



What Property Managers Must Know When Faced With a Discrimination Complaint

8 steps to ensure compliance with the HUD process



UNDERSTANDING THE DISCRIMINATION COMPLAINT PROCESS CAN HELP REDUCE RISK

The Fair Housing Act (FHA) prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex (including gender identity and sexual orientation), national origin, disability, or familial status.¹ In its last annual account to Congress, the United States Department of Housing and Urban Development (HUD) reported 11,519 Fair Housing discrimination complaints.²

HUD investigations can be both time-consuming and costly for multifamily housing providers. Knowing how the investigation process works and how you can respond appropriately helps reduce your risk of incurring the potentially hefty sanctions HUD can impose. This document walks you through the HUD enforcement process step by step!

Each phase includes multiple deadlines for actions the different parties must or could take. See the Deadlines chart at the end for details on the deadlines.

Basis of Complaints	Number of Complaints in FY2021
Disability	4,791
Race	2,480
Sex	1,072
Retaliation	1,022
National Origin	835
Familial Status	778
Color	359
Religion	185

Source: HUD Enforcement Management System (HEMS). Data current as of November 18, 2021

Most discrimination complaints filed with HUD in 2021 were for disability discrimination.

HUD INVESTIGATION PROCEDURES

1. Filing a Complaint

Any individual or company that has witnessed or experienced housing discrimination may file a complaint with HUD free of charge. Complaints will often name individual property managers directly, in addition to the corporate entity or owner associated with the complainant's housing.

For HUD to proceed with an investigation, the following criteria must be met:

- The complaint must be made within the specified time limits.
- The complainant must have legal standing.
- The respondent and the dwelling involved must be covered by the FHA.
- The subject matter or issue, and the bases of alleged discrimination, must constitute illegal practices as defined by the FHA.

If HUD determines that the complaint does, in fact, involve alleged housing discrimination, then the department will proceed forward with investigating the complaint.



2. Responding to a Complaint

If a complaint has been filed against you, you will be notified by HUD and have 10 days to respond.

Recommended Actions

Prioritize mail from HUD.

Due to the tight window a company has for responding to a complaint, make sure anyone responsible for collecting mail at your facilities is trained to give mail from HUD priority attention and forward it to the appropriate person immediately.

Respond to complaints.

Although filing an answer is not mandatory, it is strongly encouraged. Responding allows you to share your version of the story and provide sufficient information to convince HUD that it should not pursue the matter further.

Involve legal counsel early.

Because your answer will become part of the official case record and any representations can and will be used against you in future proceedings, seeking the assistance of legal counsel in responding to a HUD complaint is strongly encouraged. In addition, legal counsel can likely negotiate an extension of time to respond.

Notify your insurance company early.

