.gov/fhe/504/sect504.html). In a press release issued January 19, 2001, Secretary Cuomo described the site as providing valuable information for recipients of HUD funds and for consumers with disabilities. In fact, the site provides basic information, an FHEO complaint form, the means to file a complaint online, links to Section 504 handbooks and regulations, and a useful Q&A. The site does not provide the links to HUD's funding program regulations and handbooks or to non-FHEO policy guidance that would make it much more useful. The site is also difficult to find, requires searching through FHEO links, and is not identified by name on either the HUD or FHEO Web page. Nonetheless, this is a useful start.

**Finding V.N.1.b: FHEO and HUD have begun to use the Web to provide information to the public about programs, regulations, notices, and related sources of information and assistance. The FHEO Web page is promising but is difficult to navigate and does not include all of HUD's past and current civil rights information and documents.**

**Recommendation V.N.1.b: HUD and FHEO should maximize their use of their Web sites. All HUD and FHEO information, guidance, and requirements**

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<sup>234</sup> Some of the documents are likely to be available only through Freedom of Information Act requests. Others have been widely circulated in specific communities, however, and have become part of the public domain; they easily could serve a wider audience through publication on the Web or in the *Federal Register*. The "Questions and Answers Regarding Admissions and Evictions in Light of Section 504 and the Fair Housing Amendments Act of 1988" that FHEO included in its September 5, 1990, conference on mental disabilities is one such document.



**related to civil rights compliance and enforcement should be on the Web sites. In particular, information that is not retrievable in any other way should be on the Web sites. This includes information in grant documents, such as the SuperNOFA, that defines eligibility for HUD funding in terms of civil rights compliance.**

## O. Conclusion

The history of Section 504 enforcement at HUD has been replete with good intentions, hard work, and partially fulfilled promises. It is discouraging to hear FHEO promise to conduct the same number of post-award compliance reviews in 2001 as it promised in 1989. The current Administration has the opportunity to provide strong support for meaningful enforcement of Section 504 and make Section 504 enforcement an effective tool in the mandate to make it possible for individuals with disabilities to live in the communities of their choice.

## SECTION VI

### **Effects of Policy Decision Making, Resources, Legal Decisions, and Structure on Delivery of Enforcement**

#### A. Resources and Leadership Must Be Dedicated to Administrative Enforcement

When rights are established by law and the enforcement of those rights is dependent on government resources, effective enforcement requires that strong organizational structures, resources, and policy leadership be dedicated to ensure that enforcement is prompt, effective, and thorough. Passage of a strong law is not enough to preserve rights; without resources and leadership for enforcement, rights will not be protected effectively.

Organizational structures must produce consistent, reliable, impartial outcomes and must do so within reasonable time frames.

Adequate resources must include sufficient staffing to perform statutory obligations and support training, education, and outreach activities, as well as permitting discretionary activities that are necessary to launch new initiatives. Resources also include substantive support to provide expert guidance and legal assistance both internally and externally.

And leadership requirements must include commitments from Congress, from the Department of Housing and Urban Development, and from the Office of Fair Housing and Equal Opportunity to ensure fair and effective enforcement of a major piece of civil rights legislation that passed Congress with strong bipartisan support.

The Office of Fair Housing and Equal Opportunity (FHEO), within HUD, is the only administrative entity with enforcement authority over FHA complaints. It has additional responsibilities for enforcing Section 504 of the 1973 Rehabilitation Act with respect to programs and operations funded with HUD financial assistance. Because it has such significant authority. It must effectively carry out a wide of range of duties:

- It must assist people who believe they have been the victims of discrimination, through education, counseling, technical assistance, and, where appropriate, through the administrative complaint process.

- It must help housing providers and housing-related industries to understand their obligations and rights under the law.
- It must determine whether the government has jurisdiction over complaints.
- It should refer those who feel that they have been discriminated against but who do not have complaints that are within FHEO's jurisdiction to another avenue for assistance if one exists.
- It must conduct fair and impartial investigations and make decisions in cases, in policies, and in guidance that are consistent with the enabling statutes and with judicial decisions that interpret and apply the law.
- It must engage in efforts to resolve complaints through conciliation and settlement.
- It must understand and interpret HUD program requirements consistent with the civil rights laws it enforces.
- It must review factual and legal circumstances that range from the most simple manifestations of egregious discrimination to extraordinarily complex cases raising many factual issues and difficult legal interpretations.
- It must reach conclusions promptly, fairly, and consistently, and it must protect the rights of those who file complaints and those against whom complaints are filed.
- It must do its work quickly, reliably, and effectively.
- When cases cannot be resolved voluntarily among the parties, it must move quickly to a disposition of the complaint, as directed by Congress.
- It must ensure that cases involving criminal activities, those requiring injunctive relief, those involving the violation of a conciliation agreement or a Voluntary Compliance Agreement, those involving a pattern and practice of discrimination, and those under the FHA are referred promptly and with an adequate record to DOJ for further enforcement.
- It must review the operations of recipients of financial assistance from HUD and ensure that federal funds are not being spent in a way that is inconsistent with congressionally imposed civil rights obligations. In doing so, it must engage in a

variety of activities, from complaint investigations and compliance reviews to technical guidance and interpretations that will advance compliance with the law to invoking program sanctions when noncompliance with statutory and regulatory obligations exists.

- It must have the resources and the time to identify civil rights issues where no complaint has been filed and address those issues, whether through a Section 504 compliance review or through a Secretary-initiated complaint investigation.
- It must effectively administer two programs authorized by the FHA itself—the Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP)—in order to advance the purposes of the FHA.
- It must undertake new initiatives to address and resolve civil rights issues that emerge as it engages in its civil rights enforcement and compliance activities.<sup>235</sup>

A well-managed national civil rights enforcement effort requires an organizational structure that delivers and directs enforcement and compliance functions that are consistent, that comply with statutory obligations, and that are directed by substantive interpretations of the law. It requires goals and measures for performance that focus on effective performance within established parameters and that are based on key outcome-based measurements, including prompt investigation or resolution of complaints. It requires monitoring of the activities of field staff assigned to enforcement and compliance tasks to ensure that the projected actions are, in fact, occurring. It requires an adequate number of staff to perform the functions. It requires staff with adequate skills and training to be able to handle a variety of enforcement- and compliance-related tasks effectively and reliably. It requires access to information, guidance, and other mechanisms, including the use of technology, that will ensure that case outcomes are reliable and

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<sup>235</sup> FHEO has many additional obligations as well. Evaluation of those activities is beyond the scope of this report. Among the activities are the enforcement of other civil rights laws, including Title VI of the 1964 Civil Rights Act, Section 109 of the Housing and Community Development Act, Title II of the Americans with Disabilities Act, the Architectural Barriers Act, Section 3 of the Housing and Urban Development Act of 1968, and various Executive Orders. FHEO must lead the government in ensuring that federal agencies affirmatively further fair housing. In addition, FHEO has responsibilities for oversight of the Government Sponsored Enterprises; responsibility for civil rights compliance of HUD's program and policy activities, including front-end reviews of applications for HUD funding; and obligations to respond to inquiries from the White House, members of Congress, industry representatives, and members of the general public.

consistent nationally. It requires the preparation and provision of sound guidance to enforcers, to housing providers and others covered by civil rights laws, and to the public.

An effective national civil rights enforcement effort also needs funding—consistent, adequate funding for effective day-to-day operations, such as funding within HUD’s own budget for unusual or special projects that will advance enforcement, for the two special programs that deliver fair housing and civil rights enforcement-related activities outside HUD, and for travel budgets that are sufficient to permit on-site investigations when and where necessary.

Finally, a national civil rights enforcement office needs substantive legal and interpretive guidance to its staff that provides the context for enforcement and compliance activities. It also needs strong substantive leadership to ensure that policy and case decision making are reliable and consistent and that all stakeholders have adequate notice of their responsibilities under the law.

All these requirements must be provided in the context of congressional and departmental leadership. Without congressional leadership and a concurrent commitment from HUD’s leadership, civil rights enforcement efforts cannot be successful.

## **B. Organizational Structures Must Support Enforcement and Compliance Activities**

### **1. Overview of FHEO’S Organizational Structures That Set Enforcement and Compliance Priorities**

Management is a key factor in directing civil rights work. Leadership and direction of organizational activities occurs within FHEO in several ways. First, priorities are set through governmentwide and agencywide structures, including a Strategic Plan and an Annual Performance Plan. Performance requirements for field operations are established through a Business and Operating Plan (BOP).

Federal agencies have a governmentwide obligation to establish strategic plans, as required by the Government Performance and Results Act of 1993 (GPRA).<sup>236</sup> GPRA requires each federal agency to prepare a strategic plan for its operations and submit it to the Office of Management and Budget and to Congress. The plans are required to include a broad mission

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<sup>236</sup> 5 U.S.C. Sec. 306 et seq.

statement, general goals and objectives, a description of how the goals are to be achieved, and performance goals, which are also required by federal law.<sup>237</sup>

GPRA requires agencies to prepare five-year plans and to update them at least every three years. The first such plan had to be submitted by September 30, 1997. Political appointees, including the Secretary of HUD and the Assistant Secretary for FHEO, set priorities consistent with directions set by the President and Congress through the Strategic Plan. How those priorities are to be implemented are described in each agency's Annual Performance Plan and implemented on a day-to-day basis through a BOP.

Management and accountability occur through the day-to-day leadership by managers, both in Headquarters and in field offices, including the 10 regional HUB offices, through which most enforcement and compliance activities are conducted. Field offices report to Headquarters about their activities and, in particular, are required to report on their activities as described in the BOP. The BOP does not cover most, or even many, of the day-to-day operations of FHEO, and many of the directions, much of the guidance, and much decision making affecting operations are conveyed through FHEO's Office of Field Management and Oversight through conference calls; through issuance of written guidance on particular issues; and through training, meetings of HUB directors, and informally. While some substantive limitations on conduct relating to enforcement and compliance occur through application of judicial and administrative precedent, many decisions are made on a situation-by-situation basis.<sup>238</sup>

Accountability is also structured through position descriptions and elements that describe the performance criteria that are expected for each employee. Because elements describe the actual outcomes that are valued by the office, performance is expected to mimic the expectations described in the elements. Position descriptions and elements applicable to individual employees have a direct impact on performance to the extent that annual performance and subsequent pay increases are tied to these elements.

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<sup>237</sup> 5 U.S.C. Sec. 306(a).

<sup>238</sup> Interviews with FHEO senior staff, March and April 2001.

## **2. HUD's Strategic Plan Has Only Limited Commitments to Improving Enforcement and Compliance in General and for People with Disabilities**

HUD's current Strategic Plan covers the years 2000 to 2006. It has five Strategic Goals:

- Increase the availability of decent, safe, and affordable housing in American communities.
- Ensure equal opportunity in housing for all Americans.
- Promote housing stability, self-sufficiency, and asset development of families and individuals.
- Improve community quality of life and economic vitality.
- Ensure public trust in HUD.<sup>239</sup>

The strategic goal that addresses civil rights concerns is HUD's goal to "ensure equal opportunity in housing for all Americans." There are three strategic objectives under this goal:

1. Housing discrimination is reduced.
2. Minorities and low-income people are not isolated geographically in America.
3. Disparities in home ownership rates are reduced among groups defined by race, ethnicity, and disability status.<sup>240</sup>

HUD's strategic goals and their associated strategies and performance measures fail to focus on improving enforcement of civil rights laws. In particular, the objectives and measures do not address discrimination against people with disabilities. Under its objective describing HUD's efforts to reduce housing discrimination, HUD presents only this performance measure: "Disparate treatment of racial and ethnic minorities in the home purchase market and in the rental market will decrease substantially as measured by a housing discrimination study."

This measure does not at all address discrimination against people with disabilities. It does not provide any measure for reducing discrimination in housing. It does not address enforcement activities or the significant ways in which discrimination occurs in ways other than disparate treatment, including denials or reasonable accommodations or modifications or failing

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<sup>239</sup> HUD's Strategic Plan, 2000–2006, available at [www.hud.gov/reform/strpln.cfm](http://www.hud.gov/reform/strpln.cfm).

<sup>240</sup> *Ibid.*, pp. 35–46.

to design and construct housing that is accessible. It proposes to assess performance only by a study that it predicts will find substantial decreases in certain kinds of discrimination.<sup>241</sup>

The text for this objective does mention discrimination against people with disabilities. It says that HUD will toughen enforcement against discriminatory behavior, strive for more rapid responses to initial complaints of discrimination, increase the number of complaints referred for criminal prosecution, and “continue to fight discrimination on the basis of disability.”<sup>242</sup> HUD also states that it will address the issue of accessible rental housing for people with disabilities, including conducting a major education campaign to inform state and local officials about accessibility provisions of the FHA and conducting a “baseline study of accessibility compliance in newly constructed multifamily housing developments.”<sup>243</sup> There are no measures for performance addressing these laudable concepts, so there is no assurance that these activities will, in fact, occur. There is also no way to assess progress toward achieving them. HUD’s strategic objective that “minorities and low-income people are not isolated geographically in America” and its performance measure that “segregation of racial and ethnic minorities and low-income households will decline” address neither enforcement nor compliance activities, and they do not mention people with disabilities and the segregation and discrimination they encounter in the housing market.

The final strategic objective—“disparities in homeownership are reduced among groups defined by race, ethnicity, and disability status”—contains one performance measure: “The minority homeownership rate equals or exceeds 67.5 percent of the nonminority homeownership rate.” Neither the performance measure nor the accompanying text addresses techniques for increasing homeownership rates for people with disabilities. HUD merely reports that it is developing a measure for homeownership rates for persons with disability status. Enforcement and compliance activities are not discussed.<sup>244</sup>

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<sup>241</sup> Ibid., pp. 41–42.

<sup>242</sup> Ibid., p. 41.

<sup>243</sup> Ibid., p. 42.

<sup>244</sup> The General Accounting Office recently described HUD’s FY 2000 performance report as “an improvement” over the previous year’s efforts, but said that the agency “is still struggling to



HUD's previous Strategic Plan, proposed for FY 1999 to FY 2003, in stark contrast, contained text and several performance measures addressing civil rights enforcement and compliance directly.<sup>245</sup> HUD noted that FHEO would "[c]ontinue to investigate all complaints and to take all required enforcement activity action whenever and wherever required."<sup>246</sup>

Among the performance measures adopted by FHEO were the following:

- Increase the number of Title VI and Section 504 compliance reviews by five per year over five years.
- Increase the number of VCAs (Voluntary Compliance Agreements) executed under Title VI and Section 504 by five per year over the next five years.
- Develop and carry out strategies to achieve commitments to increase visitability and accessibility for people with disabilities.

In addition, measures included increasing in targeted cities the number of housing units accessible to people with disabilities in integrated settings to offset housing lost through designation of public and assisted housing for the elderly, and, by the end of 1999, developing/modifying HUD data systems to capture the number of new and existing accessible/visitable units. These performance measures, if they had been implemented, would have resulted in significant changes that would have improved access and opportunities for people with disabilities.

### **3. FHEO's Current Annual Performance Plan Lacks a Strong Enforcement and Compliance Direction**

HUD further outlines its planned work in an Annual Performance Plan (APP). The APP "links the goals and objectives of the Strategic Plan with HUD's policies, its programs, its budget

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articulate and accomplish its mission." HUD overall was criticized for failing to demonstrate how specific agency programs contributed to successful outcomes. *Department of Housing and Urban Development: Status of Achieving Key Outcomes and Addressing Major Management Challenges*, General Accounting Office Report 01-833.

<sup>245</sup> HUD's 1999-2003 Strategic Plan is found at [www.hud.gov/reform/sptoc.cfm](http://www.hud.gov/reform/sptoc.cfm). The performance measures are located in Appendix 1, [www.hud.gov/reform/spappend.cfm](http://www.hud.gov/reform/spappend.cfm).

<sup>246</sup> *Ibid.*, Performance Objective 7.

resources, and its partnerships with and impact on American communities.”<sup>247</sup> HUD also has established an internal BOP process. It describes the BOP as “the internal, unifying management process all organizations use to establish, coordinate and implement strategies, office goals, and action plans that track measurable results for the year. The BOP identifies how HUD will accomplish the important outcomes for communities contained in the Annual Performance Plan.”<sup>248</sup>

In its FY 2001 APP, FHEO has addressed some enforcement-related activities under the three strategic objectives identified in the Strategic Plan. Under the strategic objective “housing discrimination is reduced,” FHEO proposed: “The percentage of fair housing complaints aged over 100 days will decrease by 33 percentage points from FY 1999 levels to 40 percent of the HUD inventory.” FHEO also proposed: “The percentage of fair housing complaints aged over 100 days will decrease by 15 percentage points from FY 1999 levels to 45 percent of the inventory of substantially equivalent agencies.”<sup>249</sup> FHEO stated that at the end of FY 1999, 73 percent of complaints in the HUD inventory were more than 100 days old, and 60 percent of the complaints in FHAP agencies were more than 100 days old.

FHEO’s performance plan also contained a performance indicator that it would double HUD enforcement actions to 2,120 during the second term of the Clinton/Gore Administration. FHEO also indicated that it would direct state and local substantially equivalent agencies to improve their enforcement activities by setting a standard that at least 25 percent of FHAP agencies would increase enforcement actions by 20 percent over FY 2000 levels.<sup>250</sup> FHEO’s 2001 plan also committed to increase the accessibility of newly constructed housing by (1) conducting studies of the degree of compliance with FHA access requirements, (2) funding a project for accessibility training and technical assistance, and (3) establishing a new fair housing training academy to provide accessibility education to housing professionals. FHEO proposed to increase

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<sup>247</sup> Program Fiscal Year 2001 Annual Performance Plan, accessible at [www.hud.gov/app2001.pdf](http://www.hud.gov/app2001.pdf), p. ii.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid., p. 152.

<sup>250</sup> Ibid., pp. 160–161.

the number of persons who were trained about accessible design and construction requirements by 5 percent over FY 2000 levels.<sup>251</sup>

FHEO's current performance plan does contain measures designed to address (but not resolve) its significant case backlog problem, but fails to address either the systematic inadequacies in the existing complaint processing system or the lack of Section 504 complaint investigation and compliance activity in recent years described earlier in this report.<sup>252</sup> In addition, the APP's focus on increasing education about accessibility does not address the significant enforcement issues that exist because of the construction industry's noncompliance in constructing accessible housing, including housing funded with HUD funds, that is covered by both the FHA and Section 504.

In sum, HUD's current Strategic Plan and APP lack detailed outcome-based goals that are directed at improving enforcement and compliance, unlike previous plans. In the absence of goal-setting addressed to high-quality, consistent civil rights enforcement activity and a commitment to outcome-based monitoring and data systems that can meaningfully report and assess performance, FHEO's performance cannot be expected to improve.

**Finding VI.B.3.a: HUD's current Strategic Plan and APP do not contain adequate measures to address and correct the enforcement and compliance issues addressed in this study.**

**Recommendation VI.B.3.a: HUD and its Office of Fair Housing and Equal Opportunity should review and revise both the current Strategic Plan and future APPs to include clearer goal-setting for case-processing issues. Such goals should be outcome-based and subject to monitoring activity designed to improve performance.**

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<sup>251</sup> Congress required HUD, in "report" language associated with its FY 2001 budget, to work with fair housing advocates, advocates for the disabled, and users and providers of multifamily housing to develop a plan for educating housing users and providers about accessible housing. This component in the APP appears directly related to this requirement.

<sup>252</sup> See, e.g., text at footnotes 185–189.

**Finding VI.B.3.b:** HUD's current Strategic Plan and APP lack specific measures and indicators for enforcement and compliance strategies to address housing discrimination against people with disabilities. Current strategies for studies and training about accessible housing only include fair housing violations and not Section 504 violations.

**Recommendation VI.B.3.b:** HUD and its Office of Fair Housing and Equal Opportunity should develop more focused goals in its Strategic Plan and future APPs that will directly address and increase enforcement of the FHA and Section 504, overall and for people with disabilities.

**Finding VI.B.3.c:** HUD's current Strategic Plan and APP lack any reference to using Section 504 to address housing discrimination against people with disabilities.

**Recommendation VI.B.3.c:** HUD should revise its Strategic Plan and improve future APPs by including specific measures and indicators to reduce housing discrimination against people with disabilities using HUD's Section 504 compliance authority.

#### **4. FHEO's Business and Operating Plan Has Only Limited Application to Enforcement and Compliance**

As noted previously, FHEO sets standards for performance and implementation strategies for the APP through a BOP. The FY 2000 BOP for FHEO is notable, however, for its limited

requirements for outcome-based performance.<sup>253</sup> It had only two performance-based measures for HUD fair housing enforcement: (1) to double enforcement actions<sup>254</sup> and (2) to reduce the percentage of HUD cases aged more than 100 days by 30 percent. It had only two performance-based measurements for FHAP agencies: (1) to reduce the percentage of cases aged more than 100 days by 10 percent and (2) to have a 20 percent increase in enforcement actions by 25 percent of the FHAP agencies.<sup>255</sup> It contains no measures for performance of Section 504 complaint investigations. It contains no performance requirements for the conduct of compliance reviews under HUD's Section 504 or other civil rights statutes, although it contains some general measures for identifying areas of noncompliance during reviews of applicants for HUD funding.

The commitments made by FHEO for enforcement and compliance lack substance and requirements for actual performance. HUD has missed a valuable opportunity in its current plans for future activities to improve and strengthen its enforcement and compliance.<sup>256</sup>

**Finding VI.B.4.a: HUD has failed to make strong commitments to civil rights enforcement and compliance activities in its current planning and implementation process.**

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<sup>253</sup> The FY 2000 BOP was the latest BOP available for this review.

<sup>254</sup> See discussion at footnotes 64–72 *infra*.

<sup>255</sup> It is not clear the extent to which the strategies set in the FY 2000 BOP overlap the strategic objectives in the FY 2001 APP. For example, the APP seeks the reduction of aged cases in the HUD inventory by 33 percent rather than 30 percent and the reduction of aged cases in the FHAP inventory by 15 percent rather than the 10 percent set in the BOP.

<sup>256</sup> FHEO reported that it had met its FY 2000 BOP goals. It reported that it accomplished 758 enforcement actions, resulting in 553 percent of its goal. But see earlier discussion of this issue *infra*. FHEO reported that FHAP grantees increased their enforcement actions by 31, exceeding the national goal of 21 (however, an increase of 31 enforcement actions by FHAPs nationally is not a significant increase in comparison to the other FHAP accomplishments detailed elsewhere in this report). FHEO reported that it exceeded its goal of closing aged cases by closing 1,620 aged cases and that FHAPs had reduced their aged cases by 1828 cases. Again reflecting confusion in the goals, however, FHEO's report claimed that the FHAP goal was to decrease its aged inventory by 20 percent while the APP indicated that the goal was a 15 percent reduction and the BOP standard described a 10 percent reduction. See December 21, 2000, Memorandum from Eva Plaza, Assistant Secretary for Fair Housing and Equal Opportunity, to Frank Davis, Director, Office of Departmental Operations and Coordination, and discussion at footnote 258.

**Finding VI.B.4.b:**                    **The most recent BOP for FHEO, like the Strategic Plan and the APP, does not establish performance-based measures designed to produce more effective enforcement and compliance.**

**Recommendation VI.B.4.a:**

**FHEO should develop more performance measures related to improved civil rights enforcement, including measures for improved performance of FHA and Section 504 complaint investigations and Section 504 compliance reviews.**

## **5.        Organizational Structure and Accountability**

FHEO has gone through several reorganizations during the past 12 years. Its most recent organizational structure, approved in 1997 and implemented in 1998, established a General Deputy Assistant Secretary and two Deputy Assistant Secretary (DAS) positions, one for Enforcement and Programs and one for Operations and Management. The field staff reports to FHEO’s Headquarters office through 10 HUBs, to the General Deputy Assistant Secretary.

