Chapter 13
Category 11h
Project not Available to the General Public
(Notifications of Fair Housing Act Administrative and Legal Actions)

Definition

State agencies must report the receipt of notices of Fair Housing Act (FHA) administrative and legal action issued by HUD or the Department of Justice to the Internal Revenue Service.

The Fair Housing Act

LIHC properties are subject to Title VIII of the Civil Rights Act of 1968[1], which makes it unlawful to discriminate in any aspect relating to the sale or rental of dwellings, in the availability of transactions related to residential real estate, or in the provision of services and facilities in connection therewith because of race, color, religion, sex, disability, familial status, or national origin.

Reasonable Modification and Accommodation

The FHA specifically makes it unlawful to refuse to permit, at the expense of the person with a disability, reasonable modifications to existing premises if the modifications are necessary to accommodate a person with a disability to occupy the premises. A landlord may, where reasonable, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification.

The FHA also makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices or services to afford a person with a disability equal opportunity to use and enjoy a dwelling.

Accessibility

The FHA makes it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with disabilities. The Fair Housing Act defines multifamily dwellings as buildings consisting of four or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of four or more units.

All premises within such dwellings are also specifically required to contain features of adaptive design so that the dwelling is readily accessible to and useable by persons with disabilities[2]. The FHA provides a list of the accessibility features necessary for compliance with the design and construction requirements[3]:

1. the public and common use portions of such dwellings are readily accessible to and usable by disabled persons;

[1] 42 USC 3601 et.seq., as amended
[2] 42 USC §3604(f)(3)(c)(iii)
[3] Refer to the Fair Housing Act Design Manual: A Manual to Assist Designers and Buildings in Meeting the Accessibility Requirements of the Fair Housing Act for more specific information about these requirements. The manual is available through HUD USER 1-800-245-2691.

2. all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs;

3. all premises within such dwelling contain the following features of adaptive design:

   (a) an accessible route into and through the dwelling;

   (b) light switches, electrical outlet, thermostats, and other environmental controls in accessible locations;

   (c) reinforcements in bathroom walls to allow later installation of grab bars;

   (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Citizenship Status

The FHA does not prohibit discrimination based solely on a person's citizenship status. Therefore, asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the FHA. Owners implementing citizenship or immigration status screening measures must make sure they are carried out in a uniform, nondiscriminatory fashion.

Example 1: Visa Expiration

> A person applying for an LIHC apartment mentions in the interview that he left his native country to study in the United States. The landlord, concerned that the student's visa may expire during tenancy, asks the student for documentation to determine how long he is legally allowed to be in the United States.
>
> If the landlord requests this information, regardless of the applicant's race or specific national origin, the landlord has not violated the Fair Housing Act.

Questions concerning the Fair Housing Act should be referred to the state's HUD regional office. HUD's regional offices are listed in Exhibit 13-1.

Role of the U.S. Department of Housing and Urban Development (HUD)

HUD is responsible for enforcing the Fair Housing Act. In so doing, HUD investigates allegations of housing discrimination, attempts to resolve the complaint, and determines whether there is reasonable cause to pursue civil action. If reasonable cause is present, HUD must bring the case before an administrative law judge. In the alternative, if either party elects to have claims or complaints decided in a civil action, HUD must refer the complaint to the U.S. Department of Justice for prosecution in the United States District Court.

Role of the U.S. Department of Justice

The Department of Justice (DOJ) may file a lawsuit whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of discrimination or denial of rights to a group of persons where such denial raises an issue of general public importance. DOJ may also file a lawsuit based upon HUD referrals involving the legality of any state or local zoning, or other land use law or ordinance if the parties agree to a civil action. DOJ may also enter into settlement/consent agreements with property owners to obtain compliance with the Fair Housing Act. DOJ may also seek a court judgment to enforce the terms of a settlement/consent agreement.

