



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

HUD and FHAP Agencies Can Better Document Decisions Not To Investigate Fair Housing Complaints

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity | 2023-BO-0001
November 4, 2022

Date: November 4, 2022

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, GA

Subject: HUD and FHAP Agencies Can Better Document Decisions Not to Investigate Fair Housing Complaints

Attached are the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final report of our review of HUD's Title VIII complaint intake process for complaint inquiries and jurisdictional determinations recorded in the HUD Enforcement Management System (HEMS).

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, Title 5 United States Code, appendix 8M, 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) 994-8380.

Highlights

HUD AND FHAP AGENCIES CAN BETTER DOCUMENT DECISIONS NOT TO INVESTIGATE FAIR HOUSING COMPLAINTS | 2023-BO-0001

What We Audited and Why

We audited the U.S. Department of Housing and Urban Development's (HUD) Title VIII complaint intake data and jurisdictional determinations recorded in the HUD Enforcement Management System (HEMS). We initiated this audit to assist HUD with identifying opportunities to improve its data collection and jurisdiction determination process.

Our audit objective was to assess HUD's Title VIII fair housing complaint intake process for complaint inquiries that resulted in filed fair housing complaints and inquiries that were closed during the intake stage. Specifically, we reviewed HEMS to assess the thoroughness and consistency of complaint inquiry data and jurisdictional determinations made during the intake process.

What We Found

A fair housing complaint inquiry is opened by HUD or a Fair Housing Assistance Program (FHAP) agency when a claimant provides information regarding an alleged discriminatory housing practice. If HUD or the FHAP agency determines the complaint is within HUD's jurisdiction to investigate, the matter is converted to a complaint. If a complaint inquiry is not within HUD's jurisdiction or HUD or an FHAP agency cannot make a jurisdictional determination, the inquiry is closed.

We found that HUD and FHAP agencies adequately documented decisions to convert inquiries to complaints in HEMS, but that closed inquiries need to be documented more adequately and consistently. Specifically, HEMS did not always include (1) adequate documentation supporting the recorded closure reason, (2) sufficient information supporting jurisdictional determinations made, and (3) letters properly notifying claimants when HUD lacked jurisdiction to pursue their allegations. These conditions occurred due to inconsistent and outdated HUD policies and procedures. Further, HUD officials stated that HUD staff's ability to enter all information into HEMS was negatively impacted by the large volume of inquiries received, some of which may not have been related to fair housing issues. We also found that FHAP agencies did not enter complaint inquiries into HEMS when they decided not to investigate the allegations. HUD does not require them to enter these inquiries in HEMS and does not provide grant funding for entering this information. This gap renders HUD's process for overseeing allegations closed during the inquiry stage incomplete. HUD's management needs more complete information in HEMS to oversee jurisdictional determinations and ensure that HUD and FHAP agencies' staff are assessing allegations of housing discrimination properly. As a result, HUD management does not have all the information it needs to ensure its FHAP agencies are performing as expected.

What We Recommend

We recommend that HUD's Deputy Assistant Secretary for Enforcement update HUD Handbook 8024.01, REV-2, and regional intake policies and procedures as necessary and develop a process for overseeing allegations of housing discrimination that FHAP agencies close during the intake stage to ensure that closure and jurisdictional determinations are consistent the Fair Housing Act.

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Background and Objective

The Fair Housing Act,¹ as amended, prohibits discrimination because of race, color, religion, national origin, sex, disability, and familial status. The Act applies to certain issues, including harassment and discrimination in the sale, rental, or advertising or financing of housing; the provision of brokerage services; and other activities related to residential real estate transactions. 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. The Act gives the U.S. Department of Housing and Urban Development (HUD) the authority and responsibility to administer the Act. HUD’s Office of Fair Housing and Equal Opportunity (FHEO) is the responsible office for investigating allegations of housing discrimination. FHEO is charged with enforcement, administration, development, and public understanding of Federal fair housing policies and laws. To achieve its mission, FHEO enters into cooperative agreements with State and local agencies under programs such as the Fair Housing Assistance Program (FHAP).

Although HUD has delegated the processing of some fair housing allegations to FHAP agencies, HUD retains the responsibility of ensuring oversight and the proper administration of all fair housing allegations.² FHAP agencies receive housing discrimination complaints and conduct investigations to determine whether the alleged discrimination occurred. HUD expects the agencies to use their authority to ensure that victims are made whole through conciliation agreements, settlements, and administrative or judicial enforcement.

