



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

FHEO Faces Challenges in Completing Investigations Within 100 Days

Audit Report Number: 2024-BO-0005

September 24, 2024

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

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

Subject: FHEO Faces Challenges in Completing Investigations Within 100 Days

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our audit of challenges that HUD's Office of Fair Housing and Equal Opportunity (FHEO) faces in completing investigations within 100 days.

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

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

If you have any questions or comments about this report, please do not hesitate to call Ronald J. Lloyd, Audit Director, at (617) 994-8345.

Highlights

FHEO Faces Challenges in Completing Investigations Within 100 Days | 2024-BO-0005

What We Audited and Why

We audited the U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity's (FHEO) challenges in completing housing discrimination investigations within 100 days. We initiated the audit due to the number of investigations reported in FHEO's annual reports to Congress that exceeded 100 days. Our objective was to survey and assess the challenges FHEO faces in completing investigations within 100 days for Title VIII complaints in accordance with the Fair Housing Act.

What We Found

Based on our survey, FHEO faces several challenges in completing investigations within 100 days for Title VIII complaints, including (1) limited staffing and training, (2) staff workload, (3) complexity of the case work, (4) uncooperative or unresponsive parties, and (5) inconsistent review processes with the Office of General Counsel (OGC). Aware of these challenges, FHEO took steps to address its limited staffing and increase the availability of training. However, FHEO does not have control over the complexity of the cases it receives and whether the parties to each case are cooperative or responsive. Because of these challenges, 81 percent (122 of 150) of the respondents to our survey stated that completing investigations within 100 days was not attainable. Due to these challenges, FHEO did not complete 70.2 percent of its investigations within 100 days from 2020 to 2022. Despite being unable to control all the factors that lead to a timely investigation, FHEO has opportunities to review its investigative processes across regions to make processes more efficient and increase the number of timely outcomes.

What We Recommend

We recommend that HUD's Deputy Assistant Secretary for Fair Housing and Equal Opportunity (1) update protocols to promote consistent expectations for timely supervisory, legal, and headquarters reviews of complex cases; (2) review and update the memorandums of understanding with OGC for each region to identify and remove inefficiencies that can lead to longer FHEO investigation times and OGC review times and identify best practices that can be implemented across all regions; and (3) review and update investigative processes followed by each regional office to identify best practices that can be implemented across all regions and identify and remove inefficiencies that can lead to longer investigation times.

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Background and Objective

The Fair Housing Act, as amended, prohibits discrimination on the basis of race, color, religion, national origin, sex, disability, and familial status.¹ The Act applies to certain issues, including harassment and discrimination in the sale, rental, advertising, or financing of housing; the provision of brokerage services; and other activities related to residential real estate transactions. With some exceptions, the Act covers all “dwellings,” which are defined generally as buildings designed to be used in whole or part for a residence, as well as vacant land offered for sale and lease for constructing or locating a building.

HUD’s Office of Fair Housing and Equal Opportunity (FHEO) enforces the Act, which aids its mission to eliminate housing discrimination, promote economic opportunity, and achieve diverse, inclusive communities by leading the Nation in the enforcement, administration, development, and public understanding of Federal fair housing policies and laws. FHEO’s enforcement efforts include partnering with State and local agencies through the Fair Housing Assistance Program (FHAP) to investigate housing discrimination complaints from the public.

To start the investigative process, a complainant files an inquiry, which contains information regarding an alleged discriminatory housing practice. The inquiries must have four elements of jurisdiction, including (1) standing, (2) timeliness, (3) respondent jurisdiction, and (4) subject-matter jurisdiction, to be converted as filed complaints and proceed to the investigation stage of processing.² The Act requires that FHEO complete investigations within 100 days of when a received inquiry is converted to a filed complaint, unless it is impracticable to do so. FHEO will notify the complainant of any reason for delays if it is unable to complete the investigation within the 100-day period. FHEO classifies an investigation that surpasses the 100-day period as a “newly aged complaint” and must issue an annual report to Congress that includes the number of complaints fitting this category. As of September 2022, FHEO reported 1,441 newly aged complaints. Below is a table of FHEO aged complaints, total FHEO filed complaints, and the percentage of filed aged complaints during the last 3 years.

Report period	FHEO newly aged complaints	Total FHEO filed complaints	Percentage of filed complaints that were aged
2022	1,441	1,912	75%
2021	1,361	2,074	66%
2020	1,188	1,696	70%

Our audit objective was to survey and assess the challenges FHEO faces in completing investigations within 100 days for Title VIII complaints in accordance with the Fair Housing Act.

