



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: Office of Fair Housing and Equal Opportunity
Headquarters Staff, Office of Enforcement Staff,
Regional Directors, Field Supervisors

FROM: John Gibbs, Principal Deputy Assistant Secretary
for Fair Housing and Equal Opportunity

DATE: September 16, 2025

SUBJECT: Fair Housing Act Enforcement and Prioritization of Resources

This memorandum supersedes any conflicting guidance previously issued to staff in the Office of Fair Housing and Equal Opportunity (FHEO). It will outline (1) FHEO’s role under the United States Constitution and Fair Housing Act, (2) why FHEO must prioritize resources for cases with strong evidence of intentional discrimination, and (3) how future enforcement efforts will proceed.

This memorandum also calls attention to priorities and practices that must be eliminated. Under previous administrations, FHEO, the Department of Justice, and federally-funded nonprofits often leveraged the Fair Housing Act and other civil rights statutes against municipalities, mortgage lenders, insurance companies, appraisers, housing authorities, individual landlords, developers, trade associations, and other stakeholders, in an ideological manner inconsistent with federal law. Respondents facing fair housing complaints often had to acquiesce to federal demands that were unrelated or contrary to civil rights protections. Under such a regime, American housing became more expensive and less fair. To restore the American Dream of homeownership on equal terms, FHEO must return to its statutory role.

I. The Fair Housing Act Protects *All* Americans From Intentional Discrimination Based on Protected Characteristics¹

FHEO investigates complaints received from the public and can initiate its own investigations into potential violations of the Fair Housing Act and other civil rights statutes within its jurisdiction. The Fair Housing Act prohibits various forms of discrimination in housing against “any person” “because of”—or “based on”— race, color, religion, sex, national origin, familial status, or disability.² The Fair Housing Act plainly prohibits discrimination against *individuals*

¹ Section I of this memo focuses on the Fair Housing Act and its amendments (42 U.S.C. 3601 *et seq.*) without specifically addressing Section 504 of the Rehabilitation Act, the Violence Against Women Act, or Title VI. The directives in Sections II and III apply to all statutes within FHEO’s jurisdiction.

² *E.g.*, 42 U.S.C. §§ 3604(a)-(c). By contrast, Title VI of the Civil Rights Act prohibits discrimination based on race, color, or national origin in any program or activity receiving federal financial assistance.

based on protected characteristics, yet notably does not divide Americans into protected minority and unprotected majority groups.³

Despite this, previous FHEO and OGC enforcement guidance sometimes did just that, obscuring the neutral, individual protections afforded by the Fair Housing Act. For example, a 2014 memo on *intentional* discrimination indicates liability for “reverse redlining” arises from “less favorable loan terms due to the location of the dwelling.”⁴ The first element provided is, “The complainant sought to secure (or insure) a dwelling in a protected-class concentrated area.” The final element includes two options, one of which states: “The respondent issued loans (or insurance) on more favorable terms for dwellings not in a protected-class concentrated area.” A separate memo issued by OGC in 2022 asked staff to assess whether complainants lived or sought to live in a “majority-minority neighborhood.”⁵

This group-oriented, race-based guidance runs counter to basic civil rights principles and departs from the plain text of the Fair Housing Act.⁶ In addition to coining terms like “protected-class concentrated area”⁷ and asking staff to assess the racial composition of neighborhoods, such guidance relied extensively on the vague, atextual, and complicated *McDonnell Douglas* burden-shifting framework most commonly used in employment discrimination cases.⁸ All of this muddled “the most easily understood type of discrimination”—disparate treatment.⁹

Under the Fair Housing Act, “[i]t is the policy of the United States to provide, *within constitutional limitations*, for fair housing throughout the United States.”¹⁰ Relevant to residential real estate-related transactions, “nothing” in the statute “prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.”¹¹ Any *fair* market residential appraisal will necessarily account for the location of the dwelling, which is a factor other than race, and

³ *cf.* *Ames v. Ohio Dep’t of Youth Services*, 145 S.Ct. 1540, 1546 (2025) (explaining “individual” civil rights apply “without regard to that individual’s membership in a minority or majority group”).

⁴ Memorandum on “Elements of Proof,” Office of General Counsel, 10 (originally issued Aug. 11, 2014) (emphasis in original).

⁵ “Elements of Proof for Appraisal Cases,” Office of General Counsel, (May 6, 2022).

