
CHAPTER 11. CONCILIATION

11-1 INTRODUCTION

Under Section 810(b)(1) of the Fair Housing Act (the Act) and Title 24 Code of Federal Regulations, Section 103.300(a) [24 C.F.R. Sec. 103.300(a)] of the implementing regulations, HUD must engage in conciliation efforts on all housing discrimination complaints filed pursuant to the Act "to the extent feasible." The period during which conciliation must be attempted commences with the filing of the complaint, and concludes with the issuance of a charge on behalf of the complainant or upon dismissal of the complaint. The implementing regulations at 24 C.F.R. Section 103.325 also set forth a limited number of circumstances that justify HUD's suspension of conciliation efforts.

11-2 CONTENTS OF THE CHAPTER

This chapter provides guidance on implementing HUD's mandate under the Act to engage in conciliation; the role of the conciliator; how conciliation works in the HUD investigation process; how and when parties may engage in the conciliation process; preparing for and conducting conciliation; determining when to suspend conciliation efforts; and detailing HUD's role in approving and enforcing conciliation agreements. The chapter also addresses the role of the intake analyst in conveying threshold information about the conciliation process to the parties and provides guidance for HUD investigators when they are confronted with conciliation offers from parties during the course of the investigation.

Remedies provided under the Act, guidance in framing public interest provisions, an introduction to binding arbitration, as well as the required elements of a conciliation agreement are included in this chapter.

The term "conciliator" is used throughout this chapter to describe any HUD staff person engaged in the conciliation process with respect to a complaint filed under the Act.

11-3 THE HUD CONCILIATOR

Section 103.300(c) of the implementing regulations states that:

Generally, officers, employees, and agents of HUD engaged in the investigation of a complaint under this part will not participate or advise in the conciliation of the same complaint or in any factually related complaint. Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information can be observed, the investigator may suspend fact-finding and engage in efforts to resolve the complaint by conciliation.

A. Separating Investigation from Conciliation.

A separate conciliator need not be assigned in every case because it may be impractical to do so in some situations. In general, supervisors and managers should assign responsibility for conciliating and investigating complaints on a case-by-case basis, based on their assessments of the nature and complexity of the allegations and issues involved, and of the relative talents, capabilities and expertise of the individuals comprising the investigative staff. If an investigator realizes, during the conciliation process, that he or she cannot maintain his or her impartiality as a conciliator, then the investigator should ask the supervisor to assign someone else to conciliate the case. If a separate conciliator is assigned, the investigation should not be suspended while conciliation is taking place.

If an investigator is going to be simultaneously conciliating a case, he/she must make every effort to separate the two functions. Some suggestions as to how to separate conciliation and investigation include, but are not limited to:

1. Concluding any investigation (i.e., interview, etc.) that is taking place prior to engaging in conciliation;
2. Taking a break prior to beginning conciliation
3. Initiating a separate telephone call in which only conciliation is discussed;
4. Verbally announcing to the parties the transition to conciliation and fully explaining the difference in roles and functions of the investigator and conciliator (i.e. that anything said or done during conciliation cannot be used in the investigation); and
5. Taking steps to avoid commingling notes related to investigation and conciliation.

In order to facilitate the confidentiality of the conciliation process, a detailed conciliation record must be established and maintained. In order to separate conciliation and investigation, the conciliation materials should be contained under a separate tab entitled “Conciliation” in the Deliberative section of the case file. (See also Chapter 10, Preparation of the Case File). Only materials related to conciliation should be kept under the “Conciliation” tab, which will ensure that conciliation and investigation materials are maintained separately and will prevent conciliation materials from being commingled with other proprietary information.

B. Introducing Conciliation During an Investigative Interview.

Under certain circumstances, it may be appropriate for a HUD investigator to engage in conciliation negotiations during the course of an on-site investigation. For example:

- A party makes conciliation overtures during the course of an on-site investigation and considerations of time and distance make it impracticable to delay commencement of negotiations until the completion of the on-site; and

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- The relationship between each of the parties and the investigator makes such efforts possible without adversely affecting the neutrality of the HUD investigator/conciliator.

A HUD investigator who has the opportunity to conciliate a complaint while on-site is authorized to negotiate a HUD conciliation agreement provided there is a clear distinction between investigative and conciliation activities. In dealing with the parties in the role of conciliator, the HUD investigator must take every reasonable precaution to ensure that the investigative record is not compromised in the event that the conciliation attempt is unsuccessful.

C. The HUD Conciliator's Ongoing Role.

The conciliator should have a realistic understanding of the strengths and weaknesses of the case. Conciliators (including investigators or supervisors who act as conciliators) should educate the parties about settlement and the realities of the case early in the conciliation process, solicit and convey offers, rejections of offers and counter-offers among the parties in a timely manner and, where appropriate, solicit "impasse-breaking" offers to sustain negotiations. Although initial efforts to conciliate may fail, a conciliator should continue to look for areas of agreement, and be prepared to resume negotiations at any time prior to a charge of discrimination being filed or the dismissal of a complaint.