The complaint intake process begins when a claimant provides information regarding an alleged discriminatory housing practice. This information is called an inquiry. HUD staff is required to enter all inquiries and the information collected into the HUD Enforcement Management System³ (HEMS). Inquiries that contain the four required elements of jurisdiction, including (1) standing, (2) timeliness, (3) jurisdiction over the respondent, and (4) subject-matter jurisdiction, are converted to filed complaints and proceed to the investigation stage of processing. However, if HUD determines that it lacks jurisdiction or is unable to determine jurisdiction, the inquiry is closed. Although inquiries may be closed for many reasons, two of the most common reasons for closure are the claimant’s failure to respond to requests for additional information or that the alleged issues were not covered under the Act. When HUD determines that it lacks jurisdiction, the claimant making the inquiry is to be notified of the basis for the determination and informed of alternatives when appropriate.⁴

When an FHAP agency determines an inquiry may be actionable under the Act, it is required to enter the information in HEMS and request “dual-filing” with HUD.⁵ HUD reviews the requests and accepts


¹ The Act is also referred to as Title VIII of the Civil Rights Act of 1968. Complaints may be referred to as “Title VIII complaints” or “Title VIII fair housing complaints.”

² 42 U.S.C. 3608(c)

³ The HUD Enforcement Management System automates the investigation and compliance business processes for FHEO. TEAPOTS was HUD’s official automated system for processing and tracking fair housing complaints. HUD began using HEMS as its official system in 2014.

⁴ Chapter 4 of HUD’s Title VIII Complaint Intake, Investigation, and Conciliation Handbook 8024.01, REV-2, dated May 2005 and HEMS User Manual

⁵ Dual-filing means that the allegations are being filed as a potential violation of the FHAP agencies’ local or State laws and as a potential violation of the Fair Housing Act.



inquiries that contain the required elements for jurisdiction. When HUD accepts an inquiry for dual-filing, the inquiry becomes a filed Fair Housing Act complaint. When an FHAP agency determines that an inquiry may not be actionable under the Act, HUD does not require the inquiry information be entered in HEMS.

Fair Housing Initiative Program (FHIP) organizations also have a role in the fair housing discrimination process. Specifically, through the Private Enforcement Initiative, FHIP organizations receive funding to conduct intake, investigation, mediation, and litigation of housing discrimination complaints and perform testing in the rental, sales, lending, and insurance markets to uncover illegal discrimination under the Act. However, they do not enter information in HEMS. Therefore, we did not address their role in our audit work and this report.

Our audit objective was to assess HUD's Title VIII fair housing complaint intake process for complaint inquiries that resulted in filed fair housing complaints and inquiries that were closed during the intake stage. Specifically, we reviewed the information in HEMS to assess the thoroughness and consistency of complaint inquiry data and jurisdictional determinations made during the intake process.

Results of Audit

FINDING: HUD AND FHAP AGENCIES CAN BETTER DOCUMENT DECISIONS NOT TO INVESTIGATE FAIR HOUSING COMPLAINTS

We found that HUD and FHAP agencies adequately documented decisions to convert inquiries to complaints in HEMS, but that closed inquiries need to be documented more adequately and consistently. Specifically, HEMS did not always include (1) adequate documentation supporting why the inquiry was closed, (2) sufficient information supporting the jurisdictional determination made, and (3) letters properly notifying claimants when HUD lacked jurisdiction to pursue their allegations, when applicable. We found that FHAP agencies did not enter complaint inquiries into HEMS when they decided not to investigate the allegations. HUD does not require them to enter these inquiries in HEMS and does not provide grant funding for entering this information. This gap renders HUD's process for overseeing allegations closed during the inquiry stage incomplete. These conditions occurred due to inconsistent and outdated HUD policies and procedures, and an incomplete process for overseeing allegations of housing discrimination that FHAP agencies closed. Further, HUD officials stated that their staff's ability to enter all information into HEMS was negatively impacted by the large volume of inquiries the staff received from the public, some of which may not have been related to fair housing issues. HUD's management needs more complete information in HEMS to oversee jurisdictional determinations and ensure that HUD and FHAP agencies' staff are assessing allegations of housing discrimination properly. As a result, HUD management does not have all the information it needs to ensure its FHAP agencies are performing as expected.