Role of Substantially Equivalent State or Local Fair Housing Agency

Where HUD has determined that state or local laws are substantially equivalent to the federal Fair Housing Act, a state or local fair housing agency investigates fair housing allegations, attempts conciliation, and determines whether reasonable cause exists to believe a discriminatory housing practice has occurred. If the fair housing agency makes a determination of reasonable cause, then a charge is filed with representation of the complainant provided by a state or local representative.

Memorandum of Understanding (MOU) Among Treasury , HUD and DOJ

Treasury, HUD, and DOJ entered into an MOU in a cooperative effort to promote enhanced compliance with the Fair Housing Act for the benefit of residents of LIHC properties and the general public. Key points of the MOU include coordinated procedures for notifying the state agencies and IRS of charges, lawsuits, or other actions under the Fair Housing Act involving an LIHC property. The MOU also calls for interagency assistance and training, training for the state agencies and industry stakeholders, and training for architects on the accessibility requirements. See Exhibit 13-2 for the full text of the MOU.

Reporting of Fair Housing Act Administrative and Legal Actions

HUD or DOJ will notify a state agency of:

1. a charge by the Secretary of HUD for a violation of the Fair Housing Act,
2. a probable cause finding under a substantially equivalent fair housing state law or local ordinance by a substantially equivalent state or local agency,
3. a lawsuit under the Fair Housing Act filed by the DOJ, or
4. a settlement agreement or consent decree entered into between HUD or DOJ and the owner of an LIHC property.

Other non-FHA civil rights actions and lawsuits, such as section 504 Rehabilitation Act lawsuits or administrative actions, are not covered under the terms of the MOU and should not be reported to the IRS.

On receipt of such a notification, a state agency should immediately file a Form 8823 with the IRS noting the potential violation using the “out of compliance” box and notify the owner in writing. A sample letter that a state agency should send to the owner is included as Exhibit 13-3.

When a Form 8823 pertaining to the above is received, the IRS will send a letter to the owner notifying the owner that a finding of discrimination, including an adverse final decision by the Secretary of HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment by a federal court, will result in the loss of low-income housing credits. Similarly, the IRS will also send a letter to owners notifying them that a judgment enforcing the terms of a settlement agreement or consent decree will result in the loss of low-income housing credits.

Potential Violations Discovered by State Agencies

State agencies should report potential Fair Housing Act violations discovered during their compliance monitoring activities to their HUD Regional offices, or other fair housing enforcement agencies, as appropriate. HUD's Regional offices are listed in Exhibit 13-1. Do not submit this information to the IRS via Form 8823.

State Agency Notified by HUD or DOJ that the Terms of Settlement Agreement, Consent Decree, or Judgment are Satisfied

Form 8823 should be filed with the IRS when the civil action is completed. HUD or DOJ will notify the state agency of the resolution of an alleged violation of the Fair Housing Act. Documentation that the owner has complied with the court order and/or HUD's requirements and that the violation has been corrected is needed.

IRS Determinations

The state agencies are responsible for reporting their receipt of notifications of administrative and legal action by HUD and the Department of Justice as outlined in the MOU. The IRS is responsible for determining whether the owner is out of compliance for purposes of IRC §42, and the associated out of compliance and back in compliance dates, based on the findings of the court proceeding. The determination will be based on the facts of the individual case.

Example 1: Violation of Fair Housing Act

> A LIHC project discriminated against single women in its rental practices. The U.S. Department of Justice initiated a lawsuit and obtained a judgment covering all units in the project. The property violates the Fair Housing Act and is in violation of Treas. Reg. §1.42-9.

Depending on the nature of the violation, noncompliance may be determined at the unit, building, or project level. The costs attributable to a residential rental unit that is not for use by the general public are not excludable from eligible basis by reason of the unit's ineligibility for the credit under this section. However, in calculating the applicable fraction, the unit is treated as a residential rental unit that is not a low-income unit.

