

within a few days of receipt of a referral from HUD. HUD's review of the Division's work corroborates its position.

Comment: The Division legal staff has insufficient state court and federal court trial experience.

According to the Division, a majority of the Division legal work is not in state court, but in administrative hearings. Given this, the Division has hired an attorney with extensive state court trial experience. In regards to federal court trial experience, HUD will not require the Division's legal staff to have such experience because HUD certified the Division to administer and enforce a substantially equivalent state law, not a federal law.

Comment: The Division should not separate cases when an organization and a bona fide complainant file with the Division.

The commenter responded on behalf of an organization. The organization alleges that the separation of complaints arising out of the same set of facts places unreasonable demands on an organization's time. The organization must respond to the Division's requests for information on its own behalf. Additionally, if it is a designated representative of the bona fide complainant, the organization will assist the complainant in providing information to the Division.

The Division states that it separates complaints to assure that organizations, which may have legitimate claims for damages, receive compensation when appropriate. Though the complaints arise out of the same alleged act of discrimination, issues of standing and damages may be different and may require different fact-finding and analysis. The lack of commonality on these issues justifies breaking the case into different complaints.

To save the organization time, the Division permits submission of the same documentation for its complaint and the bona fide complainant's complaint, provided identical documentation is appropriate for both the organization and the bona fide complainant. HUD will not require the Division to change its procedure on this issue.

Comment: The Division often fails to provide notice for conferences or fails to provide correct and adequate notice to parties and designated representatives in fair housing cases. In addition, prior to scheduling conferences, the Division often fails to check on the ability of parties and designated representatives to attend.

The organization that commented on this issue identified two cases where respondents failed to appear at

conferences. The Division contends that it sufficiently informed the respondents of the conference in both of these cases and always does. The Division stated that at intake it records the names and addresses of the respondents. The Division then mails all notices to the parties at the addresses that were provided at intake. If the notice is not returned by post office, there is a presumption of receipt. HUD will suggest to the Division that it conduct some additional investigation to assure that the respondent's address is correct prior to sending the notice of conference. Hopefully, such a process would lessen the number of respondents who fail to show up at conferences.

The organization states that a more efficient practice in notifying parties of conferences is to check the parties' schedules prior to scheduling a conference. In response, the Division stated that it has always rescheduled matters at any party's request (including the organization's) and will continue to do so in order to conduct a thorough investigation. HUD concludes that the method of scheduling conferences is an internal management decision for the Division and will not require the Division to adopt a particular scheduling procedure for purposes of maintaining substantial equivalency certification.

Comment: The Division did not follow up when notified of a respondent's failure to perform some settlement term. The settlement term involved fair housing training for the respondent.

In the case that the organization is referring to, the Division does not recall being notified that training had not been conducted. The Division has a compliance unit that ensures that the terms of the orders and settlements are satisfied. The Division has informed HUD that it will investigate this matter and ensure that the settlement term is met.

Comment: Unlike the federal Fair Housing Act, New York law exempts all 2-family, owner-occupied housing from application of fair housing laws.

The relevant regulation, at 24 CFR section 115.202 (a) (4), provides that "[i]n order for a determination to be made that a state or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must * * * not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act."

The New York law exempts rental units in two-family homes occupied by

the owner. This exemption does not substantially reduce the coverage of housing accommodations as compared to section 803 of the Act. In its counterpart provision at section 803(b)(2), the FHAct exempts an owner from coverage if he/she rents out rooms in a house that contains quarters for four or fewer families and the owner lives in the house.

In actuality, the New York law increases the coverage of housing accommodations compared to section 803 of the FHAct since, unlike the FHAct, individuals will be protected from discrimination if there are quarters for three or four families. These individuals would not be protected under the FHAct. While such complaints may not be dual-filed, the Department does not view New York's divergence on this issue as jeopardizing the Division's substantial equivalency certification.

Comment: The Division largely ignores requests for prompt intervention.

The commenter refers to two cases where a request for prompt intervention was denied. In one case, the complainant alleged a denial of housing in February 2001. However, the complaint was not filed until March 2002. Since the complaint was filed more than one year after the alleged discriminatory act, the Division correctly dismissed the complaint for untimeliness. In the other case, prompt intervention was unnecessary because the Division was able to secure the landlord's withdrawal of the termination of tenancy. Moreover, contrary to the comment, the Division contends that it has been successful on several occasions in staying eviction proceedings pending the Division's administrative process.

Comments and Responses Regarding the Pennsylvania Human Relations Act (PHRA)

Comment: In discriminatory advertising cases, the PHRA limits civil penalties to a maximum of \$500 where the complainant is not actually denied housing based upon discriminatory language of the advertisement.

This is different than the FHAct. The FHAct does not require that the complainant demonstrate that he or she was actually denied housing before the full range of civil penalties may be imposed on a respondent in a discriminatory advertising case. Rather, advertisers and publishers of discriminatory advertisements bear full liability under the Fair Housing Act. See, *United States v. Hunter*, 459 F.2d 205 (4th Cir. 1972), cert. denied, 409