

CHAPTER 5. THE COMPLIANCE REVIEW OR COMPLAINT
INVESTIGATION FIELD VISIT
SECTION 1. GENERAL

15. THE INVESTIGATOR. The investigator must be impartial, tactful and courteous. Each investigation must be conducted without preconceived opinions. The investigator must be skillful in adapting his/her approach, attitudes, and techniques to suit the particular individual, circumstance, or situation in order to extract information in the most productive and courteous manner. The investigator must be polite, yet firm, in dealing with all persons and must be businesslike in appearance and manner.
 16. THE RECIPIENT AGENCY. All agencies receiving HUD financial assistance are subject to Title VI compliance reviews or complaint investigations. Such agencies are required by Regulation (see 24 CFR 1.6(h), Appendix 1.2) to keep records and submit compliance reports at such times and in such a form as will enable HUD to ascertain whether the recipient agency has complied or is complying with Title VI and its regulation.
 17. COMPLIANCE DATA. Section 1.6(b) of the Department's Title VI Regulation requires all recipients to have (available for the Department) racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.
 18. ACCESS TO SOURCES OF INFORMATION. Each HUD recipient shall permit HUD investigators access during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with Title III (see 24 CFR 1.6(c) Appendix 1.2).
 19. FAILURE TO FURNISH INFORMATION. Recipient failure or refusal to furnish requested information is a violation of Section 1.6 of the Title-VI Regulation. When a recipient fails or refuses to furnish information to an investigator, the investigator shall inform the recipient chief executive officer or designee that such failure is a violation of the Title VI Regulation, and may result in the imposition of sanctions or termination, refusal to grant or continue Federal financial assistance as authorized by statute and 24 CFR 1.8. The investigator shall indicate in the investigation report that the recipient refused to provide information, and shall describe efforts to obtain the information.
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20. THIRD PARTY INFORMATION. Where any information requested of a recipient is in the exclusive possession of any other agency, which fails or refuses to furnish this information,

the recipient shall so certify in a written report which describes the efforts it has made to obtain the information. (See Appendix 1.2, 24 CFR 1.6(c)).

SECTION 2. THE FIELD VISIT

21. MEETING WITH THE RECIPIENT. The investigator(s) shall meet with the recipient chief executive officer, or his/her designee, on the appointed date and at the designated time. The investigator(s) should be punctual, present his/her HUD credentials, and make certain that the recipient officer(s) is introduced to the entire team of investigators, if there is more than one.
 - a. Purpose Explained. The investigator should explain the right secured by Section 601 of Title VI of the Civil Rights Act of 1964 (see Appendix (1.1)), and state the purpose for the visit as either: (1) a routine compliance review; (2) a special compliance review; (3) a combined compliance review and complaint investigation; (4) a complaint investigation; or (5) a follow-up review.
 - b. Initial Field Request for Compliance Records. The investigator should request copies of all materials requested by the ARA/FHEO in the Regional Office letter of introduction announcing the field visit (See Appendix 3.8 for form letter).
 - c. Confidential Nature of the Field Visit. The investigator shall state to all persons interviewed or contacted that investigators are not authorized to release the name or identity of a Title VI complainant. All interviews, conversations, and disclosures are to be kept confidential to prevent intimidation or retaliation against any person(s) who assists in the development of a case except for disclosure determined by the AS/FHEO to be necessary to carry out the purposes of the Department's Title VI Regulation. (For further discussion on public disclosure see Chapter 10, on the Freedom of Information Act).
 - d. Recipient's Right to Know Allegations. A recipient of HUD financial assistance is entitled to know the allegations against its program or those aspects of its program which will be reviewed. Therefore, the investigator shall summarize the allegations and define the type of compliance review to be undertaken.

22. MEETING WITH THE COMPLAINANT. The investigator shall contact the complainant in order to confirm arrangements for personal interview. The interview shall be conducted in strict privacy and arranged so that it precedes the investigator's visit to the office of the recipient. The

investigator should be businesslike, courteous, sincere, and keep the conversation directed to the allegations of the complaint or other information which would be of assistance in the investigation and/or review.