Functionally, staff performance is overseen by field oversight staff, which monitors performance by the field and reports directly to the General DAS. Substantive support and guidance on enforcement and compliance matters, on disability issues, and on FHIP and FHAP are provided through the DAS for Enforcement and Programs.<sup>257</sup> This reorganization was described as requiring, for the first time, that “Field FHEO components will perform all core functions at the lowest organizational levels, thereby empowering field managers to choose from a range of civil rights actions when responding to local needs.”<sup>258</sup> Previously, FHEO was

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<sup>257</sup> Before this reorganization, HUB directors reported to the Director of the Office of Enforcement (previously the Office of Investigations) on the performance of enforcement and compliance functions and on their oversight of FHIP and FHAP. This approach meant that compliance with substantive legal and policy guidance was directly managed by substantive experts. As a result of the 1997 reorganization, field oversight staff, using the BOP requirements, oversee substantive performance of all of the field operations. This office includes some individuals with substantive knowledge but limited investigative and supervisory experience.

<sup>258</sup> Memorandum from Susan M. Forward, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, to the Secretary, September 17, 1997.

organized by statutory or functional responsibility. This reorganization was designed to provide “customer satisfaction and results” and to decrease the number of managers. Headquarters offices were redesigned to provide support to field staff.<sup>259</sup> The proposal reduced FHEO staffing from 646 to 591 positions.<sup>260</sup>

Structurally, the reorganization produced, under 10 HUB Directors, a total of 18 program centers. Ten of the program centers are co-located in their specific HUB, and the remainder are dispersed around the country. Designed to make enforcement, compliance, and program functions available to the public at the lowest organizational level, the reorganization also disperses decision making to the lowest levels. (See Chart VI-1.)

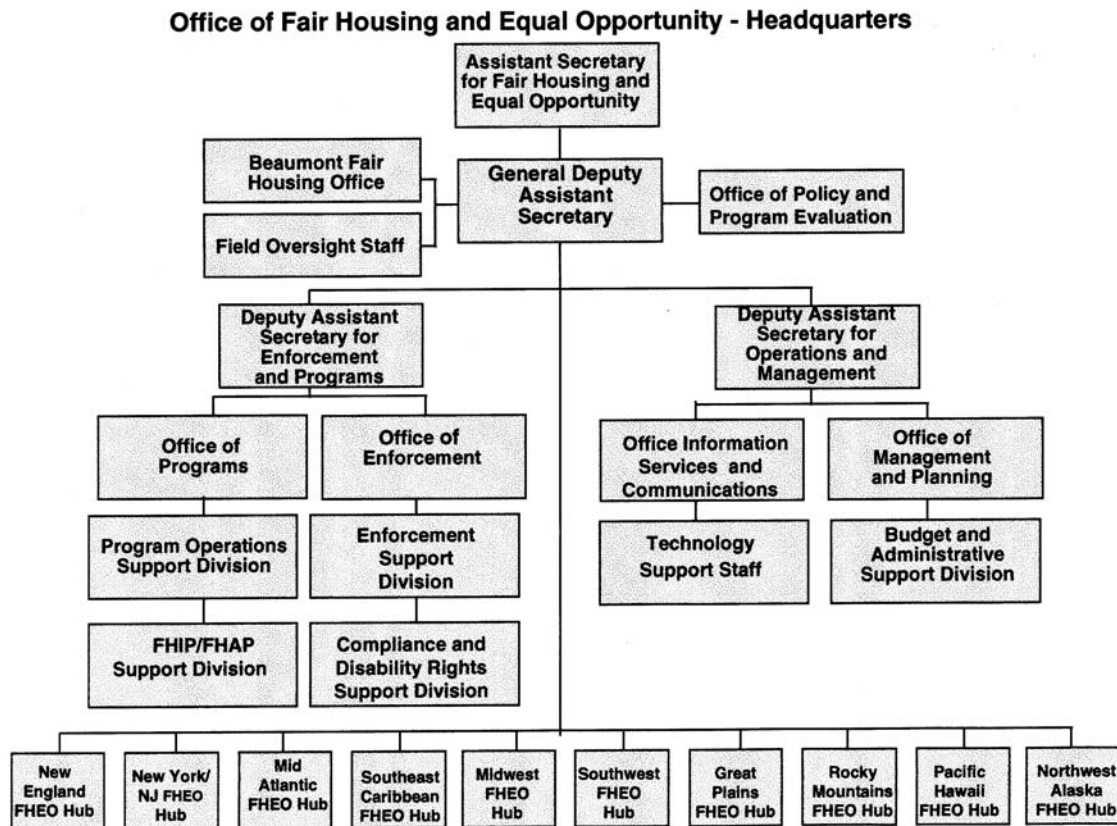
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<sup>259</sup> Ibid.

<sup>260</sup> Ibid.

## Chart VI-1: Current FHEO Organizational Chart

The 1998 reorganization did not demonstrably improve enforcement and compliance activities. The average age of open cases increased from 385 days to 497 days between 1998 and 2000. Administrative closures increased from 15 percent to 21 percent of total closures. Cause cases did not significantly increase, and in FY 2000 they dropped. Virtually no Section 504 compliance activities occurred during the period. In comparison, FHAP agencies—with smaller staffs, closer-to-the-ground decision making, and no comprehensive planning process—performed better than HUD.



One conclusion that can be drawn is that more devolved decision making, at least at the national level, requires greater levels of management oversight and controls to ensure effective management of day-to-day operations of a national enforcement program. As noted, consistency and reliability of outcomes, as well as performance that is consistent with legal standards, policy



guidance, and statutory requirements, is an expected outcome for a well-managed national civil rights operation.

**Finding VI.B.5.a: FHEO’s current devolved organizational structure has not improved the delivery of civil rights enforcement and compliance activities.**

**Recommendation VI.B.5.a: FHEO’s organizational structure should be reevaluated to identify the changes that should be made to improve civil rights enforcement and compliance delivery.**

**6. FHEO Should Improve Its New Monitoring System by Focusing on Outcome-Oriented Performance by Field Staff**

Especially in a devolved management structure, an important mechanism for ensuring ongoing effective performance by a field-based staff is the use of a strong on-site monitoring system. FHEO’s performance in conducting investigations was criticized by the HUD Inspector General in 1998 because it lacked an on-site monitoring process for its field officer operations.<sup>261</sup> FHEO senior management has recently instituted an on-site monitoring process called the Quality Management Review. FHEO reports that it monitored five HUBs in FY 2000. It expected to monitor the remaining five offices during FY 2001.<sup>262</sup> The project also identified a total of 17 best practices by its field offices. None of the best practices are explicitly tied to enforcement or compliance activities enforcing disability rights; however, several relate to increased enforcement activity generally. For example, the Chicago HUB was recognized for developing voluntary mediation processes for early resolution of complaints, for testing respondents to ensure compliance with conciliation agreements, and for a “Complaint Investigation How-To Manual.” Other best practices were less related to improved enforcement.

The results of the Quality Management Review process were not available for review. FHEO provided a copy of the concept paper and the questions used by members of the Quality

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<sup>261</sup> OIG, note 57, p. 13.

<sup>262</sup> Floyd May Interview, April 2001.

Management Review teams to conduct field assessments. Significantly, neither document describes or establishes outcome-based criteria for enforcement or compliance activities. Neither document identifies protocols for file reviews, analysis, or consideration of data, or observation of actual performance. Typical questions address procedures, rather than substance. For example, a HUB director is asked the following series of questions, among others: What are your procedures for monitoring the intake of claims/complaints? How do you monitor the progress of the complaint investigation? What is the process by which a case is submitted to you for concurrence?”

The manager with direct oversight responsibility for investigations is asked questions such as these: “What monitoring systems are in place to ensure that new cases do not age? What mechanisms are in place to ensure that the oldest cases are processed first? Have you revisited or conducted another assessment of your aged-case strategy to determine whether any adjustments/modifications are needed? What is the average time between receipt of cases from intake and assignment to investigators? What are the criteria for assigning a case to a particular investigator? What is the procedure for monitoring investigation status? What is the procedure for conducting conciliation?” Investigators are asked, “What is the procedure for preparing an Investigative Plan? How are cases identified as appropriate for a subpoena? Who is responsible for reviewing and approving an Investigative Plan? How are cases identified and scheduled for on-site investigations?” and so forth.

The questions do not address compliance functions. The process includes procedures for identification and correction of deficiencies, and, as noted above, for identification and recognition of best practices.

It is too soon to measure the effect of the current on-site monitoring process. The recent implementation of an on-site management and operations review process, however, is a positive move by FHEO. Of particular importance is the process for recognition of outstanding or unique contributions to enforcement and compliance activities. Such recognition should include making available the process, outcome, or content of the practices to other offices so they can be replicated.

**7. FHEO’s Criteria for On-Site Monitoring Should Be Revised to Focus on Improved Substantive Performance, Not Process**

The new management review process appears to have serious deficiencies. An effective on-site monitoring process for civil rights enforcement should review both the quantity and quality of performance in all aspects of operations. It should review process, timeliness, and substantive content. It must contain aspects of technical assistance, sanctions to improve operations, and corrective actions. It should include recommendations for changing practices and procedures as well as guidance on best practices. It is just as important that, when deficiencies are found, there should be, wherever possible, corrective actions on individual cases, so that rights of individuals are not impaired by poor performance.

FHEO's on-site monitoring should look at every aspect of enforcement and compliance activities, at both the macro and micro levels. It should look at substantive content and performance, not simply process.

a. Enforcement

FHEO on-site monitoring should do the following regarding enforcement:

- Evaluate how precomplaint intake is handled, whether appropriate interviews are conducted and correct information given, and how long the process takes against a national standard.
- Review sample files from the handling of the claims process to ensure that decisions on whether to file complaints are made appropriately and consistent with legal and policy guidance.
- Reverse decisions that are made erroneously.
- Observe intake interviews and counseling that occurs with potential complainants.
- Evaluate, using an on-site monitoring process, the quality and content of investigations and conciliations through file reviews as well as interviews.
- Ensure that all investigations and conciliations are impartial and fair and the outcomes consistent with legal standards, policy guidance, and outcomes in similar cases in other offices.
- Evaluate the numbers and timeliness of investigations by reviewing open and closed case files against national standards for timely processing, and consider the nature and extent of actual supervisory oversight of cases.

- Evaluate areas where lapses in investigative or conciliation activity or unfocused and inappropriate investigative activity have interfered with the processing of a case.
- Evaluate cases to determine whether all victims of discrimination have received an appropriate remedy and whether resolutions have resulted in changed policies and practices.
- Monitor resolutions of cases and act on failures to comply with conciliation agreements.
- Require field staff to identify properly and take appropriate actions in potential cases or situations where temporary injunctive relief, subpoena issuance, and other relief should be sought.
- Investigate zoning and land use cases in adequate time to allow DOJ to review and act upon cases, because the FHA requires DOJ to file zoning and land use cases within 18 months from the act complained of.
- Have field staff identify cases and situations where a Secretary-initiated complaint should be sought to remedy discrimination where no individuals have filed complaints.
- Have field staff properly identify and promptly act upon cases where patterns and practices of discrimination justify a referral to DOJ for enforcement.
- Establish benchmarks for all aspects of enforcement activity, and monitor activities so as to hold managers and staff accountable for compliance with those benchmarks.

b. Compliance

FHEO on-site monitoring should do the following regarding compliance:

- Start with clear measures for the initiation of compliance reviews, including the number, type, and scope of compliance reviews to be conducted within a given time frame.
- Review the sites already reviewed, the sites scheduled for review, and the basis for deciding to conduct the review.

- Evaluate open and closed files for compliance reviews to ensure that there are no significant lapses in activity, and that remedial and corrective actions have been proposed and taken in a timely fashion.
- Review letters of compliance and noncompliance for consistency with national policy, legal standards, and actions taken elsewhere.
- Take remedial actions, including program consultation, where noncompliance has been identified.
- Make recommendations for suspension or termination of funding promptly and correctly.

c. FHAP-Related Activities

FHEO on-site monitoring should do the following regarding FHAP-related activities:

- Evaluate FHEO staff's review of FHAP agency performance. Establish national benchmarks for consistent performance by FHAP agencies. Objective benchmarks could include areas such as administrative closures, case and inquiry processing time, time for commencement of an investigation, and number of complaints resolved.
- Confirm that FHEO monitors conduct individual case monitoring within 45 days from the date of closure of a complaint by an FHAP agency.
- Examine field staff review cases to ensure that the investigative process has provided an appropriate investigation. If FHAP agency performance is generally acceptable, a specified percentage of cases should be selected for in-depth review, and the remainder monitored only for obvious deficiencies or as a result of complaints about performance. Benchmarks for measuring an appropriate investigation should include evaluating the nature and scope of the investigation to ensure that it investigates each of the respondents' defenses and the complainants' allegations; that similarly situated persons are identified and their treatment analyzed; that appropriate documents are collected and appropriate witness interviews conducted; that policies, practices, and procedures related to the case are reviewed; and so forth. FHEO should use HUD's Title VIII manual standards, and the monitoring of the FHEO field staff should ensure that the

standards are being applied. Cases that are inadequately investigated should be remanded to the agency for further work, even though that additional work may require HUD to hold the case open longer than the 45-day monitoring period.

- Examine FHEO's monitoring of relief sought and granted by FHAP agencies to determine whether the relief being sought reflects the nature of the case and the available evidence.
- Evaluate areas such as the issuance of determinations of reasonable cause and the processing of charges after investigation; the use of temporary injunctive relief, subpoenas, and discovery; the criteria on which determinations of no reasonable cause are made; and other related performance issues.
- Monitor its own staff's use of Performance Improvement Plans and suspension and termination of funding to ensure that these corrective actions have been used appropriately and effectively and have been preceded by notice of problems and an opportunity to correct those problems.
- Interview representatives of FHAP agencies to detect any performance, communication, or retaliation in the handling of FHAP matters.
- Offer to FHAP agencies that perform outside the norms for such agencies appropriate technical assistance and training to correct inadequacies, and to FHAP agencies performing exceptionally, the opportunity for additional funding and other recognition for their practices. Criteria for exceptional behavior should be established and monitored nationally.

d. FHIP-Related Activities

FHEO on-site monitoring should do the following regarding FHIP-related activities:

- Monitor FHIP agencies carefully. FHIP agency performance, while harder to quantify than FHAP activities, should be evaluated by benchmarks as well. Some objective benchmarks for FHIP performance include the time from an initial inquiry to the conduct of tests, if appropriate, and referral to an appropriate entity; use of appropriate testing techniques in a timely fashion; and completion of special enforcement projects in the established time frame.

- Monitor FHEO on its provision of training and technical assistance to FHIP recipients and on its treatment of FHIP recipients. Monitor FHEO's communication with FHIP agencies through interviews with FHIP recipients.
- Monitor FHEO on its ability to provide timely responses to FHIP inquiries and to process or communicate about any problems in processing complaints filed by FHIP recipients.
- Include a review of individual cases and their resolutions.
- Evaluate FHEO's response to complaints about FHIP performance, including nonresponsiveness to inquiries, improper tactics, and nonperformance.
- Establish benchmarks to standardize its basic requirements for private enforcement funding and ensure that field staff review performance according to those benchmarks.

All on-site monitoring should address the relationship between FHEO and legal counsel to ensure that counsel have been involved in case discussions, that legal guidance is provided in a timely and consistent fashion, and that counsel have been consulted where appropriate. In addition, cases should not be delayed by the need to seek legal guidance. A full on-site monitoring process should review the nature and content of training and technical assistance provided to the public, to advocates, to recipients, and to FHAP and FHIP program participants.

All monitoring should require adherence to national policy guidance, BOP and APP standards, and Strategic Plan goals.

**Finding VI.B.7.a:** **FHEO needs to continue and expand its on-site monitoring process. It should monitor more specific BOP and APP goals as recommended above, and it should use its on-site monitoring process as a way of ensuring that performance standards are met and field staff are performing adequately.**

**Finding VI.B.7.b:** **An on-site monitoring process should have as its primary goal the assurance of prompt, effective enforcement and compliance outcomes. Benchmarks for performance should be set and monitored. Offices that do not meet these benchmarks should**

**receive direct technical assistance and sanctions, if necessary, to improve performance.**

**Recommendation VI.B.7.a:**

**FHEO should continue its on-site monitoring process and ensure that it includes adequate benchmarks, actual observation and review of performance, and outcome-based reviews so that the process improves its enforcement and compliance operations consistent with the other recommendations of this report.**

**8. FHEO's Performance Requirements for Individual Employees Should Focus on Enforcement and Compliance Outcomes**

Effective individual performance by federal employees can be directed through the use of position descriptions and performance elements that describe the duties of each employee and the quantity of work that is required, as well as the standards for performance of the duties. Outcome-based measures that address the quantity and quality of work expected of each employee could assist in improving enforcement and compliance activities overall.

For example, if an employee responsible for assisting potential complainants has a performance element that requires all claims handled by that employee to be reviewed, evaluated, and concluded to disposition within 20 days from receipt of the claim by HUD in order to perform at an outstanding level, performance on handling claims would presumably improve. Similarly, if investigators are required to complete 80 percent of the investigations assigned to them within 80 days from the date on which complaints are filed in order to meet performance expectations, investigations could reasonably be expected to be shorter than their current duration. Although HUD's PriceWaterhouse study recommended that new performance-based elements be developed and implemented for individual employees engaged in enforcement activities, such elements were never put into place.<sup>263</sup>

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<sup>263</sup> "Focused Enforcement: The Business Process Redesign of the Title VIII Housing Discrimination Investigation Process," PriceWaterhouse, March 8, 1996, p. IX-7.



**Finding VI.B.8.a:** FHEO lacks sufficient performance-based criteria for its employees to ensure that they perform at appropriate levels.

**Recommendation VI.B.8.a:** FHEO should implement performance-based elements for staff engaged in enforcement and compliance functions.

**9. HUD’s Legal Guidance Should Be Compiled and Organized to Support Enforcement and Compliance Activities**

The source of FHEO’s legal guidance is HUD’s Office of General Counsel. Although some of FHEO’s staff are attorneys, legal advice comes to FHEO and its staff formally through a separate part of HUD’s organizational structure. Legal counsel are responsible to the General Counsel of HUD, rather than to the Assistant Secretary for FHEO.

The portion of HUD’s Office of General Counsel responsible for giving legal advice on fair housing issues has remained reasonably consistent in its organizational structure. Its staff has institutional knowledge and, generally, a high level of expertise on civil rights issues. Over the past 10 years, the Counsel’s office has had a fair housing division in Headquarters. Elevated in the past year to being headed by an Associate General Counsel, the Headquarters office has two parts, one dedicated to enforcement and the other to programs and compliance. Each HUB has its own field counsel office, with one or more attorneys performing fair housing work. However, these field counsel do not report to the Associate General Counsel for Fair Housing but to the Deputy General Counsel. That means that field counsel lawyers can be assigned other work without any assurance that fair housing work will receive priority. As with FHEO’s HUB directors, assistant field counsel have broad latitude in staff assignments and legal decision making.

There is little or no common ground for legal guidance nationally. Aside from occasional legal opinions prepared at the request of the Headquarters Office of Enforcement and a body of case law generated by decisions issued by HUD ALJs, each field counsel office develops its own legal analysis process, its own strategy for cases, and its own internal case management system. There is no single source of information about interpretative opinions that have been issued by

any of the counsel offices,<sup>264</sup> and there is no single source of information available through HUD about federal or state judicial decisions interpreting the FHA and Section 504 for findings of cause and no cause in FHA cases or findings of compliance or noncompliance in Section 504 cases or compliance reviews handled by HUD, or about conciliations, voluntary compliance agreements, or settlements reached by HUD, DOJ,<sup>265</sup> FHAP agencies, or courts in these cases.

Virtually all this information, other than legal guidance on cases that are in investigation, is public information by statute<sup>266</sup> or by practice. Access to this baseline information is critical to successful civil rights enforcement work, and HUD should make it a priority to gather this information both from Headquarters and from field counsel offices and make it available to its own staff and to the public.<sup>267</sup> Some of this information is already available online; the National Fair Housing Advocate, for example, provides an inexpensive, easily searchable database of fair housing cases that is ADA-compliant, as well as ready reference to HUD resources, statutes, and regulations.<sup>268</sup> Access to this information could be made readily available to HUD staff quickly and inexpensively.

**Finding VI.B.8.b: HUD lacks legal information resources that are critical to its enforcement and compliance work in enforcing Section 504 and the FHA.**

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<sup>264</sup> Interview with Harry Carey, senior HUD staff, April 2001.

<sup>265</sup> DOJ makes available information about its lawsuits and amicus involvement in fair housing cases at [www.usdoj.gov/crt/housing/caselist.htm](http://www.usdoj.gov/crt/housing/caselist.htm). It lists 27 cases relating to disability-based discrimination in the housing area.

<sup>266</sup> See, e.g., 42 U.S.C. 3612(b)(4), conciliation agreements to be made public.

<sup>267</sup> Web sites hosted by Federal Government agencies should consider the requirements of Section 504. Because Section 508 of the Rehabilitation Act also covers federal agencies, the information they make available to the public should include accessible features and alternative forms of access for people with disabilities.

<sup>268</sup> Development of this database was initially funded through FHIP. It is located at [www.fairhousing.com](http://www.fairhousing.com).

**Recommendation VI.B.8.b:**

**At a minimum, HUD should provide access to comprehensive fair housing legal information that is searchable by name of case, issues, or keyword. The information that should be made available includes information on FHA and housing-related Section 504 state and federal judicial decisions, determinations that there is or is not reasonable cause to believe that a violation of the FHA has occurred, determinations by HUD that there is compliance or noncompliance with Section 504, conciliation agreements, VCAs, settlements in FHA cases, and legal and interpretive opinions issued by the Office of General Counsel on significant issues relating to the FHA and Section 504. This information should be made available to HUD staff and to the public, and it should be made available in accessible and alternative formats.**

**Recommendation VI.B.8.c:**

**HUD should immediately provide access for FHEO and counsel staff to the searchable, ADA-compliant fair housing and civil rights case database available online through the National Fair Housing Advocate.**

**C. Organizational Resources Supporting Enforcement and Compliance Have Not Been Adequate**

**1. FHEO Has Not Been Adequately Staffed to Perform Enforcement and Compliance Activities**

Adequate staffing is an important component of civil rights enforcement. Enforcement is a staff-based activity. Enforcement tasks require interviews; data collection and analysis; on-site visits; preparation of written materials, including complaints, investigative plans, investigative

reports and letters, conciliation agreements, and Voluntary Compliance Agreements; and other related activities, such as counseling, training, advice, and community education.

a. FHEO Staffing Overall Has Dropped Significantly During the Past 10 Years

FHEO's staffing has consistently been reduced over the past 10 years. Overall, FHEO's staff has decreased by 7 percent in the 11 years since the FHA was amended. FHEO's full-time staffing level was at 625.1 full-time equivalent (FTE) positions in 1989; it was down to 584 FTEs in FY 2000. Staff levels overall reached high points in FY 1992 and FY 1994, at 740 and 750 FTEs, respectively, and then began dropping (see Chart VI-2). From 1995 to 2000, FHEO staffing dropped almost 25 percent. In addition, during the years when FHEO staffing reached its highest levels, many of those employees were hired on a temporary basis for a period not to exceed two years.<sup>269</sup> This prevented the development of a permanent, skilled workforce within FHEO. Further losses of staff occurred when HUD instituted its Community Builder program. Many senior FHEO staff and mid-level managers were hired into the Community Builder program. As a result, the years of training, experience, and management experience were lost to FHEO.<sup>270</sup>

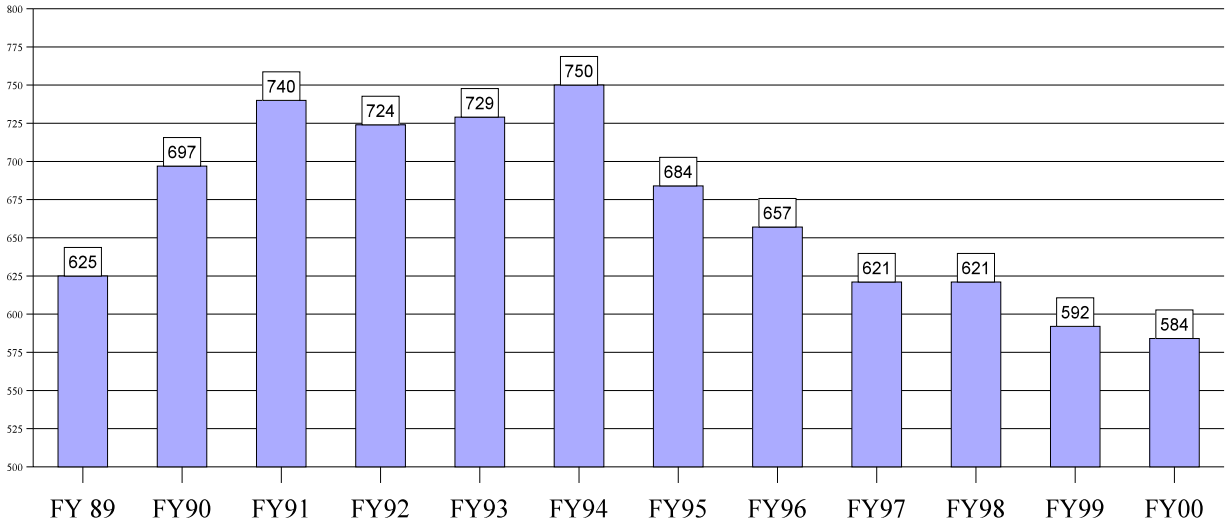
**Chart VI-2: FHEO Staffing Levels, FY 1989–FY 2000**

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<sup>269</sup> Senior HUD staff member interview, April 2001.