Jurisdictional Determinations Were Adequately Recorded for Filed Complaints

Overall, HUD and FHAP agencies adequately recorded and documented complaint inquiry information in HEMS to support the jurisdictional determinations made for our statistical sample of 67 inquiries⁶ that were converted to filed complaints. There were instances in which some of the contact dates recorded on the HEMS intake screen were not consistent with other information in HEMS. The inconsistent contact dates may impact HUD's ability to properly track the timeliness of complaint processing.

Information Was Not Always Adequately Documented and Supported for Closed Inquiries

HUD and FHAP agencies did not always adequately document information in HEMS for our statistical sample of 83 inquiries⁷ closed during the inquiry stage. Specifically, HEMS did not always include (1) adequate documentation supporting why the inquiry was closed, (2) sufficient information supporting the jurisdictional determination made, and (3) letters properly notifying claimants when HUD lacked jurisdiction to pursue their allegations. HUD officials stated that the inadequate documentation stemmed

⁶ Of the 15,354 filed complaints in our universe, HEMS showed that 7,265 were originated by HUD and 8,089 were originated by FHAP agencies.

⁷ Of the 40,860 inquiries in our universe that were closed during the intake stage, HEMS showed that 36,769 were originated by HUD and 4,091 were originated by FHAP agencies.

from factors such as limited staff resources, impacts of the coronavirus disease (COVID-19) pandemic, and the volume of non-FHEO related complaints.

There was at least 1 exception in 42 of the statistical sample of 83 closed inquiries tested. An exception is a material deficiency for the attribute tested. Of the 42 with exceptions, 37 were processed by HUD and 5 were processed by FHAP agencies.⁸ See appendix B for details.

Description of Exception	Number of Exceptions
Reason for closure not adequately supported in HEMS	37
Sufficient information not adequately documented in HEMS for jurisdictional determinations	10
Notification of lack of jurisdiction and alternatives not properly documented in HEMS ⁹	16

An exception occurred in at least 48 percent of closed inquiries tested. Projecting these results to our universe of all closed inquiries entered into HEMS during our audit period,¹⁰ at least 19,937 of the 40,860 inquiries in HEMS may have had an exception. As a result, HUD could not rely on the information in HEMS to oversee HUD and FHAP agencies and show that they properly closed inquiries during the intake stage and addressed claimants' allegations of housing discrimination.

Reason for Closure

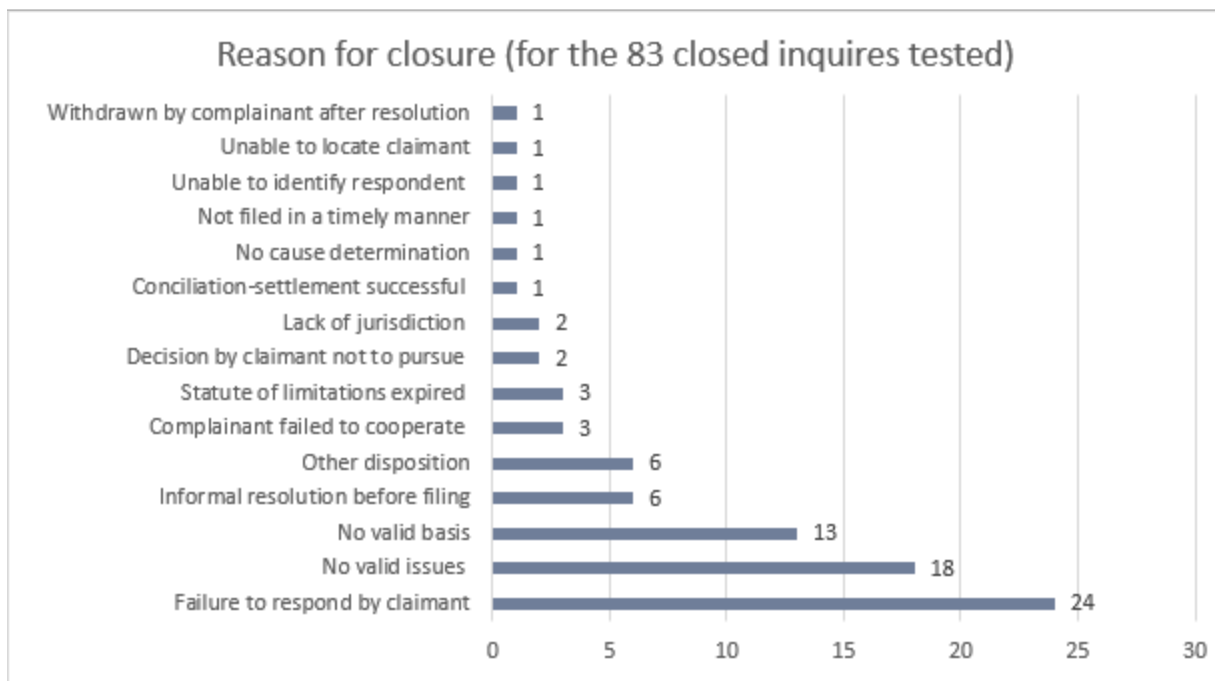
HEMS lacked adequate documentation for 37 of 83 closed inquiries to support the reason for closure. See appendix B. HUD's procedures included phone calls, emails, and certified letters to claimants when additional information was needed to determine jurisdiction. However, HEMS did not always adequately document that HUD performed these procedures. For example, information recorded in HEMS mentioned emails sent to the claimant requesting additional information needed to establish jurisdiction, but the emails were not always attached in HEMS. HEMS also did not show that certified letters were used to communicate with claimants as required when additional information was needed and other means of communication were not successful. Therefore, HEMS did not always adequately support closing the inquiry.