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

² The Fair Housing Act defines standing as referring to a complainant who claims to have been injured or is about to be injured by a discriminatory housing practice. To be timely, the complainant must file a complaint within 1 year of the date of the most recent occurrence of the alleged discriminatory housing practice. For respondent jurisdiction, the Act exempts some transactions from coverage, such as certain religious organizations and housing for older persons.

Results of Audit

FHEO Faces Challenges in Completing Investigations Within 100 Days

Based on our survey, FHEO faces several challenges in completing investigations within 100 days, including (1) limited staffing and training, (2) staff workload, (3) complexity of the case work, (4) uncooperative or unresponsive parties, and (5) inconsistent review processes with the Office of General Counsel (OGC). Aware of these challenges, FHEO took steps to address staffing and training issues. However, FHEO does not have control over the complexity of the cases it receives and whether the parties to each case are cooperative or responsive. Because of these challenges, 81 percent (122 of 150) of FHEO's equal opportunity specialist (EOS) investigators and EOS supervisors responding to our survey stated that completing investigations within 100 days was not attainable. Despite being unable to control all the factors that lead to a timely investigation, FHEO has opportunities to review its investigative processes across its operational regions to make processes more efficient, thereby more quickly addressing allegations of discrimination and bringing closure to injured parties.

Limited Staffing and Training Impact FHEO's Ability To Complete Investigations Within 100 Days

Of the EOS investigators, EOS supervisors, and OGC staff members surveyed, 83 percent (160 of 193) reported being understaffed or that staff had limited or no experience with investigations and the training was insufficient to cover the various case types investigated. Based on HUD attrition data from 2018 to 2022, 189 EOS employees retired or left the agency for other reasons, resulting in a material loss of experienced staff. Recognizing the need for additional staffing, HUD hired 230 new EOS employees from fiscal years 2020 to 2022, representing 56 percent of FHEO's total EOS staff as of December 27, 2023. Despite the increase in staffing, HUD stated that it needs an additional 88 EOS staff members to meet its desired staffing level.

FHEO created the Professional Development Institute to build core competencies of new EOS investigators and serve as a refresher for seasoned staff. The institute's objective is to align with the National Fair Housing Training Academy curriculum and promote consistent investigations within FHEO. However, 28 percent (54 of 193) of EOS investigators, EOS supervisors, and OGC staff members surveyed stated they needed more training. For example, an EOS supervisor stated that the institute's training does not provide practical instruction on the mechanics of how to conduct investigations, lead conciliatory discussions, or perform other case-related duties. Also, a respondent from OGC noted that investigators often conduct multiple interviews because they are not properly trained on how to ask followup questions during initial interviews.

In August 2022, HUD assessed the skills of its EOS staff and identified opportunities to begin succession planning based on leadership pipeline and attrition predictions. In December 2023, HUD executed a 12-week learning plan for new investigators and employees new to enforcement work. According to HUD, the program consists of blended learning opportunities, case studies, and legal and regulatory discussions. The new investigator learning path is designed to standardize learning across the country and provide a strong foundation.

Increased Workload Inhibits Timely Investigations

When surveyed, 52 percent (101 of 193) of EOS investigators, EOS supervisors, and OGC staff members identified high workload as a challenge and stated that it prevents them from completing investigations within 100 days. Of the EOS supervisors, 60 percent stated that investigators should manage 6 to 10 cases at a time. However, 54 percent of EOS investigators surveyed stated that they are assigned more than that—one investigator reported managing as many as 30 cases at once.

FHEO headquarters staff stated that determining a reasonable workload for its staff is difficult due to several factors:

- **Availability.** Some enforcement staff members can devote all their time to investigations, while others might spend a portion of their time on other activities, such as grant management, responding to Freedom of Information Act requests, training, intake assistance, and front-end compliance reviews. The distribution of workload depends on the structure of HUD's regional offices and their portfolios of work.
- **Experience.** GS-level and experience of the staff varies. Newer staff members may not have been able to handle multiple types of cases leaving the more complex cases for seasoned staff.
- **Complexity.** Cases can range from an individually-filed complaint with a small documentary record and one or two witnesses to a systemic case involving dozens of respondent entities, witnesses, and complainants and extensive documentary records, advanced data analysis, and coordination with partner agencies.
- **Case resolution.** Some cases are resolved early through settlement or a withdrawn complaint. Other cases can take years of investigation and settlement efforts, reconsideration, and continued litigation.

FHEO attempts to address caseload issues when they arise. FHEO stated that regional directors have the authority to move case assignments to other staff resources from other areas, such as assigning intakes to all staff for a period to address an intake backlog or assigning enforcement investigations to compliance staff to address an investigative backlog. FHEO also stated that regional directors sometimes ask for support from other regions by transferring cases to a different region for investigation or requesting headquarters support on complex cases, such as the Office of Systemic Investigations or the Compliance and Disability Rights Division.