<sup>270</sup> HUD's proposed budget for 2002 identifies another issue likely to have an impact on fair housing staffing. The proposed budget indicates that HUD is working to develop a long-term staffing strategy to meet an expected increase in retirements because of the high number of older workers in the HUD workforce. Because of the expertise drain that has already adversely affected FHEO, further retirements are likely to have a significant impact on the quality of its work.

### FHEO FULL TIME POSITIONS-FISCAL YEARS 1989-2000



During the most recent two fiscal years, FHEO was staffed below even its HUD-authorized ceiling. In FY 1999 and FY 2000, the maximum number of staff approved internally by HUD for FHEO was 650, but FHEO's actual staffing was at 592 and 584, 91.1 percent and 89.8 percent of the ceiling, respectively.

FHEO has recently been staffed relatively lower than other program areas at HUD. For example, in 1999, FHEO was staffed at 585 FTEs. At that time, FHEO's ceiling for employees (the supposed highest level of staffing permitted for FHEO by HUD decision makers) was 650, so FHEO was 65 FTEs below its ceiling. At that same time, HUD's Office of Community Planning and Development was staffed at 76 persons above its ceiling and the Office of Administration was staffed at 184 above its ceiling. The Office of General Counsel had 78 persons above its ceiling. At the same time, there were 810 Community Builders, more than when FHEO was staffed at its highest level during the 1990s.<sup>271</sup> In 1999, FHEO was staffed at 10 percent below its ceiling with approval to hire only 10 additional employees. In comparison, HUD's Office of Housing was staffed 4.6 percent below its ceiling and had approval to add 106 employees, which would have brought it to only 1.6 percent under its ceiling.

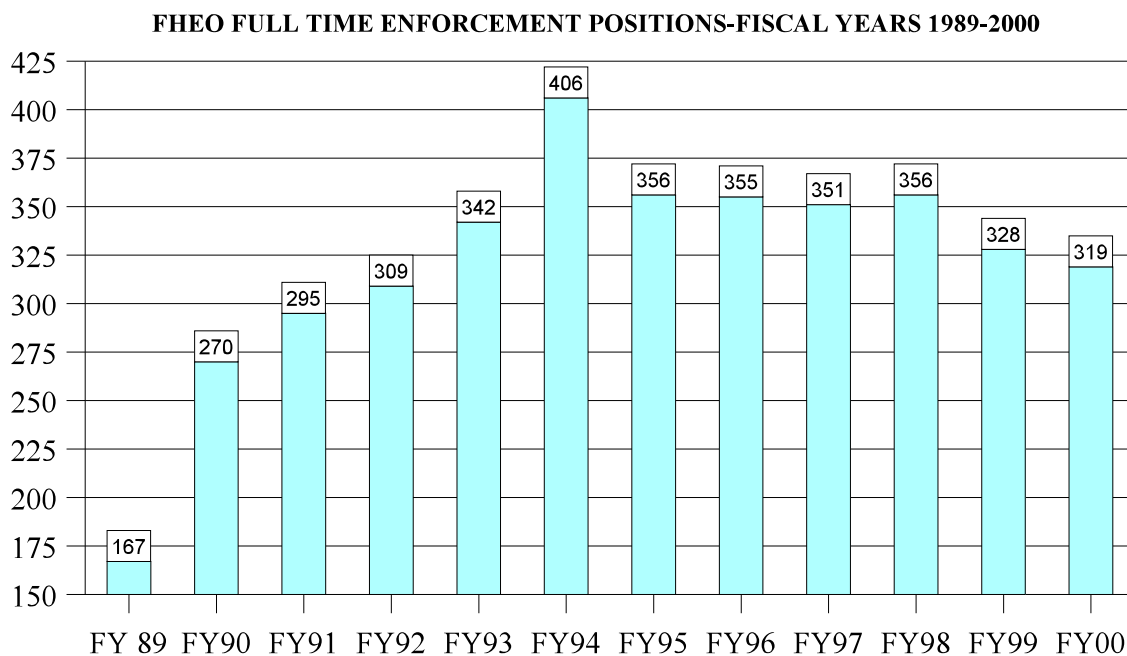
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<sup>271</sup> HUD Staffing Status, November 17, 1999.

b. Enforcement Staffing Has Dropped

The number of enforcement staff has also dropped, but not as sharply. From 270 FTEs in 1990 (the first full year that enforcement of the FHA increased as a result of the 1989 amendments), enforcement staffing increased to a high of 406 in 1994 and then dropped again to 319 in FY 2000 (see Chart VI-3).

**Chart VI-3: Staffing of FHEO's Enforcement Activities, FY 1989–2000**



The 1996 PriceWaterhouse study of HUD's enforcement of the FHA recommended that FHEO be staffed at a level that permits, on average, each investigator to be required to close no more than 40 cases a year, with a case load of no more than 15 at any given time.<sup>272</sup> Staffing

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<sup>272</sup> "Focused Enforcement: The Business Process Redesign of the Title VIII Housing

resources have not been provided consistent with that recommendation. Because investigators are required to investigate cases other than FHA complaints—including complaints filed only under Section 504, Title VI, or any of the other nine laws and Executive Orders enforced by FHEO—the actual staff levels are even further below the recommended levels.<sup>273</sup>

Staffing levels have direct correlations to performance on cases. Especially since FHEO's enforcement staff numbers dropped during the mid- to late 1990s, the average age of open cases has increased, it takes longer to settle cases, fewer charges have been issued, and fewer complaints have been filed. Although staffing levels are clearly not the only factor affecting the processing of cases, they are clearly an important factor.

The PriceWaterhouse study also recommended that organizational units managing investigations have at least one supervisor to every seven to eight employees.<sup>274</sup> The 1998 reorganization not only reduced staff numbers overall, it created enforcement branches with an investigative staff-to-manager ratio averaging 1 supervisor to every 9.3 investigators.<sup>275</sup> (In HUD's personnel system, investigators have official job titles of Equal Opportunity Specialists with federal pay grades ranging from GS-9 to GS-13.) In addition, staff performing compliance functions were separated from investigative staff and assigned to a separate office in the field, called the Program Operations branch. This reorganization also separated Section 504 enforcement activities from Section 504 compliance activities. It gave HUB directors and program center directors more responsibility in directing operations within their authority.

There is no study comparable to the PriceWaterhouse study of staffing needs for compliance activities. Given other findings of this report regarding the inadequacies in the numbers and performance of compliance work by FHEO, a similar study analyzing FHEO's

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Discrimination Investigation Process," PriceWaterhouse LLP., March 8, 1996, p. VIII-8.

<sup>273</sup> In addition, HUD has recently been criticized by Congress for lacking a staff plan that matches staffing requirements with programmatic responsibilities, citing a study by the National Academy of Public Administration finding that top management does not "know whether ... staff levels in individual offices and overall are adequate to accomplish the department's mission."

<sup>274</sup> "Focused Enforcement: The Business Process Redesign of the Title VIII Housing Discrimination Investigation Process," PriceWaterhouse LLP., March 8, 1996, p. VIII-7.

<sup>275</sup> *Ibid.*, Appendix B, forward memorandum to the Secretary, September 17, 1997.

goals for conduct of timely compliance activities should be conducted, and staffing and supervision numbers should be increased accordingly

**Finding VI.C.1.a:** HUD's staffing of FHA and Section 504 enforcement activities has decreased significantly over the past 11 years.

**Finding VI.C.1.b:** During the past four years, the Office of Fair Housing and Equal Opportunity has not been given adequate staffing resources to perform its enforcement work.

**Finding VI.C.1.c:** As staffing increases to appropriate levels, additional supervisors will be necessary to oversee day-to-day activities effectively.

**Recommendation VI.C.1.a:** At a minimum, FHEO should be provided with enough skilled nontemporary staff FTEs to ensure that each investigator carries no more than 15 FHA cases or the equivalent at any time. Additional staffing should be provided to ensure that enforcement activities under Section 504 are conducted at a meaningful level in each HUB.

**Recommendation VI.C.1.b:** At a minimum, FHEO should be provided with enough supervisory staff to permit a ratio of one supervisor to every seven or eight investigators. An analysis similar to the PriceWaterhouse study of staffing needs for compliance activities should be conducted, and staff should be increased accordingly.

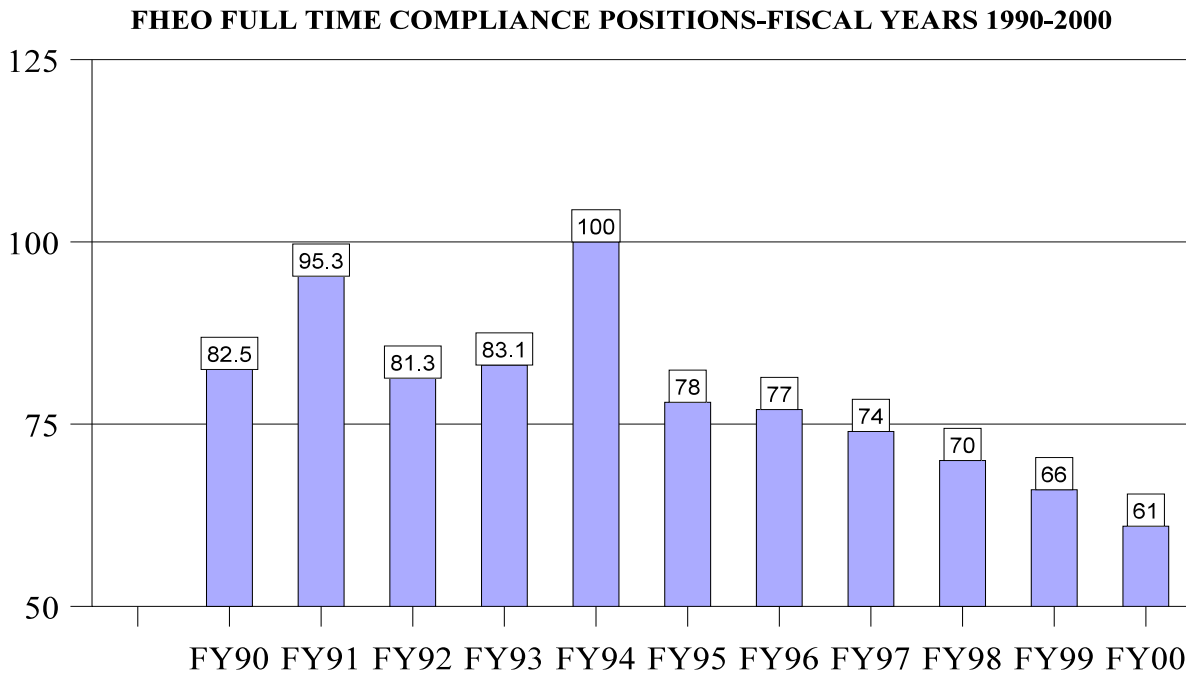
- c. Staffing of Compliance Activities Has Dropped Significantly and Is Now Half the 1989 Level

Finally, staffing of HUD's compliance functions (which include Section 504 compliance, as well as compliance activities related to other civil rights laws and executive orders enforced by



FHEO) has also dropped to less than half the staff to perform compliance work in 1989. Compliance staff levels in 1989 were 130.1; by FY 2000 the number of all compliance staff was down to 61 (see Chart VI-4).

**Chart VI-4: Staffing of FHEO’s Compliance Activities, FY 1989–FY 2000**



Over the past several years, FHEO has been criticized for its performance in conducting compliance reviews. An audit report by HUD’s OIG in 1998, for example, found that “FHEO did not always ensure that HUD recipients complied with applicable requirements of Section 504.”<sup>276</sup> One of the findings of the Inspector General was that HUD should provide consistent supervisory oversight to ensure that compliance reviews are conducted in a timely fashion.<sup>277</sup> Among the subsidiary findings were determinations that actions were not taken to ensure the timely completion of compliance reviews and that even when reviews were completed, actions were not taken to ensure that corrections were made.<sup>278</sup>

<sup>276</sup> OIG, note 57, p. 20.

<sup>277</sup> Ibid., p. 26.

<sup>278</sup> Ibid.

NCD's review indicates that inadequate staffing and supervision contributed to this problem. If resources are limited, staff conducting compliance activities are frequently reassigned.<sup>279</sup> Unlike other agencies that perform only compliance work, FHEO has a demand-driven system that requires many resources to enforce the FHA. FHEO staff acknowledge that compliance work has not been conducted because staff have been diverted to other priorities, specifically, FHA priorities.<sup>280</sup>

There is no study comparable to the PriceWaterhouse study of increased effectiveness of compliance activities. Given other findings of this report regarding the inadequacies in the numbers and performance of compliance work by FHEO, a similar study analyzing FHEO's goals for conduct of timely compliance activities should be conducted, and staffing and supervision numbers should be increased accordingly. In addition, compliance activities should be organized and directed on a more consistent basis to ensure that they are not overlooked as other demand-driven priorities use resources.

**Finding VI.C.1.d: For at least the past four years, the Office of Fair Housing and Equal Opportunity has not been provided with enough resources to perform a reasonable amount of compliance activity.**

**Finding VI.C.1.e: HUD's doubling of enforcement activities took valuable staff and resources away from compliance activities.**

**Finding VI.C.1.f: Compliance activities suffer when staff are reassigned to perform other demand-driven activities.**

**Finding VI.C.1.g: FHEO's compliance review process has not been the subject of a significant external review in the same way that PriceWaterhouse reviewed the FHA process.**

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<sup>279</sup> Senior HUD staff member interview, April 2001.

<sup>280</sup> Senior HUD staff member interview, April 2001. In particular, senior staff attribute the lack of compliance activity to diversion of staff resources to support HUD's doubling of its enforcement efforts during the past four years.

**Recommendation VI.C.1.c:**

**FHEO should be provided with adequate staff, in addition to enforcement staff, to ensure that compliance activities are ongoing, consistent, and completed in a timely manner. Organizational structures should ensure that staff are allocated in a way that permits compliance staff to be protected from such demands to ensure that compliance work is an ongoing and consistent process.**

**Recommendation VI.C.1.d:**

**FHEO's compliance review process should be reviewed and analyzed by an external entity, such as PricewaterhouseCoopers, and its operations revised for greater efficiency and effectiveness.**

- d. **Lawyers in the Field Offices of Counsel Should be Provided in Adequate Numbers to Support Enforcement and Compliance Activities**

As noted, the OGC, although it has an Associate General Counsel for Fair Housing and a Headquarters staff with two Assistant General Counsel, does not consistently have attorneys dedicated to fair housing work in its 10 regional, or HUB, offices. Each of the offices has its own structure and staffing patterns, and frequently fair housing attorneys at the field level are required to perform work in areas other than fair housing. HUD's OGC was unable to provide information about the number of attorneys assigned to fair housing enforcement activities during the past 11 years. If there are inadequate numbers of counsel to handle cases, provide advice, offer legal opinions, and even participate in investigations, it will be harder for FHEO to perform its enforcement and compliance activities.

**Finding VI.C.1.h: There is inadequate information from which to determine whether staff attorneys have been provided in adequate numbers to support FHA and Section 504 activities.**

**Recommendation VI.C.1.e:**

**HUD's Office of General Counsel should evaluate its staffing**

**of the fair housing and civil rights enforcement functions to ensure that there are adequate numbers of staff attorneys to support those functions. No case should be delayed and no rights should be jeopardized because of lack of available legal resources.**

Consistent and prompt legal advice in support of civil rights enforcement and compliance activities is an important component of effective actions. Generally, interviews with current HUD staff indicate that the relationship between the OGC and FHEO is working reasonably well. Legal counsel should be readily available at every stage of the investigatory process, from evaluating whether or not HUD has jurisdiction over a particular case to planning complex investigations to seeking temporary injunctive relief or subpoenas to evaluating the quality and quantity of the evidence gathered to seeking appropriate remedies to making a final decision on whether or not civil rights laws have been violated.

During the past 12 years, suggestions have occasionally been made that the lawyers working on fair housing and civil rights issues should report to the Assistant Secretary for FHEO rather than to the General Counsel to ensure consistency between policy leadership and legal guidance. This model, which is used at the Equal Employment Opportunity Commission and some other agencies conducting Section 504 compliance activities, should be examined by HUD to determine whether it would improve delivery of enforcement and compliance activities.

Others argue that the separation of the two functions provides a checks and balances system that is properly addressed by leaving determination decisions in FHEO with legal advice by counsel considered in the decision making. If the consistent guidance about legal developments—including legal opinions, judicial developments, and determinations in cases and compliance reviews—is made available as recommended above, merger of counsel staff and fair housing/civil rights staff may not be needed to improve delivery of enforcement and compliance services.

**Recommendation VI.C.1.f: HUD should consider whether its civil rights attorneys should report to the Assistant Secretary for Fair Housing and Equal Opportunity, after implementing a more effective legal guidance delivery system.**

## **2. Funding for the Two Major Programs Authorized by the Fair Housing Act to Address Enforcement Has Been Inconsistent and Management Practices Problematic**

During the past 11 years, congressional appropriations for the two major FHEO programs, FHIP and FHAP, have increased significantly. In significant areas affecting the enforcement of civil rights, however, funding has diminished. In addition, management issues in the FHIP program have adversely affected enforcement.

### **a. The Fair Housing Initiatives Program Has Not Been Consistently Funded by Congress**

FHIP is the program developed by Congress and advocates in 1988 to provide funding for fair housing-related activities by nongovernmental entities. Organizations that are eligible for FHIP include private fair housing groups, state and local government agencies enforcing fair housing laws, advocacy groups, and other nonprofit organizations. The statutory language in the FHA authorizes the Secretary to fund public or private nonprofit organizations or other public or private entities that are carrying programs to prevent or eliminate discriminatory housing practices.<sup>281</sup> Eligible activities include “programs or activities designed to obtain enforcement of the rights granted by” the FHA and “education and outreach programs designed to inform the public concerning rights and obligations” under the FHA.<sup>282</sup>

HUD administers FHIP as a competitive grant program, giving it little administrative oversight authority.<sup>283</sup> FHIP activities have occasionally been controversial; for example, a study prepared by the General Accounting Office at the request of Senators Larry Craig, Ted Stevens, and Michael Crapo addressed the role of FHIP recipients in collecting information and

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<sup>281</sup> 42 U.S.C. Sec. 3616a (a).

<sup>282</sup> 42 U.S.C. Sec. 3616a (a) (1) and (2).

<sup>283</sup> Some advocates have argued that FHIP loses many benefits and is delayed unnecessarily by operating as a competitive program. Instead, they argue, it should be administered as a basic grant program for eligible entities, somewhat as HUD administers its FHAP, with a higher degree of emphasis on training, technical assistance, and quality assurance and less emphasis on administration of a competitive grant program.

identifying potential violations of the FHA’s design and construction requirements.<sup>284</sup> Members of Congress have occasionally criticized FHIP recipients’ conduct as advocates for the rights of victims of discrimination, and this criticism has resulted in congressional inquiries and sometime sporadic funding of FHIP.

FHIP recipients provide a range of services and activities that are critical to enforcement of civil rights issues. They are community-based, so they provide education, technical assistance, advocacy, and case-processing levels where federal, state, and local governments lack a civil rights presence. Because they are active in their local communities, they can provide quicker, localized responses to local civil rights concerns. They provide counseling and local referrals to many people who may seek to file fair housing complaints but who do not have claims, and they assist many others in investigating and filing claims and complaints. FHIPs routinely conduct “testing,” an investigative technique whereby individuals posing as homeseekers gather information from which others—typically test coordinators and, later, investigative agencies—reach conclusions about whether discrimination may have occurred.<sup>285</sup>

Funding requests for FHIP have been erratic over the past 12 years, as have congressional appropriations. HUD’s funding requests have ranged from \$6 million to \$30 million. In most years, the congressional appropriation has fallen below the amount requested in the President’s budget request. For example, in 1997, the budget request was for \$18 million, but Congress appropriated \$15 million. In 1998, the request was for \$24 million but only \$15 million was funded. The highest funding level for FHIP was for FY 1995, when \$26 million was requested

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<sup>284</sup> GAO Report Number GAO/RCED-00-160R Fair Housing Accessibility Provisions, June 30, 2000.

<sup>285</sup> Testing has been sanctioned by many court decisions, including, most notably, the United States Supreme Court, in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

and appropriated. This budget was passed in 1993.<sup>286</sup> Table VI-1 lists the funding for the Fair Housing Initiatives Program from 1990 to 2000.

**Table VI-1: Funding for the Fair Housing Initiatives Program,  
FY 1990–FY 2000**

<b>Fiscal Year</b>	<b>President’s Budget Request (In millions)</b>	<b>Appropriation (In millions)</b>
1990	6.0	5.6
1991	5.6	5.7
1992	8.0	8.1
1993	7.6	10.6
1994	27.5	20.5
1995	26.0	26.0
1996	30.0	17.0
1997	18.0	15.0
1998	24.0	15.0
1999	29.0	15.0 <sup>287</sup>
2000	27.0	18.0
2001	29.0	16.5

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<sup>286</sup> For FY 1999, FY 2000, and FY 2001, Congress funded FHIP at higher levels, but HUD allocated a total of \$22 million of FHIP funds over the three years for a fair housing audit that was not competed through FHIP. This expenditure by HUD has been the subject of controversy among FHIP recipients who sought to have all of the funds available for FHIP-eligible projects. Some advocates argued that the audit expenditure was not authorized by the FHIP statute because the funding was to be used neither for enforcement nor for education and outreach. HUD’s proposed budget for FY 2002 is \$23 million for FHIP and indicates that it expects that this funding level will fund only 72 percent of eligible applicants. Its FY 2000 allocation funded only 42 percent of the eligible applicants.

<sup>287</sup> See discussion at footnote 286. This chart represents the actual funding level available for FHIP activities.

