

period. However, the Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement) between HUD and THRC requires that THRC complete the investigation within 100 days or, if THRC is unable to do so, it shall notify the parties in writing of the reasons for the delay. Similarly, THRA does not require that final disposition be within one year of receipt of the complaint. However, the Interim Agreement between HUD and THRC requires that final disposition of complaints occur within one year, or if THRC is unable to do so, it shall notify the parties in writing of the reasons for the delay. When HUD conducts performance assessments of THRC and reviews cases dual-filed with THRC, HUD monitors THRC's compliance with the time frames enumerated in THRA and the time frames enumerated in the Interim Agreement.

*Comment. The FHAct's design and construction requirements mandate that all ground floor units of covered dwellings be accessible. THRA only mandates that each covered building have one accessible entrance.*

The comment is confusing. The commenter is identifying seemingly contradictory provisions of the FHAct and THRA. However, further analysis indicates that the provisions are not inconsistent. It is true that the FHAct's design and construction requirements require that all ground floor units in covered dwellings contain certain accessibility features. However, HUD accessibility requirements further clarify that each covered building need only have one accessible entrance to the building itself. Similarly, THRA requires that all ground floor units in covered dwellings contain certain accessibility features. As the commenter points out, THRA also states that each covered building need only have one accessible entrance to the building itself. The FHAct and THRA are consistent on this issue.

#### **Comments and Responses Regarding the New York State Division of Human Rights (the Division)**

*Comment. A complainant in New York should be able to choose whether his/her complaint is processed in the federal administrative forum or in the state administrative forum.*

Allowing a complainant in New York to choose whether his/her complaint is processed in the federal administrative forum or the state administrative forum would contravene the FHAct. When HUD grants certification or interim certification to a state or local fair housing enforcement agency, it has

determined that the agency administers a law that is substantially equivalent to the FHAct. Section 810(f) of the FHAct provides that HUD shall refer complaints to agencies with certification when the complaint alleges a discriminatory housing practice within a jurisdiction served by the certified agency. Except in limited circumstances, HUD will take no further action with respect to complaints that it refers to certified agencies. These circumstances include the following: (1) If the certified agency is either untimely in its commencement of proceedings or if, after commencement, it carries forward such proceedings without reasonable promptness; (2) when HUD determines that the agency no longer qualifies for certification; and (3) if the agency agrees to HUD's reactivation of the complaint. If none of these circumstances apply, once a complaint is dual-filed at HUD and at the substantially equivalent agency, the substantially equivalent agency will conduct the complaint investigation, conciliation, and enforcement activities.

Similarly, the commenter stated that if a complainant withdraws a complaint from the Division, the complaint should not automatically be withdrawn from HUD. Again, under the FHAct, a complainant is not permitted to choose between HUD and the Division. If a complainant withdraws a complaint, the complaint will be considered withdrawn from both the Division and HUD.

*Comment. Staff of the New York State Division of Human Rights (the Division) has received insufficient training in handling fair housing cases.*

Since the Division received interim certification in 1999, Division staff has received extensive fair housing training. HUD-sponsored training has included instruction on conducting intake, investigation, conciliation, interviewing techniques, and case management. Additionally, Division staff have been trained on fair housing investigation and law in general as well as disability fair housing issues, testing, discriminatory advertising, and proving intimidation, harassment, and retaliation.

Shortly after the Division received interim certification, a four-day, Division-specific fair housing training was held at HUD's New York State Office. The Division's executive staff, investigators, attorneys, and administrative law judges attended this training. Division staff has also participated in national and regional HUD-sponsored fair housing training, including the FHIP/FHAP Quad Regional Conference in Philadelphia,

Pennsylvania, during August 2001 and the National Fair Housing Policy Training Conference in Orlando, Florida, during June 2002. Training sessions have been held in all of the Division's offices. HUD reviews cases investigated by the Division. HUD staff travel to all Division offices on an ongoing basis and provide training and technical assistance. Finally, since 1999, HUD has had frequent, often daily, communications with the Division's executive staff, regional directors, housing unit staff, and investigators.

*Comment: After issuing a finding in a particular case, the Division failed to notify the complainant's designated representative of the determination.*

The Division admits that it failed to inform the designated representative of the determination in a particular case. The Division responded that this was an oversight and, once learned, the mistake was "quickly remedied."

*Comment: The Division limits its investigations to violations of the New York State Human Rights Law and does not investigate violations of the federal Fair Housing Act.*

The Division limits its investigations to violations of the New York State Human Rights Law because it has no authority to administer or enforce the FHAct. The power to administer and enforce the FHAct lies with HUD.

HUD has certified New York State Human Rights Law as "substantially equivalent" to the FHAct. The Division has the authority to administer and enforce this law. Any complaints that allege a violation of the FHAct that are not covered by the New York State Human Rights Law, will be referred by the Division to HUD for processing. Similarly, HUD will not refer complaints it receives to the Division that are not covered by the New York State Human Rights Law.

*Comment: The Division does not process and investigate complaints in a timely manner.*

HUD's review of the Division's work indicates that complaints are usually processed and investigated in a timely manner and, when it is impracticable to meet required time frames, the Division informs parties of the reasons for the delay.

*Comment: After HUD refers a complaint to the Division, there are delays of approximately two to four weeks in which the Division requires that the complainant have complaints notarized and drafted in Division language and forms.*

The Division disagrees that there are delays of two to four weeks and alleges that necessary documentation is mailed to the complainant and the respondent