Complex Cases Are Challenging To Complete in 100 Days

According to HUD Handbook 8024.01, REV-2, chapter 8, some types of cases that arise under the Fair Housing Act involve unique, legal, and evidentiary issues. These special case types are (1) harassment, (2) retaliation, (3) mortgage lending discrimination, (4) disability discrimination, and (5) zoning and other land use. When surveyed, 63 of 193 EOS investigators, EOS supervisors, and OGC staff members reported complex cases such as these present challenges to completing their investigations within 100 days. From fiscal years 2018 through 2022, HUD reported to Congress that FHAP agencies and HUD received 43,146 alleged discrimination complaints, of which 23,944 (55 percent) related to disability discrimination.

According to FHEO, complex cases take longer to investigate because they can have significantly larger and more complex factual records that take more time to collect, review, and analyze. Also, some cases

require specialized data analyses requiring technical experts in fields such as economics, statistics, and mapping. FHEO must either procure these skillsets through a contract or source them within FHEO. Other cases may take longer due to the complexities of scheduling among multiple parties. HUD stated that identifying complex cases versus noncomplex cases depended on certain factors and is determined on a case-by-case basis, including:

- the authority or authorities at issue, such as the Fair Housing Act, the Americans With Disabilities Act, or the Age Discrimination Act;
- the number of respondents and complainants involved and the organizational complexity of the relevant entities (an individual compared to a large bank, city, or county);
- whether other agencies are implicated, such as in cases with properties that receive U.S. Department of Agriculture funding or investigations related to ongoing matters involving the U.S. Department of Justice;
- the existence and number of injured or potentially injured parties who have not filed complaints and the relative ease of identifying these people;
- complex data analysis needs, such as data cleaning, statistical testing, or mapping;
- allegations that involve policies or widespread practices; and
- cases involving travel and multiple site visits.

Each investigation consists of gathering and analyzing facts regarding a complainant's allegations and respondent's defenses with respect to the alleged discriminatory housing practice or policy. According to FHEO, there is no set timeline for an investigator to meet when encountering a complex case, and complaints are not immediately identifiable as complex and can become complex as the investigation progresses.

Uncooperative or Unresponsive Parties Can Prevent a Timely Investigation

All investigations rely on the cooperation of both respondents and complainants. According to HUD Handbook 8024.01, REV-2, section 7-21, investigators should make a reasonable effort to obtain the respondent's voluntary cooperation and consult with regional counsel. If a respondent withholds records or refuses to schedule an interview or answer questions during the interview, investigators should remind the respondent in writing of HUD's authority to seek each party's voluntary cooperation as well as its authority to issue a subpoena.

However, 62 percent (120 of 193) of EOS investigators, EOS supervisors, and OGC staff members surveyed, stated that it is difficult scheduling interviews and face delays in collecting evidence needed to complete thorough investigations because of unresponsive or uncooperative parties. In one example, an EOS investigator was delayed more than 300 days when trying to get information from a complaint respondent.

HUD stated that EOS investigators' process for handling unresponsive or uncooperative parties varied depending on the reason for the unresponsiveness and the nature of the unresponsive party. However, an investigator almost always follows up with the parties by phone, email, or letter. Investigators also reach out to them in person or work with HUD's attorneys to issue and enforce subpoenas.

Inconsistent Investigative Processes Affect the Achievement of Completing Investigations Within 100 Days

Of the EOS investigators and EOS supervisors surveyed, 31 percent (or 47 of 150) stated that inconsistencies in the investigative process are a challenge. These inconsistencies include the timeliness of supervisory reviews and reviews performed by OGC, obtaining a subpoena, and duplication of work.

FHEO developed memorandums of understanding (MOU) with OGC to formalize procedures for collaborating and coordinating enforcement efforts related to fair housing complaints. According to FHEO, it does not have a standardized MOU in place for all regions to follow. Instead, each regional office has its own agreement with its regional OGC counterpart to facilitate legal reviews of investigative casework and act as operating protocols for processing fair housing complaints. These MOUs vary among regions. Specifically, some regions have different timelines for legal review of reasonable cause case determinations. For example, one regional counsel is expected to complete its review of reasonable cause determinations within 5 days, while another regional counsel is expected to complete its review within 30 to 90 days. FHEO stated that each regional FHEO office and counsel have different workloads and organizational structures and the regional directors are empowered to negotiate their relationship with OGC independently. The MOU agreements vary depending on the number of attorneys assigned to fair housing matters and their skills, as well as the workload of FHEO and OGC regional offices.