- a. Purpose Explained. The investigator should explain the right secured by Section 601 of Title VI of the Civil Rights Act of 1964 (see Appendix) and should explain that such Act calls for termination, suspension, refusal to grant or continue financial assistance if a recipient is found, after an administrative hearing to be in noncompliance with Title VI.
- b. No Monetary Compensation. The investigator should explain that Title VI does not authorize HUD to obtain damages, compensation, or financial restitution to a person who files a Title VI administrative complaint. The complainant should be advised however that the statute does not preclude an injured victim of discrimination from seeking his/her own relief, including possible monetary compensation, through private court action.

SECTION 3
TECHNIQUES IN THE CONDUCT OF COMPLIANCE
REVIEWS AND COMPLAINT INVESTIGATIONS

23. GENERAL. Investigators should know HUD programs thoroughly. Such program knowledge and expertise will make for more thorough compliance reviews and complaint investigations. Staff working on Title VI cases should develop expertise from an equal opportunity aspect, in budget analysis, policy analysis, demographic analysis, and personnel practices.
24. TEAM APPROACH. The ideal compliance review should be well planned and conducted by a team of at least four (4) trained investigators; of course, the larger the recipient, the greater the number of investigators. The investigation of an uncomplicated complaint involving only one agency or program would not require as many investigators.
 - a. Team Leader. An experienced investigator should be designated "team leader" and that person should coordinate all aspects of the case while in the field. The team leader, responsible for coordinating the total effort of the field visit, should be able to locate team investigators at all times (day or night) while in the field.

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- b. Investigators. Each investigator should be familiar with the investigation plan and should have responsibility for specific parts of the review or investigation.

- c. Team Assignments. The team should disperse during the day and cover as much of their respective assignments as possible. Early evening hours (or as determined by the team leader) should be used for the team to convene as a group and report (orally) information obtained and problems encountered or experienced during that day. These meetings should be used to isolate the strengths, weaknesses, or gaps in the review or investigation, as well as assist in the determination of issues which may not have been apparent at the outset.

- d. Interviews. When investigators are working together as a team, one should serve as the "lead person" during the interviews, conversations, or conferences with non-HUD personnel. The other team person(s) should take notes. One person should be designated (before each meeting or interview) to prepare the memorandum to the files on the subject of the meeting (see Chapter 8, paragraph 35a for a discussion on working papers). Before the end of the interview the lead investigator should ask other members of the team whether they have additional comments or questions. In such a case the second person becomes the lead person and the process is repeated until all questions are asked by HUD staff.
 - (1) It is good practice for investigators to prepare a line of questions before interviews are conducted.
 - (2) It is better to interview all persons scheduled to be interviewed in one agency in one or two days, as opposed to sporadic, unscheduled interviews. Such a practice increases the likelihood of a thorough well-documented field visit.
 - (3) If an interviewee makes reference to a document, it is good practice to ask to see the original item and request a copy.

- e. Note Taking. All investigators should take notes unless in a team situation, in which case an investigator not serving as a lead investigator takes notes. Investigators should inform all persons interviewed that notes will be taken to reflect matters discussed during the course of the interview.

- (1) Notes should be short and concise.
- (2) Notes should follow the questions asked.
- (3) The names and titles of all parties present should be noted, as well as the date, time, and place of the meeting.
- (4) Notes should reflect the titles of all documents

received and from whom such documents were received.

(5) Tape recorders shall not be used by HUD staff as a means of recording interviews.

f. Disagreements. Investigators should never argue among themselves or express different viewpoints in the presence of the persons being interviewed although statements which distinguish or clarify should be expressed. Such disagreements tends to diminish the integrity of the investigation, show weakness or inexperience of HUD staff, and may cause the person interviewed to take the field visit lightly, and provide vague or inconclusive responses.