Adequately documenting communications with claimants is important because most of the inquiries were closed due to a failure to respond by the claimant, no valid issues, and no valid basis. See the chart below.

⁸ Although this breakout showed more inquiries with exceptions were processed by HUD, it is important to note that HUD did not require FHAP agencies to enter inquiries in HEMS that did not become filed complaints. See page 11 related to this issue.

⁹ To determine whether lack of jurisdiction and alternatives were properly documented in HEMS, we reviewed HEMS for letters and emails to the claimant.

¹⁰ The audit period was January 1, 2019, through December 31, 2020.



Although HUD asked claimants for an alternative contact person when they submitted their claim, we found 19 inquiries where HEMS did not show that HUD reached out to the alternative contact person before closing the inquiry when claimants could not be reached or did not respond.

As a result, HUD may have missed opportunities to pursue these inquiries; and without this information documented in HEMS, we considered HUD’s reason for closure unsupported.

Jurisdictional Determinations

HEMS lacked sufficient information to support the jurisdictional determinations recorded for 10 of 83 closed inquiries. See appendix B. HEMS did not always show that HUD and FHAP agencies adequately followed up with claimants when there was unclear information to ensure that there was no valid basis or issues¹¹ before closing the inquiries. For example, a claimant completed an online submission that alleged she was denied a loan due to her race and sex. Although HUD determined that there was no valid basis and closed the inquiry, HEMS contained no documentation to show that HUD attempted to contact the claimant or performed any follow-up with the claimant to support this closure.

Notification to Claimants

HEMS also lacked documentation showing that claimants were properly notified when HUD lacked jurisdiction to pursue their allegations for 16 of 83 closed inquiries. See appendix B. According to the handbook,¹² when HUD lacks jurisdiction under the Act, the Equal Opportunity Specialist must explain the basis for the determination and inform aggrieved persons of other alternatives, where appropriate. However, for some inquiries that were closed due to no valid issues or no valid basis, HEMS did not

¹¹ These issues are the violations defined in the Fair Housing Act, such as discriminatory refusal to rent.

¹² Chapter 4 of the Title VIII Complaint Intake, Investigation, and Conciliation Handbook, 8024.01, REV-2

always include a letter or email to the claimants notifying them that HUD lacked jurisdiction to process their allegations and informing them that their inquiry was closed. In some cases, information recorded in HEMS noted that HUD notified the claimants, but HEMS did not include the letter or email to support that the claimant was notified. Therefore, HEMS did not always support that these claimants were properly notified of the jurisdictional determination and informed of alternatives when appropriate.

In addition, the language used in HUD requests for additional information to claimants, notifications of case closures, and lack of jurisdiction determination letters to claimants should be clarified. For example, some communications informed claimants that HUD would close their claim if they did not provide the additional information requested by HUD within a 10- or 13-day period or no further action would be taken. This language is also included in the handbook.¹³ However, communications with claimants did not always inform them that if they provided the requested or additional information to establish jurisdiction under the Act within the statutory period, HUD would reassess and possibly reopen their claims. Therefore, the handbook and communications with the claimants should be updated to clarify this information and ensure that claimants are fully informed of their rights to pursue a fair housing complaint.