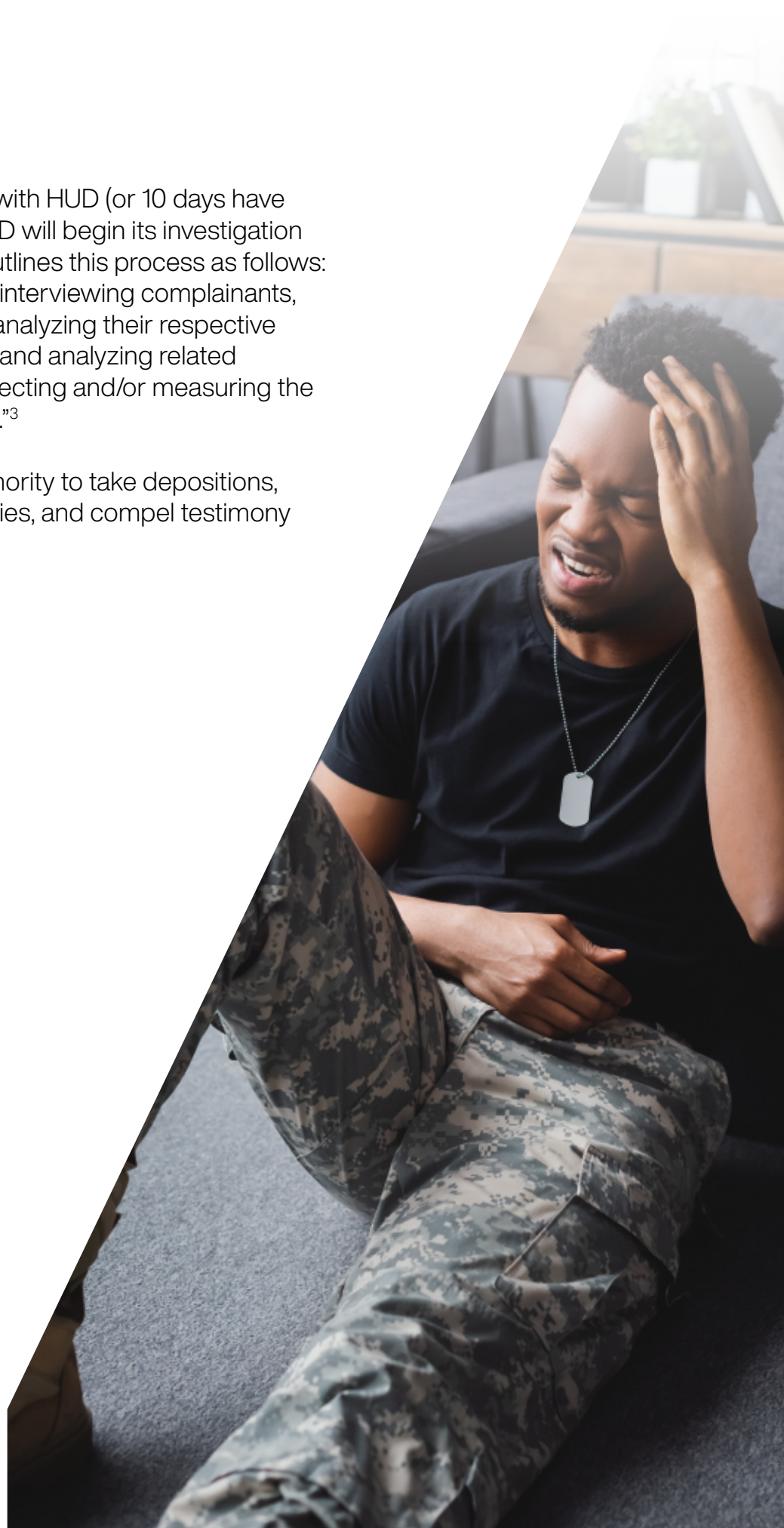
As soon as you know a complaint has been filed, notify your insurance company because there may be insurance to cover the allegations of the complaint. If there is coverage, the insurance company will only be there to help you if they are notified early.



3. Investigation

Once you have filed your answer with HUD (or 10 days have lapsed without any response), HUD will begin its investigation in earnest. The HUD Handbook outlines this process as follows: “Investigators gather evidence by interviewing complainants, respondents and witnesses, and analyzing their respective statements; collecting, organizing and analyzing related documents and records; and inspecting and/or measuring the subject dwelling and environment.”³

Please note that HUD has the authority to take depositions, issue subpoenas and interrogatories, and compel testimony and documents.





4. Conciliation

Conciliation is an informal dispute resolution process that allows the parties to resolve a matter without further investigation and without going to court. The FHA requires HUD staff to bring the complainant and respondent(s) together to attempt conciliation, or mediation, of a complaint, although the choice to conciliate the complaint is entirely voluntary on the part of both parties.

If the parties sign a conciliation agreement (agreeing to resolve the matter), HUD will end the investigation and close the file. Successful conciliation typically requires some form of monetary payment made by the respondent to the complainant. While nothing said or done during the conciliation process can be made public, a final conciliation agreement will be released to the public unless one of the parties requests nondisclosure.⁴

Note: Publication of any housing discrimination could result in reputational damage and encourage others to file complaints.

5. Determination

If efforts to settle the issue during the investigation and conciliation phases fail, HUD will determine “reasonable cause”⁵ or “no reasonable cause”⁶ and conclude its investigation.

CHARGE OF DISCRIMINATION PROCEDURES DETERMINATION

Reasonable Cause

If the investigation reveals that there is reasonable cause to believe that discrimination has occurred or is about to occur, HUD will issue a determination of reasonable cause and charge you with violating the law.

No Reasonable Cause

If HUD finds no reasonable cause to believe that housing discrimination has occurred or is likely to occur in the near future, HUD will issue a determination of “no reasonable cause” and close the case.

If either party disagrees with HUD’s determination, he or she can elect to have the charge decided in a civil court action, and “the Attorney General will commence a civil action on behalf of the aggrieved person in a United States District Court.”⁷





6. Administrative Proceedings

After HUD issues a charge of violation, a HUD Administrative Law Judge (ALJ) will hear the case unless one of the parties elects to have the case heard in federal civil court (see discussion below).

Any party adversely affected by the ALJ's initial decision can petition the Secretary of HUD for review. After HUD has issued a final decision, any party aggrieved by the Department's final decision can appeal to the appropriate court of appeals.

7. Federal Court Litigation⁸

If any party to the case elects to go to federal court, HUD transfers the case to the United States Department of Justice (DOJ) for prosecution. The DOJ will commence a civil action on behalf of the aggrieved person in a United States District Court.