Reference

Treas. Reg. §1.42-9(a)

Exhibit 13-1
HUD's Regional Offices

HUD AREA	DIRECTOR	PHONE NUMBER	REGIONAL STATES
REGION I BOSTON Fair Housing Hub U.S. Department of Housing and Urban Development Thomas P. O'Neill, Jr. Federal Building 10 Causeway Street, Room 321 Boston, MA 02222-1092	Marcella Brown	617 994-8320	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
REGION II NEW YORK Fair Housing Hub U.S. Department of Housing and Urban Development 26 Federal Plaza - Suite 3532 New York, New York 10278-0068	Stanley Seidenfeld	212 264-1290 Ext. 3501	New Jersey, New York
REGION III PHILADELPHIA Fair Housing Hub U.S. Department of Housing and Urban Development The Wanamaker Building 100 Penn Square East, 12th Floor Philadelphia, PA 19107-3380	Wanda S. Nieves	215-656-0661 Ext. 3265	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia
REGION IV ATLANTA Fair Housing Hub U.S. Department of Housing and Urban Development Five Points Plaza 40 Marietta Street, 16th Floor Atlanta, Georgia 30303-2806	Gregory King	404 331-5001 Ext. 3660	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee
REGION V CHICAGO Fair Housing Hub U.S. Department of Housing and Urban Development Ralph H. Metcalfe Federal Building 77 West Jackson Boulevard, Rm. 2101 Chicago, Illinois 60604-3507	Barbara Knox	312 353-7776 Ext. 2400	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin
REGION VI FORT WORTH Fair Housing Hub U.S. Department of Housing and Urban Development 801 Cherry Street, 27th Floor P.O. Box 2905 Fort Worth, Texas 76113-2905	Garry Sweeney	817 978-5868	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

Exhibit 13-1
HUD's Regional Offices

REGION VII KANSAS CITY Fair Housing Hub U.S. Department of Housing and Urban Development Gateway Tower II 400 State Avenue, Room 200 Kansas City, Kansas 66101-2406	Robbie Herndon	913 551-6889	Iowa, Kansas, Missouri, and Nebraska
REGION VIII DENVER Fair Housing Hub U.S. Department of Housing and Urban Development 633 17th Street, 13th Floor Denver, Colorado 80202-3690	Evelyn Meininger	303 672-5434 Ext. 1364	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
REGION IX SAN FRANCISCO Fair Housing Hub U.S. Department of Housing and Urban Development Philip Burton Federal Building & U.S. Courthouse 450 Golden Gate Avenue, 9th Floor P.O. Box 36003 San Francisco, CA 94102-3448	Chuck Hauptman	415 436-8420	Arizona, California, Hawaii, and Nevada
REGION X SEATTLE Fair Housing Hub U.S. Department of Housing and Urban Development Seattle Federal Office Building 909 First Avenue, Rm. 205 Seattle, Washington 98104-1000	Judith Keeler	206 220-5170 Ext. 3415	Alaska, Idaho, Oregon, and Washington

Exhibit 13-2

MEMORANDUM OF UNDERSTANDING AMONG

THE DEPARTMENT OF THE TREASURY,

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND

THE DEPARTMENT OF JUSTICE

Preamble

The United States Departments of the Treasury, Housing and Urban Development, and Justice enter into this memorandum of understanding (MOU) in a cooperative effort to promote enhanced compliance with the Fair Housing Act (Act), 42 U.S.C. ээ 3601 et seq., for the benefit of residents of low-income housing tax credit properties and the general public.

It is recognized that the Department of the Treasury=s (Treasury) Internal Revenue Service (IRS) is responsible for administering and enforcing the tax laws in the low-income housing tax credit program under э 42 of the Internal Revenue Code, 26 U.S.C. э 42. In accordance with э 1.42-9 of the Income Tax Regulations, 26 C.F.R. э 1.42-9, low-income housing tax credit properties are to be rented in a manner consistent with the Act. Noncompliance of these properties with the low-income housing tax credit provisions is required to be reported to the IRS by state housing finance agencies under 26 U.S.C. э 42(m)(1)(B)(iii).