FHIP funds full-service private fair housing organizations to conduct enforcement activities through its Private Enforcement Initiative. Full-service organizations are those that provide a range of education and enforcement activities relating to discrimination on all bases covered by the FHA. In general, people with disabilities are served by the groups funded through the program in the same way African Americans, Latinos, women, and members of other groups are served. FHIP has also historically funded groups that serve people with disabilities exclusively or primarily. Funding for programs that provide fair housing assistance primarily or exclusively to people with disabilities has ranged from 2.01 percent of the FHIP allocation in 1989 to 11.25 percent in 1999 (see Table VI-2). HUD does not maintain records indicating the percentage of applicants that sought funding for programs serving people with disabilities; there is no indication that the variance in funding levels is attributable to any factor other than the number and quality of applications.

**Table VI-2: FHIP Funding Addressing Discrimination Against People with Disabilities, FY 1990–FY 2000**

<b>Fiscal Year</b>	<b>Total FHIP Allocation (In millions)</b>	<b>Total for Disability-Specific Projects (In dollars)(% of total)</b>
1990	5.6	116,865 (2.01%)
1991	5.7	434,897 (7.6%)
1992	8.1	272,911 (3.36%)
1993	10.6	325,586 (3.07%)
1994	20.5	702,078 (3.4%)
1995	26.0	605,688 (2.4%)
1996	17.0	994,733 (5.85%)
1997	15.0	749,446 (4.99%)
1998	15.0	643,259 (4.3%)
1999	15.0*	1,688,198 (11.25%)
2000	18.0*	814,903 (4.5%) <sup>288</sup>

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<sup>288</sup> Compiled from data provided by the Fair Housing Initiatives Program, December 27, 2000. 55 Fed Reg. 50890, December 11, 1990; *Fed. Reg.* 29741, July 6, 1992; 58 *Fed. Reg.* 13068, March 9, 1993; 59 *Fed. Reg.* 35945, July 14, 1994; 59 *Fed. Reg.* 63369, December 8, 1994; 61 *Fed. Reg.* 5013,



\*Does not include an additional allocation for an audit that was not funded through the FHIP competitive program (see footnote 286).

In addition, in the competition for FY 1999 and FY 2000, for the first time, HUD asked applicants for FHIP funding to indicate whether they intended to target discrimination against people with disabilities (among other groups). Recipients indicating that these groups would be targeted for special activities received special consideration during the funding process. FHIP recipients receiving a total of \$3,838,957 in FY 1999 indicated that they intended to target people with disabilities. In FY 2000, FHIP recipients receiving a total of \$8,257,211 (or 45.9 percent of the total allocated) indicated that they would target discrimination against people with disabilities in whole or in part.

b. FHEO's Administration of the Fair Housing Initiatives Program Does Not Engender Confidence in the Program

HUD's operation of FHIP has been widely criticized. A 1998 Inspector General study of FHIP management operations found that "FHEO did not satisfactorily administer its Fair Housing Initiatives Program. Essentially, FHEO: (1) did not perform and document the FHIP grant award process timely and adequately; and (2) approved and disbursed grant draw downs totaling \$6.2 million (73 percent) of the \$8.5 million review which were not fully warranted."<sup>289</sup>

The Inspector General attributed these deficiencies to the following:

- (1) Lack of adequate supervision over the staff performing the functions.
- (2) Design flaws in the grants management system program and the grant agreement payment schedule.
- (3) The inconsistent method used by the staff to document their receipt and review of grant deliverables.<sup>290</sup>

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February 9, 1996; 62 *Fed. Reg.* 24965; 63 *Fed. Reg.* 8465, February 19, 1998.

<sup>289</sup> 1998 Audit Report, *supra* p. iv.

<sup>290</sup> *Ibid.*, p. 27.

Other Inspector General audit reports found that the Office of the Secretary “exercised undue influence over the FHEO staff responsible for awarding and administering” a grant made under FHIP,<sup>291</sup> that FHEO announced its intent to fund the Boston (Massachusetts) Housing Authority through FHIP for clearly prohibited purposes in violation of statutory requirements, and FHEO awarded FHIP education and outreach funds to an organization that did not perform the designated activities.<sup>292</sup> In addition, FHIP-eligible organizations have repeatedly criticized HUD for using FHIP funds to support an audit-based research project during fiscal years 1999, 2000, and 2001.<sup>293</sup>

Congress has expressed its displeasure about carryovers in FHIP funds between fiscal years because of late completion of the competitive process and corresponding delays in signing contracts to obligate the funds.<sup>294</sup> FHIP recipients have complained about the lengthy competitive process that fails to ensure consistent funding streams for eligible organizations; some organizations have been required to seek bridge loans or to temporarily suspend operations because of delays in completing the competitive process or in negotiating contracts with successful recipients.<sup>295</sup> Without contracts, private fair housing organizations cannot even acquire bridge loans to ensure a consistent presence in the community and ongoing staff. Anecdotal information suggests that many FHIP-funded groups have lost experienced staff and have been

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<sup>291</sup> Audit Report, Office of District Inspector General for Audit, Capital District, February 13, 2001, Audit Memorandum No. 2001-AO-0801 (hereafter 2001 Audit Report).

<sup>292</sup> Audit Report, Office of District Inspector General for Audit, Capital District, July 6, 2000, Audit Memorandum No. 00-AO-174-0801 (hereafter 2000 Audit Report). FHEO noted in its comments on the draft of this report that it did not fund the Boston Housing Authority because the matter was corrected before funds were dispersed. The matter was corrected following a complaint to the OIG.

<sup>293</sup> See discussion in footnote 292.

<sup>294</sup> House Conference Report, H. Rpt. 106-674, June 7, 2000.

<sup>295</sup> One organization reported that a previous FHIP contract expired in September 1999. The Notice of Funding Availability for new funds was issued in June, but the group was not notified that it was funded until December 1999. A contract was negotiated with a promised start date of February 15. The contract was not issued until May. This organization, with a consistent record of funding eligibility and of strong enforcement capability, went without FHIP funding from September 30, 1999, until late May 2000.

unable to assist victims of discrimination because of these kinds of funding management problems.

Finally, the products of various FHIP grants are not readily available to the public. FHEO has no organized system to list, categorize, or report about the contents of deliverables of the FHIP. In response to a request made for purposes of this study for model or best practices deliverables from FHIP from grantees that have received funding for programs protecting the rights of people with disabilities, FHIP staff stated that they could not identify or provide them.<sup>296</sup> The program produces educational materials, legal summaries, technical assistance materials, case outcomes, and other information that would be important to help programs around the country improve their delivery of fair housing services and to help housing providers understand and comply with the law. In addition, to the extent that there is opposition to the program based on political or other nonmanagement concerns, being able to establish a track record of successful outcomes is a valid way to respond to criticism. And it goes without saying that more information about the outcomes funded by FHIP would rationalize the program by permitting grantees, Congress, and even the FHEO to know what was working in order to assess new funding decisions and new applications for funding.

For similar reasons, FHEO should consider the development of a case-tracking system for use by FHIP recipients to make monitoring of cases and case outcomes easier. Like the TEAPOTS system that has been developed for use in tracking HUD and FHAP complaints, a similar program that is accessible to and usable by FHIP recipients, with appropriate safeguards for case-specific information that is not appropriately contained in an investigative record, could be of great assistance in managing FHIP more effectively. If data are sensitively collected, with read-only access by FHIP monitors, FHIP-funded activities could be monitored more effectively. If carefully developed, the system could also help individual agencies monitor their own intake, case-processing, and related activities.<sup>297</sup>

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<sup>296</sup> Interview with senior HUD staff members, April 2001.

<sup>297</sup> In its comments on the draft of this report, FHEO noted that FHIP recipients are required to file all complaints with HUD or with an FHAP agency, and that case-related data are thus trackable through FHEO's complaint-tracking system, TEAPOTS. This comment misses two important points: (1) FHIP recipients engage in extensive activity in matters that may not become complaints and which are not captured by government case-tracking systems, and, more important, (2) the existing systems do not

**Finding VI.C.2.a:**                    **The absence of fair housing deliverables and outcomes, the lack of a carefully constructed case-tracking system for cases funded through FHIP, and the absence of institutional knowledge about the best or most effective of the programs funded through FHIP are significant shortcomings in an important program.**

**Recommendation VI.C.2.a:**  
**FHIP should move expeditiously to develop a comprehensive, organized system to identify outcomes, information, and materials developed as a result of the program and to make them available to the public and especially to organizations and individuals that deal with fair housing issues.**

**Recommendation VI.C.2.b:**  
**FHIP should develop a case-tracking system for use by FHIP recipients, with read-only access by FHIP monitors, to collect reportable data to assist in quantifying the activities of recipients funded by FHIP. Such a data system should have the capability of being used by FHIP recipients to track, monitor, and report on their own activities.**

**Recommendation VI.C.2.c:**  
**The changes proposed to FHIP in this report should include input from current and potential FHIP recipients and other interested stakeholders to ensure that the program changes result in a more efficient and effective use of federal dollars.**

- c.     The Fair Housing Initiatives Program Is Critical to Effective Enforcement of the Act and Should Be Revitalized

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have great utility for monitoring the activities of the FHIP recipient itself, which is important for purposes of monitoring how FHIP grant funds are being used.

FHIP is important because the funding permits a variety of education, outreach, technical assistance, and other programs that help people who believe they have been victimized by discrimination and because it provides a focused local presence to organize and support fair housing rights. It has been used to fund important disability-related activities, and a significant amount of its funding has been devoted to projects that protect the rights of people with disabilities. It has been flawed in its administration and execution, however.

Current recipients of FHIP funding recommended to senior FHEO officials last summer that it reorganize the program significantly.<sup>298</sup> Their consensus proposal urged that FHIP be reconstituted to serve primarily as a formula grant program, with funding tied to population in the area served by full-service private fair housing groups. They urged FHEO to establish baseline criteria for eligibility and fund through formula grants all qualified fair housing organizations. They also urged that FHEO end the lengthy and controversial competitive funding process for at least the private enforcement component of the program.

This proposal has merit, especially if it is tied to improved grant management and increased training and technical assistance. It would have significant advantages because it would replace the current inefficient competitive process that has been widely criticized and has failed on occasion to deliver funding for activities that are important to the delivery of fair housing services.

It would ensure a consistent budget process, because funding needs could be predicted based on the predicted number of eligible organizations. It would help ensure consistent funding streams for organizations that provide an important presence in enforcing fair housing rights. It would allow limited staff resources in FHIP to focus their attention on performance problems, training, technical assistance, and ensuring that consistent and reliable outcomes are obtained.

A similar approach could be taken to fund organizations that wish to become eligible for private enforcement funding but currently do not meet statutory requirements. Those organizations, rather than competing for limited dollars, should be able to enter into a funded program for a limited time, offered special training and technical assistance, and permitted to

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<sup>298</sup> This subject was discussed, with complete consensus, by the FHIP recipient audience, with Deputy Assistant Secretary David Enzel at a workshop held at the biannual HUD-FHAP-FHIP Conference in San Antonio, Texas, in July 2000 and has repeatedly been raised in working group discussions that FHEO routinely holds with FHIP recipients.

develop the skills that would allow them to become effective full-service private fair housing groups. FHAP has provided such funding to new organizations for years under its capacity-building program.<sup>299</sup> Funding more new organizations will enable more geographic areas to be served by private fair housing groups, including those that lack an FHAP agency.

If these approaches are followed, FHIP would operate more like FHAP, which, as described later in this report, funds state and local government agencies meeting specified criteria, based on the number of cases handled, and funds new organizations with baseline funding for three years until technical capability is reached. It would free FHEO's limited resources from managing a major competitive program, and it would free more resources to improve the quality and quantity of fair housing activities.

Resources funded for purely education and outreach projects and for national projects should continue to be made available competitively. These funding opportunities permit funding of special, novel, and national/regional projects that advance fair housing purposes. They would also allow, in contrast to the private enforcement initiative, funding of projects designed to identify, educate, and reach out to specific types of housing discrimination, including discrimination based on disability.

**Finding VI.C.2.b:**                    **FHIP serves an important function in supporting fair housing rights. As currently constituted, however, the program has operated ineffectively and inefficiently.**

**Finding VI.C.2.c:**                    **FHIP does not provide adequate systematic support for an ongoing fair housing presence nationally.**

**Recommendation VI.C.2.d:**  
**FHIP's private enforcement initiative should be reconstituted to provide funding to full-service private fair housing groups based on a formula grant approach. The funding should be tied to eligibility criteria based on the current statute; it should be based on population in the service area served by a group;**

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<sup>299</sup> See, e.g., 24 CFR 115.303.

**and it should be tied to increased training and technical assistance and performance monitoring.**

**Recommendation VI.C.2.e:**

**FHIP should develop a formula-based funding structure that enables new organizations to become qualified to participate in the private enforcement initiative as full-service organizations as FHAP funds new participants in its capacity-building program.**

**Recommendation VI.C.2.f: FHIP’s education and outreach and national initiatives should continue to be funded competitively, with improvements as recommended by the HUD Inspector General.**

d. Funding for the Fair Housing Assistance Program Has Been Increased

FHAP funds only state and local government bodies enforcing laws that have been found by HUD to be “substantially equivalent” to the Fair Housing Act.<sup>300</sup> Substantial equivalency determinations are a two-part process, requiring an evaluation of the equivalency of the law or ordinance on its face to the provisions of the FHA and an evaluation of the performance of the enforcing agency in enforcing the law. Determinations about the equivalency of the rights and remedies provided by the law are evaluated based on regulatory criteria.<sup>301</sup> Determinations about the performance of the agency in enforcing the law are based on a review of the information gathered by the agency in investigating and resolving the case and by on-site and remote monitoring. HUD requires FHAP agencies to attend mandatory training.

As a result of restructuring the program in the mid-1990s, FHAP’s funding is formulaic; that is, an agency that meets the equivalency criteria receives an established amount of funding based on costs associated with case processing (with HUD reimbursing the agency a set amount of money for each investigation), administrative overhead costs, and reimbursement for expenses related to mandatory training. Each agency in good standing is also eligible for funding for

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<sup>300</sup> 42 U.S.C. Sec. 3608.

<sup>301</sup> 24 CFR 115.

special enforcement-related projects through the Special Enforcement Initiative.<sup>302</sup> New organizations receive capacity-building funding, currently set at \$115,000 annually. Agencies are eligible to receive capacity-building funding for up to three years. In earlier years, new agencies received capacity-building funding at a higher level—\$100,000 per year for up to three years.

FHAP agencies are monitored remotely through review of individual case files by HUD staff. They occasionally receive on-site technical assistance. FHEO requires FHAP agencies to send designated numbers of staff to annual training organized by HUD. FHAP agencies with performance issues are subject to being placed on performance improvement plans and to having their funding suspended. Agencies with significant uncorrected performance problems may lose their certification as substantially equivalent. Criteria and appeal rights for these actions are set forth in HUD's regulations.<sup>303</sup> HUD has used its authority to challenge agencies' certifications, and several agencies have withdrawn themselves from the program after HUD challenged either the adequacy of their law or of their performance.<sup>304</sup> Recent information provided to HUD about statutory and performance inadequacies, however, have resulted in no response from HUD and no adverse action against the agencies.<sup>305</sup>

In contrast to FHIP, Congress has generally funded FHAP at or near the amount contained in the President's budget request (see Table VI-3). Over the past 12 years, the amount

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<sup>302</sup> 24 CFR 115.

<sup>303</sup> *Ibid.*

<sup>304</sup> FHEO states that it has taken action to deny substantial equivalency status to a number of jurisdictions. The state of Montana and city of Clearwater, Florida, lost equivalency status after their laws were amended or repealed. The state of Illinois and other jurisdictions are no longer equivalent because of performance issues, and the state of Tennessee lost its equivalency status for a time because of performance issues. However, FHEO's significant activity in challenging equivalency occurred in the mid-1990s. No significant actions have been taken since 1997.

<sup>305</sup> For example, the National Fair Housing Alliance and its members have communicated with FHEO on numerous occasions about substantially equivalent agencies that have deficiencies in their laws or performance. Among the issues raised are provisions in Pennsylvania and Nebraska state law affecting equivalency, judicial decisions in Indiana and Virginia affecting equivalency, and significant performance problems in Louisiana and Virginia, including the failure of Louisiana to issue a charge in seven years of operation. FHEO has not provided substantive responses to the National Fair Housing Alliance on any of these issues, despite the fact that these deficiencies are representative of performance standards to obtain and maintain equivalency status. See, e.g., 24 CFR 115.203 and 115.211.



appropriated for FHAP has more than tripled, from \$6.5 million in FY 1990 to \$22 million in FY 2001.<sup>306</sup>

**Table VI-3: Fair Housing Assistance Program Budget Requests and Appropriations, FY 1990–FY 2000**

<b>Fiscal Year</b>	<b>President’s Budget Request (In millions)</b>	<b>Appropriation (In millions)</b>
1990	6.7	6.7
1991	6.6	6.6
1992	5.0	5.0
1993	4.75	4.4
1994	4.5	4.5
1995	7.3	7.3
1996	15.0	13.0
1997	15.0	15.0
1998	15.0	15.0
1999	23.0	16.5
2000	20.0	20.0
2001	21.0	22.0

Both FHIP and FHAP have routinely had carryover funding, indicating that all the funds appropriated have not been obligated during the budget year for which they were funded. Congress criticized HUD, in report language associated with the FY 2001 budget, for large carryovers in FHIP and FHAP and directed HUD to put into place mechanisms that would result in funds being dispersed by the last quarter in the fiscal year.<sup>307</sup>

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<sup>306</sup> HUD’s proposed budget for FY 2002 indicates that it will seek \$23 million for FHAP and that it will also seek to use additional FHIP funding to benefit substantially equivalent state and local agencies.

<sup>307</sup> See House Appropriations Committee Report, H. Rpt. 106-674, June 7, 2000.

- e. Although FHAP Agencies Have Performed More Efficiently than FHEO in Enforcement, Improved FHEO Oversight Could Improve Their Performance

FHAP agencies have generally performed better than FHEO in processing complaints. They have had faster investigative times, fewer administrative closures, and relatively more charges issued. FHAP performance, however, is only relatively better than HUD's. FHEO should consider instituting a national FHAP monitoring program consistent with risk assessment principles, similar to the one used in its San Francisco HUB that was recently identified as a best practice nationally. Instead of lengthy review of individual cases, qualitative factors are used to "grade" investigator performance on individual cases. After establishment of a baseline based on this review, a percentage of cases are identified for in-depth review. The cases selected for this review include those that are investigated by investigators who were graded relatively lower than their peers, those where conciliation agreements or no reasonable cause decisions are made, and withdrawals with resolutions. This process could also indicate investigators who need special technical assistance, training, or other help in performing their duties. Cases not selected for in-depth review should still be scanned for obvious deficiencies. In addition, individual cases that generate complaints about FHAP performance should be individually assessed.

**Finding VI.C.2.d: FHAP has not developed the significant operational problems that have been found in FHIP.**

**Finding VI.C.2.e: FHAP could be improved by more aggressive monitoring of case processing, by improved training and technical assistance, and by taking effective action to correct situations where substantial equivalency standards are not met.**

**Recommendation VI.C.2.g: FHEO should be provided with adequate resources to develop a more effective training, technical assistance, and monitoring program to improve the performance of FHAP agencies, including the establishment of a risk-based monitoring process.**

FHAP includes funding for a special enforcement initiatives component. This component, by regulation, is designed to enhance enforcement activities.<sup>308</sup> Eligibility for these funds is based on regulatory criteria. Not all FHAP agencies qualify for the funding. The requirements are not onerous, and they have not been changed since the FHAP regulation was strengthened in 1996. The regulations require that an agency meet three of the following six criteria: (1) The agency has enforced a subpoena or sought temporary injunction relief at least once in the preceding year; (2) the agency has held at least one administrative hearing or had at least one case on a court's docket in the preceding year; (3) at least 10 percent of the agency's caseload resulted in written conciliation agreements providing monetary relief for the complainant and remedial action; (4) the agency has had in the previous three years at least one major fair housing systemic investigation requiring an exceptional expenditure of funds; (5) the agency's enforcement of its law received meritorious mention for innovative fair housing activities; (6) the agency investigated at least 10 fair housing complaints during the previous year.<sup>309</sup> These criteria do not require much beyond what reasonably could be expected of a functional fair housing agency, and they should be reviewed and revised to set the threshold higher for receipt of these funds.

There is no system within FHEO to identify or collect the special enforcement initiatives, their outcomes, or their products. As with FHIP, exceptional enforcement initiatives products and information should be collected and made available to the public and to other programs.

**Finding VI.C.2.f: FHEO provides funding to FHAP agencies for special enforcement initiatives but lacks a system for collecting data about the nature of these initiatives or their outcomes. The standards for receipt of this special funding are not onerous.**

**Recommendation VI.C.2.h: FHEO should develop a process for collecting and making available the outcomes of its special enforcement initiatives program for FHAP agencies.**

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<sup>308</sup> 24 CFR 115.305.

<sup>309</sup> 24 CFR 115.305 (a)(1)-(6).

**Recommendation VI.C.2.i: FHEO should review and strengthen the criteria for receipt by FHAP agencies of special enforcement initiatives funding and should collect and disseminate to the public information about their outcomes.**

**3. HUD Has Not Provided Adequate Contract Funds to Support Enforcement and Compliance Activities**

In addition to the separate FHIP and FHAP programs, HUD allocates internal contract funding to FHEO for support of fair housing–related projects. In the past, this funding has been used for special training and education/outreach initiatives and to develop enforcement initiatives. In general, it is used to supplement the administrative activities of FHEO.

The contract funding, which comes from HUD’s salary and expenses account, has dropped over the past seven years, the only period for which numbers were made available. From a high in FY 1994 of \$2.591 million, FHEO’s contract expenditures dropped to a low in FY 2000 of \$1.180 million (see Table VI-4).

**Table VI-4: HUD Allocation of Contract Funding to FHEO, FY 1994 – FY 2000**

<b>Fiscal Year</b>	<b>Allocation (in millions)*</b>	<b>Expenditure (in millions)*</b>
1994	\$2.759	\$2.591
1995	\$2.409	\$2.219
1996	\$1.555	\$1.475
1997	\$1.360	\$1.283
1998	\$2.533	\$2.383
1999	\$1.665	\$1.609
2000	\$1.180	\$1.180

\* Amounts rounded.

Interviews with current FHEO leadership indicate that the lack of adequate contract and similar funding is a significant adverse factor in civil rights enforcement and compliance.

Contract and other funds are used to develop external and internal educational materials. They are used to procure training services for staff, consumers, and industry. They are used to fund systems that could improve delivery of civil rights services to the public, including making materials available in alternative and accessible formats. They are used to upgrade enforcement-related activities and to provide safe and efficient working environments for investigators. They are used to contract with external experts, such as architects, to support certain types of investigations.

The impact of the lack of contract funding is staggering. Current FHEO leadership reported, for example, that its entire training budget for FY 2001 was \$40,000.<sup>310</sup> This funding level is wholly inadequate to fund even HUD's urgent internal training needs, much less to provide the badly needed ongoing Training Academy approach needed to provide investigative and other staff with the skills to conduct routine investigations, undertake more complex and systemic investigations, resolve cases fully and promptly, and undertake effective compliance reviews. The training budget is so small that it cannot reasonably be expected to provide any ongoing industry training or technical assistance. It is also insufficient to provide education, training, or technical assistance to consumers who are disabled and who need training and information in order to exercise their rights under the civil rights laws.<sup>311</sup> In addition, the lack of a consistent funding stream for contract funds means that FHEO staff are unable to plan effectively for future developments, to undertake multiyear projects, or to initiative innovative new projects directly.

FHEO's current printing budget level is not enough to fund basic printing activities to replenish existing stocks, much less to develop new materials and put existing materials in alternative formats.<sup>312</sup>

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<sup>310</sup> Interview with Floyd May, senior HUD staff, April 2001.

<sup>311</sup> The absence of adequate contract funds in FY 1997 caused FHEO to shut down a fair housing clearinghouse service that was designed to provide fair housing support materials to the public.

<sup>312</sup> Senior HUD staff member interview, April 2000.

