

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 1968¹, 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 disabilities². The FHA provides a list of the accessibility features necessary for compliance with the design and construction requirements³:

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)