It is recognized that the Department of Housing and Urban Development (HUD) is responsible for enforcing the Act, 42 U.S.C. ээ 3601 et seq. In doing so, HUD is required to investigate allegations of housing discrimination, attempt conciliation of the complaint, and determine whether there is reasonable cause to believe discrimination has occurred under the Act. Upon finding reasonable cause, HUD must bring the case before an administrative law judge, or if either party elects to have claims or complaints decided in a civil action, HUD must refer the complaint to the Department of Justice for prosecution in the United States District Court.

It is recognized that the Department of Justice (Justice) is responsible for enforcing the Act, 42 U.S.C. ээ 3601 et seq. Pursuant to section 3614 of the Act, Justice may file a lawsuit whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of discrimination or denial of rights to a group of persons where such denial raises an issue of general public importance. Justice also may file a lawsuit upon referral of matters from HUD involving the legality of any state or local zoning or other land use law or ordinance and after receiving a referral from HUD following an election by a party to a HUD complaint to have the matter decided in a civil action. Justice may enter into

settlement agreements and consent decrees with property owners to obtain compliance with the Act. In the event a property owner fails to comply with the terms of the settlement agreement or consent decree, Justice may seek a court judgment to enforce the terms of the settlement agreement or consent decree.

The parties to this MOU agree to the following:

1) Coordination on Notifying Low-Income Housing Tax Credit Property Owners about Charges, Lawsuits, and Other Actions

HUD and Justice will identify low-income housing tax credit properties for which there is: 1) a charge by the Secretary of HUD for a violation of the Act; 2) a probable cause finding under a substantially equivalent fair housing state law or local ordinance by a substantially equivalent state or local agency; 3) a lawsuit under the Act filed by Justice; or 4) a settlement agreement or consent decree entered into between HUD or Justice and the owner of a low-income housing tax credit property. HUD or Justice will then transmit the address of the property and a summary of these actions to the appropriate state housing finance agency, using a current list of contacts and addresses of state housing finance agencies provided by the IRS.

Upon the state housing finance agencies reporting this information to the IRS (using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance), the IRS will send a letter to involved property owners notifying them that a finding of discrimination, including an adverse final decision by the Secretary of HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment by a federal court, could result in the loss of low-income housing tax credits. Similarly, the IRS will also send notification to property owners that a judgment enforcing the terms of a settlement agreement or consent decree could result in the loss of low-income housing tax credits. The IRS, HUD, and Justice will collaboratively develop the model letters addressed to property owners and other entities. HUD and Justice will also send to the IRS and the appropriate state housing finance agency a summary of the above-referenced actions, describing relevant information such as the precise nature of the violation, the dates of the violation, and proposed corrective actions.

2) Designating Contacts and Interagency Technical Assistance and Training

HUD and Justice will designate personnel to provide the IRS upon request with technical assistance and problem resolution concerning emerging civil rights and discrimination matters involving the administration of the low-income housing tax credit program (e.g., accessibility issues, section 8 vouchers, civil rights interpretative issues, and published guidance). In addition, HUD and Justice will provide training upon request to a few designated IRS personnel about the Act. The IRS will designate personnel to provide technical assistance and training upon request to HUD and Justice personnel on general tax administration issues under the low-income housing tax credit program, in a manner consistent with the IRS=s disclosure limitations contained in section 6103 of the Internal Revenue Code.

3) Training for State Housing Finance Agencies and Others

HUD and Justice will make training available upon request to state housing finance agencies and other entities (e.g., developers, property management companies, syndicators) on the Act, including training on inspecting for Act accessibility criteria referenced in the uniform physical condition standards in 24 CFR 5.703. HUD will also encourage substantially equivalent state and local fair housing agencies to invite state housing finance agencies and other entities to participate in civil rights training developed by the substantially equivalent agencies.

4) HUD=s Pilot Program to Train Architects on the Act=s Accessibility Requirements

HUD has begun the process of developing a pilot program in one region of the country to provide training and technical assistance to architects and others on the accessible design and construction requirements of the Act. HUD has also proposed expanding this program to four regions in FY 2001. HUD will promote participation in the program by members of the American Institute of Architects, including those involved with the design and construction of low-income housing tax credit properties.

