

Procedures for the Intake and Investigation of Discrimination Complaints

Introduction and Jurisdiction

THDA's non-discrimination policy ensures non-discrimination in the delivery of programs and services by THDA employees, agents, and sub-recipients and compliance with Federal and state civil rights laws and enabling regulations. Federal and state non-discrimination laws include, but are not limited to, Title VI of the Civil Rights Act of 1964 ("Title VI"), Title VIII of the Civil Rights Act of 1968 ("Fair Housing Act"), Section 504 of the Rehabilitation Act of 1973 ("Section 504"), Age Discrimination Act and the Tennessee Human Rights and Disability Acts.

Applicants to or beneficiaries of a THDA funded program, including those programs administered by a contractor or sub-recipient agency, may file a discrimination complaint directly with THDA. Complaints must be filed, in writing, no later than 180 days after the last date of the alleged adverse action. All individuals who contact THDA with a verbal complaint of discrimination are directed to submit their complaint in writing, and provided a Web link or a copy of THDA's Discrimination Complaint form. Complaints submitted by email or mail with sufficient information are considered written complaints. The complaint should include the following information to allow THDA to conduct an initial review and determine jurisdiction:

1. Name, address and telephone number of the complainant
2. The name of the THDA program for which the complainant applied or is a participant
3. The name of the person or entity who the complainant alleges engaged in an adverse action(s) or decision ("respondent")
4. The date or dates on which the alleged adverse action(s) or event(s) occurred
5. The basis of the complaint (e.g., race, national origin, disability)
6. A description of the adverse action that led the complainant to feel discrimination was a factor
7. Names, addresses and phone numbers of people who may have knowledge of the event

The THDA Civil Rights Compliance Advisor ("Advisor") intakes, logs and initially reviews all complaints received by THDA that allege discrimination. The purpose of the initial review is to evaluate the written information received to determine whether it constitutes a complaint that is subject to further processing. For THDA to proceed with processing a complaint through the discrimination complaint process, the following conditions must be established *prima facie*¹:

1. The complainant belongs to a protected class covered by Title VI, Title VIII (Fair Housing Act), Section 504 of the Rehabilitation Act or any other state or federal civil rights law, and
2. The complaint alleges an adverse action by THDA, an agent of THDA (contractor) or a sub-recipient of THDA funding, and
3. The complaint alleges a causal connection (nexus) between the protected status and the adverse action.

¹ The claim is sufficiently established upon first observation through information submitted by the complainant in the initial written complaint.

Where the above conditions are not established prima facie, THDA shall dismiss the claim of discrimination with a notice to the complainant. Where a claim of discrimination is dismissed after an initial review but where a THDA program or activity or a THDA employee is named in the complaint, the complaint is transferred to the appropriate THDA division head for further investigation and response under program or division procedures.

All investigations of complaints alleging discrimination conducted by THDA are coordinated with or reported to the appropriate jurisdictional authority. The Tennessee Human Rights Commission (THRC) ensures the State of Tennessee's compliance with Title VI, which prohibits discrimination based on race, color, and national origin by state agencies receiving federal financial assistance. THRC is the jurisdictional authority for complaints alleging discrimination in Tennessee covered by Title VI. The Fair Housing Act designates the Department of Housing and Urban Development (HUD) as the jurisdictional agency for claims of housing related discrimination. HUD's Office of Fair Housing Enforcement is the investigative authority for fair housing complaints. HUD has certified THRC as a Fair Housing Assistance Program (FHAP) for the State of Tennessee. HUD, or THRC, as a substantially equivalent agency, may adjudicate a claim of housing discrimination in the State of Tennessee. For other federal programs administered by THDA, the jurisdictional authority is the Office of Civil Rights for the relevant federal agency who funds the program or activity.

Complaint Intake, Review and Investigation Procedures

A complaint that alleges discrimination covered by THDA's non-discrimination policy, including complaints that allege discrimination by a THDA contractor (agent) or sub-recipient must be forwarded immediately, upon receipt, to the Advisor. The Advisor coordinates the initial review, communication between THDA and any jurisdictional agency, notifications and documentation for all complaints that allege discrimination in a THDA funded program or activity through the following procedures.

