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Department of Housing and Urban Development

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

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, FHIP/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 (FHAct), at 24 CFR section 115.202 (a)(3), provide that a state or local law that is substantially equivalent to the FHAct 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

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

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 on-going 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

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 Divison'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

U.S. 934 (1972). Discriminatory housing advertisements represent ''precisely one of the evils the [Fair Housing] Act was designed to correct.'' *Id.,* at 211.

The Department objects to any attempt to limit the liability of advertisers or publishers, regardless of the fact that the limitation applies to civil penalties payable to the government, rather than to actual damages payable to an aggrieved person(s). In addition, the practical effect of the provision is to treat one class of respondents differently, *i.e.,* more favorably, than any other class of respondents. Such an approach is inconsistent with the goals and purposes of the Fair Housing Act. PHRA's civil penalty cap is especially inappropriate in that the maximum allowable civil penalty in any case where a complainant is not actually denied housing is significantly less than that allowed for even a first violation under the FHAct.

As such, discriminatory advertising complaints received by HUD that do not involve an actual denial of housing will not be referred to the Pennsylvania Human Relations Commission (PHRC) for dual filing and will be processed under the provisions of the FHAct, not the provisions of the PHRA. In addition, HUD will require PHRC to refer to HUD for processing any discriminatory advertising complaints that do not involve an actual denial of housing.

Comment: PHRA sets forth affirmative defenses to a finding that an advertiser has knowingly and willfully violated PHRA. Such affirmative defenses are not included in the FHAct.

Section 9.1(c) of the PHRA sets forth several affirmative defenses to a finding that an advertiser has knowingly and willfully violated PHRA. The affirmative defenses include the following: (1) If the advertiser in good faith attempted to comply with the list and specific examples of impermissible housing advertisements promulgated and published by the PHRC; (2) if the advertiser complied with an interpretation of the commission or its personnel concerning what constitutes appropriate housing advertisements; and (3) if the advertiser has made reasonable efforts in good faith to comply with PHRA. These affirmative defenses do not exist in the FHAct. The Department concludes that the affirmative defenses narrow the rights of aggrieved persons. As such, discriminatory advertising complaints received by HUD that implicate the affirmative defenses enumerated in section 9.1(c) of the PHRA will not be referred to PHRC for dual filing and will be processed under the provisions of the FHAct, not the provisions of the PHRA. In addition, HUD will require PHRC to refer to HUD for processing any discriminatory advertising complaints that may implicate the affirmative defenses enumerated in section 9.1(c) of the PHRA.

Comment: In certain circumstances, attorney fees may be awarded to a respondent under PHRA.

Section 9(d)(4) of the PHRA states that ''[i]f after a trial, the Commonwealth Court finds that a respondent has not engaged in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing respondent if the court determines that the complaint is frivolous and that the Commission dealt with the party complained against in a willful, wanton, and oppressive manner, in which case, the Commission shall be ordered to pay such costs and attorney fees.'' The Department does not view this as a problem since the FHAct has a similar provision. The FHAct authorizes the payment of attorney fees and costs to a ''prevailing party'' (other than the United States) whether it be the complainant(s), other aggrieved person(s), or the respondent(s). See 42 U.S.C. section 3612(p).

Comment: Under PHRA, cases will be dismissed where the respondent offered an appropriate remedy and the complainant rejected the remedy.

Section 9(c.1) of PHRA states that ''The Commission shall dismiss a case with prejudice, before, or after a finding of probable cause, where in its opinion, appropriate remedy has been offered by the respondent and refused by the complainant.'' The FHAct has no corresponding provision. The FHAct encourages conciliation and settlement but does not require complainants to accept settlement offers, however appropriate settlement offers might appear. PHRA has informed the Department that since it is impossible to precisely quantify embarrassment and humiliation damages, PHRC has interpreted the section in such a way that does not cover those cases in which embarrassment and humiliation damages are available. PHRC informed HUD that it views all cases dual-filed with HUD as possibly resulting in embarrassment and humiliation damages. Therefore, it will not dismiss these cases in accordance with section 9(c.1). HUD will include a provision in the Memorandum of Understanding (MOU) between HUD and PHRC stating that section 9(c.1) will not be applied to any dual-filed cases. The MOU will also require PHRC to inform complainants in dual-filed cases that complaints will not be dismissed where the respondent offered an appropriate remedy and the complainant rejected the remedy.

Comment: *In Hoy* v. *Angelone, 720 A.2d 745 (Pa. 1998), the Pennsylvania Supreme Court held that punitive damages are not available in court proceedings brought under the PHRA.*

The *Hoy* case involved employment discrimination, and it is unclear whether the court would rule in the same manner in a housing case. If the Pennsylvania courts were to rule that punitive damages are not available in cases involving housing discrimination, this would raise a significant substantial equivalency issue because punitive damages are available in court proceedings under the FHAct. HUD's understanding is that there have been no post-*Hoy* Pennsylvania court decisions in which punitive damages were sought as a remedy for housing discrimination. HUD will continue to monitor developments in this area to see how the Pennsylvania courts address this issue with respect to housing discrimination. HUD will also require PHRC to keep it informed of any relevant post-*Hoy* Pennsylvania court decisions.

Dated: July 7, 2003.

Turner Russell,

Director, Enforcement Division, Office of Fair Housing and Equal Opportunity.

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