5) Cooperation in Research Concerning Low-Income Housing Tax Credit Properties

HUD and Treasury will cooperate in research sponsored by either Department concerning low-income housing tax credit properties.

6) Cooperation to Identify and Remove Unlawful Barriers to Section 8 Tenants

In consultation with the state housing finance agencies, HUD, Justice, and the IRS will cooperate in identifying and removing unlawful barriers to occupancy of low-income housing tax credit properties by individuals holding section 8 vouchers.

7) Cooperation in Assisting Syndicators of Low-Income Housing Tax Credits

HUD, Justice, and the IRS will cooperate in helping the national associations of investment syndicators of low-income housing tax credit properties to enhance practices by syndicators in monitoring and promoting compliance with the Act and the low-income housing tax credit program.

8) Annual Civil Rights Meeting Among Federal Agencies and Participation in National Conference of State Housing Finance Agencies

HUD, Justice, Treasury, and other interested federal agencies will meet annually to discuss emerging civil rights issues and new methods and programs to increase civil rights compliance in the low-income housing tax credit program. IRS will encourage the state housing finance agencies to invite HUD and Justice to the annual national conference of state housing finance agencies. HUD and Justice agree to designate personnel to conduct training and discuss emerging civil rights issues at the national

conference.

Implementation

This MOU will become effective 30 days from the date of the last signature on this document.

The parties agree to confer on the interpretation and application of the memorandum as necessary and to conduct a mutual annual review of its operation.

Nothing in this MOU shall be construed to impair or affect i) HUD=s or Justice=s authority to enforce the Act, ii) the IRS=s authority to administer the low-income housing tax credit program, including complete administrative discretion to deny low-income housing tax credits in the event of a violation of the Act, or iii) the IRS's disclosure limitations under section 6103 of the Internal Revenue Code.

/signed/	/signed/	/signed/
Lawrence H. Summers	*Andrew Cuomo*	*Janet Reno*
LAWRENCE H. SUMMERS Secretary of the Treasury	ANDREW CUOMO Secretary, U.S. Department of Housing and Urban Development	JANET RENO Attorney General
August 9, 2000	August 9, 2000	August 10, 2000
DATE	DATE	DATE

Exhibit 13-3
Sample Letter to Notify Building Owner of Potential Fair Housing Act Violations

Date

Owner
Address
City State ZIP

RE:
Project:
BIN Numbers:

Dear Owner:

Enclosed are Forms 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, concerning certain Fair Housing Act [administrative/legal actions] reported by [the U.S. Department of Housing and Urban Development (HUD)/U.S. Department of Justice] to this agency. Our agency has submitted these Forms 8823 to the Internal Revenue Service.

Low-income housing tax credit properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act ("Act"). The Act prohibits discrimination in housing and housing related transactions, including the sale, rental and financing of dwellings, based on race, color, religion, sex, national origin, familial status, and disability. See 42 U.S.C. sections 3601 through 3619. The Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

Section 1.42-9 of the Income Tax Regulations provides that the failure of low-income housing tax credit properties to comply with the requirements of the Act results in the denial of credits on a per-unit basis. Thus, an adverse final decision by the Secretary of HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse final judgment by a federal court, including a judgment enforcing compliance with the terms of a settlement agreement or consent decree, could result in the disallowance of credits, recapture of credits, and preclusion of future credits on the effected units. If the reduction in the number of the low-income units in the building(s) brings the project below the minimum set-aside requirement defined in section 42(g)(1) of the Internal Revenue Code, the entire amount of the credit for the project could be disallowed.

Your ability to enter into a settlement agreement concerning the particular Fair Housing Act problem with HUD, the Department of Justice, or the state or local fair housing agency may preclude the necessity of loss of low-income housing tax credits. It is incumbent upon you to work with the appropriate agency to resolve the problem.

Sincerely,

Name-Signature
Title

CC: Management Contact