1. Within five (5) business days of receipt, the Advisor logs the complaint in an Excel worksheet. The Advisor updates the log as the case progresses from the initial review to final resolution.
 - a. The log will include the name of the complainant, contact information, date of the alleged discrimination, nature of the alleged discrimination (and protected class), person or entity named (respondent), jurisdiction, final resolution, case notes.
2. Within ten (10) business days of receipt, the Advisor completes an initial review.
 - a. Verbal complaints of discrimination not followed by a written complaint within ten (10) business days are dismissed and closed without a written notice to the complainant.
 - b. Written complaints are reviewed to determine if the complaint meets the prima facie conditions for processing as a discrimination complaint. During the initial review, additional information may be requested from the complainant.
 - i. Where it is determined that the complainant does not belong to a covered protected class or where the causal connection between the protected class status and the adverse action is not sufficiently established (prima facie):
 1. The discrimination claim is dismissed and closed by THDA.
 2. Where applicable, the complaint is transferred to a THDA program division for review based upon division or program complaint procedures.

3. The Advisor sends the complainant a written notice of the review and action within ten (10) business days of THDA's receipt of the complaint. The notice will include information on how to file a complaint with the appropriate jurisdictional agency should the complainant disagree with the decision. If the complaint is transferred to a program division for review, the notice will include information on who to contact within the THDA program division for additional information.
 4. The complaint log is updated.
- ii. Where it is determined that the complainant belongs to a protected class covered by Title VI, Fair Housing Act, Section 504 or any other state or federal civil rights law, but the complaint does not allege an adverse action by THDA, an agent of THDA (contractor) or a sub-recipient of THDA funding:
1. The Advisor sends a notice of receipt, along with a copy of the original complaint to the appropriate jurisdictional agency, typically THRC.
 2. The Advisor sends a notice of review and action to the complainant explaining that THDA is not the appropriate jurisdictional agency to investigate the claim of discrimination. Where appropriate and known, the notice includes the contact information for the appropriate jurisdictional agency.
 3. All notifications to the complainant and/or referrals to state or federal jurisdictional agencies are sent within ten (10) business days of THDA's receipt of the complaint.
 4. The complaint is dismissed and closed by THDA.
 5. The complaint log is updated.
- iii. Where it is determined that the complaint is covered under Section 504 of the Rehabilitation Act (disability):
1. The complaint is transferred, as soon as possible, but no later than ten (10) days after receipt, to THDA's Section 504 Coordinator.
 2. Within ten (10) days of receipt of the complaint, the Advisor sends the complainant a notice of transfer, which explains the reason for the transfer of the complaint and provides contact information for the Section 504 Coordinator.
 3. The Section 504 Coordinator will initiate communication with the complainant, determine or verify Section 504 covers the issue, and where appropriate, seek resolution with the complainant through THDA's Section 504 procedures.
 4. The Section 504 Coordinator will notify the Advisor when the Section 504 review process is complete.
 - a. If a resolution is reached through the Section 504 process, the discrimination complaint is closed with no further communication to the complainant.

- b. If a resolution is not reached, within five (5) days of receiving the Section 504 review results, the Advisor will send a notice of review and action to the complainant closing the complaint. The notice will explain how to appeal the determination with THDA and include the contact information for the appropriate jurisdictional agency should the complainant wish to seek further redress.
 5. The complaint log is updated.
- iv. Where it is determined that the complaint is covered under Title VI (race, color, national origin basis) and the complaint alleges an adverse action by THDA, an agent of THDA (contractor) or a sub-recipient of THDA funding:
1. Within ten (10) business days of THDA's receipt of the complaint:
 - a. The Advisor sends the complainant a notice of review and action.
 - i. The notice explains jurisdiction, and the process for THDA's Internal Audit division to investigate the complaint, along with a timeline.
 - ii. The notice explains that the investigation will be coordinated with THRC and includes contact information for THRC.
 - b. The Advisor emails a notice of complaint receipt to THRC Title VI Division with a copy of the original complaint.
 - c. The Advisor emails a copy of the THRC complaint notification, the original complaint and any other relevant documents collected by the Advisor in the initial review to the THDA Internal Audit (IA) Director.
 - d. Where the respondent is a THDA sub-recipient agency, the Advisor will notify the sub-recipient agency.
 2. The Advisor coordinates communication between THDA and THRC and throughout the investigation process.
 3. Within thirty (30) days of the receipt of a complaint notification, THDA IA Division will initiate an initial investigation. The investigator will review the initial review file, and interview or otherwise collect necessary facts from the complainant, respondent and any witnesses.
 4. Within sixty (60) days of the receipt of the complaint, THDA IA will issue an investigative report or summary and send it to the Advisor.
 - a. The Advisor will work with the Assistant Chief Legal Counsel to:
 - i. Write a memorandum based on the THDA IA investigative report that includes a detailed summary of the investigation, findings, determination and any planned remedial actions.
 - ii. Send the memorandum to THRC Title VI Complaint Division no more than seventy-five (75) days after the date the initial complaint notification was sent to THRC.