**Finding VI.C.3: FHEO receives inadequate contract and printing funding to allow it to perform its statutorily required duties.**

**Recommendation VI.C.3: FHEO's contract budget should be increased immediately, to at least double FHEO's expenditure in 1994, to \$5.2 million. Future funding levels should be maintained at similar or higher levels to provide needed reliability in planning. FHEO should be given staff support to assist in the prompt allocation and obligation of these funds. FHEO's printing budget should be similarly increased.**

#### **4. Funding for Travel Costs Has Not Increased over the Past Seven Years**

FHEO receives an annual allocation of funds from HUD's departmental budget to support its travel. FHEO's travel allocations and expenditures have remained static over the past seven years, the only years for which numbers were provided. In real dollars, this means that there has been a decrease in the amount of funding for travel.

Travel funds are important for civil rights enforcement (see Table VI-5). They are used to fund on-site investigations in order to conduct interviews, gather information, and conduct observations that cannot be performed from a government office. They provide funding for staff to conduct conciliation conferences designed to settle cases. Travel funds permit attendance by staff at public hearings, meetings with potential victims of discrimination, and information gathering about discriminatory practices. In compliance settings, adequate travel funds permit an on-site compliance review to be conducted by several persons at the same time, lessening confusion and the burden on respondents and allowing conclusions to be reached more quickly. Adequate travel funds permit negotiations to resolve outstanding compliance problems to occur at one time, at a convenient location, and without undue delays in completion.

**Table VI-5: Travel Allocations and Expenditures for FHEO,  
FY 1994–FY 2000**

<b>Fiscal Year</b>	<b>Departmental Allocation (in millions)</b>	<b>Expenditure (in millions)</b>
FY 94	\$1.293	\$1.259
FY 95	\$1.4	\$1.239
FY 96	\$1.239	\$1.075
FY 97	\$1.239	\$1.2
FY 98	\$1.030	\$0.983
FY 99	\$1.250	\$1.195
FY 00	\$1.201	\$1.201

**Finding VI.C.4:** FHEO travel funding has remained static over the past seven years, resulting in an overall loss of funds in real dollars.

**Recommendation VI.C.4:** HUD should provide adequate travel funding, based on realistic budget projections from field and Headquarters staff, to permit on-site investigations and compliance reviews, attendance by staff at investigation- and compliance-related activities, and attendance by staff at training events and at public events that will enhance FHEO’s education and outreach activities.

**D. FHEO Should Improve Its Policy Decision Making and Communication of Those Policies to Staff and to the Public**

**1. Existing Procedures for Developing and Communicating Substantive Policy Guidance Should Be Expanded**

FHEO, as a national fair housing enforcement agency, makes decisions every day that affect the rights and obligations of the public. For that reason, the decisions it makes on public policy matters are of general public interest. Case decisions are one way that policy is made, but it is also made on legislative matters, in response to individual and industry inquiries, and even in correspondence. For example, FHEO made national policy on the application of the FHA’s

design and construction requirements in a letter to the National Association of Realtors issued in 1999, opining that liability for violations of the FHA's design and construction requirements applied to architects and to successor corporate purchasers and operators of inaccessible housing. The content of this letter was apparently never incorporated into national policy, however, nor was it made available to the general public. Such policy decisions should be made available to the public.

Similarly, decisions by FHEO on whether particular facts do or do not create liability in individual cases not only determine the outcome of the case, they also amount to public policy pronouncements. Yet FHEO does not make its determinations on whether or not there has been a violation of the FHA or Section 504 readily available to the public.

HUD has issued basic guidance, through regulations, on the FHA.<sup>313</sup> It also has issued a considerable amount of detailed guidance on the application of the design and construction requirements to newly constructed multifamily housing, primarily as a result of industry pressure.<sup>314</sup>

Some past guidance on public policy issues of general interest has been made publicly available.

In 1994, FHEO issued public guidance in the form of a notice on the application of the First Amendment to fair housing investigations. It issued a notice on HUD's interpretation of the FHA's prohibitions against discriminatory advertising. It issued a notice on the confidentiality of its conciliation agreements and its policy on the appropriate bases for administrative closure of complaints and on a number of other subjects.<sup>315</sup> FHEO has also been criticized by courts for

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<sup>313</sup> 24 CFR 100 et seq. For some years, HUD also published the Preamble to the Fair Housing Act regulations, containing considerable substantive interpretative guidance as an Appendix to its FHA regulations. However, this information is no longer published in the annual *Code of Federal Regulations*. For a discussion of HUD's lack of guidance on Section 504 interpretations, see Section V.L.

<sup>314</sup> HUD issued regulations on design and construction requirements specifically; it also has issued, and published in the *Federal Register*, questions and answers on design and construction issues and a detailed design manual.

<sup>315</sup> Each of these notices and other public documents interpreting aspects of FHEO's policies or activities can be found online at [www.fairhousing.com](http://www.fairhousing.com), under HUD resources. HUD's usual way of disseminating guidance to the public on program issues is through notices and handbooks, each of which goes through an internal clearance process and then is made available publicly. All of HUD's notices and



failing to issue guidance on a particular issue: occupancy standards. In *Pfaff, supra*, the Ninth Circuit Court of Appeals found that HUD should have made public its internal guidance on its interpretation of the FHA's prohibition against familial status discrimination. Congress subsequently required HUD to publish in the *Federal Register* a 1991 OGC memorandum describing HUD's policy on this subject.<sup>316</sup> According to its senior staff, FHEO has not issued any public guidance during the past two years. When asked what new interpretative guidance on fair housing and Section 504 issues had been issued, staff identified only a question-and-answer directive to its own staff on design and construction issues. That document was not provided to the authors of this study, presumably because it is not a public document.

With major civil rights laws, the availability of interpretative guidance, whether through notices or other public documents, is an important part of advising the public, advocates, industry representatives, and others about the ways in which fair housing and civil rights obligations manifest themselves. Guidance provides benchmarks for appropriate behavior and direction about compliance obligations. The absence of publicly available guidance in this area is a serious deficiency. Adequate staff and funding to develop, update, and publish this information are also necessary.

**Finding VI.D.1.a: FHEO has generated guidance and interpretations about the application of civil rights laws, but it is not currently using a mechanism to make this guidance available to the public.**

**Recommendation VI.D.1.a: FHEO should develop and implement a more comprehensive system to make its interpretations of civil rights laws generally available. HUD should provide adequate staffing and funding to support this effort.**

Until 1995, FHEO did not have a single source of information to guide its own staff in conducting activities to enforce the FHA. In September 1995, FHEO published a handbook, *Title*

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handbooks are available online at [www.hudclips.org](http://www.hudclips.org).

<sup>316</sup> FR-4405-N-01, December 17, 1998.

*VIII Complaint Intake, Investigation, and Conciliation Handbook*, containing six chapters: Jurisdiction, Complaint Intake, Special Intake Processing, Planning and Conducting the Investigation, Administrative Closures, and Conciliation. The handbook combines procedural guidance to FHEO staff with detailed substantive guidance.<sup>317</sup> The handbook is available to the public. Two additional chapters, authored by Professor Robert Schwemm, a noted expert on the application of fair housing law and author of a fair housing handbook, were published in 1999. Those chapters, *Theories of Discrimination and Analysis of Specific Cases*, combine legal principles from case law with directions to investigative staff about the conduct of investigations in such cases. Included in the *Analysis of Specific Cases* chapter are subsections about the investigation of discrimination based on disability, including reasonable accommodation, reasonable modification, design and construction cases, and cases involving zoning decision making that discriminates based on disability.<sup>318</sup>

Several proposed chapters of the handbook were never issued, including a chapter on concurrent processing of FHA and Section 504 and Title VI complaints, entitled *Preparation of Cause and No Cause Determinations and Remedies*.

The handbook guidance is invaluable information, both about FHEO's own requirements for important aspects of the enforcement process and about substantive legal requirements for fair housing cases. It contains standards for appropriate performance by enforcement staff and criteria by which case decision making and procedures can be understood and applied. It should be considered to contain guidance and procedures that are binding on FHEO staff and on FHAP agencies. Anecdotal information, however, suggests that the handbook is not always followed by FHEO and FHAP staff. It should be the subject of ongoing staff training; it should be completed; and it should be routinely read and applied by staff. It also should be made readily available to advocates and industry groups alike.

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<sup>317</sup> HUD Handbook Number 8024.1, available at [www.hudclips.org](http://www.hudclips.org).

<sup>318</sup> *Ibid.*, Chapter 8, *Analysis of Specific Cases*, Sections 8-8 and 8-9.

**Finding VI.D.1.b:** FHEO's enforcement handbook provides important procedural and substantive guidance. It is a useful first step in setting standards for proper performance of fair housing enforcement activities.

**Recommendation VI.D.1.b:** FHEO's enforcement handbook should be completed and updated, considered to be binding guidance for FHEO and FHAPs alike, and available publicly.

**2. FHEO's Training Capability Is Limited Because of Lack of Resources, and This Lack Adversely Impacts Enforcement and Compliance**

Ongoing training on procedural and substantive issues is important for effective civil rights enforcement. Without basic and advanced training on techniques, institutional expertise is not developed or shared. Investigations take longer because strategies for improving investigations are not available. Best practice activities in one area are not made available in other areas. As experienced employees leave or retire, fundamental information is lost.

In addition, in areas such as the FHA and Section 504, the substantive law is emerging. Litigation in both areas is substantial. Many cases are decided each year with significant impact on the contours of the law. The content of these decisions and their effect on investigations should be reviewed, analyzed, and presented to all staff engaged in investigative and compliance activities. FHEO has no organized way of doing this. In addition, training that develops skills in applying both techniques and substance should be offered to ensure that staff understand the proper application of the principles.

For some years in the late 1990s, FHEO offered a basic investigative training course presented by John Marshall Law School in Atlanta. Current funding inadequacies have resulted in the cessation of this training. Training opportunities that enhance the skills of experienced staff are necessary. Currently, the only systematic vehicle for such training is an annual conference for FHIP and FHAP recipients that is attended by only a few FHEO staff.

Similarly, FHEO is able to offer FHIP and FHAP recipients only limited training through an annual conference and occasional localized training, usually devoted to specific issues of local

interest. Subject matter training that is conducted jointly for HUD's investigative and legal staff working on fair housing and civil rights issues is available only if FHEO is able to fund the training and if travel funds are available.

FHEO should assemble a group of experts in fair housing law to advise it, and it should be funded to provide, on an ongoing and reliable basis, a training academy for fair housing and civil rights matters. The development of core curricula that address a variety of fair housing and civil rights training needs will be a critical part of this activity. Areas for training should include, at a minimum, basic and advanced investigative skills, substantive developments in the law, the application of basic substantive law to individual cases through skills training, investigation of special or difficult cases, investigations when injunctive relief has been or will be sought, the conduct of systemic investigations, the conduct of testing activities, the establishment and effective operation of FHIP- and FHAP-funded organizations, the conduct of effective education and outreach activities for possible victims of discrimination, disability rights, sensitivity to disability issues and reasonable accommodations during the enforcement process, effective conciliation techniques, effective education of housing providers, remedies, the conduct of compliance reviews for different sorts of HUD-funded housing providers, environmental justice issues, and emerging issues.

Internal HUD training should also include at least annual training for FHIP and FHAP monitors on techniques for maintaining effective performance by these entities, management and mid-management training, HUD program requirements and their relationship to civil rights issues, and case management. Such an academy should provide training for all enforcement and compliance staff on a rotating basis. Training should be conducted by subject matter experts and by those whose expertise includes the actual skills being taught—that is, the investigation or conciliation of fair housing cases, the conduct of compliance reviews, and the like.

While establishment of such an academy could require a significant investment of funds and time, the problems described throughout this report with FHEO's enforcement and compliance activities require this action. Without training, oversight and management will not be successful in accomplishing the major improvements in civil rights enforcement that this report calls for.

**Finding VI.D.2:** FHEO lacks a unified, systematic mechanism for providing substantive and technical training to its enforcement and compliance staff, other than annual FHAP/FHIP conferences that are attended by only a few FHEO staff.

**Recommendation VI.D.2:** HUD should fund, and FHEO should establish, a civil rights training academy that will provide basic and advanced skills, substantive skills, and technical training as described in this report for its own staff and for legal counsel.

**3. HUD Has Never Performed a National Audit of Discrimination Based on Disability That Could Contribute to Greater Understanding of the Nature and Extent of Such Discrimination**

In 1977 and 1989, HUD conducted major national studies of the incidence of housing discrimination in America. These studies, using audit-based testing research, compared the treatment of individuals in the rental and sales markets based on race and national origin. Both studies found significant indicators of discrimination.

In 1998, HUD announced that it planned to conduct a similar study of the incidence of housing discrimination. The study, the results of which have not been announced at the date of the preparation of this report, is notable for several reasons. First, the study is again based on audits, or tests, in which the treatment of individuals is compared based on race and national origin. Despite the fact that many private fair housing groups have been testing for discrimination based on disability for many years, and despite the fact that discrimination based on disability now represents the highest number of complaints filed with HUD and FHAP agencies annually,<sup>319</sup> the study fails to collect data about discrimination against people with disabilities.

HUD has done no study of the incidence of discrimination based on disability or the ways in which such discrimination is manifested. Its failure to include discrimination against people with disabilities in this major national study is a significant lack in the development of enforcement strategies and national attention to this issue.

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<sup>319</sup> See Chart IV-3.

In addition, HUD should consider funding, through its Office of Policy Development and Research, other studies about the ways in which discrimination against people with disabilities occurs and the nature and type of discrimination complaints that have been filed administratively and litigated. It should also study the nature and extent of discrimination against people with disabilities in HUD-funded programs and activities and make recommendations to remedy this discrimination.

**Finding VI.D.3.a:** HUD’s current Housing Discrimination Study testing the incidence of discrimination in housing does not study the incidence of discrimination against people with disabilities.

**Recommendation VI.D.3.a:** HUD should conduct a single national study to identify the incidence and dimensions of discrimination against people with disabilities, similar to its current Housing Discrimination Study.

**Finding VI.D.3.b:** HUD has not conducted any national study of the ways in which discrimination against people with disabilities manifests itself, nor any study of discrimination against people with disabilities in HUD-funded properties.

**Recommendation VI.D.3.b:** HUD should initiate a national study of the ways in which discrimination against people with disabilities manifests itself and a national study of discrimination against people with disabilities in HUD-funded properties.

**4. At the Departmental Level, HUD Needs Ongoing Disability-Related Policy Input**

The absence of consistent disability-related policy input into HUD’s enforcement and compliance activities remains a significant deficiency that adversely affects enforcement and compliance activities. Although recent Administration leaders, including Secretaries Cisneros,

Cuomo, and Martinez, have met with some disability advocacy groups on a variety of housing-related issues, HUD lacks a visible, consistent voice on disability issues.

In the past, HUD has had staff that served as advisors to the Secretary on disability policy issues. Continuation and enhancement of such an office could benefit HUD and people with disabilities. By bringing a disability presence to the highest decision makers at HUD, a high-profile Office of Disability Policy with significant influence on the Secretary and departmental policy could play an important role in focusing attention and resources on disability-related issues, including, but not limited to, civil rights enforcement and compliance activities. Such an office should maintain regular contact with disability advocacy organizations and provide technical guidance and direction to all of HUD's operations, including increased visibility for activities related to President Bush's New Freedom Initiative, compliance with ADA, and activities implementing the decision of the United States Supreme Court in *Olmstead v. L.C.*, requiring placement of people with disabilities in community-integrated settings wherever possible.<sup>320</sup>

In particular, such an office should review all of HUD's own operations for Section 504 compliance, including accessibility of publications, Internet activities, and operations generally, as well as provide guidance to the Secretary on a variety of issues and serve as a focal point for increased visibility of disability rights issues within HUD.

**Finding VI.D.4: HUD would benefit by increasing the visibility and activities of an Office of Disability Policy.**

**Recommendation VI.D.4: An Office of Disability Policy should be funded and staffed appropriately to permit increased input on disability-related activities, including enforcement and compliance, at the highest decision-making level within HUD.**

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<sup>320</sup> Although it is clear that the *Olmstead* decision, by its very nature, requires significant levels of HUD involvement as it relates to housing opportunities for people with disabilities, there was no evidence of activities related to implementation of the *Olmstead* decision in the materials provided by FHEO for this report.

**5. Increased Input from People with Disabilities and Their Advocates Is Needed to Inform HUD and the Public About the Nature and Extent of Housing Discrimination.**

The experiences of people with disabilities in seeking housing can and should inform HUD and the national policymakers. In addition to input through an Office of Disability Policy, HUD needs to hear from individuals throughout the country who have confronted discrimination in its most virulent forms and its more subtle manifestations. Because the data that FHEO has provided indicate an increasing incidence of discrimination based on disability, and because there has been no national study about the nature and extent of housing discrimination as it is uniquely experienced by people with disabilities, HUD should consider convening town meetings in locations around the country. These meetings could meet multiple needs. They could collect information about the ways in which people with disabilities encounter discrimination in housing. They could provide a focal point for increased education for people with disabilities and the public about housing discrimination and about the rights of people with disabilities and the responsibilities of housing providers to avoid discrimination. In addition, to the extent that enforcement mechanisms of the FHA and Section 504 have been used, the experiences of parties to complaints can help inform improvements by HUD in the delivery of enforcement services and in the delivery of its housing programs. Town meetings could also play a helpful role in increasing awareness about housing discrimination against people with disabilities.

**Finding VI.D.5: There continues to be a need to educate the public about the nature and extent of housing discrimination against people with disabilities.**

**Recommendation VI.D.5: HUD, together with community stakeholders, should consider conducting town meetings in several locations around the country to better inform the public, people with disabilities, housing providers, and HUD about disability-based housing discrimination.**



## **6. Increased Support and Leadership from the Administration, Congress, and HUD Leaders Are Critical to Enforcement and Compliance Improvements**

Leadership from various administrations, from Congress, and from leaders at HUD on civil rights issues relating to housing—and especially those relating to disability rights—has not been consistent during the years examined by this report. HUD’s FHEO cannot function without adequate resources and staffing, without key policy leadership and support, and without reform of existing operations for enforcement and compliance. This report has documented numerous barriers to effective enforcement and compliance activities.

With a new administration that has signaled its support of disability-related activities throughout the federal government, there is an opportunity to remove the barriers. Congressional and departmental support—including increased funding for staff, training, technical assistance to housing providers and disability advocates, and more effective management and guidance systems—will be critical to improving enforcement of and compliance with civil rights laws. Even more important, effective leadership and support for FHEO’s efforts to improve its operations must be provided from a political and practical perspective in order for the improvements that this report recommends to occur.

The public will benefit from fair, reliable enforcement of civil rights laws. And people with disabilities who encounter discrimination in every phase of housing access will benefit immeasurably.

## **SECTION VII**

### **Conclusion**

Full, fair enforcement of the Fair Housing Act and Section 504 of the 1973 Rehabilitation Act is an important promise that Congress made to this country, and specifically to people with disabilities, that has not yet been kept. Housing discrimination undermines a fundamental premise on which our free society rests—that every person, regardless of race or national origin and regardless of disability status, should have the opportunity to live in and benefit from a home. Without strong, timely enforcement of fair housing laws, victims of discrimination may be discouraged from seeking an end to discrimination, and discriminators will be emboldened to continue their unlawful practices. Congress’s promise can be kept with strong and thoughtful leadership and direction, with resources that are adequate to the task, and with more effective management of enforcement and compliance activities. The need is great; the time is now.

## APPENDIX I

### List of Findings and Recommendations

- Finding IV.B.1: The number of discrimination allegations filed with HUD and state and local fair housing enforcement agencies is very low, given statistical and anecdotal evidence that housing discrimination is widespread.
- Finding IV.B.2.a: Three-quarters of all claims (4,210 of 5,924 in FY 2000) are dismissed without being converted to complaints and therefore are not subjected to full investigation.
- Finding IV.B.2.b: From FY 1996 through FY 2000, HUD reported both complaints and claims (whether dismissed or maturing into complaints) to Congress and the public. It is only through creative arithmetic that HUD has made it appear that fair housing receipts have not declined.
- Recommendation IV.B.2.a: In reporting to Congress and the public, HUD should be required to distinguish between fair housing complaints and other receipts, such as claims or inquiries, so that a fair assessment of the agency's success can be made.
- Finding IV.B.2.c: After HUD adopted a new intake process in FY 1996, emphasizing the assessment of claims to determine whether they warranted full investigation, the number of HUD complaints filed dropped even further. By FY 2000, complaints (N = 1,988) were at 30 percent of their FY 1992 level.
- Finding IV.B.2.d: On February 1, 2001, HUD abandoned its claims assessment process in favor of a system that gives investigators 20 days to

process an inquiry to determine whether it will be filed as a complaint. HUD did not supply data by which the effectiveness of this new approach can be gauged.

Recommendation IV.B.2.b: Congress should closely monitor HUD's new intake protocol to ensure that it does not inappropriately discourage the filing of fair housing complaints and does not inappropriately prevent the conversion of inquiries into complaints.

Finding IV.B.5.a: Disability complaints now compose the largest percentage of HUD complaints. Complaints of disability discrimination have composed a growing percentage of HUD and FHAP receipts. In FY 1999 and FY 2000, nearly 42 percent of all HUD complaints included allegations of disability discrimination, more than any other protected class.

Finding IV.B.5.b: The growth of disability complaints cannot be attributed to a single cause but is undoubtedly influenced by the growing recognition that people with disabilities are entitled to equal housing opportunity under the FHA.

Finding IV.B.5.c: HUD has contributed to the growth in disability complaints through its support of private fair housing enforcement agencies under FHIP. HUD has awarded FHIP grants to full-service enforcement agencies handling disability complaints and to other advocacy groups focused exclusively on education about, outreach to, and enforcement of the rights of people with disabilities.

Recommendation IV.B.5: HUD should continue to explore ways that it can use FHIP and contract funds to support collaborative work between full-service fair housing agencies and organizations representing people with disabilities.

- Finding IV.B.6.a: Throughout the 1990s, HUD devolved substantial authority to its HUBs and allowed them great autonomy to structure intake, complaint processing, investigation, and cause determinations.
- Finding IV.B.6.b: In the mid- and late 1990s, Headquarters FHEO ceased its close oversight of HUB operations, opting instead for “remote monitoring.” The result has been significant differences in practice among HUBs, including markedly different treatment of disability complaints.
- Finding IV.B.6.c: There is great variability in numbers of complaints (overall and on the basis of disability) filed by HUD’s 10 HUBs and by FHAPs that is not adequately explained by differences in populations served by each HUB.
- Finding IV.B.6.d: The management style currently employed by Headquarters FHEO tends to reinforce significant regional variations in enforcement practice, resulting in different treatment of disability (and other) complaints depending on the state in which a complainant lives and whether the complaint is handled by HUD or by an FHAP.
- Recommendation IV.B.6.a: HUD should assess the intake process at each HUB and at each FHAP to determine whether the historically low number of complaints (overall or on the basis of disability) reflects impediments for victims of discrimination in using the Title VIII administrative complaint system.
- Recommendation IV.B.6.b: HUD should identify best practices among HUBs and FHAPs concerning community outreach, intake, case processing, investigation, and cause determination and require HUBs and FHAPs that do not already do so to use them.

Recommendation IV.B.6.c: Headquarters FHEO should take active steps to deal with these regional differences so that the quality of justice does not depend on place of residence, or should assume greater central authority over the Title VIII complaint process.

Finding IV.B.7: There are significant differences between the HUBs with respect to the percentage of Title VIII complaints alleging disability discrimination. Five of the HUBs (Chicago, Atlanta, Ft. Worth, Philadelphia, and Kansas City) are consistently below the national norm, giving rise to a concern that disability issues may not be getting appropriate attention. The Chicago HUB, which historically files the greatest number of overall fair housing complaints, has been at or below average for disability complaints every year since the FHAA was passed.