NOTE: Investigators should never argue with persons being interviewed.

g. Detail. Investigators should train themselves to be attentive to detail, and alert to acts which in themselves are not discriminatory nor meant to be discriminatory, but nonetheless have the effect of discriminating against persons of a particular race, color, or national origin.

25. RELEVANT INFORMATION. The purpose of a field visit is to review and gather data which will show the extent to which a recipient of Federal financial assistance is complying with Title VI. FHEO investigators should be careful in the final written analysis, to distinguish between that data required to determine Title VI compliance or noncompliance, and that data which simply indicates the extent of compliance with FHEO related "programmatic" requirements.

a. Example:

A compliance review of a redevelopment agency revealed the following:

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- (1) The redevelopment agency does not have a written personnel policy as required in Chapter 1, section 4, paragraph 1 of Handbook RHM 7217.1; and
- (2) The redevelopment agency does not advertise vacancies, a violation of HUD equal employment opportunity requirements in Chapter 1, section 4, paragraph 9, Handbook RHM 7217.1.

The above referenced items are significant for Title VI purposes if: (1) the compliance review also indicates noncompliance with Title VI in that the redevelopment program was operated in a manner which restricts minority

participation or benefit; and (2) the review indicates that persons employed by the Authority were nonminority persons whose activities as employees caused discrimination in the operation or administration of the redevelopment program based on race, color, or national origin. In any case, the above referenced items should be called to the attention of the Assistant Regional Administrator for Community Planning and Development, for correction of program violations.

- b. Program Requirements. Program requirements with Title VI significance are relevant to the ARA/FHEO only to the extent that other documented evidence of apparent noncompliance with Title VI is found.
- c. Title VI Compliance Data. Title VI compliance data is any substantiated information which: (1) demonstrates the extent to which HUD recipients and/or applicants afford all minorities recognized by the Department's Handbook of Codes, 2160.4B, the same opportunity as nonminority persons to benefit from and/or participate in HUD financially assisted program and activities; (2) indicates the extent to which HUD recipients and applicants have overcome the effects of discrimination where found; or (3) in the absence of a prior finding of discrimination (after hearing), indicates the extent to which a recipient in administering a program has taken affirmative action to overcome the effects of conditions which result in limiting participation by persons of a particular race, color, or national origin.
- d. Data Collection. Title VI compliance data should be gathered on a basis which would indicate whether all eligible minorities (recognized by the Department) have been and/or are presently benefiting from or participating in HUD programs to the same extent and degree as eligible majority group persons. Such data may also be used to evaluate

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whether each minority group represented in the target community served receives a fair share of program services equivalent to its proportion of the target population. Interviews should be planned and conducted comparatively. For example, if minority persons of a particular age, sex, marital status or income are interviewed, then similar interviews should be conducted with nonminority persons of the same general age, sex, marital status or income. If a comparative nonminority group does not exist or cannot be found, the report of the field visit should so reflect. In cases where the persons to be interviewed are non-English speaking, interviews should be conducted by a person fluent in the language; or an interpreter should accompany the interviewer at all times while conducting

such interviews.

- e. Racial Disparity. Racial disparity is best indicated when the percentage of eligible to actual nonminority participants and beneficiaries is compared to the percentage of eligible to actual minority participants and beneficiaries. Racial disparity exists when the result of the above stated comparison indicates a number of participants, identifiable by race, color, or national origin, are represented in disproportionate numbers to the number of eligibles in the identified group. (See chart on page 22 for illustration).
- f. Observation. The Chart on page 22 reflects, among other things, the following Title VI problems.
 - (1) Eligible minority persons are not residing in the HUD financially assisted housing units to the same degree as eligible nonminority persons.
 - (2) Tenants who are black female heads of households are isolated in units Z, in disproportionate numbers as compared to their nonminority counterparts.
 - (3) The housing authority maintains racially identifiable housing projects or assigns tenants to projects according to their race.
 - (4) Eligible minority males are not housed in the project to the same degree F-s eligible nonminority males.
 - (5) There are sizable numbers of eligible American Indians, Orientals, and other minorities in the community. However, only Spanish and Black persons are actually tenants in the HUD financially assisted units. Such a statistical fact requires further investigation to determine why other minority persons are not participants or beneficiaries.