Policies and Procedures Were Inconsistent and Outdated

The conditions described above occurred due to inconsistent and outdated HUD policies and procedures.

HUD's procedures to contact claimants and document its attempts to contact claimants when additional information was needed were inconsistent. For example, one region's procedures stated that attempts to contact the claimant should be documented in the HEMS chronology of case section and the 10-day letter should be uploaded to the HEMS document section. However, another region's procedures did not specify how to document its attempts to contact claimants. Some regions may have reached out to the claimants' alternative contact person identified by the claimants when they submitted their inquiry under certain circumstances, while other regions did not attempt to contact alternative contacts to try to obtain current contact information for claimants. These inconsistencies are important because when HEMS does not support that sufficient attempts were made to reach the claimant, there is risk that the claimant's housing discrimination allegations were not properly addressed.

According to HUD's Complaint Intake, Investigation, and Conciliation Handbook, which was last updated in May 2005, when the claimant cannot be reached by telephone and additional information is needed, HUD should request the information in a letter using certified mail with a return receipt requested. The handbook states that the letter should inform the claimant that the inquiry will be closed and no further action will be taken if the information is not provided within 10 business days. Although copies of request letters were in HEMS for some inquires, the handbook did not include procedures for documenting the use of certified mail, and the use of certified mail was not documented in HEMS. HUD also relied on email to contact and obtain information from claimants, but the handbook did not include email procedures. HUD officials stated that the development of and familiarity with newer methods of documenting contact, such as the use of emails, may have resulted in staff not adequately documenting these methods in HEMS. It is important to properly document the use of email and certified mail to ensure that HEMS shows that every reasonable attempt was made to contact the claimant when the

¹³ The Title VIII Complaint Intake, Investigation, and Conciliation Handbook, 8024.01, REV-2

inquiry was closed. During our audit, HUD officials agreed that certified mail should be used, and the handbook should be updated to include email procedures.

Finally, HUD officials stated that the large volume of inquiries they received from the public, many of which did not relate to fair housing, negatively impacted their ability to enter all information into HEMS for closed inquiries. HUD officials also stated that some of the reviewed inquiries occurred during the pandemic and a period of transition to full remote work, which may have had an impact on the issues identified. However, a significant number of exceptions occurred before the pandemic.

HEMS Did Not Include All Allegations That FHAP Agencies Closed During the Intake Stage

HEMS also did not include all allegations that FHAP agencies processed and closed during the intake stage. Although the handbook required HUD staff to enter information for all housing discrimination allegations into HEMS, HUD did not require FHAP agencies to enter information in HEMS for inquiries they closed during the intake stage. Therefore, there are an unknown number of fair housing allegations that FHAP agencies did not record in HEMS for closed inquiries. This occurred because HUD had an incomplete process for overseeing allegations of housing discrimination that FHAP agencies closed. HUD's process and agreements with FHAP agencies only required FHAP agencies to enter information in HEMS for inquiries they submitted to HUD for dual-filing. HUD reimbursed FHAP agencies for filed complaints but did not reimburse FHAP agencies for inquiries that did not become filed complaints. Since HUD lacked data on all inquiries closed by FHAP agencies, it did not have the information needed to ensure that FHAP agencies adequately supported (1) reasons for closing inquiries without referring them to HUD, (2) jurisdictional determinations, and (3) claimant notifications before closing the inquiries. As a result, HUD could not use HEMS to ensure that these allegations were properly addressed and closed in accordance with the Act. The missing information is important because 42 U.S.C. 3608(a) charges HUD with the authority and responsibility for administering the Act.

Conclusion

HUD management does not have all the information it needs to ensure its FHAP agencies are performing as expected. These conditions occurred due to inconsistent and outdated HUD policies and procedures and an incomplete process for overseeing allegations of housing discrimination that FHAP agencies closed. Accordingly, opportunities exist for improving the thoroughness and consistency of complaint inquiry data in HEMS.