⁶ *Steed v. EverHome Mortg. Co.*, 308 Fed. Appx. 364, 368 (11th Cir. 2009) (describing “‘reverse redlining’ as the practice of extending credit on unfair terms *because of* the plaintiff’s *race* and geographic area.” (emphasis added)). So if an appraiser undervalued a home based on race, this would trigger the FH Act’s protection whatever the racial composition of the neighborhood.

⁷ The term “protected-class concentrated area” has never appeared in a published court opinion.

⁸ *But see St. Mary’s Honor Center v. Hicks*, 509 U.S. 502, 519 (1993) (“The *McDonnell Douglas* methodology was never intended to be rigid, mechanized, or ritualistic.”) (cleaned up). The Supreme Court has not held that *McDonnell Douglas* applies to Title VIII cases. Even in the context of employment discrimination (Title VII), the framework is inapplicable to cases relying on direct evidence, *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985), “mixed-motive” cases, *Price Waterhouse v. Hopkins*, 490 U.S. 228, 258 (1989), and disposition at the pleading stage, *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508 (2002).

⁹ *Teamsters v. United States*, 431 U.S. 324, 335, n.15 (1977).

¹⁰ 42 U.S.C. § 3601.

¹¹ 42 U.S.C. § 3605(c) (“Appraisal exemption”).

therefore a permissible consideration. In short, the previous administration’s prioritization of so-called “appraisal bias” and targeting of market-based appraisals was lawless.

Under the Equal Protection Clause of the Fourteenth Amendment, “racial discrimination is invidious in all contexts.”¹² All Americans have protected characteristics (*e.g.*, race or sex), and though it should go without saying, the most important question in investigations is whether the available evidence raises an inference of intentional discrimination based on those characteristics.¹³ Since race is a prohibited characteristic, FHEO will not target respondents who give *too little* consideration to race in housing and housing-related transactions.

II. Resources Must Be Redirected to Cases with the Strongest Evidence of Intentional Discrimination.

President Trump’s Executive Order 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” requires all agencies to review their enforcement activities and practices to ensure they are necessary actions to “discharge their legal obligations, protect public safety, and advance the national interest.” Importantly, the Executive Order instructs agencies to “preserve their limited enforcement resources by generally de-prioritizing actions to enforce regulations that are based on anything other than the best reading of a statute and de-prioritizing actions to enforce regulations that go beyond the powers vested in the Federal Government by the Constitution.”

In general, FHEO is statutorily obligated to complete Fair Housing Act “investigation[s] within 100 days after the filing of the complaint . . . unless it is impracticable to do so.”¹⁴ Previous enforcement directives, based on ideology but not statute, rendered it “impracticable” to complete investigations in a timely manner. Such enforcement actions prioritized novel and tenuous theories of discrimination concerned with appraisal bias, environmental justice, local zoning, screening for felony convictions, and gender identity, among others. These investigations needlessly diverted FHEO staff and resources for years on end and will no longer be prioritized.

Conciliations and Voluntary Compliance Agreements (VCAs) should be “a just resolution of the complaint” to remedy “any violations of the rights of the aggrieved person.”¹⁵ But too often, FHEO previously proposed and entered unjust conciliations to extract concessions from respondents without a basis in fact or law.

As a result of previous guidance and priorities, which often went beyond the law and take much more time to process, FHEO faces a severe backlog of complaints and conciliations. The backlog is unfair to complainants, respondents, and staff. FHEO must prioritize cases with the strongest evidence of disparate treatment toward a bona fide purchaser or renter because of his or her protected traits.

¹² *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 214 (2023) (quoting *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991)).

¹³ Reasonable accommodation/modification cases raise unique issues.

¹⁴ 42. U.S.C. § 3610.

¹⁵ 24 C.F.R. § 103.300(b).

III. “Priority Memorandums” and Revoked Guidance

Going forward, FHEO will prioritize eliminating artificial, arbitrary, and unnecessary barriers to affordable housing rather than creating them. Enforcement actions (as well as guidance) will hew closely to the text of the operative statutes. To ensure effective utilization of resources consistent with the provisions of Executive Order 14219 and basic responsibility to American taxpayers, FHEO staff should prioritize cases involving facially discriminatory conduct.

Before conciliations, VCAs, charges, or findings are filed or issued by FHEO, a “priority memorandum” must be provided to the Principal Deputy Assistant Secretary, or his designee, for review. There should be an identifiable author for the memorandum—an investigator, attorney, or administrator—prepared to answer questions.