Recommendation IV.B.7.a: HUD should assess the intake process at each HUB and at each FHAP to determine whether the historically low number of complaints (overall or on the basis of disability) reflects impediments for victims of discrimination in using the Title VIII administrative complaint system.

Recommendation IV.B.7.b: Headquarters FHEO should take active steps to deal with these regional differences so that the quality of justice does not depend on place of residence, or should assume greater central authority over the Title VIII complaint process.

Finding IV.B.8: Among HUD and FHAP disability complaints, reasonable accommodation is the most frequent issue, representing 41.6 percent of HUD cases and 38.5 percent of FHAP cases in FY 2000. Design and construction accessibility issues rank next (9.1 percent of HUD cases and 8.8 percent of FHAP cases).

- Finding IV.C.1: By enforcing accountability, HUD was able to reduce agencywide administrative closure rates from 48 percent in FY 1993 to 15 percent in FY 1997. When the performance measures were deleted from appraisals in FY 1998, the administrative closure rate went back up to 19 percent. In FY 1999, it was 20 percent, and in FY 2000, it had gone up to 21 percent.
- Recommendation IV.C.1: HUD should establish and enforce accountability and job performance standards modeled on those in place during FY 1995 through FY 1997 to ensure that the administrative closure method is not overused.
- Finding IV.C.2: During every year since FY 1989, disability cases have been significantly more likely than other cases to be closed by conciliation. While FHAP disability complaints are more likely than FHAP nondisability complaints to be resolved by conciliation, FHAPs appear to rely on conciliation somewhat less than HUD, in terms of both disability cases and other cases.
- Finding IV.C.3.a: Since FY 1996, HUD has closed at least one-third of its complaints (and FHAPs have closed at least 41 percent) with a finding that no cause existed to believe discrimination had occurred.
- Finding IV.C.3.b: Since FY 1996, disability complaints were closed with a finding of no cause at a slightly lower rate. This may result from the fact that HUD disability complaints are more likely to be resolved earlier in the process, especially through conciliation, and that fewer nonmeritorious cases are left at the cause/no cause decision point.
- Finding IV.C.4.a: Since FY 1990, complaints of disability discrimination have lagged significantly behind the average HUD case in probability of cause finding.

- Finding IV.C.4.b: Of the 12,017 disability complaints filed with HUD from 1990 through 2000, the agency found reasonable cause to believe discrimination had occurred in just 284 cases, or 2.4 percent of all cases.
- Finding IV.C.4.c: When HUD finds cause in only 1 out of 40 disability cases, it may be sending a message to the disability community that victims of disability discrimination are unlikely to secure relief through filing a HUD complaint.
- Recommendation IV.C.4.a: HUD should take steps to improve its credibility with disability groups and advocates by aggressively pursuing disability discrimination complaints and widely publicizing favorable results.
- Finding IV.C.4.d: HUD cause findings have declined dramatically, from 325 in FY 1994 to 96 in FY 2000
- Finding IV.C.4.e: There are significant differences among HUBs concerning the overall number of disability complaints and the percentage of cause findings in disability cases since FY 1990. In absolute numbers and in terms of percentage of caseload, the New York HUB ranked highest in disability complaints with cause findings over the 11-year period (57 cause findings, or 4.9 percent of its disability cases) and the Kansas City HUB ranked lowest (11 cause findings, or 0.9 percent of its disability cases).
- Finding IV.C.4.f: Such regional variations are attributable to cultural differences between regions of the country and personnel assigned to the respective HUBs. The management style currently employed by Headquarters FHEO tends to reinforce significant regional variations in enforcement practice, resulting in different treatment of disability (and other) complaints depending on the state in which



a complainant lives and whether the complaint is handled by HUD or by an FHAP.

Finding IV.C.4.g: Victims of discrimination are discouraged from using the Title VIII administrative process at HUD and FHAPs for a variety of reasons, including an unwelcoming intake process, inordinate delays in assessing and investigating claims, relatively small monetary awards achieved through HUD and FHAP conciliation, and a generalized sense that the administrative process rarely achieves results that outweigh the personal costs of filing a claim or complaint.

Recommendation IV.C.4.b: Congress should require HUD to conduct a study to determine why the absolute number and percentage of cause findings (especially those in disability cases) have declined so precipitously, and why there are such wide variations on these indicators among the HUBs.

Recommendation IV.C.4.c: Headquarters FHEO should take active steps to deal with these regional differences so that the quality of justice does not depend on place of residence, or should assume greater central authority over the Title VIII complaint process.

Finding IV.C.4.g: FHAP cause findings have declined from 545 in FY 1990 to 158 in FY 2000.

Finding IV.C.4.h: From FY 1992 through FY 2000, FHAPs charged 347 of the 8,683 disability cases they handled, or 4 percent of total complaints. This rate is 40 percent higher than the rate for HUD-processed disability complaints for the same period.

Recommendation IV.C.4.d: HUD should conduct an analysis to determine why FHAPs, on average, charge 40 percent more of the disability complaints they

handle. HUD should identify and distill the practices that have led to this success and require their use by HUDs and FHAPs that do not already employ them.

- Finding IV.C.4.i: There are wide and troubling variations from region to region among the FHAPs. For instance, Boston region FHAPs found cause in 8.7 percent of disability complaints, and Philadelphia area FHAPs found cause in 8.0 percent. By contrast, Ft. Worth area FHAPs found cause in 0.6 percent of all disability complaints, and those in the Seattle and Denver regions found cause in 2.5 and 2.7 percent of all disability cases, respectively.
- Recommendation IV.C.4.e: Headquarters FHEO should take active steps to deal with these regional differences so that the quality of justice does not depend on place of residence. Alternatively, Headquarters should assume greater central authority over the Title VIII complaint process.
- Finding IV.D.2.a: At the end of FY 2000, a victim of disability discrimination could expect to have waited 13 months since the filing of a complaint and to have no clear indication how soon the complaint might come to a hearing or otherwise be resolved.
- Finding IV.D.2.b: The average age of HUD complaints, measured from filing to date of closure, has risen from 96 days in FY 1989 to 137 days in FY 1992 to 497 days in FY 2000.
- Finding IV.D.2.c: The aging of complaints has occurred as the number of complaints investigated by HUD has declined by 70 percent.
- Recommendation IV.D.2: HUD should analyze its management practices to determine why case handling has become so inefficient, and should report its findings to Congress and the public.

- Finding IV.D.2.d: The aged case backlog serves as an important indicator to complainants and fair housing advocates of the likelihood of a prompt adjudication of the complainant's grievance. This, in turn, may well determine whether the complainant will decide to make use of the federal enforcement process.
- Finding IV.D.2.e: At the close of FY 1998, 69 percent of HUD's pending complaints had exceeded the statutory 100-day maximum for investigation and determination of cause. At the close of FY 1998, 78 percent of HUD's pending complaints had gone past 100 days. At the close of FY 1998, 68 percent of HUD's pending complaints had surpassed the deadline. During these three fiscal years, the Denver HUB was the worst performer (81 percent of cases older than 100 days) and Kansas City was the best (44 percent of cases older than 100 days).
- Finding IV.D.2.f: FHAP processing time to closure for all complaints came close to meeting the 100-day mandate during FY 1989 and remained below 140 days through FY 1993. Processing times rose steadily through FY 1997 (when they reached 317 days). Thereafter, they have declined nearly 30 percent; during FY 2000, FHAP complaints took an average of 220 days from filing to closure or cause determination.
- Finding IV.D.2.g: FHAPs have been able to process fair housing complaints more quickly than HUD. In the last four years for which data are available, FHAPs have investigated and closed cases about 100 days faster than HUD. With respect to disability claims, FHAPs work more quickly as well, averaging 75 fewer days than HUD per disability complaint.
- Finding IV.D.3: Congress appears to be unaware of the scope of HUD's aged case problem and the effect it has on complainants and public confidence in the administrative enforcement system.

Recommendation IV.D.3: Congress should closely scrutinize HUD's aged case portfolio and provide oversight and funding to correct it.

Finding IV.D.4.a: Congress required the HUD Secretary to send the 100-day letters only where it was "impracticable" to complete an investigation within 100 days, but the drafters of the FHAA did not anticipate that such a large percentage of the inventory would exceed the statutory deadlines. At present, the 100-day letters are the rule, rather than the rare exception Congress intended. In essence, the letters have become a formality observed in almost every case. HUD's intermittent reporting of these facts to Congress may have made it more difficult for the oversight committees to understand and respond to the aged case crisis.

Finding IV.D.4.b: At every stage of the process, HUD and the FHAPs are failing to meet the time lines set out in the FHA. The 100-day letters tell only a part of the story; once a case exceeds 100 days from filing, there are no ongoing requirements that HUD or an FHAP report to complainants or respondents about the status of a case. Often, when investigations take more than 500 days, the dearth of communication with the parties effectively sends the message that no work is being done toward resolving the underlying complaint.

Finding IV.D.4.c: Through FY 1994, HUD was able to conciliate cases in 150 days or fewer. Beginning in FY 1995, the time it took to resolve complaints began to increase dramatically, finally reaching 314 days in FY 2000. There appears to be no clear correlation between the prevalence of conciliations and the time expended to close a conciliated case. For example, in FY 1992, HUD successfully conciliated 2,058 cases, or 32 percent of all complaints (582 of these cases alleged disability discrimination, representing 33 percent of all conciliated cases). That year, the average age of all conciliated cases was less than 100 days. This was accomplished at a time when FHEO had 309 FTEs devoted

to enforcement. In FY 2000, HUD conciliated only 904 cases, or 41 percent of all complaints (324 of these complaints alleged disability discrimination, representing 48 percent of all conciliated cases). The FY 2000 average age of conciliated cases was 314 days, at a time when HUD had 319 FTEs devoted to enforcement.

- Finding IV.D.4.d: During the past two fiscal years, FHAPs have been able to conciliate cases four to five months faster than HUD.
- Recommendation IV.D.4.a: HUD should analyze its management practices to determine why case handling has become so inefficient and should report its findings to Congress and the public.
- Recommendation IV.D.4.b: HUD should identify best practices among HUBs and FHAPs concerning the rapid conciliation of cases (especially disability cases) and require HUBs and FHAPs that do not already do so to use these practices.
- Finding IV.D.4.e: In FY 2000, with 319 enforcement FTEs, it took HUD more than 650 days on average, and about 570 days for a disability case, to reach a finding of no cause.
- Finding IV.D.4.f: By contrast, over the past four fiscal years, FHAPs have actually brought down the average time to reach a finding of no cause to 258 days, or more than a year faster than HUD in FY 2000.
- Finding IV.D.4.g: The aging of cases amounts to a self-inflicted wound: The longer it takes HUD to process a case, the more likely that witnesses and evidence will evaporate, the more likely a case will remain idle in HUD's inventory, and the more likely HUD will have to consign it to administrative closure or terminate it as a no cause case.
- Recommendation IV.D.4.c: HUD should determine how FHAPs have been able to reach determinations of no cause in less than half the time it takes HUD and

should implement practices to ensure that HUD cases are treated as expeditiously.

Recommendation IV.D.4.d: Congress should earmark funding for HUD to substantially reduce its aged case portfolio and to ensure that the problem does not recur.

Finding IV.D.4.h: HUD takes five times as long to make cause determinations as Congress intended when it passed the FHAA, although they require at least the same level of investigation as no cause cases. In FY 2000, HUD made cause determinations about 150 days faster on average (and 75 days faster on average for disability complaints).

Recommendation IV.D.4.e: HUD should analyze the success of FHAPs in reaching cause determinations more quickly than the HUBs and should require HUBs to incorporate these best practices.

Recommendation IV.D.4.f: Congress should require HUD to take immediate steps to assess the reasons for the aged case problem at HUBs and FHAPs. Congress should then provide adequate funding to support a corrective plan to ensure that investigations and cause or no cause determinations are made within 100 days of a complaint being filed.

Finding IV.E.1: With respect to monetary compensation to victims of discrimination, total compensation and average compensation have increased, but largely because of a small number of large settlements in fair lending and design and construction cases. Excluding a single lending settlement in FY 2000, total compensation and average compensation per HUD case would have fallen to historic lows.

Finding IV.E.2: Monetary compensation seems to be benefiting fewer and fewer complainants, declining from a high of 997 HUD cases in FY 1992 to only 400 HUD cases in FY 2000. FHAPs followed a similar path, from a high of 1,067 cases in FY 1996 to only 590 cases in FY 2000.

- Finding IV.E.3: Among HUD-processed complaints since 1989, average disability compensation (\$6,732 per conciliated case) ranks fourth behind national origin, color, and race. Among FHAP-processed complaints since 1989, average disability compensation (\$3,932 per conciliated case) ranks second behind color.
- Recommendation IV.E.1: HUD should focus its resources on securing resolution of (and compensation in) a broad range of fair housing complaints rather than focusing on settlement of cases designed primarily to garner the most publicity for the agency.
- Recommendation IV.E.2: HUD should identify best practices in each area above and attempt to replicate these practices across its enforcement programs. For example, if a region or FHAP is doing a particularly good job regarding quick processing or good conciliations or high levels of monetary compensation or good disability outreach, HUD should try to bottle it and make it available to the entire fair housing community, beginning with HUBs and FHAPs but including FHIPs and other advocates.
- Finding IV.F.1: Despite clear authority in the FHAA, HUD has used the Secretary-initiated complaint option on only two occasions.
- Recommendation IV.F.1: As part of its comprehensive effort to more effectively enforce the FHA, HUD should make much more extensive use of Secretary-initiated complaints.
- Finding IV.F.2.a: The relative dearth of cause findings has meant that few complaints ever reach an ALJ hearing.
- Finding IV.F.2.b: Because of the low caseloads, the expertise of HUD ALJs is drastically underused.

- Recommendation IV.F.2: As part of a comprehensive plan to more effectively enforce the FHA, HUD should strive to increase its use of ALJs by processing cases more quickly and issuing charges in a greater percentage of cases.
- Finding V.C.1: TEAPOTS does not include enough information about Section 504 complaints and compliance reviews to permit it to be used as a planning and evaluation document. FHEO has just begun to add Section 504 to TEAPOTS. TEAPOTS may need to be expanded to include data about Section 504 compliance reviews for it to be a fully effective data collection system. FHEO has not had sufficient resources to create effective data collection systems or to provide adequate IT support services to FHEO staff to enable them to provide reliable, consistent data or to use FHEO's data systems effectively.
- Recommendation V.C.1: FHEO should make its data systems a priority. HUD should fund FHEO's data systems and resources adequately. FHEO should determine whether to add fields to TEAPOTS that would make it as effective a data system as possible for planning, coordinating, and evaluating purposes.
- Finding V.C.2: FHEO has not developed an adequate, consistent, and reliable data system for its Section 504 enforcement actions. As a result, it has not been able to learn from its successes or its mistakes, make the best arguments for adequate funding, plan or allocate resources in a reasonable way, or justify the actions that it has taken or proposes to take.
- Recommendation V.C.2: FHEO should add the same Section 504 complaint and compliance review data to the data system it currently maintains to track its enforcement of the FHA. In addition, FHEO should systematize the requests, timing, and storage of data that it must collect for its annual



reports to Congress, to the Department of Justice, and to the U.S. Commission on Civil Rights.

Recommendation V.C.3: FHEO should review the data collection system that the Office of Coordination and Review uses to collect governmentwide Section 504 data from all federal agencies and consider how best to collect, maintain, and use the HUD data and make it available to the public. FHEO should provide adequate resources to its data collection system and to the IT staff that support it.

Recommendation V.C.4: Headquarters should involve field staff in solving the data collection and data maintenance problems. The data system should be able to identify common enforcement problems and discrimination trends to enable FHEO and HUD to target enforcement activities.

Finding V.E.2.a: FHEO has drafted an *Assisted Housing Provider Compliance Review Manual* that provides a detailed approach, is easy to follow, and has been effectively combined with on-site compliance reviews. FHEO has not finalized the manual, nor has it developed similar manuals for reviews of other recipients, such as states, cities, and agencies that receive funding from the Office of Community Planning and Development. FHEO has combined compliance reviews with training.

Recommendation V.E.2.a: FHEO should finalize the *Assisted Housing Provider Compliance Review Manual* and should publish similar manuals for each type of recipient. The development of the manuals should accompany increased resources for continued training and compliance reviews. The manuals should contain instructions on contacting local advocacy groups, tenant organizations, and any other local group that has experience with the recipient; inviting the contacts to submit information before the compliance review or meeting with the compliance team before the review; and obtaining information from

FHEO after the compliance review for the purpose of developing methods of encouraging and helping the recipient to comply with Section 504.

Recommendation V.E.2.b: FHEO should continue to combine training with compliance reviews. It should review the merits and problems of the approach and address them both. Some of the issues to review are the amount of on-site time; the number of FHEO staff involved; coordination and staff from field and Headquarters program offices; and inclusion of general or regional counsel staff, Department of Justice staff, or staff from other federal or state agencies, such as the Environmental Protection Agency and the Departments of Education and Transportation.

Recommendation V.E.2.c: FHEO should continue to target its compliance reviews based on number of complaints, input from advocates and recipients, news articles, and current Department of Justice guidance.

Finding V.E.2.b: The Section 504 enforcement program has never been adequately staffed in Headquarters or in the field, nor has it been provided with adequate resources.

Recommendation V.E.2.d: The Section 504 enforcement program must be fully staffed in Headquarters and in the field and should be adequately funded to support a departmentwide Section 504 enforcement program.

Finding V.F.1: HUD has not coordinated its Section 504 enforcement responsibilities to take advantage of critical program or departmental efforts. It does not have a method for conducting ongoing discussions about the impact of departmental actions and policies on Section 504 enforcement. It does not work with other federal or state agencies or with the Justice Department Office of Coordination and Review. It does not communicate regularly and effectively with consumers or their representatives or with the agencies and advocates that represent

them on their discrimination, housing, or community development issues.

Recommendation V.F.1: FHEO should develop a Section 504 program that includes short-term and long-term strategies and goals for enforcing Section 504; a review of the successful ways FHEO has coordinated with other HUD offices; establishment of systems for communicating within HUD and with consumers and recipients; evaluation methods; coordination of its technical assistance branch, its FHA branch, and its Section 504 enforcement branch; review of, evaluation of, and plans for improving responses to, investigations of, and enforcement of Section 504 complaints; review of, evaluation of, and plans for a compliance program that results in rational and effective use of compliance reviews; and sufficient resources to implement a Section 504 program.

Finding V.G.1: FHEO has not developed a standardized system for determining when compliance reviews of HUD recipients would advance FHEO's and HUD's civil rights goals. HUD and DOJ criteria for identifying targets of compliance reviews have not been used consistently by field offices and have not been used at all by field offices that have not conducted compliance reviews or have targeted only housing authorities.

Recommendation V.G.1: HUD's compliance program should include all HUD recipients and should be an integral part of its goal of affirmatively furthering fair housing. FHEO's compliance program must be based on articulated criteria that can be measured and communicated within FHEO and HUD and to recipients and the public. HUD must ensure that each of its program offices provides FHEO with relevant information about the compliance of its recipients and cooperates with FHEO in its compliance program.

- Finding V.H.1: FHEO and PIH have conducted joint ventures that have not been documented. Their results are therefore not available for planning, budgeting, technical assistance, or further joint ventures.
- Recommendation V.H.1: FHEO and its departmental partners should document and evaluate their joint efforts. FHEO and PIH should make their joint report available within HUD and to the public. To the extent possible, FHEO and PIH should issue documents reflecting past coordinated efforts. Both offices should institute a system to ensure that future efforts are similarly recorded and made public.
- Finding V.H.2: Enforcement of Section 504 is a departmental responsibility. Without the support of HUD leadership and the cooperation of HUD's program offices, FHEO has limited ability to ensure the law's enforcement.
- Recommendation V.H.2: HUD should establish a secretarial-level office whose responsibility is to conduct a "civil rights impact statement" for each of its initiatives. Similar to an environmental or business impact statement, the civil rights analysis will clarify whether a funding program's decision, action, or interpretation will affect its civil rights program and whether it will promote, hinder, or have no impact on the accomplishment of HUD's civil rights goals.
- Finding V.I.1.a: FHEO limited compliance reviews to housing authorities for many years. It investigated only Title VI or Section 504 compliance when it could have investigated both simultaneously. When FHEO adopted its multistatute approach and issued multijurisdictional guidance, compliance reviews became more efficient. Except for a brief period, FHEO's compliance review strategy in many field offices was to review every housing authority and to review every one again. FHEO's efforts to create a compliance review strategy that used

reviews to focus on known civil rights problems was logical and effective. The effort ended when FHEO staffing levels were reduced and remaining staff and resources for compliance reviews were diverted to FHA complaint investigations.

Recommendation V.I.1.a: FHEO should adopt an expanded version of its previously successful compliance review strategy as part of its Section 504 program. It should target its compliance reviews according to enforcement strategies that have had the greatest likelihood of accomplishing specific programmatic goals, and it should conduct multistatute reviews. The goals should include expanding recipients' understanding of and compliance with Section 504 requirements; coordinating with HUD program offices and expanding their ability to ensure recipients' compliance with Section 504; and increasing the public's knowledge of and support for Section 504 and related civil rights laws.

Finding V.I.1.b: FHEO successfully obtained one of the most extensive VCAs in its history by working in conjunction with the OGC and PIH. The team received full support from departmental and program leadership. Without that support, the team would not have had the time, the resources, or the authority to develop solutions to enforcement and program interpretation problems that had prevented earlier compliance efforts. The NYCHA approach could have been replicated with other housing authorities, but HUD did not provide the necessary resources to do so.

Recommendation V.I.1.b: FHEO should review the approach that resulted in the NYCHA VCA and determine what resources and support would be necessary to apply it to other recipients. FHEO should also publish its evaluation of the NYCHA approach and use it to further its training, technical assistance, and enforcement efforts.

- Finding V.I.3.a: FHEO’s Austin VCA is replicable, but no other FHEO agreement with a city accomplishes as much. The probable reasons for the breadth of the VCA and its successful implementation are a combination of Headquarters support, dedicated field staff, willing city officials, and, possibly most important, a local advocacy group that knew the city, understood Section 504 and the FHA, and persisted with both FHEO and the city until it achieved the goals of its complaint.
- Recommendation V.I.3.a: FHEO should replicate the resources and sustained support that were necessary to bring the city of Austin into compliance with Section 504. FHEO should encourage staff to work with local agencies and advocacy groups in identifying discrimination issues, forging solutions, and monitoring agreements.
- Recommendation V.I.3.b: HUD should enforce the Section 504 responsibilities of cities, counties, and states to ensure that all of their programs and activities meet the regulatory requirements. For example, every city should ensure that 5 percent of the city’s housing program is fully accessible to residents with mobility impairments. See, for example, the city of Austin’s program. Every state should ensure that all of its programs promote the ability of individuals with cognitive and mental disabilities to gain access to the same benefits and services as all other state residents.
- Finding V.J.1: When recipients violate VCAs, HUD does not take enforcement action against them. HUD treats VCAs as “educational documents,” and the compliance review process as an “educational process,” rather than as a means of enforcing civil rights laws.
- Recommendation V.J.1: All VCAs must be enforced after their time limits expire and the recipient has not fulfilled the VCA’s terms. FHEO shall immediately

forward the VCA to the Office of General Counsel for enforcement. The OGC shall initiate administrative proceedings within two months of receiving the referral from FHEO. OGC and FHEO shall give the recipient one month to comply with the terms of the VCA before initiating enforcement actions.

Recommendation V.J.2: FHEO must develop protocols with the grant-award program to ensure that if funds are granted, they be conditioned upon the recipient's correcting the violations according to an existing VCA. HUD should make clear that failure to comply with the terms of the VCA shall result in enforcement and temporary denial of all future funds to the recipient, including funds that have been approved but are awarded on a periodic basis.

Recommendation V.J.3: HUD should publish all VCAs on the HUD Web site and include the name of the FHEO contact for questions from the public and other recipients.

