

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4688-N-02]

Responses to Notice of Certification and Funding of State and Local Fair Housing Enforcement Agencies Under the Fair Housing Assistance Program (FHAP)

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: Under HUD's regulations addressing the certification of state and local fair housing enforcement agencies under the Fair Housing Assistance Program (FHAP), HUD is required to (1) Periodically inform the public of certified and interim certified agencies and identify those agencies where a denial of interim certification or withdrawal of certification has been issued or proposed; and (2) solicit comments from the public, prior to HUD granting certification to state or local fair housing enforcement agencies. On February 27, 2002, a notice fulfilling these requirements was published. The following notice identifies and responds to the comments received.

DATES: *Effective Date:* July 16, 2003.

FOR FURTHER INFORMATION CONTACT: Myron P. Newry or Kenneth J. Carroll, FHAP/FHAP Support Division, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5222, Washington, DC 20410-0001, at (202) 708-2215 (this is not a toll-free number). Persons with speech or hearing impairments may contact the Office of Programs by calling 1-800-290-1617, or 1-800-877-8399 (the Federal Information Relay Service TTY).

SUPPLEMENTARY INFORMATION: Seven organizations responded to the February 27, 2002, public notice. Four of the seven organizations identified issues with the Tennessee Human Rights Act (THRA) and with the way that the Tennessee Human Rights Commission (THRC) administers that law. One organization identified issues with the New York State Human Rights law and with the way that the New York State Division of Human Rights administers that law. One organization identified issues with the Pennsylvania Human Relations Act. Finally, one organization expressed support for the Vermont Human Rights Commission (this comment will not be discussed below).

Comments and Responses Regarding the Tennessee Human Rights Commission

Comment. The THRC had only one administrative hearing in the past seven years.

According to the Department's records, this is not true. From December 31, 1995, to December 31, 2002, THRC had two administrative hearings. Discrimination was found in each of those cases. In addition, during this time period, THRC had one judicial consent order. Finally, from December 31, 1995, to December 31, 2002, THRC conciliated 62 cases prior to a THRC finding, to the satisfaction of all parties involved. THRC has a statutory duty to attempt settlement of cases through conference, conciliation, and persuasion during the investigation and enforcement process, and the Department views this as an acceptable method of case disposition.

Comment. Complainants and respondents do not receive sufficient notice of time frames and forum options during THRC's fair housing complaint investigation, conciliation, and enforcement activities.

THRC sends notification letters to respondents and complainants in every case. The notification letters state that the complainant has a right to pursue a civil cause of action in chancery court or circuit court within one year of the last alleged act of discrimination. The notification letters also inform the parties that the time limit to file a private cause of action in court will continue to run when the complaint is pending at THRC. Finally, the notification letters set forth procedures for the election of civil proceedings, the period of time parties have to elect, and the amount of time the commission has to file in court when a party elects civil proceedings.

With one exception, the Department views the notification letter as sufficiently notifying the parties of time frames and forum options. Concerning the issue of informing the parties that the time limit to file a private cause of action in court will continue to run when the complaint is pending at THRC, the letter shall be revised. Pursuant to the Department's recommendation below under the comment, "The time limit for filing a private lawsuit under THRA is not tolled by filing a complaint with THRC," the letter must clearly inform the parties of the procedure (as recommended by HUD) that THRC will utilize when a dual-filed complaint being processed by THRC is close to the

one-year time limit to file a private cause of action in court.

Comment. THRC complaint forms must be notarized and complainants must submit a notarized affidavit form with the complaint form.

There is no statutory requirement that complaints be notarized under the THRA. However, THRC's rules state that "[t]he complaint shall be in writing and must be signed and sworn to before a notary public or other person duly authorized by law to administer oaths and take acknowledgements." The purpose of the notarization requirement, according to THRC, is "to provide some degree of insurance against catchpenny claims of disgruntled, but not necessarily aggrieved, persons." Regulations implementing the Federal Fair Housing Act (FHA), at 24 CFR section 115.202 (a)(3), provide that a state or local law that is substantially equivalent to the FHA must not "place excessive burdens on the complainant that might discourage the filing of complaints, such as * * * [p]rovisions that could subject a complainant to costs, criminal penalties, or fees in connection with filing complaints." A notarization requirement may place a financial and logistical burden on a complainant. However, THRC's rules also provide that notary public service "shall be furnished without charge by the Commission." Moreover, THRC has recently proposed rules allowing complaints to be "verified" instead of notarized. According to THRC, the term "verified" would be defined more broadly than notarization, allowing complaints to be sworn to persons other than a notary public, including designated representatives of THRC. Complaints would also be "verified" if they were supported by a declaration in writing under penalty of perjury. HUD will require THRC to enact the rule that complaints may be "verified" (instead of notarized) and all that is necessary for a complaint to be "verified" is that it be supported by a declaration in writing under penalty of perjury.

Comment. It is not THRC's "practice" to interview complainants as part of the investigative process.

THRC disputes this comment. According to THRC, investigators are continually instructed and reminded that they cannot complete an investigation without interviewing, at a bare minimum, the complainant, the respondent, and any relevant witnesses. The Department's performance assessments of THRC and the Department's review of THRC's dual-filed cases indicate that complainants, respondents, and all relevant witnesses