

SECTION 504 COMPLAINT PROCESS

The following is an overview of how HUD processes complaints filed by individuals who have experienced disability discrimination under the law called Section 504. Section 504 of the Rehabilitation Act protects you from discrimination in HUD-funded programs for which you qualify, and is commonly called "Section 504." This overview of the Section 504 complaint process contains citations to 24 CFR 8.1-8.58. These are references to specific sections of the Code of Federal Regulations that contain HUD's regulations for Section 504. These HUD regulations set forth more specific rules with respect to how Section 504 applies to various HUD-assisted programs.

What is a Complaint?

A complaint is a communication alleging discrimination on the basis of disability and in some way asking for HUD's assistance in resolving the problem. It may range from a verbal communication (which is later put in writing) to a complaint submitted on either the old HUD-903 Complaint Form, or on the new HUD Housing Discrimination Information Form. The complaint should contain:

- the complainant's name and address;
- the name and address of the individual or organization (usually the recipient of federal assistance) alleged to have discriminated; and
- a description of the discriminatory actions and the date of those actions. [24 CFR 8.56(c)(5)]

The complaint may be amended fairly and reasonably at any time to clarify or amplify the allegation. [24 CFR 8.56(c)(6)]

Although a complaint will contain the name of the complainant, HUD will keep the identity of the complainant confidential unless it has written authorization from the complainant to release it, or except as necessary to carry out the purpose of the Section 504 regulations, including the enforcement provisions. [(24 CFR 8.56(c)(2)]

When Must a Complaint be Filed?

Under Section 504, a complaint must be filed within 180 days of the alleged act of discrimination unless HUD waives this time limit for good cause shown. The complaint is deemed received on the date HUD actually receives it or, if mailed, on the date it is postmarked. [24 CFR 8.56(c)(3)]

Who May File a Complaint?

Any individual who believes he or she has been discriminated against on the basis of disability by a recipient of Federal financial assistance, his or her representative, or a member of a class of persons so situated, or the authorized representative of a member of that class. [24 CFR 8.56(c)(1)]

Who is an Individual with Disabilities?

An individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. [24 CFR 8.3]

Notification to Parties

Within ten days of receipt, HUD will notify the complainant and the recipient that it has received the complaint. [24 CFR 8.56(d)]

Accepting the Complaint

Within twenty days of acknowledging its receipt of a complaint, HUD must determine whether it will accept, reject, or refer the complaint to another Federal agency, and must notify the parties of that decision. [24 CFR 8.56(e)(1)(i)]
To do so, HUD must determine if it has jurisdiction over the complaint.

Does HUD have Jurisdiction?

HUD considers several factors in determining if it has jurisdiction to investigate the complaint. HUD must determine if the complainant or the person he or she represents is a person the law was designed to protect. In making this determination, the Department must determine whether the individual, or the person the individual represents, is a person with a disability as defined by Section 504. The Department also must determine if the individual is "otherwise qualified" for the program or activity alleged to have discriminated. For most HUD-assisted programs, an individual must have income below a certain level in order to be eligible. In some cases, disability may also be an eligibility factor. For example, if a housing program is set up under the Department's Housing Opportunities for Persons with AIDS (HOPWA) program, and the complainant's only disability is a visual impairment, the person would not be qualified for the HOPWA project because that project is designed to meet the needs of persons with AIDS. Therefore, HUD would lack jurisdiction to process this complaint under Section 504.

Another factor HUD must consider in determining jurisdiction is whether the alleged act of discrimination occurred in a program, service or activity that receives Federal financial assistance from HUD for the period during which the act occurred. If both of these conditions are not met, HUD must reject the complaint and notify the complainant and the recipient of that decision. For example, if a privately owned apartment building received HUD funds only during the period from January 1989 to June 1990, and the alleged act of discrimination occurred in February 1988, HUD would lack jurisdiction.

If HUD has jurisdiction over the case, then HUD will accept the complaint for investigation.