- iii Track THRC's response to THDA's investigation, which should be received within ten (10) days.
 - 5. Upon receipt of THRC's response to the investigation, or no more than ninety (90) days after the receipt of the complaint (whichever comes first), unless otherwise directed by THRC:
 - a. The Advisor will work with the Assistant Chief Legal Counsel to write a notice of findings or determination.
 - i The notice summarizes the basis for the determination and explains any actions, including corrective actions, to be completed by THDA to resolve the complaint.
 - ii The notice will include information on how to file an appeal of the determination with THDA or THRC, and the deadline to file an appeal.
 - 6. THDA's Executive Director is responsible for all THDA appeal decisions. The Executive Director may choose to assign the appeal to THDA's Chief Legal Counsel.
- v. Where the complaint is not covered by Title VI but is covered by the Fair Housing Act or THDA's non-discrimination policy and the complaint alleges an adverse action by THDA, an agent of THDA (contractor) or a sub-recipient of THDA funding:
 - 1. Within ten (10) days of receipt of the complaint:
 - a. The Advisor sends the complainant a notice of review and action.
 - i The notice explains jurisdiction, and the process for THDA's Internal Audit division to investigate the complaint, along with a timeline.
 - ii The notice includes the contact information for the appropriate jurisdictional authority.
 - b. The Advisor emails a copy of the notice of review and action, a copy of the original complaint and any other relevant documents collected by the Advisor in the initial review to the THDA Internal Audit (IA) Director.
 - 2. Where the respondent is a THDA sub-recipient agency, the Advisor will notify the sub-recipient agency as the respondent of the complaint within ten (10) days of THDA's receipt of the complaint.
 - 3. Within thirty (30) days of the receipt of a complaint notification, THDA IA Division will initiate an initial investigation. The investigator will review the initial review file, and interview or otherwise collect necessary facts from the complainant, respondent and any witnesses.
 - 4. Within sixty (60) days of the receipt of the complaint, THDA IA will issue an initial report of findings or determination. The initial report of findings of determination is sent to the Advisor.

- a. The Advisor will work with the Assistant Chief Legal Counsel to:
 - i. Write a notice of findings or determination based on the THDA IA investigative report that includes a detailed summary of the investigation, findings, determination and any planned remedial actions.
 5. Within ninety (90) days of the receipt of the complaint, the Advisor will send a notice of findings or determination to the complainant.
 - a. The notice summarizes the basis for the determination and explains any actions, including corrective actions, to be completed by THDA to resolve the complaint.
 - b. The notice will include information on how to file an appeal of the determination with THDA, the deadline to file an appeal.
 - c. The notice will include contact information for the appropriate jurisdictional agency should the complainant disagree with the decision and wish to file a complaint directly with the jurisdictional agency.
 6. THDA's Executive Director is responsible for all THDA appeal decisions. The Executive Director may choose to assign the appeal to THDA's Chief Legal Counsel.
3. All complaints that allege discrimination by a resident in a Section 8 project based ("low rent") apartment are covered under THDA's contract with HUD for Project Based Contract Administration (PBCA). The contract terms require THDA to transfer complaints alleging violations of the Fair Housing Act or other discriminatory claims, upon receipt, to HUD FHEO Division IV. THDA or a contractor hired by THDA to manage the Section 8 PBCA call center, will transfer complaints to HUD FHEO through the following procedures.
- a. The complaint is emailed to HUD FHEO Division IV with a notice to the complainant no later than ten (10) days after receipt of the complaint.
 - b. The complaint is closed by THDA upon transfer to HUD FHEO.
 - c. The complaint is reported to the Advisor within ten (10) business days of the receipt of the complaint.
 - d. The Advisor records the complaint in the log.
 - e. For complaints that are covered under Title VI, the Advisor emails a notice of receipt to THRC within ten (10) business days of the receipt of the complaint. The notification explains that the complaint was transferred to HUD FHEO Division IV, as per THDA's Contract with HUD, and closed by THDA.
4. THDA will fully cooperate with discrimination complaint investigations conducted by state and federal jurisdictional agencies.