Additionally, an individual may file a Fair Housing lawsuit in a federal or state court on his or her own behalf.⁹ The Attorney General may also commence his own civil action in any appropriate district court if he believes any person or group is engaged in a pattern of behavior and practice in direct opposition to the purpose of the FHA, or if the action is commenced with respect to a breach of a conciliation agreement.

Under any of the above scenarios, the court has substantial flexibility in awarding damages and granting relief as the court deems appropriate, which may include a permanent or temporary injunction, temporary restraining order, or an order enjoining the defendant from engaging in such practice(s).

8. Potential Damages/Sanctions

If the ALJ finds that housing discrimination has occurred or is about to occur, or it is proven at trial in federal court, then the ALJ or the federal court has the authority to award damages to the complainant and to penalize the respondent(s). The potential sanctions are much the same regardless of the forum (ALJ versus federal court).

Civil Monetary Penalties.

The ALJ may assess a civil monetary penalty against each respondent for each separate and distinct discriminatory housing practice. In determining the amount to assess, the ALJ will consider the following six factors:⁹

1. Previous housing discrimination
2. Respondent's financial resources
3. Nature and circumstances of the violation
4. Degree of the respondent's culpability
5. Goal of deterrence
6. Other matters as justice may require

The maximum amounts are:¹⁰

- Administrative Law Judge¹² or Federal Court First FHA violation: \$24,793¹¹
- FHA violation in the previous five years: \$61,982¹²
- Two or more FHA violations in the previous seven years: \$123,965¹³
- Enforced by Attorney General First FHA violation: \$50,000¹⁴
- Any subsequent violation: \$100,000¹⁵

Civil penalty amounts are in addition to actual damages, attorney's fees, and costs that may be awarded to someone who has experienced housing discrimination.





Other Damages

Compensatory damages.

These are actual damages suffered by the complainant as a result of discrimination. They could include out-of-pocket expenditures made in search of housing and rent fees associated with alternative housing. The amount of compensatory damages awarded is at the court's discretion for private claims, administrative claims, and "pattern" claims initiated by the Attorney General.

Non-economic damages.

These damages are in addition to out-of-pocket expenses and include damages for pain and suffering, mental anguish, and psychological injuries.

Punitive damages.

This DOJ update from 2015 provides that the ALJ cannot award punitive damages (the Tennessee Law Review article is dated 2000). Additionally, HUD's website lists "punitive damages" under only a civil trial in a federal district court and makes no mention of them for an administrative hearing before an ALJ.¹⁶

There are no caps on punitive damages for private claims or those brought under an administrative proceeding.

Attorney's fees/costs.

At its discretion, the ALJ or federal court may award all reasonable attorney's fees and associated costs to the prevailing party (unless the prevailing party is the United States). Additionally, the United States shall be liable for such fees as if it were a private person.¹⁷

Injunctive/Equitable relief.

The court may order such relief as necessary for the elimination of discriminatory housing practices. This could include a permanent or temporary injunction, temporary restraining order, or other order.¹⁸

Outcomes Reported in FY 2021 for Fair Housing Act Cases Sent to DOJ

Case Name	Outcome Date	Outcome	Case Type	Compensatory	Punitive	Total
U.S. v. Las Vegas Jaycees Senior Citizens Mobile Home	9/8/2021	Consent Decree	Election	\$100,000	\$0	\$100,000
U.S. v. Rupp	8/23/2021	Jury Verdict	Election	\$14,400	\$60,000	\$74,400
U.S. v. Fairfield Properties	6/29/2021	Settlement Agreement	Election	\$47,500	\$0	\$47,500
U.S. v. Smolnik	9/1/2021	Consent Decree	Election	\$40,000	\$0	\$40,000
U.S. v. Vandelay Group	2/22/2021	Consent Decree	Election	\$27,500	\$0	\$27,500
U.S. v. Brisas del Mar	9/7/2021	Consent Decree	Election	\$21,500	\$0	\$21,500
U.S. v. Woodcock	9/30/2021	Consent Decree	Election	\$13,000	\$0	\$13,000
U.S. v. Hideaway Village Community Management Association	9/15/2021	Consent Decree	Election	\$10,000	\$0	\$10,000
U.S. v. Hammett	12/15/202	Consent Decree	Election	\$6,500	\$0	\$6,500
U.S. v. Carmer	12/8/2020	Consent Decree	Election	\$0	\$0	\$0

Source: U.S. Department of Justice (DOJ). Data current as of December 13, 2021

Deadlines (In Order of Occurrence)

● Deadlines for complainant actions ● Deadlines for the government ● Deadlines for you (respondent)