Recommendations:

We recommend that HUD's Deputy Assistant Secretary for Enforcement

- 1A. Update HUD Handbook 8024.01, REV-2, and regional intake policies and procedures as necessary to include (1) minimum requirements that all regions follow for documenting in HEMS attempts to reach out to claimants when additional information is needed before closing inquiries; (2) policies and procedures for collecting, recording, and documenting all relevant electronic intake information in HEMS; and (3) clarifying that communications with claimants regarding inquiry closure, requests for additional information, and notices of jurisdiction information clearly inform the claimant of the ability to provide additional information within the statute of limitations.

1B. Develop a process to oversee housing discrimination allegations that FHAP agencies close and do not submit to HUD for dual-filing to ensure that the closure and jurisdictional determinations are consistent with the Fair Housing Act. To help address this recommendation, HUD should consider requiring FHAP agencies to enter data on closed inquiries in HEMS and make updates to FHAP agreements as necessary.

Scope and Methodology

We performed our audit remotely from March 2021 through March 2022. Our audit period was January 1, 2019, through December 31, 2020.

To accomplish our audit objective, we

- Reviewed applicable laws, regulations, guidance, policies and procedures, training materials, and sample FHAP agreements.
- Interviewed FHEO officials remotely to gain an understanding of the intake process, including oversight, and to gain an understanding of HEMS and data entry into HEMS.
- Obtained and analyzed HEMS data provided by HUD officials as of March 15, 2021, for Title VIII fair housing inquiries closed during the period January 1, 2019, through December 31, 2020. We identified 56,214 complaint inquiries that were closed, of which 40,860 inquiries were closed during the intake stage and 15,354 inquiries were converted to a filed complaint.
- Used a stratified random sample of 67 inquiries for review among the universe of 15,354 of HUD's Title VIII fair housing filed complaints. Of the 15,354 filed complaints, HEMS showed that 7,265 were originated by HUD and 8,089 were originated by FHAP agencies. We designed the strata to group sampling units by primary classes, such as disability or race, and different types of dispositions for the filed complaints. Strata were created for each combination, and samples were pulled in each of these categories. To include cases originated both from HUD and FHAP agencies, each category was sorted by origin and sampled systematically across the primary classes and the different types of dispositions.
- Used a stratified random sample¹⁴ of 83 inquiries for review among the universe of 40,860 HUD Title VIII fair housing closed inquiries. Of the 40,860 inquiries that did not proceed to a filed complaint, HEMS showed that 36,769 were originated by HUD and 4,091 were originated by FHAP agencies. A limitation of our review is that there were an unknown number of inquiries received by FHAP agencies that were not recorded in HEMS. Our universe and sample were based on inquiries recorded in HEMS. We designed the strata to group sampling units by primary classes and different types of dispositions for the closed complaint inquiries. Strata were created for each combination, and samples were pulled in each of these categories. To include cases originated both from HUD and FHAP agencies, each category was sorted by origin and sampled systematically across the primary classes and the different types of dispositions.
- Accessed and reviewed HEMS for our two samples by reviewing various HEMS screens and attached documents.

After reviewing the information in HEMS, for each sample inquiry we answered the following questions:

¹⁴ Stratified random sampling is a method of sampling that involves the division of a population into smaller sub-groups known as strata. In stratified random sampling, or stratification, the strata are formed based on members' shared attributes or characteristics.

- Overall, did HUD or the FHAP agency adequately record the inquiry information in HEMS that was relevant to the circumstances of the inquiry?
- Based on the information in HEMS, did HUD or the FHAP agency collect sufficient information to make an appropriate jurisdictional determination?
- Was source documentation attached in HEMS for the intake information, and was it consistent with the information in HEMS?

For closed inquiries reviewed, we also answered the following question:

- Based on information in HEMS, when HUD lacked jurisdiction under the Fair Housing Act, did HUD or the FHAP agency explain the basis for the determination and inform the claimant of alternatives when appropriate?

Using our statistical results, we projected the results of the exceptions found in our sample to the universe of closed inquiries. Including a statistical margin of error, we can say with a one-sided confidence interval of 95 percent¹⁵ that at least 48 percent of the time, there was at least one exception for the attributes tested. See appendix B for details. Extending this percentage to the universe of 40,860 records, at least 19,937 inquiries in HEMS may have at least 1 exception for the attributes we tested; however, this count could be higher.

Our review was limited to the intake stage and was based on intake information in HEMS. We did not obtain and assess intake information maintained by HUD or FHAP agencies outside HEMS, such as documents in hardcopy files, SharePoint sites, call logs, or other records maintained by the regions and FHAP agencies.