Each “priority memorandum” must include the following standard information:

1. Basis of jurisdiction, including:
 - Statutory provision(s) at issue (Fair Housing Act, Title VI, ADA, etc.)
 - The protected characteristic(s) that were the basis for the complaint
 - Status of complainant (purchaser, tester, former tenant, etc.)
2. Description of each Allegation/Charge, including
 - HEMs (or HUD file) Case number(s)
 - Theory of discrimination
 - Species of unfavorable housing treatment (e.g., refusal to rent, retaliation)
 - Relevant names, dates and locations;
3. Description of evidence supporting/rebutting allegation(s), including
 - Facts suggesting a motive to discriminate based on a protected characteristic
 - Statements, statistics, deviations from industry practices, etc.
 - Response to charges by respondents and other related parties
 - Any facts that could impact a determination of credibility for any individual or entity
 - Damages to complainant, including:
 - Methodology for calculating damages
 - Evidence to substantiate damages
4. Description of potential terms for settlement/conciliation offered or previously offered, if any, including
 - Monetary relief
 - Description of public interest relief
5. Proposed next steps.
6. Analysis of the likelihood of success if the matter were to be fully litigated by the Department.

The information in the “priority memorandum” will allow FHEO to direct resources to vigorously enforce civil rights protections and clear the backlog created by previous administrations. Accordingly, the information, along with pertinent supporting documentation,

should be entered into HEMS. FHEO leadership will then determine whether the information in the memorandum and in HEMS warrants further action.

The following material should be removed from FHEO's "Guidance Repository" and should no longer be used for intake, investigations, cause determinations, or any other official purpose by any FHEO staff, FHIPs, FHAPs, or equal opportunity specialists:

- "Memorandum Opinion – NAMIC v. HUD," Date issued: September 19, 2023.
- "2023.07.13_Memphis_LOF_04-18-1479-6.9.Signed," Date issued: July 23, 2023.
- "Statement of Interest_Connolly v. Lanham," Date issued: March 13, 2023.
- "DOJ Press Release on AI Discrimination in Tenant Screening," Date issued: January 9, 2023.
- "Louis et al. v. SafeRent et al._U.S. Statement of Interest (tenant screening algorithm)" Date issued: January 9, 2023.
- "Appraisal Elements of Proof," OGC, Date Issued: May 6, 2022.
- "Immigration Status and Discrimination FAQ," Date issued: March 1, 2022.
- "Joint Statement HUD – DOJ, State, and Local Land Use Laws and Practices and the Fair Housing Act," Date Issued: Nov. 10, 2016.
- "OGC Guidance Fair Housing Act Protections for LEP Persons," Date Issued: Sept. 15, 2016.
- "Proving Disparate Impact in Fair Housing Cases After Inclusive Communities," Date Issued: Aug. 1, 2016.
- "OGC Guidance Application of Fair Housing Act Standards to Use of Criminal Records," Date Issued: April 4, 2016.
- "Guidance for PHAs and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions," Date Issued: Nov. 2, 2015.
- "Memo – Use of Arrest Records of Tenants of Public and HUD-Assisted Housing 4-18-15," Date Issued: April 8, 2015.
- "Guidance on Title VI Complaint Investigations involving LEP," Date issued: Sept. 30, 2014.
- "FAQs Accompanying Affirmative Fair Housing Marketing Plan Guidance and Instructions for Section 818 PRA Demo," Date issued: June 1, 2014.
- "Affirmative Fair Housing Marketing Plan Review Guidance," Date issued: April 14, 2024.

- “Guidance Regarding Zoning and Land-Use Referrals to DOJ,” Date issued: March 24, 2014.
- “R8 Legal Opinion – SSN Non-Citizen Legal Memo August 2013,” Date Issued: August 15, 2013.
- “Compliance Based Evaluation of a Recipients Certification that it has AFFH,” Date Issued: March 5, 2013.
- “Referrals of Pattern or Practice Fair Housing Cases to the Department of Justice,” Date Issued: Dec. 12, 2011.
- “Guidance on Rights provided by Title VI of CRA, Fair Housing Act, and LEP,” April 13, 2009.

As described in Section I, the guidance on “redlining” and “reverse redlining” from OGC’s 2014 “Elements of Proof” memo is legally unsound and will not be used by FHEO for enforcement. A full review of existing FHEO and OGC guidance is ongoing. Documents that are outdated, legally unsound, contrary to administration policy, or unhelpful will be rescinded and/or replaced.

IV. Conclusion

All Americans deserve vigorous, impartial fair housing enforcement, and FHEO leadership is committed to delivering it. The interim process outlined in Section III allows for the unwinding of unmeritorious enforcement actions while permitting meritorious actions to proceed. Any specific questions from FHEO regional directors should be directed to Deputy Assistant Secretaries, who will relay them to FHEO leadership as needed.