- 1 year** **Filing a complaint.** Discrimination complaints must be filed with HUD within one year (365 calendar days) of the alleged discrimination, and the clock starts running the day after the discriminatory act.¹⁹ However, the complainant may hire a private attorney and file a civil suit up to two years after the last discriminatory action. Additionally, a longer time frame for filing may be allowed under a different federal, state, or local statute.
- 10 days** **Notice of complaint.** You will receive notice from HUD that someone has filed a complaint of discrimination within 10 days of the filing.
- 10 days** **Responding to the complaint.** You have 10 days of receiving the notice to submit an answer to the complaint.
- 30 days** **Contesting HUD's determination regarding reasonable cause.** If either party disagrees with HUD's determination, he or she can elect to have the charge decided in a civil court action, and "the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court" no later than 30 days after the election is made.²⁰
- 2 years** **Filing a fair housing lawsuit in a federal or state court.** An individual may file a fair housing lawsuit in a federal or state court on his or her own behalf "no later than 2 years after the occurrence or termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement."²¹
- 18 mos** **Civil Action by Attorney General.** The Attorney General may commence his own civil action no later than 18 months in any appropriate district court if he believes any person or group is engaged in a pattern of behavior and practice in direct opposition to the purpose of the FHA, or no later than 90 days if the action is commenced with respect to a breach of a conciliation agreement.²²
- 20 days** **Requesting to have the case heard in federal civil court.** After HUD issues a charge regarding reasonable cause, either party has 20 days to elect to have the case heard in federal civil court rather than by a HUD ALJ.
- 120 days** **Administrative hearing.** The FHA requires that the administrative hearing take place within 120 days of issuance of a charge, and then within 60 days, the ALJ will issue an initial decision.
- 15 days** **Petitioning the Secretary of HUD for Review.** Within 15 days of the issuance of the ALJ's initial decision, any party adversely affected by the ALJ's initial decision can petition the Secretary of HUD for review.

Minimize Your Exposure

Helping your employees avoid discrimination in the first place remains the best way to avoid a HUD investigation. And you do that by ensuring your teams are well-trained and kept current as the legal landscape shifts.

Grace Hill offers policies, training, and assessment to help your company communicate and train on compliance requirements — and evaluate whether those requirements are being met.

And with Grace Hill's one-of-a-kind Compliance Refreshers (30 – 45 minute courses that build on key compliance knowledge, including Fair Housing), you can inform learners of critical updates in the law.

Ready to reduce your risk by ensuring your employees understand the discrimination complaint process and know how to remain compliant with the HUD process?
Talk to a Grace Hill expert today!

Reviewed for legal accuracy by Haynsworth Sinkler Boyd, P.A., an advisor for multifamily housing clients on compliance and business matters, including FHA, ADA, state and local fair housing laws, and employment matters in those states where our attorneys are licensed to practice.

[1] 42 U.S.C.A. § 3604. Currently absent from the Act is the inclusion of sexual orientation, and/or gender identity as a protected class, though in 2012 HUD published a rule implementing a policy that LGBT individuals enjoy the same access to core HUD programs regardless of sexual orientation, gender identity, or marital status. 77 C.F.R.5661

[2] Office of Fair Housing and Equal Opportunity, Annual Report to Congress FY 2016 (2017)

[3] U.S. Department of Housing and Urban Development, Title VIII Complaint Intake, Investigation, and Conciliation Handbook 7-1 (2005), <https://www.hud.gov/sites/documents/80241C7FHEH.PDF>

[4] 42 U.S.C.A. § 3610(d)(1)

[5] 42 U.S.C.A. §3610(g)(2)(A)

[6] 42 U.S.C.A. §3610(g)(3)

[7] 42 U.S.C.A. § 3612(o)(1)

[8] 42 U.S.C.A. § 3613

[9] 25 C.R.F. §180.671(c)(1)-(6)

[10] All figures are adjusted annually subject to inflation

[11] 24 C.F.R. § 180.671 (a)(1)

[12] 24 C.F.R. § 180.671 (a)(2)

[13] 24 C.F.R. § 180.671 (a)(3)

[14] 42 U.S.C.A. § 3614(d)(1)(C)(i)

[15] 42 U.S.C.A. § 3614(d)(1)(C)(ii)

[16] Rethinking Conciliation Under the Fair Housing Act, 67 Tenn. L. Rev. 425, 434 (2000)

[17] 42 U.S.C.A. § 3612(p)

[18] Id. at § 3613(c)(1)

[19] Id. at § 3613(a)(1)(A)

[20] 24 CFR 103.410(d)

[21] 42 U.S.C.A. § 3613(a)(1)(A)

[22] 42 U.S.C.A. § 3614