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This analysis must be made prior to a determination of a recipient's Title VI compliance posture.

- g. The Department has a duty to seek out and document the cause of disparity based on race, color, or national

origin. If an investigator finds an absence (or low number) of minority beneficiaries or participants to be due to action (either direct or indirect) or inaction of a HUD respondent, then it may be necessary to initiate Title VI enforcement action against that entity. The investigator must show, however, a direct relationship between the Respondent's action or inaction and any apparent racial disparity. Another problem which could be analyzed as a result of data gathered during a review would be such a factor as, the percent of minority male/female head of household to nonminority male/female head of household. Such information may reflect discrimination against a particular gender group or segregation by race within a particular gender group. This data is not collected to show sex discrimination, which is not covered under Title VI.

(1) Compliance with Program Requirements Which are FHEO Related. A recipient's noncompliance with program requirements which are FHEO related should be noted, substantiated or documented for the purpose of showing whether there is compliance with Title VI. If apparent noncompliance with Title VI cannot be documented the ARA/FHEO lacks Title VI authority to require, or recommend corrective action by the recipient or applicant. Such matters must be directed to the attention of the appropriate HTD program officer.

(2) Sources of Compliance Data. A number of sources of compliance data are delineated in Appendix 4.3.

h. Documentation. One of the most important aspects of a Title VI case is the extent to which statements in the report are documented. Documentation (e.g. evidence of compliance or noncompliance) cannot be based upon hearsay, speculation, false information or the opinion of a complainant or FHEO investigator. Although the standard rules of evidence may be somewhat relaxed during the Title VI administrative process, the Federal Rules of Evidence apply if there is a trial de novo by a Federal Court charged with the responsibility to review the Department's actions. Upon judicial review such matters as the following may be re-examined: the method by which the original investigation; the extent, veracity and quantum of documentation of all allegations or issues; and the merits of a Title VI case.

(1) Marking. Investigators should request a copy of everything which appears relevant to an allegation or issue. The copy should be compared with the

original document and the back of each copy marked when received as to: (1) date received; (2) name of the person providing the item; (3) whether the provider is the normal custodian of the item; (4) name of the investigator receiving the document; and (5) if the item is a part of a larger item, the title of the entire item as well as the title of the item so marked.

- (2) Board Minutes. Where recipient agency policies and action are determined in whole or in part by a board, committee or special governing body,, the minutes of such governing body should be reviewed for a record of any action taken by that agency which bears upon the program operation or administrative matter examined. The technique of scanning will enable an investigator to pore over a voluminous amount of material so as not to overlook actions which directly or indirectly sanction activities which cause discrimination. All relevant segments of board minutes should be copied (and marked as stated above for future supporting documentation of agency action).
- (3) Policy vs. Practice. Investigators should inquire as to the official policy of the recipient with respect to each aspect of the matter being reviewed or investigated. A copy of the official policy should be included with the final investigation report, even though the policy may have been imposed by HUD. The investigator should also request written (preferably) or an oral expression of the recipient's practice in every aspect of its program which is the subject of the field visit.
 - i. When to End a Field Visit. The efficient investigator remains in the locale until leads have been exhausted (in a complaint investigation) and relevant information obtained, thus making a return trip unnecessary.
 - j. Ending the Field Visit. Before leaving the locale, the principal investigator or team leader should hold a brief exit interview with the chief executive officer or designee. The purpose of this meeting is to: (1) thank the official for any courtesies extended the investigator/team; (2) answer questions raised by the official, except that the investi-gator should not give him/her impression of the recipient's compliance posture, or name a complainant or informant; (3) follow up leads obtained during the field visit; (4) clear up discrepancies or "gray areas" in data reviewed; and/or (5) to afford the recipient officer an opportunity to present any documentation of compliance or materials earlier requested by HUD/FHEO staff.