One FHEO regional office implemented a pilot program from June 2022 to June 2023 to enhance efficiency and working relationships with the Office of Regional Counsel. The program is designed to get counsel's involvement early and provide the investigator with useful insight throughout the investigation. The regional office stated that 100 percent of the staff that participated in this program had positive feedback and acknowledged that it helped with challenging areas, such as obtaining subpoenas more quickly when staff encountered uncooperative parties.

In addition to the inconsistencies in MOUs with regional counsel, 17 EOS investigators and 5 EOS supervisors reported that duplicative tasks are a challenge. Specifically, staff were asked to upload documents into the HUD Enforcement Management System (HEMS), which automates the investigation and compliance business processes, and then load those same documents into a digital case file. The digital case file is a file created outside HEMS, which mimics information in HEMS for EOS investigators and supervisors to easily access. FHEO stated that HEMS is the official case management system and it does not require a digital case file but the regional directors have the authority to decide whether their staff are required to maintain one. EOS staff members indicated that having to maintain both systems adds time to the investigation process. One supervisor stated that the case workload is extensive and would be more manageable if the EOS staff are not required to perform tasks that are not necessary, such as creating a digital case file when HEMS is where the information should be uploaded. Creating the digital case file is redundant and creates additional work, adding time to the investigation.

Conclusion

FHEO's ability to investigate Title VIII complaints within 100 days is important in preventing and deterring housing discrimination in a timely manner. However, FHEO faces several challenges that hinder its ability to complete investigations within 100 days. Even though HUD took steps to address its staffing and training needs, the case load, complexity of cases, and uncooperative and unresponsive parties continue to slow investigative work. Opportunities exist for FHEO to improve its investigation process which could increase efficiency and help with timely completion of investigations.

Recommendations

We recommend that HUD's Deputy Assistant Secretary for Fair Housing and Equal Opportunity

- 1A. Update protocols to promote consistent expectations for timely supervisory, legal, and headquarters reviews of complex cases.
- 1B. Review and update the MOUs with OGC for each region to identify and remove inefficiencies that can lead to longer FHEO investigation times and OGC review times and identify best practices that can be implemented across all regions.
- 1C. Review and update investigative processes followed by each regional office to identify best practices that can be implemented across all regions and identify and remove inefficiencies that can lead to longer investigation times.

Scope and Methodology

We performed our audit from November 2022 through March 2024. The audit generally covered the period January 1, 2020, through June 30, 2022. To review the most recent investigative case data in HEMS, we expanded our audit period to November 2022.

To accomplish our objective, we

- Reviewed applicable laws and regulations pertaining to Title VIII investigations.
- Reviewed FHEO's Title VIII Complaint Intake, Investigation, and Conciliation Handbook (8024.1).
- Reviewed FHEO's annual reports to Congress for the period 2015 through 2021 to identify information related to our audit objective.
- Reviewed the MOU between FHEO and OGC for each of the 10 HUD regions.
- Using Microsoft Forms, surveyed 124 FHEO EOS nonsupervisory staff members stationed in the field at the time of our audit. We received a response from 97 of the 124 EOS staff members surveyed, resulting in a response rate of 78 percent.
- Using Microsoft Forms, surveyed 71 FHEO EOS supervisory staff members stationed in the field at the time of our audit. We received a response from 53 of the 71 EOS staff members surveyed, resulting in a response rate of 75 percent.
- Using Microsoft Forms, surveyed 73 OGC counselors stationed in the field at the time of our audit. We received a response from 43 of the 73 counselors surveyed, resulting in a response rate of 59 percent.
- In the surveys sent to the EOS staff members, EOS supervisors, and OGC counselors, generally included questions pertaining to training, case load, investigative processes, and challenges to completing investigations within 100 days.

To achieve our objective, we compared data obtained from HEMS, a system in which data on compliance reviews are documented, to FHEO's employee listing to identify the staff members we surveyed. We surveyed 100 percent of EOS supervisors and OGC counselors located in the field. However, we surveyed only EOS nonsupervisory staff members who had 10 or more investigations assigned to them during our audit period and were on the FHEO employee listing. We relied on HEMS to determine the number of compliance reviews initiated and completed. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequate for our purposes.

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

Appendix

Auditee Comments and OIG's Evaluation

On July 30, 2024, we issued the discussion draft report to the Deputy Assistant Secretary for Enforcement. On September 4, 2024, the Deputy Assistant Secretary informed us that HUD chose not to provide formal written comments for inclusion in the final report.