Finding V.K.1: FHEO has successfully operated under the multistatute guidance for several years. The results of investigating a recipient's compliance with two or more civil rights laws simultaneously has had obvious efficiency benefits for the recipient, the beneficiaries, and HUD.

Recommendation V.K.1: HUD should continue to follow the multistatute guidance. The agency should conduct an evaluation of how the field offices use the guidance, identify any differences, and develop guidance to address gaps and to reinforce successful outcomes. HUD should also define successful outcomes in terms of numbers of beneficiaries assisted, timeliness of the operation, satisfaction of the parties involved, funds and time spent, and replicability of the effort.

Finding V.L.1: FHEO has not maintained the Section 504 guidance that it has issued in any systematic way. It has not maintained the systems that once

existed, and it has not created a system for maintaining such guidance now. It is critical that the source for policy decisions, the decisions themselves, and the resulting guidance be continually available to HUD staff and to the public.

Recommendation V.L.1: FHEO should create a method as soon as possible for collecting all Section 504 policies, guidance, notices, and interpretive materials in a single location. Each of the documents should be identified by issuance date, location (i.e., where it first appeared), history, and current force. FHEO should allocate sufficient resources to this project so that a system of locating and maintaining such information can be established and maintained. FHEO should make these historical documents and future documents available to HUD staff and to the public in a user-friendly format that is searchable by word or concept.

Finding V.M.1: HUD has too narrowly defined “recipient” to exclude housing providers who benefit from federal financial assistance. HUD’s assigning housing authorities with the responsibility of monitoring private housing providers’ compliance with the civil rights laws has been unworkable.

Recommendation V.M.1: HUD should review its policy decision and issue an interpretation of the responsibilities of federally subsidized private housing providers that is effective and enforceable.

Finding V.M.2.a: HUD’s Occupancy Task Force issued numerous recommendations in 1994 as to how the funding programs could incorporate disability rights requirements into their operations. The Offices of Housing and Community Planning and Development did not adopt the majority of the recommendations. The recommendations resulted from agreement among public and private housing providers, advocates



for elders and people with disabilities, and management organizations.

Recommendation V.M.2.a: HUD should review and incorporate as many of the Occupancy Task Force recommendations as are applicable to HUD's current Housing and Community Planning and Development programs. It should determine whether the recommendations can be applied to programs and initiatives that did not exist in 1994 and the most effective ways of applying them.

Finding V.M.2.b: The Secretary's Office on Disability Policy brought Section 504 and fair housing disability issues to the attention of HUD's leadership. It encouraged the Secretary and his staff to meet with disability rights advocates, and it resulted in greater recognition among program staff of the implications of program regulations and guidance for individuals with disabilities.

Recommendation V.M.2.b: HUD should maintain the Secretary's Office on Disability Policy. HUD should assign it joint oversight with the Office of Administration, FHEO, and the Office of General Counsel for HUD's Section 504 federally conducted responsibilities insofar as necessary to ensure that no HUD program operates in inaccessible buildings; that HUD conducts an effective self-evaluation of its policies, regulations, guidance, and practices; and that HUD drafts an employment needs assessment, develops a transition plan to correct deficiencies, and secures sufficient funding to implement the recommendations from its assessments and evaluations.

Recommendation V.M.2.c: The Office on Disability Policy should have a director with experience in disability rights. The director should have at least one staff person for each of HUD's offices, including FHEO. Each staff person shall be familiar with the operations and statutory

responsibilities of the particular office. The staff person responsible for FHEO shall maintain continuing communication with the Assistant Secretary of FHEO and shall ensure that the two offices coordinate their activities. The office shall be responsible for conducting a “disability impact study” of HUD’s major initiatives, which will include specific recommendations for changes, expansions, and consultation with the civil rights community.

Finding V.N.1.a: HUD has, for the past three years, included specific civil rights information in its Notices of Funding Availability (NOFAs). The information is limited and is not preserved in any form other than NOFAs. It has also issued notices to program recipients about civil rights obligations in the context of specific HUD grant programs.

Recommendation V.N.1.a: HUD should continue to include civil rights requirements, especially Section 504 and other funding-related requirements, in NOFAs and other communications with recipients. HUD should maintain the information in a retrievable system for recipients and the public. HUD should assign sufficient staff and resources to the grant programs and to FHEO, both to provide adequate technical assistance for voluntary compliance and to make the enforcement warnings credible.

Finding V.N.1.b: FHEO and HUD have begun to use the Web to provide information to the public about programs, regulations, notices, and related sources of information and assistance. The FHEO Web page is promising, but is difficult to navigate and does not include all of HUD’s past and current civil rights information and documents.

Recommendation V.N.1.b: HUD and FHEO should maximize their use of their Web sites. All HUD and FHEO information, guidance, and requirements related to civil rights compliance and enforcement should be on the Web sites.

In particular, information that is not retrievable in any other way should be on the Web sites. This includes information in grant documents, such as the SuperNOFA, that defines eligibility for HUD funding in terms of civil rights compliance.

Finding VI.B.3.a: HUD's current Strategic Plan and APP do not contain adequate measures to address and correct the enforcement and compliance issues addressed in this study.

Recommendation VI.B.3.a: HUD and its Office of Fair Housing and Equal Opportunity should review and revise both the current Strategic Plan and future APPs to include clearer goal-setting for case-processing issues. Such goals should be outcome-based and subject to monitoring activity designed to improve performance.

Finding VI.B.3.b: HUD's current Strategic Plan and APP lack specific measures and indicators for enforcement and compliance strategies to address housing discrimination against people with disabilities. Current strategies for studies and training about accessible housing only include fair housing violations and not Section 504 violations.

Recommendation VI.B.3.b: HUD and its Office of Fair Housing and Equal Opportunity should develop more focused goals in its Strategic Plan and future APPs that will directly address and increase enforcement of the FHA and Section 504, overall and for people with disabilities.

Finding VI.B.3.c: HUD's current Strategic Plan and APP lack any reference to using Section 504 to address housing discrimination against people with disabilities.

Recommendation VI.B.3.c: HUD should revise its Strategic Plan and improve future APPs by including specific measures and indicators to reduce housing

discrimination against people with disabilities using HUD's Section 504 compliance authority.

Finding VI.B.4.a: HUD has failed to make strong commitments to civil rights enforcement and compliance activities in its current planning and implementation process.

Finding VI.B.4.b: The most recent BOP for FHEO, like the Strategic Plan and the APP, does not establish performance-based measures designed to produce more effective enforcement and compliance.

Recommendation VI.B.4.a: FHEO should develop more performance measures related to improved civil rights enforcement, including measures for improved performance of FHA and Section 504 complaint investigations and Section 504 compliance reviews.

Finding VI.B.5.a: FHEO's current devolved organizational structure has not improved the delivery of civil rights enforcement and compliance activities.

Recommendation VI.B.5.a: FHEO's organizational structure should be reevaluated to identify the changes that should be made to improve civil rights enforcement and compliance delivery.

Finding VI.B.7.a: FHEO needs to continue and expand its on-site monitoring process. It should monitor more specific BOP and APP goals as recommended above, and it should use its on-site monitoring process as a way of ensuring that performance standards are met and field staff are performing adequately.

Finding VI.B.7.b: An on-site monitoring process should have as its primary goal the assurance of prompt, effective enforcement and compliance outcomes. Benchmarks for performance should be set and monitored. Offices that do not meet these benchmarks should receive

direct technical assistance and sanctions, if necessary, to improve performance.

Recommendation VI.B.7.a: FHEO should continue its on-site monitoring process and ensure that it includes adequate benchmarks, actual observation and review of performance, and outcome-based reviews so that the process improves its enforcement and compliance operations consistent with the other recommendations of this report.

Finding VI.B.8.a: FHEO lacks sufficient performance-based criteria for its employees to ensure that they perform at appropriate levels.

Recommendation VI.B.8.a: FHEO should implement performance-based elements for staff engaged in enforcement and compliance functions.

Finding VI.B.8.b: HUD lacks legal information resources that are critical to its enforcement and compliance work in enforcing Section 504 and the FHA.

Recommendation VI.B.8.b: At a minimum, HUD should provide access to comprehensive fair housing legal information that is searchable by name of case, issue, or keyword. The information that should be made available includes information on FHA and housing-related Section 504 state and federal judicial decisions, determinations that there is or is not reasonable cause to believe that a violation of the FHA has occurred, determinations by HUD that there is compliance or noncompliance with Section 504, conciliation agreements, VCAs, settlements in FHA cases, and legal and interpretive opinions issued by the Office of General Counsel on significant issues relating to the FHA and Section 504. This information should be made available to HUD staff and to the public, and it should be made available in accessible and alternative formats.

- Recommendation VI.B.8.c: HUD should immediately provide access for FHEO and counsel staff to the searchable, ADA-compliant fair housing and civil rights case database available online through the National Fair Housing Advocate.
- Finding VI.C.1.a: HUD's staffing of FHA and Section 504 enforcement activities has decreased significantly over the past 11 years.
- Finding VI.C.1.b: During the past four years, the Office of Fair Housing and Equal Opportunity has not been given adequate staffing resources to perform its enforcement work.
- Finding VI.C.1.c: As staffing increases to appropriate levels, additional supervisors will be necessary to oversee day-to-day activities effectively.
- Recommendation VI.C.1.a: At a minimum, FHEO should be provided with enough skilled nontemporary staff FTEs to ensure that each investigator carries no more than 15 FHA cases or the equivalent at any time. Additional staffing should be provided to ensure that enforcement activities under Section 504 are conducted at a meaningful level in each HUB.
- Recommendation VI.C.1.b: At a minimum, FHEO should be provided with enough supervisory staff to permit a ratio of one supervisor to every seven or eight investigators. An analysis similar to the PriceWaterhouse study of staffing needs for compliance activities should be conducted, and staff should be increased accordingly.
- Finding VI.C.1.d: For at least the past four years, the Office of Fair Housing and Equal Opportunity has not been provided with enough resources to perform a reasonable amount of compliance activity.
- Finding VI.C.1.e: HUD's doubling of enforcement activities took valuable staff and resources away from compliance activities.

- Finding VI.C.1.f: Compliance activities suffer when staff are reassigned to perform other demand-driven activities.
- Finding VI.C.1.g: FHEO's compliance review process has not been the subject of a significant external review in the same way that PriceWaterhouse reviewed the FHA process.
- Recommendation VI.C.1.c: FHEO should be provided with adequate staff, in addition to enforcement staff, to ensure that compliance activities are ongoing, consistent, and completed in a timely manner. Organizational structures should ensure that staff are allocated in a way that permits compliance staff to be protected from such demands to ensure that compliance work is an ongoing and consistent process.
- Recommendation VI.C.1.d: FHEO's compliance review process should be reviewed and analyzed by an external entity, such as PricewaterhouseCoopers, and its operations revised for greater efficiency and effectiveness.
- Finding VI.C.1.h: There is inadequate information from which to determine whether staff attorneys have been provided in adequate numbers to support FHA and Section 504 activities.
- Recommendation VI.C.1.e: HUD's Office of General Counsel should evaluate its staffing of the fair housing and civil rights enforcement functions to ensure that there are adequate numbers of staff attorneys to support those functions. No case should be delayed and no rights should be jeopardized because of lack of available legal resources.
- Recommendation VI.C.1.f: HUD should consider whether its civil rights attorneys should report to the Assistant Secretary for Fair Housing and Equal Opportunity, after implementing a more effective legal guidance delivery system.
- Finding VI.C.2.a: The absence of fair housing deliverables and outcomes, the lack of a carefully constructed case-tracking system for cases funded through

FHIP, and the absence of institutional knowledge about the best or most effective of the programs funded through FHIP are significant shortcomings in an important program.

Recommendation VI.C.2.a: FHIP should move expeditiously to develop a comprehensive, organized system to identify outcomes, information, and materials developed as a result of the program and to make them available to the public and especially to organizations and individuals that deal with fair housing issues.

Recommendation VI.C.2.b: FHIP should develop a case-tracking system for use by FHIP recipients, with read-only access by FHIP monitors, to collect reportable data to assist in quantifying the activities of recipients funded by FHIP. Such a data system should have the capability of being used by FHIP recipients to track, monitor, and report on their own activities.

Recommendation VI.C.2.c: The changes proposed to FHIP in this report should include input from current and potential FHIP recipients and other interested stakeholders to ensure that the program changes result in a more efficient and effective use of federal dollars.

Finding VI.C.2.b: FHIP serves an important function in supporting fair housing rights. As currently constituted, however, the program has operated ineffectively and inefficiently.

Finding VI.C.2.c: FHIP does not provide adequate systematic support for an ongoing fair housing presence nationally.

Recommendation VI.C.2.d: FHIP's private enforcement initiative should be reconstituted to provide funding to full-service private fair housing groups based on a formula grant approach. The funding should be tied to eligibility criteria based on the current statute; it should be based on population



in the service area served by a group; and it should be tied to increased training and technical assistance and performance monitoring.

Recommendation VI.C.2.e: FHIP should develop a formula-based funding structure that enables new organizations to become qualified to participate in the private enforcement initiative as full-service organizations, as FHAP funds new participants in its capacity-building program.

Recommendation VI.C.2.f: FHIP's education and outreach and national initiatives should continue to be funded competitively, with improvements as recommended by the HUD Inspector General.

Finding VI.C.2.d: FHAP has not developed the significant operational problems that have been found in FHIP.

Finding VI.C.2.e: FHAP could be improved by more aggressive monitoring of case processing, by improved training and technical assistance, and by taking effective action to correct situations where substantial equivalency standards are not met.

Recommendation VI.C.2.g: FHEO should be provided with adequate resources to develop a more effective training, technical assistance, and monitoring program to improve the performance of FHAP agencies, including the establishment of a risk-based monitoring process.

Finding VI.C.2.f: FHEO provides funding to FHAP agencies for special enforcement initiatives but lacks a system for collecting data about the nature of these initiatives or their outcomes. The standards for receipt of this special funding are not onerous.

Recommendation VI.C.2.h: FHEO should develop a process for collecting and making available the outcomes of its special enforcement initiatives program for FHAP agencies.

- Recommendation VI.C.2.i: FHEO should review and strengthen the criteria for receipt by FHAP agencies of special enforcement initiatives funding and should collect and disseminate to the public information about their outcomes.
- Finding VI.C.3: FHEO receives inadequate contract and printing funding to allow it to perform its statutorily required duties.
- Recommendation VI.C.3: FHEO's contract budget should be increased immediately, to at least double FHEO's expenditure in 1994, to \$5.2 million. Future funding levels should be maintained at similar or higher levels to provide needed reliability in planning. FHEO should be given staff support to assist in the prompt allocation and obligation of these funds. FHEO's printing budget should be similarly increased.
- Finding VI.C.4: FHEO travel funding has remained static over the past seven years, resulting in an overall loss of funds in real dollars.
- Recommendation VI.C.4: HUD should provide adequate travel funding, based on realistic budget projections from field and Headquarters staff, to permit on-site investigations and compliance reviews, attendance by staff at investigation- and compliance-related activities, and attendance by staff at training events and at public events that will enhance FHEO's education and outreach activities.
- Finding VI.D.1.a: FHEO has generated guidance and interpretations about the application of civil rights laws, but it is not currently using a mechanism to make this guidance available to the public.
- Recommendation VI.D.1.a: FHEO should develop and implement a more comprehensive system to make its interpretations of civil rights laws generally available. HUD should provide adequate staffing and funding to support this effort.

- Finding VI.D.1.b: FHEO's enforcement handbook provides important procedural and substantive guidance. It is a useful first step in setting standards for proper performance of fair housing enforcement activities.
- Recommendation VI.D.1.b: FHEO's enforcement handbook should be completed and updated, considered to be binding guidance for FHEO and FHAPs alike, and available publicly.
- Finding VI.D.2: FHEO lacks a unified, systematic mechanism for providing substantive and technical training to its enforcement and compliance staff, other than annual FHAP/FHIP conferences that are attended by only a few FHEO staff.
- Recommendation VI.D.2: HUD should fund, and FHEO should establish, a civil rights training academy that will provide basic and advanced skills, substantive skills, and technical training as described in this report for its own staff and for legal counsel.
- Finding VI.D.3.a: HUD's current Housing Discrimination Study testing the incidence of discrimination in housing does not study the incidence of discrimination against people with disabilities.
- Recommendation VI.D.3.a: HUD should conduct a single national study to identify the incidence and dimensions of discrimination against people with disabilities, similar to its current Housing Discrimination Study.
- Finding VI.D.3.b: HUD has not conducted any national study of the ways in which discrimination against people with disabilities manifests itself, nor any study of discrimination against people with disabilities in HUD-funded properties.
- Recommendation VI.D.3.b: HUD should initiate a national study of the ways in which discrimination against people with disabilities manifests itself and a

national study of discrimination against people with disabilities in HUD-funded properties.

Finding VI.D.4: HUD would benefit by increasing the visibility and activities of an Office of Disability Policy.

Recommendation VI.D.4: An Office of Disability Policy should be funded and staffed appropriately to permit increased input on disability-related activities, including enforcement and compliance, at the highest decision-making level within HUD.

Finding VI.D.5: There continues to be a need to educate the public about the nature and extent of housing discrimination against people with disabilities.

Recommendation VI.D.5: HUD, together with community stakeholders, should consider conducting town meetings in several locations around the country to better inform the public, people with disabilities, housing providers, and HUD about disability-based housing discrimination.

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- Chart IV-17 FHAP Age to Conciliation/Settlement: All Cases v. Disability
- Chart IV-18 HUD Age to No Cause: All Cases v. Disability
- Chart IV-19 Age of HUD Cause Findings: All Cases v. Disability
- Chart VI-1 Current FHEO Organizational Chart
- Chart VI-2 FHEO Staffing Levels, FY 1989–FY 2000
- Chart VI-3 Staffing of FHEO’s Enforcement Activity, FY 1989–FY 2000
- Chart VI-4 Staffing of FHEO’s Compliance Activities, FY 1989–FY 2000

## APPENDIX III

### List of Acronyms

ADA	Americans with Disabilities Act
ADAPT	Americans Disabled for Attendant Programs Today
ALJ	administrative law judge
APP	Annual Performance Plan
BOP	Business Operating Plan
CCCR	Citizens' Commission for Civil Rights
CDBG	Community Development Block Grant
CFR	Code of Federal Regulations
CPD	Community Planning and Development
DAS	Deputy Assistant Secretary
DOJ	Department of Justice
FHA	Fair Housing Act
FHAA	Fair Housing Amendments Act
FHAP	Fair Housing Assistance Program
FHEO	Fair Housing and Equal Opportunity
FHIP	Fair Housing Initiatives Program
FTE	full-time-equivalent
FY	Fiscal Year
GAO	Government Accounting Office
GPRA	Government Performance and Results Act of 1993
HEW	Health, Education, and Welfare
HHS	Health and Human Services
HOPWA	Housing for People with AIDS
HUB	housing field office
HUD	Housing and Urban Development
IT	information technology



LOF	Letter of Findings
MCATS	Management and Complaint Automated Tracking System
NCD	National Council on Disability
NOFA	Notice of Funding Availability
NYCHA	New York City Housing Authority
OFHEO	Office of Fair Housing and Equal Opportunity
OGC	Office of General Counsel
OIG	Office of Inspector General
PIH	Public and Indian Housing
PVA	Paralyzed Veterans of America
SMART	Safe, Mixed-income, Accessible, Reasonably priced, and Transit-oriented
TAG	technical assistance guidance
TEAPOTS	Title VIII Paperless Office Tracking System
TRACE	Section 504 Complaints Computer Tracking System
TRO	temporary restraining order
USC	United States Code
VCA	Voluntary Compliance Agreement

## APPENDIX IV

### Supplementary Charts and Tables

#### Appendix IV-1

The following chart shows the number of complaints received during the past three fiscal years, compared to the number of claims received and the number of complaints filed by HUD. By comparing “claims received” to “complaints filed,” we derive a figure that represents the likelihood of a claim maturing into a complaint.

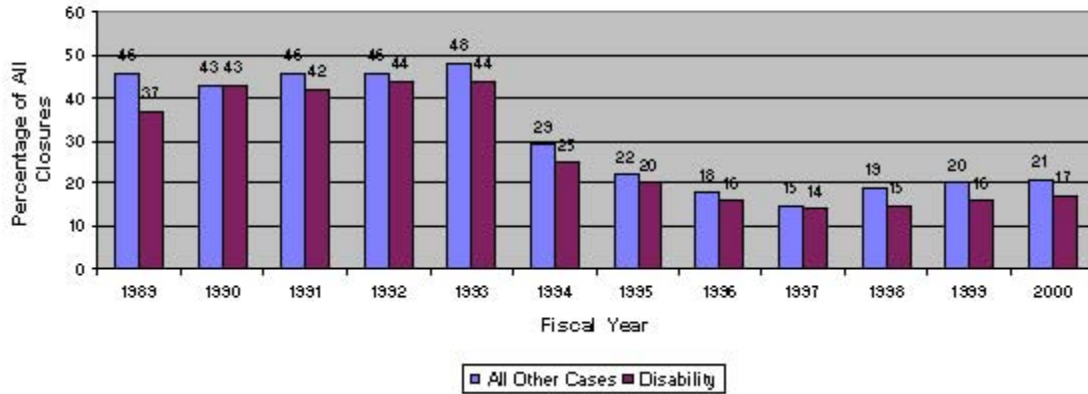
<b>Fiscal Year</b>	<b>Claims Filed</b>	<b>Complaints Filed</b>	<b>Complaints Received</b>	<b>Claims Converted to Complaints</b>	<b>% Claims Converted to Complaints</b>
FY 1998	6,261	1,985	549	1,436	23
FY 1999	6,695	2,213	496	1,717	26
FY 2000	5,924	1,988	274	1,714	29

## Appendix IV-2

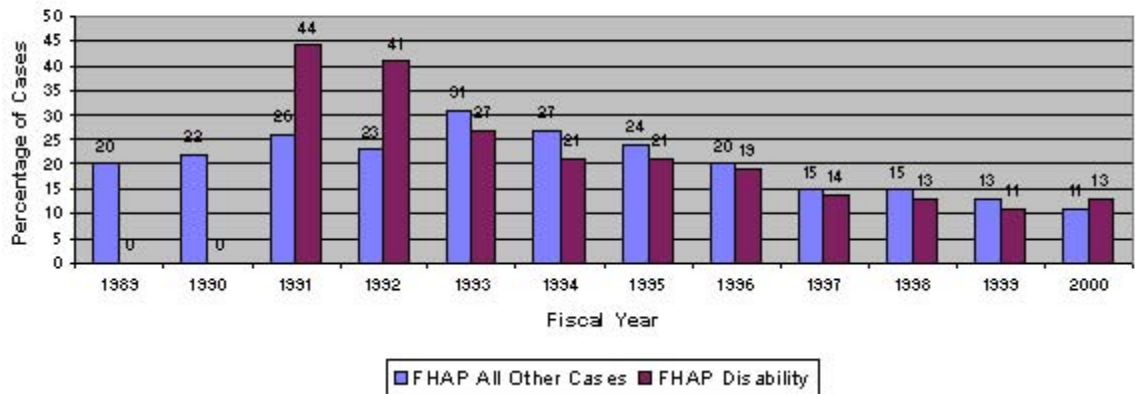
<b>Incidence of Disability, by State (Source: U.S. Census, 1990)</b>				
<b>REGION</b>	<b>FHAPs</b>	<b>% DISABILITY</b>	<b>HUD</b>	<b>% DISABILITY</b>
<b>1 Boston</b>	Connecticut Massachusetts Rhode Island Vermont	8.4 8.9 10.5 8.6	Maine New Hampshire	11.4 8.4
<b>2 New York</b>	New York	10.6	New Jersey	9.0
<b>3 Philadelphia</b>	Maryland Delaware D.C. Pennsylvania Virginia West Virginia	9.7 10.0 12.7 10.3 9.6 14.6		
<b>4 Atlanta</b>	Florida Georgia Kentucky North Carolina South Carolina Tennessee	11.2 11.5 13.3 11.2 12.3 11.7	Alabama Mississippi Puerto Rico	12.7 14.3 N/A
<b>5 Chicago</b>	Indiana Michigan Ohio	9.9 11.1 10.9	Illinois Minnesota Wisconsin	9.3 8.6 8.6
<b>6 Ft. Worth</b>	Louisiana Oklahoma Texas	13.3 12.0 9.9	Arkansas New Mexico	13.4 11.1
<b>7 Kansas City</b>	Iowa Missouri Nebraska	9.0 10.5 8.5	Kansas	8.9
<b>8 Denver</b>	Colorado North Dakota Utah	9.3 7.9 8.5	Montana South Dakota Wyoming	10.8 9.0 8.3
<b>9 San Fran.</b>	Arizona California Hawaii	10.3 10.2 8.9	Nevada	10.3
<b>10 Seattle</b>	Washington	10.4	Alaska Idaho Oregon	7.8 10.0 11.3

## Appendix IV-3

### HUD Administrative Closure as Percentage of all Closures



### FHAP Administrative Closures as Percentage of all Closures



### Appendix IV-4

<b>FY 1998 HUD Cases Exceeding 100-Day Limit (by percentage of open and closed cases)</b>				
<b>HUD Region</b>	<b>Complaints Closed</b>	<b>Closed Cases Over 100 Days and %</b>	<b>Complaints Pending</b>	<b>Pending Complaints Over 100 Days and %</b>
HQ	0	0 0%	9	9 100%
1	78	69 88%	121	93 77%
2	173	141 82%	307	217 71%
3	60	45 75%	84	63 75%
4	105	99 94%	252	164 65%
5	247	211 85%	514	352 68%
6	189	140 74%	208	127 67%
7	223	154 69%	224	91 41%
8	81	76 94%	228	184 81%
9	116	113 97%	424	310 73%
10	135	110 81%	202	155 77%
<b>TOTAL</b>	<b>1,407</b>	<b>1,158 82%</b>	<b>2,573</b>	<b>1,765 69%</b>

This chart demonstrates that at the close of FY 1998, 69 percent of HUD's pending complaints had exceeded the statutory 100-day maximum for investigation and determination of cause. The Denver HUB was the worst performer, with 81 percent of pending complaints considered aged. Kansas City was the best HUB, with 41 percent of cases exceeding the 100-day limit.

