

are interviewed as a customary part of THRC's investigative process.

*Comment. THRC often stops investigating a complaint once the respondent articulates a plausible nondiscriminatory reason for the behavior.*

THRC disputes this comment. According to THRC, absent direct evidence of discrimination, respondents must articulate legitimate, nondiscriminatory reasons for their behavior to rebut a prima facie case of discrimination. THRC then verifies those reasons to the extent factually possible. Faced with a nondiscriminatory reason, the complainant must then provide evidence to THRC showing that the respondent's reasons are false and that the real reason is discrimination. The Department's performance assessments of THRC confirm that THRC sufficiently investigates complaints following a respondent's articulation of a plausible nondiscriminatory reason for the alleged discriminatory behavior.

*Comment. THRC assigns investigators from one region of Tennessee to investigate complaints originating in another region of Tennessee.*

The duty station of an agency's investigators does not affect certification so long as complaints are appropriately investigated. The assignment of investigators is an internal management decision for THRC. Absent credible evidence that parties are being harmed by THRC assigning investigators from different regions of Tennessee, HUD will not impose requirements on THRC regarding this issue. In any event, THRC states that this is not its general practice. THRC has housing employees in Knoxville, Memphis, Nashville, and Kingsport, Tennessee. While investigators do occasionally investigate cases in regions other than their own, this is not THRC's routine practice.

*Comment. If an investigator's employment at the THRC ends during a pending investigation and a new investigator is assigned, the investigation often starts at the beginning. This result is exacerbated by a high turnover rate among THRC investigation staff.*

THRC disputes this comment and contends that it does not have a high turnover rate in housing investigators. THRC employs 31 people in six offices throughout the state. Since May of 2000, only one housing employee left THRC, and this person was not an investigator.

*Comment. THRC knowingly employed at least one investigator with a felony conviction.*

THRC acknowledges that this is true. However, the individual no longer

works at THRC. HUD will require THRC to implement hiring procedures to assure that individuals with felony convictions will not be hired in the future.

*Comment. THRC did not conduct an initial site visit for a case until approximately one year after the complaint for that case was filed. In addition, as of March 21, 2002, no one from the named complainant organization had been interviewed regarding that case. Finally, as of March 21, 2002, THRC had not made a finding in the case.*

THRC declined to discuss the particulars of the case because that case is still open and such discussion would violate the confidentiality requirement under Tennessee law. Tennessee Code Annotated 4-21-303(d) makes THRC investigative files confidential. In addition, according to THRC, Tennessee Attorney General Opinions 80-082 and 87-93 state that investigative case files of the Commission are confidential and are exempt from disclosure to all but the parties (or their representatives) involved in an action. THRC was especially reluctant to discuss the specifics of the case because such comments would be published in the **Federal Register**. HUD did confirm that a site visit was conducted in the case, appropriate parties were interviewed, and a finding was made.

*Comment. The time limit for filing a private lawsuit under THRA is not tolled by filing a complaint with THRC.*

Under THRA, the time limit to file a fair housing complaint with THRC is 180 days from the last alleged discriminatory act. The time limit to file in court under the THRA is one year from the last alleged discriminatory act. The period of time a complaint is with THRC is included in calculating the one-year time limit for filing in court. This is in contrast to the FHAct, which provides that the time limit for filing a private lawsuit is tolled by filing a complaint with HUD. HUD will require THRC to adopt a procedure to assure that parties' rights will not be compromised by THRA's provision. The procedure will apply when a dual-filed case being processed by THRC is close to the one-year time limit to file a private cause of action in court.

*Comment. THRA does not specify a time frame within which an administrative hearing must be conducted.*

Section 304 of THRA provides that, in housing discrimination cases, a hearing shall be "commenced" if there is a determination of cause, conciliation has not been successful, and neither party has elected for a civil suit within 90

days of the filing of the complaint. THRA does not specifically provide for a time within which the administrative hearing must commence. The FHAct provides that a hearing be conducted within 120 days of the issuance of the charge of discrimination. Despite the difference, HUD does not view this omission as constituting a fatal flaw that would render the statute not substantially equivalent to the FHAct.

*Comment. THRA does not sufficiently inform the complainant and the respondent of their forum options.*

Section 312 of THRA clearly provides that, within 90 days of the complaint having been filed, if it has not been conciliated, THRC shall notify the parties that they may elect to have the issues adjudicated in a civil action. According to THRA, parties have 20 days from the date of receipt of the notice in which to elect (this is 110 days from the date of the filing of the complaint). THRA states that a civil action shall commence within 60 days of the election. While it is true that no provision of THRA explicitly states that a complainant can choose either the administrative or the judicial forum, various sections of the THRA provide the choice to the parties (See sections 302 and 304 of the THRA). HUD views THRA as sufficiently informing the complainant and the respondent of their forum options.

*Comment. THRA does not include time limits that findings must be made, time limits for the issuance of charges, or time limits between the reasonable cause finding and the issuance of a charge.*

The regulations setting forth the legal criteria for substantial equivalency certification, located at 24 CFR 115.202, mandate that a substantially equivalent agency utilize the following time frames: (1) The commencement of proceedings after a complaint is filed must be within 30 days; (2) the completion of the investigation must be within 100 days (or if it is impracticable to do so, the agency must notify the parties in writing of the reasons(s) for the delay); and (3) final disposition of the complaint must be within one year (or if it is impracticable to do so, the agency must notify the parties in writing of the reasons(s) for the delay). The Department does not require substantially equivalent agencies to have time limits above and beyond these.

Section 302 of THRA provides that an investigation of a complaint be undertaken promptly within 30 days of the filing of the complaint. The THRA does not require that the investigation be completed within any specified