Notification of the Parties and the Recipient's Opportunity to Respond

Once the complaint has been accepted for investigation, HUD will notify the complainant, the award official, and the recipient of its acceptance. HUD will also notify the recipient of the allegations and provide an opportunity for a written response to the allegations within thirty days of receiving the notice. (Like the complaint, the recipient's response may be amended for good cause at any time. [24 CFR 8.56(e)(1)(ii)])

Voluntary Resolution of the Issues

During its investigation of the complaint, HUD will make every effort to define all of the issues contained in the complaint. Throughout the complaint process, HUD will encourage a voluntary resolution of the matter, and will assist the parties in resolving the complaint through informal resolution or voluntary compliance. A matter may be resolved by informal means at any time. If the Department has issued a letter finding noncompliance, the Department will attempt to resolve the issues through voluntary compliance. The Department will develop a written voluntary compliance agreement and will attempt to reach a resolution that satisfies the complainant, however, the Department's primary obligation will be to ensure that any violations of Section 504 are remedied and that actions are taken to ensure that the recipient will not violate the rights of other persons under Section 504. [24 CFR 8.56(j)]

The Investigation

During the complaint investigation, the Department will request all of the information that the Department believes is necessary in order to fully investigate the issues in the complaint. The complaint investigation will involve interviews and meetings with the parties, including any witnesses or other persons identified as having some involvement in the issues of the complaint. The Department may

also conduct on-site reviews of facilities that are under the recipient's oversight, if these facilities are a part of the complaint. [24 CFR 8.56(d) and (e)] Once the complaint investigation is completed, the Department will compile all of its findings in a Final Investigative Report (FIR).

Preliminary Letter of Findings and Right to Request a Review

If an informal resolution of the complaint is not achieved, the Department will issue a "Preliminary Letter of Findings." This letter will contain the preliminary findings of fact, and a preliminary finding of compliance or noncompliance. If the finding is noncompliance, the Preliminary Letter of Findings will include a description of each violation and an appropriate remedy. It also explains that a copy of the Final Investigative Report will be made available upon request to the recipient. A copy of the letter should also be sent to the complainant. [24 CFR 8.56(g)] This letter will also notify both parties that they have the right to request a complete review of the letter of findings, provided that such request is submitted within 30 days of receipt of the Letter of Findings, and that the request includes a written description of supplementary information that was not considered during the investigation of the complaint. [24 CFR 8.56(h)]

The Preliminary Letter of Findings may also include a Voluntary Compliance Agreement (VCA) outlining all steps necessary, along with timelines, on the part of the recipient to remedy the identified violations and bring the recipient into compliance. If the recipient agrees to the VCA and signs it, HUD will not proceed with enforcement activities. [24 CFR 8.56(j)]

Formal Determination

If a request for review is made, it must be accompanied by a written statement of the reasons the Preliminary Letter of Findings should be modified in light of supplementary information, as explained above. [24 CFR 8.56(h)] When a request for review is received from either party, a copy of it will be sent to the other party with notice of their right to respond to the request within twenty days. [24 CFR 8.56(h)(2)] Within sixty days of the request for review, the reviewing civil rights official will issue its formal determination, either sustaining or modifying the letter of findings. This decision will constitute HUD's formal determination. [24 CFR 8.56(h)(3)]

If neither party requests a review of the Letter of Findings, the Department will issue a formal determination within 14 calendar days after the 30-day time period under which such a request may be made. The formal determination will indicate compliance or noncompliance, and HUD will send this determination to the recipient, the complainant and the award official. [24 CFR 8.56(h)(4)]

Throughout the complaint process, all efforts will be made to reach a voluntary resolution of the matter. However, in cases of a determination of noncompliance, once the formal Letter of Determination has been issued, the recipient will have ten (10) calendar days in which to agree to come into voluntary compliance. If the recipient fails to meet this deadline, the Department will initiate enforcement proceedings under the procedures outlined at 24 CFR 8.57. [24 CFR 8.56(i)]