We used Audit Command Language analytics software to assess the completeness of information and reviewed for duplicates and the validity of key data fields. Based on our assessment, we determined that the data were sufficiently reliable to meet our audit objective.

We evaluated internal controls over compliance with laws and regulations and the reliability of data in information systems that were significant to our audit objective in accordance with generally accepted government auditing standards. Specifically, we reviewed controls intended to ensure the thoroughness and consistency of complaint inquiry data and jurisdictional determinations recorded in HEMS during the intake process.

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.

¹⁵ A 95 percent confidence interval means that if we were to take 100 different samples and compute a 95 percent confidence interval for each sample, then approximately 95 of the 100 confidence intervals will contain the true mean value (μ).

Appendixes

APPENDIX A – AUDITEE COMMENTS AND OIG’S EVALUATION

Ref to OIG Evaluation – Auditee Comments



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

Kilah S. White
Assistant Inspector General for Audit
HUD Office of Inspector General
451 7th Street, SW
Washington, DC 20410
Sent Via Electronic Mail to kwhite@hudoig.gov

October 28, 2022

Dear Ms. White:

The Office of Fair Housing and Equal Opportunity appreciates the opportunity to review and comment on the HUD Office of Inspector General (HUD OIG) draft report entitled, “*Review of HUD’s Title VIII Complaint Intake Process for Complaint Inquiries and Jurisdictional Determinations Recorded in the HUD Enforcement Management System*” (2023-BO-0001). In the draft report, HUD OIG provides two recommendations to FHEO intended to improve its data collection and jurisdictional-determination processes.

FHEO is actively focusing on strengthening our internal capacity in accordance with FY2022 - 2026 HUD Strategic Goals. As part of this effort, we are continually seeking ways to improve how we conduct investigations, including reviewing regional intake policies and procedures; refining documentation protocols in the HUD Enforcement Management System (HEMS); and determining whether parts of HUD Handbook 8024.01 REV-2, which guides the conduct of Title VIII investigations, may require updating. FHEO will also review its FHAP materials to ensure that inquiries that are closed based on jurisdictional determinations are properly processed and recorded, consistent with regulatory and contractual obligations.

This letter concurs with the findings and recommendations proposed in this draft report. Enclosed with this letter, we have included our plan for implementing the recommendations proposed by HUD OIG.

Once again, thank you for the opportunity to comment on this draft report. If you have any questions, please contact our Director of Enforcement Support, Erik Heins, via email at Erik.A.Heins@hud.gov.

Sincerely,

Melody Taylor

Melody C. Taylor
Associate Deputy Assistant Secretary for
Enforcement Compliance

www.hud.gov espanol.hud.gov

Comment 1 >

OIG Evaluation of Auditee Comments

Comment 1

We commend HUD for committing to further improving how it conducts investigations and determining whether parts of HUD Handbook 8024.01 REV-2 may require updating. We acknowledge HUD's planned corrective actions. We look forward to working with HUD through the audit resolution process to ensure that the recommendations are fully addressed.

APPENDIX B – 42 CLOSED INQUIRES WITH EXCEPTIONS

	Inquiry no.	Reason for closure not supported in HEMS	Sufficient information not adequately documented in HEMS for jurisdictional determinations	Notification of lack of jurisdiction and alternatives not properly documented in HEMS
1	571344	X		
2	577641	X		
3	578803	X		
4	578965	X		
5	581730	X		
6	583102	X		
7	589207	X		
8	592007	X		
9	592532	X	X	X
10	601647	X		
11	604607	X		
12	605466	X		
13	606536	X		
14	609016	X		
15	619165	X		
16	620624	X		
17	628790	X		
18	631012	X		
19	573081			X
20	573632			X
21	578342	X	X	X
22	583740	X	X	X

	Inquiry no.	Reason for closure not supported in HEMS	Sufficient information not adequately documented in HEMS for jurisdictional determinations	Notification of lack of jurisdiction and alternatives not properly documented in HEMS
23	586436	X	X	X
24	589156	X	X	X
25	598157			X
26	599417	X		X
27	605581			X
28	607368			X
29	609402	X	X	X
30	595962	X	X	X
31	573543	X		
32	584011	X		
33	609384	X		
34	612906	X		
35	578622	X	X	X
36	599147	X	X	X
37	609653	X		
38	625484	X		
39	586698	X		
40	591509	X		
41	609007	X		
42	615787	X	X	X
Totals		37	10	16