<b>FY 1999 HUD Cases Exceeding 100-Day Limit (by percentage of open and closed cases)</b>				
<b>HUD Region</b>	<b>Complaints Closed</b>	<b>Closed Cases Over 100 Days and %</b>	<b>Complaints Pending</b>	<b>Pending Complaints Over 100 Days and %</b>
<b>HQ</b>	3	2 67%	35	34 97%
1	92	86 93%	89	58 65%
2	227	187 82%	293	223 76%
3	71	54 76%	78	58 74%
4	204	139 68%	388	288 74%
5	359	321 89%	539	401 74%
6	185	151 82%	314	243 77%
7	322	216 67%	175	91 52%
8	98	289 91%	233	185 79%
9	118	104 88%	470	434 92%
10	132	126 95%	246	214 87%
<b>TOTAL</b>	<b>1,811</b>	<b>1,475 81%</b>	<b>2,860</b>	<b>2,229 78%</b>

This chart demonstrates that at the close of FY 1998, 78 percent of HUD's pending complaints had exceeded the statutory 100-day maximum for investigation and determination of cause. The San Francisco HUB was the worst performer, with 92 percent of pending complaints considered aged. Kansas City was the best HUB, with 52 percent of cases exceeding the 100-day limit.

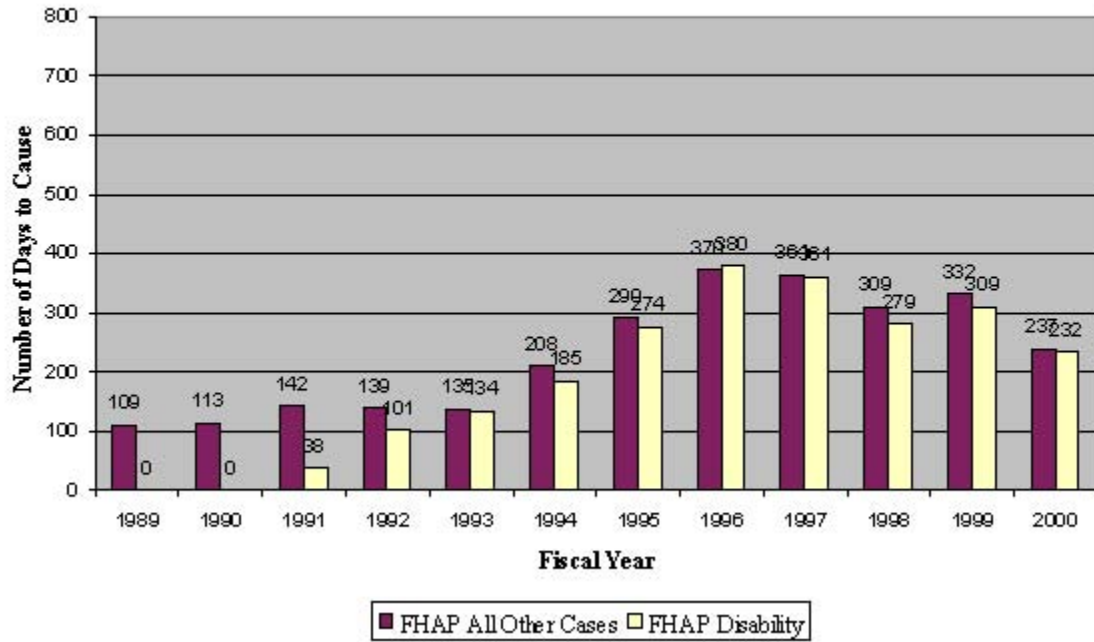
<b>FY 2000 HUD Cases Exceeding 100-Day Limit (by percentage of open and closed cases)</b>				
<b>HUD Region</b>	<b>Complaints Closed</b>	<b>Closed Cases Over 100 Days and %</b>	<b>Complaints Pending</b>	<b>Pending Complaints Over 100 Days and %</b>
<b>HQ</b>	<b>3</b>	<b>0</b>	<b>16</b>	<b>16 100%</b>
<b>1</b>	<b>98</b>	<b>72 73%</b>	<b>71</b>	<b>40 56%</b>
<b>2</b>	<b>235</b>	<b>212 90%</b>	<b>158</b>	<b>128 81%</b>
<b>3</b>	<b>57</b>	<b>53 93%</b>	<b>70</b>	<b>51 73%</b>
<b>4</b>	<b>230</b>	<b>220 96%</b>	<b>584</b>	<b>379 65%</b>
<b>5</b>	<b>388</b>	<b>378 97%</b>	<b>519</b>	<b>368 71%</b>
<b>6</b>	<b>239</b>	<b>226 95%</b>	<b>236</b>	<b>164 69%</b>
<b>7</b>	<b>279</b>	<b>153 55%</b>	<b>170</b>	<b>68 40%</b>
<b>8</b>	<b>163</b>	<b>145 89%</b>	<b>169</b>	<b>142 84%</b>
<b>9</b>	<b>278</b>	<b>286 100%</b>	<b>279</b>	<b>231 83%</b>
<b>10</b>	<b>260</b>	<b>230 88%</b>	<b>285</b>	<b>164 81%</b>
<b>TOTAL</b>	<b>2,230</b>	<b>1,997 90%</b>	<b>2557</b>	<b>1,751 68%</b>

This chart demonstrates that at the close of FY 1998, 68 percent of HUD's pending complaints had exceeded the statutory 100-day maximum for investigation and determination of cause. The Denver HUB was the worst performer, with 84 percent of pending complaints considered aged. Kansas City was the best HUB, with 40 percent of cases exceeding the 100-day limit.



## Appendix IV-5

FHAP Cause: All Other Cases v. Disability



## Appendix IV-6

In addition to monetary relief, HUD also keeps data on the number of cases in which complainants use conciliation to get “housing relief,” typically defined as getting a rental unit or being able to purchase a home as a result of the conciliation. The number of cases in which complainants in the HUD system are getting housing relief has gone down dramatically since FY 1992.

<b>HUD Conciliated Cases with Housing Relief, by Year, by HUB (Case Count)</b>													
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Cumulative Total 1990–2000
Boston	N/A	63	38	46	19	18	11	6	13	19	18	24	275
New York	N/A	36	33	55	69	59	58	37	38	18	25	14	442
Philadelphia	N/A	53	33	33	24	14	7	8	2	2	3	8	187
Atlanta	N/A	46	60	76	30	40	19	11	14	2	40	4	342
Chicago	N/A	104	117	103	62	48	33	15	11	12	9	11	525
Ft. Worth	N/A	38	93	122	149	128	89	94	64	25	20	5	827
Kansas City	N/A	78	67	103	97	70	62	37	21	36	50	26	647
Denver	N/A	28	50	51	40	40	49	7	11	4	3	21	304
San Francisco	N/A	149	52	78	59	39	6	13	11	23	8	42	480
Seattle	N/A	22	53	44	37	39	25	9	7	6	1	2	245
National Total	N/A	617	596	711	586	495	359	237	192	147	177	157	4,274

## APPENDIX V

### Technical Guidance Materials

The following list of guidance memoranda was developed from HUD's submission to NCD. Because there are gaps in the numbered TAGs, the list is not complete.

Letter from John M. Harmon, Department of Justice, to F. Peter Libassi, Department of Health, Education, and Welfare, re: Definition of Federal Financial Assistance (9/23/77).

Memorandum from Ruth Prokop, General Counsel, HUD, to Bryant L. Young, Special Assistant to the Secretary of HUD, re: Department of Justice Opinion on the Applicability of Section 504 to Federal Insurance or Guarantee Programs (12/21/77).

Memorandum from Chester McGuire, Assistant Secretary, FHEO, et al., to All Regional Administrators, re: Complaints Under Section 504 of the Rehabilitation Act (5/12/78).

Memorandum from Robert Kenison, Urban Development Division, HUD, to Lawrence Simons, Assistant Secretary for Housing, re: Request for Opinion on 1978 Rehabilitation Act Amendments: Insurance and Guarantee Programs (3/13/80).

Memorandum from Philip Abrams, Office of the Assistant Secretary for Housing, to Dr. June Koch, Deputy Under Secretary for Intergovernmental Relations, re: Proposed Handicapped Program Responsibilities (7/7/81).

Memorandum from Robert Kenison, Office of Assisted Housing, to All Regional Counsel, re: Section 504 of the Rehabilitation Act of 1973, As Amended, Notice to Recipients of HUD Financial Assistance (7/10/81).

Memorandum from Philip Winn, Assistant Secretary for Housing, to Secretary Pierce, re: Transfer of Function—Housing, Office of Independent Living for the Disabled (7/14/81).

Handicapped: Notice to all Recipients of Federal Financial Assistance from HUD Regarding Compliance with Section 504..., 46 *Fed. Reg.* 37088 (7-17-81).

Memorandum from Antonio Monroig, Assistant Secretary for FHEO, to All FHEO Staff, re: Laws Affecting Disabled Persons (10/16/81).

Memorandum from Antonio Monroig, Assistant Secretary for FHEO, to All FHEO Staff, re: Processing Employment Discrimination Complaints Under Section 504 (10/29/81).

Memorandum from Antonio Monroig, Assistant Secretary for FHEO, to All Regional Administrators, re: Processing Employment Discrimination Complaints Under Section of the Rehabilitation Act of 1973 [*Scanlon v. Atascadero State Hospital*] (4/13/83).

Memorandum from Antonio Monroig, Assistant Secretary for FHEO, to All Regional Directors, re: Section 504 Compliance (6/20/83).

Memorandum from Laurence Pearl, Director, Office of Program Compliance, to William E. Wynn, Deputy Assistant Secretary for Enforcement and Compliance, re: Section 504 in FHEO – Past, Present and Future (7/22/83).

Abstract of Secretarial Correspondence from Antonio Monroig to the Secretary, re: Action—Implementation of Secretarial Decision to Place All Section 504 Responsibilities in Office of FHEO (8/19/83).

Abstract of Secretarial Correspondence from Judith L. Tardy, Assistant Secretary for Administration, to the Secretary, re: Action—Proposed Transfer of Section 504 Function (8/30/83).

Memorandum from Laurence D. Pearl, HUD Program Compliance, to Lloyd Miller, Office of Regional Fair Housing, re: Technical Assistance on Section 504 (2/6/84).

Memorandum from Antonio Monroig, Assistant Secretary for FHEO, and Judith Tardy, Assistant Secretary for Administration, to Principal Staff, re: Barrier Free/Accessible Meetings (3/23/84).

Memorandum from Laurence D. Pearl, HUD Program Compliance, to Roosevelt Jones, Director, Office of Procurement and Contracts, re: Policy Recommendation to Assure Accessibility to Disabled Persons by Contractors (5/30/84).

Memorandum from Antonio Monroig, Assistant Secretary for FHEO, to All Regional Administrators, re: Processing Employment Discrimination Complaints Under Section 504 [*Consolidated Rail v. Darrone*] (6/5/84).

Memorandum from Antonio Monroig, Assistant Secretary for FHEO, to All Regional Administrators, re: Designation of Section 504 Coordinators (8/9/84).

Memorandum from Warren Lindquist, Assistant Secretary for PIH, to Duncan L. Howard, Regional Administrator, Region IX, re: Payment of Fee for Interpreter for Public Housing Tenant (5/17/85).

Notice: PIH 85-14, re: Application of the Uniform Federal Accessibility Standards (10/21/85).

FHEO, Section 504 Accomplishments and Activities, FY 1984 and 1985.

TAG 86-2: New Jersey 2-30 Public Housing Complex, New Townhouses for Families (2/14/86).

TAG 86-6: Complaints Filed Under Section 504 Involving AIDS (6/12/86).

TAG 86-9: 504 Coverage of AIDS and Section 202 program eligibility (undated).

TAG 86-10: Eligibility Criteria in Section 8 and Public Housing Projects for Elderly and Handicapped Persons (10/30/86).

TAG 86-11: Admission of Children to Section 202 Projects for Elderly and Disabled Persons (1/16/87).

TAG 86-12: Section 504 Nondiscrimination Protection of Employees with Substance Abuse Problems in Programs Receiving Federal Financial Assistance (undated).

TAG 86-13: State Laws Which Parallel the Rehabilitation Act and the Architectural Barriers Act (12/31/86).

TAG 87-1: UFAS applicability to Housing Authorities through Comprehensive Improvements Assistance funds (2/4/87).

Letter from William Bradford Reynolds, Assistant A.G., Civil Rights Division, Department of Justice, to Stewart Sloame, Deputy General Counsel, HUD (2/5/87).

Memorandum from Bob Ardinger, to Peter Kaplan, re: UFAS as the Standard for Determining Compliance With Section 504 (2/20/87).

Memorandum from Peter Kaplan, Director, Office of Program Compliance, to Charles Farbstein, Assistant General Counsel, HUD, re: Section 504 Authority (2/24/87).

TAG 87-2: Coverage of the Architectural Barriers Act and the Application of UFAS to HUD Programs (undated).

Memorandum from Judith Brachman, Assistant Secretary, FHEO, to All Regional Directors, re: Section 504 of the Rehabilitation Act (undated).

Memorandum from Judith Brachman, Assistant Secretary, FHEO, to All Regional Directors, re: HUD's Authority and Responsibility to Enforce Section 504 (1987).

Memorandum from Alan Greenwald, Deputy Under Secretary for Intergovernmental Relations, to J. Michael Dorsey, General Counsel, HUD, re: Section 504 Analysis and Comment (5/22/87).

TAG 87-4: Guidelines Concerning the Process of Ensuring Compliance with Section 504 (6/19/87).

Memorandum from Charles Farbstein, Assistant General Counsel, HUD, to Peter Kaplan, Director, HUD Program Compliance, re: TGM 87-4 (6/19/87).

TAG 87-5: Pets as Auxiliary Aids under 504 (7/10/87).

TAG 87-7: Coverage of Temporary Impairments as "Handicaps" (4/28/87).

TAG 87-8: Interpreting Services for HQ Staff when on travel (4/20/87).

TAG 87-9: Rehabilitation Act Amendments changes (5/1/87).

Memorandum from William Bradford Reynolds, Assistant A.G., Department of Justice, to Heads of Selected Executive Agencies, re: Technical Assistance Guide, Section 504 Transition Plan and Self-Evaluation Information (5/21/87).

TAG 87-10: Responsibilities of Regional Section 504 Coordinators (6/29/87).

Memorandum from Judith Brachman, Assistant Secretary, FHEO, to All Regional Administrators, re: Processing Complaints of Discrimination Under Section 504 (7/8/87).

Notice PIH 87-17, re: Application of UFAS Adopted by Final Rule, Part 40 (7/17/87).

TAG 87-11: Section 504 Complaints filed by the National Association of the Deaf (9/11/87).

TAG 88-1: Section 504 Complaints Computer Tracking System (TRACE) (10/16/87).

TAG 88-2: Section 504 Coordinators List and Training Plan (11/18/87).

Memorandum from Judith Brachman, Assistant Secretary, FHEO, to Joseph Monticciolo, Regional Administrator, re: Request of Region II for Clarification of HUD Admissions Policy Under Sections 202 and 504 (11/23/87).

TAG 88-3: Appropriate Remedies Under Section 504, Title VI, and Section 109 (12/4/87)  
(Letter from William Bradford Reynolds, Assistant A.G., Department of Justice, to Peter Kaplan, Director of Compliance, FHEO, re: Individual Remedies (7/24/87, attached).

TAG 88-5: Clarification of HUD Admissions Policy Under Section 202 (12/31/87).

Memorandum from Judith Brachman, Assistant Secretary, FHEO, to All Regional Administrators, re: Section 504 Federally Conducted Self-Evaluation Process (3/21/88).

TAG 88-7: Architectural Barriers Act Compliance Procedures (5/20/88).

Memorandum from Thomas Demery, Assistant Secretary for Housing, to All Regional Directors of Housing, re: Implementation of Section 504 (7/20/88).

Memorandum from Peter Kaplan, Director, Office of Compliance, to William Anderson, Director, Office of Management and Field Coordination, re: Capturing Hours Dedicated to Section 504 Coordinator Activities (5/31/88).

TAG 88-9: Executive Summary of the 504 Regulations (8/19/88).

Memorandum from Peter Kaplan, Director, Office of Program Compliance, to All FHEO Regional Directors, re: Section 504 Management and Complaint Automated Tracking System (MCATS) (8/24/88).

Memorandum from Douglas Kmiec, Acting Assistant Attorney General, Department of Justice, to Arthur Culvahouse, Jr., Counsel to the President, re: Application of Section 504 to HIV Infected Individuals (9/27/88).

Notice PIH 88-34 Re: Public Housing Development—Accessibility Requirements (10/11/88).

TAG 88-10: Processing of Complaints Under the Section 504 Regulation (11/7/88).

TAG 89-1: Confidentiality in the Conduct of 504 Investigations (11/8/88).



Letter from William Bradford Reynolds, Assistant A.G., Department of Justice, to J. Michael Dorsey, General Counsel, HUD, re: Section 504 Investigation, *Nance v. Kier Management Corporation* (11/18/88).

TAG 89-2: *School Bd. of Nassau Co. v. Arline* and 504 (12/28/88).

Memorandum from Judith Brachman, Assistant Secretary, FHEO, to Principal Staff, re: Section 504 Town Meetings (1/10/89).

Notice PIH 89-4 re: Implementation of 24 CFR Part 8 (1/13/89).

TAG 89-3: Filing and Processing Dates for Section 504 (2/6/89).

TAG 89-5: Section 504 Complaint Procedures.

TAG 89-6: Waiver of Time Frame for Filing Section 504 Complaints (4/17/89).

TAG 89-7: Section 504 Management and Complaint Automated Tracking System MCATS (5/19/89).

TAG 89-9: Cover Letters for Notifying Award Officials of Section 504 Complaints (8/31/89).

Memorandum from James Schoenberg, General Deputy Assistant Secretary for Housing, to All Regional Administrators, re: Accessibility Requirements for Section 202 Projects (7/3/89).

TAG 89-13: The Architectural and Transportation Barriers Compliance Board (ATBCB) Questionnaire (9/12/89).

Notice PIH 90-48: The Impact of Section 504 Regulation 24 CFR 8.23, "Other Alterations" (9/27/90).

TAG 91-1: TDDs and Equally Effective Communication Alternatives (1/17/91).

TAG 91-3: Multiple Chemical Sensitivity Disorder (6/6/91).

TAG 91-5: Use of a Telecommunications Device for the Deaf (8/15/91).

TAG 91-8: Section 504 Complaint Case Models (10/10/91).

Memorandum of Understanding Between HUD and Farmers Home Administration of USDA (11/7/91).

Notice PIH 92-11: re: Section 504 Compliance in the Comprehensive Grant Program (4/3/92).

Notice PIH 92-65: re: Guidance for All Non-Comprehensive Grant Program Agencies to Comply with Section 504 Requirements (12/14/92).

Notice PIH 93-18: re: The Impact of Section 504 Regulation 24 CFR 8.23(b) (4/27/93).

## **APPENDIX VI**

### **Mission of the National Council on Disability**

#### Overview and Purpose

The National Council on Disability (NCD) is an independent Federal agency with fifteen members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or significance of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

#### Specific Duties

The current statutory mandate of NCD includes the following:

- Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act; as well as all statutes and regulations pertaining to federal programs that assist such individuals with disabilities, in order to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities.
- Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities at the federal, state, and local levels and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that act as disincentives for individuals to seek and retain employment.
- Making recommendations to the President, Congress, the Secretary of Education, the director of the National Institute on Disability and Rehabilitation Research, and

other officials of federal agencies about ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.

- Providing Congress, on a continuing basis, with advice, recommendations, legislative proposals, and any additional information that NCD or Congress deems appropriate.
- Gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- Advising the President, Congress, the commissioner of the Rehabilitation Services Administration, the Assistant Secretary for Special Education and Rehabilitative Services within the Department of Education, and the director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended.
- Providing advice to the commissioner of the Rehabilitation Services Administration with respect to the policies and conduct of the administration.
- Making recommendations to the director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration, and the collection, dissemination, and implementation of research findings affecting persons with disabilities.
- Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of this council for legislative and administrative changes to ensure that such recommendations are consistent with NCD's purpose of promoting the full integration, independence, and productivity of individuals with disabilities.
- Preparing and submitting to the president and Congress an annual report titled *National Disability Policy: A Progress Report*.

## International

In 1995, NCD was designated by the Department of State to be the U.S. government's official contact point for disability issues. Specifically, NCD interacts with the special rapporteur of the United Nations Commission for Social Development on disability matters.

## Consumers Served and Current Activities

Although many government agencies deal with issues and programs affecting people with disabilities, NCD is the only Federal agency charged with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, veteran status, or other individual circumstance. NCD recognizes its unique opportunity to facilitate independent living, community integration, and employment opportunities for people with disabilities by ensuring an informed and coordinated approach to addressing the concerns of people with disabilities and eliminating barriers to their active participation in community and family life.

NCD plays a major role in developing disability policy in America. In fact, NCD originally proposed what eventually became the Americans with Disabilities Act (ADA). NCD's present list of key issues includes improving personal assistance services, promoting health care reform, including students with disabilities in high-quality programs in typical neighborhood schools, promoting equal employment and community housing opportunities, monitoring the implementation of the ADA, improving assistive technology, and ensuring that those persons with disabilities who are members of diverse cultures fully participate in society.

## Statutory History

NCD was initially established in 1978 as an advisory board within the Department of Education (P.L. 95-602). The Rehabilitation Act Amendments of 1984 (P.L. 98-221) transformed NCD into an independent agency.