APPENDIX C – CRITERIA

Reference Material	
<p>Title VIII of the Civil Rights Act of 1968¹⁶</p>	<p>Section 808(a). The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.</p> <p>Section 808(c). The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this title.</p>
<p>United States Code</p>	<p>42 U.S.C. 3601. It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.</p> <p>42 U.S.C. 3608(a). The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.</p> <p>42 U.S.C. 3608(c). The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter.</p> <p>42 U.S.C. 3616. The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter.</p>
<p>Code of Federal Regulations¹⁷</p>	<p>24 CFR (Code of Federal Regulations) 103.100(a). Whenever a complaint alleges a discriminatory housing practice that is within the jurisdiction of a substantially equivalent State or local agency and the agency is certified or may accept interim referrals under 24 CFR Part 115 with regard to the alleged discriminatory housing practice, the Assistant Secretary will notify the agency of the filing of the complaint and refer the complaint to the agency for further processing before HUD takes any action with respect to the complaint.</p>

¹⁶ Fair Housing Act and [42 U.S.C. § 3601-3619](#)

¹⁷ 24 CFR Part 100 provides HUD’s interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

Reference Material

	<p>24 CFR 115.300. The purpose of the Fair Housing Assistance Program (FHAP) is to provide assistance and reimbursement to State and local fair housing enforcement agencies. The intent of this funding program is to build a coordinated intergovernmental enforcement effort to further fair housing and to encourage the agencies to assume a greater share of the responsibility for the administration and enforcement of fair housing laws.</p>
<p>Title VIII Complaint Intake, Investigation, and Conciliation Handbook (Handbook 8024.01, REV-2)</p>	<p>Chapters 3 and 4 establish HUD’s procedures for processing allegations of housing discrimination during the intake stage. See the excerpts below.</p> <p><i>Section 4-3.</i> Inquiries may be received at HUD Headquarters, and any Field or Regional Office in person or by telephone, mail, facsimile or the Internet. Inquiries also may be filed with any FHAP agency for processing or accepting of cases. Such complaints are considered dual-filed with an FHAP agency under its own law and with HUD under the Act.</p> <p><i>4-3. D.</i> When an inquiry is first received by an FHAP agency under its fair housing law or ordinance, and the aggrieved person alleges discrimination cognizable under the Act, the agency will enter the data as an inquiry into TEAPOTS within 5 working days. The EOS¹⁸ will review the information in TEAPOTS to determine if the inquiry contains the four elements of jurisdiction: timeliness, standing, jurisdiction over the subject matter and jurisdiction over the respondent. If the complaint contains the elements that establish jurisdiction, and there are no First Amendment issues, the inquiry will be accepted as dual-filed and assigned a HUD case number.</p> <p><i>Section 4-5.</i> The four elements, necessary to establish jurisdiction, are: standing, timeliness, respondent jurisdiction and subject matter jurisdiction.</p> <ol style="list-style-type: none">1. Standing<p>In order for any person to have standing, he or she must be an “aggrieved person” as defined by the Act. The Act defines an “aggrieved person” as any person who claims to have been injured, or is about to be injured, by a discriminatory housing practice. The term “any person” includes individuals and other entities such as corporations or organizations, e.g., private fair housing organizations, disability rights groups or homeowners’ associations.</p><p>At intake, it is not necessary to obtain evidence proving that the aggrieved person suffered an injury; the aggrieved person’s assertion of the injury is sufficient for the filing of the complaint.</p>

¹⁸ Equal Opportunity Specialist

Reference Material

2. **Timeliness**

The Act requires that an aggrieved person must file the Title VIII complaint within 1 year of the date of the most recent occurrence of the alleged discriminatory housing practice.

3. **Respondent Jurisdiction**

While HUD has jurisdiction over the vast majority of housing-related transactions, the Act exempts some transactions from its coverage. These include certain (1) single family houses owned by private individual owners [Sec. 803 (b)(1)]; (2) religious organizations [Sec. 807]; (3) private clubs; and (4) housing for older persons [Sec. 807].

4. **Subject Matter Jurisdiction**

The aggrieved person's statement should contain sufficient detail to determine "subject matter" jurisdiction, i.e., whether the allegations describe unlawful discrimination that would violate Sections 804, 805, 806 or 818 of the Act.