Conciliation efforts should be considered as "unsuccessful" only when all offers have been rejected, the rejections have been communicated and no "impasse-breaking" offers have been proposed. A conciliator must fully document all conciliation attempts in a dated log, including notes on the course of negotiations, which clearly demonstrate his or her efforts to achieve voluntary resolution of the complaint.

11-4 PROHIBITION ON THE USE OF INFORMATION OBTAINED DURING CONCILIATION

Conciliation may be a fertile source of information regarding a respondent's housing practices. However, nothing said or done during the course of conciliation can be used in the investigator's reasonable cause recommendation, in the FIR, or in any subsequent Title VIII enforcement proceeding. Information discovered during conciliation should not be made public without the written consent of the persons concerned.

Although information discovered during the conciliation process cannot be factored into the investigator's recommendation, if this same information is discovered outside of the conciliation process, it is permissible for the investigator to use this information in his/her recommendation. For example, if a respondent makes an admission during conciliation negotiations, the investigator cannot use this admission in his/her recommendation. However, if the respondent makes this same admission in a later deposition, the investigator can use this admission in his/her recommendation.

11-5 USE OF INVESTIGATIVE INFORMATION DURING CONCILIATION

If a conciliator believes that it would be appropriate to review portions of the investigative record with the parties during a conciliation conference, he/she should generally arrange to caucus separately with each party for this purpose. Be wary of providing wholesale access to investigative evidence to complainants or respondents because either may occasionally negotiate in bad faith only to gain inappropriate access to the investigative record.

If a conciliator decides to share investigative information with a party during the course of an on-site conciliation interview, he/she should use all reasonable precautions to limit the scope of the disclosure to evidence that is relevant to the dispute at issue between the parties at conciliation (e.g., monetary damages for individual relief).

The conciliator should keep on hand only those documents that he/she has personally screened as appropriate to share with the parties. It is recommended that a conciliator verbally share information with the parties and consult with management and Regional Counsel's office before releasing any documents to the parties.

A. Maintaining Impartiality in Disclosure of Evidence

When reviewing investigative evidence with a party, the conciliator should never suggest that such information would support a particular finding in the case at issue. It is more appropriate to inform each party that the evidence is being provided solely in order to assist them in making realistic, practical assessments of their respective positions.

B. Assessing the Potential Impact of Disclosure on the Outcome of Negotiations

Before introducing investigative evidence into the negotiations, the conciliator should consider whether this approach is more likely to help the parties achieve a realistic view of their circumstances, or to create new obstacles to settlement by encouraging hostility.

C. Assessing the Potential Impact of Disclosure on Witnesses

A conciliator must carefully consider whether the use of investigative evidence increases the likelihood that named and anonymous witnesses will refuse to cooperate with HUD investigations, or that a party will expose such witnesses to unreasonable risks of reprisals. For example, the evidence may include damaging testimony provided by other tenants who fear retaliation by the respondent landlord. Given these considerations, it is recommended that the conciliator not reveal a witness's name or other identifying information.

D. The Use of Testing Information During the Conciliation Process

Information concerning results of all tests, whether positive, negative or inconclusive, may be shared with the respondent during conciliation. It is recommended that the conciliator orally share information about the tests with the respondent and avoid, wherever possible, releasing anything in writing concerning tests that were conducted. The conciliator should consult with management and Regional Counsel's office prior to releasing any testing documents, including any narrative summary of the tests.

11-6 DOCUMENTING THE CONCILIATION RECORD

A. Documenting HUD's Compliance with the Act

In general, a completed case file must demonstrate that HUD engaged in meaningful efforts to resolve the complaint through conciliation.

1. Evidence of conciliation efforts can best be demonstrated through the preparation of a detailed, chronologically organized conciliation record. The record should stand on its own as convincing evidence of HUD's bona fide efforts to conciliate the complaint in accordance with the Act and the regulations.
 2. Suggested format. The conciliation record should include a chronological progress log that briefly summarizes the contents of each conciliation-related contact with the parties and their representatives. The conciliator should complete and attach a Document Control Cover Sheet for the materials in the conciliation record. The documentation on conciliation may include: written conciliation interview reports with the parties, summaries of conciliation-related discussions with parties and their representatives, memoranda of telephone conciliation-related contacts prepared by the HUD conciliator, signed and dated notes or lists of relief proposals submitted by the complainant and formal letters drafted by parties or their representatives.
 3. Document conciliation efforts no matter what type of negotiation. The conciliator should maintain detailed documentation of each conciliation-related contact, whether written or verbal. Where conciliation negotiations are conducted face-to-face with any party, the conciliator should memorialize the contact in the form of a memorandum describing the date and time of the meeting, the parties present, the offers conveyed, and the parties' responses to those offers (i.e., acceptances, rejections, and/or counter-proposals). When negotiations must be conducted at "arms-length," it becomes the HUD conciliator's responsibility to convey offers and counteroffers among the parties and to document the parties' responses for the conciliation record.
 4. Reviewing proposals for individual relief prior to transmittal. When a conciliator receives a proposal for individual relief from a complainant, he/she should, where
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appropriate, review the elements of the proposal and discuss them with the complainant prior to transmitting them to the respondent. While a conciliator may not dictate the content of a complainant's proposal for relief, or refuse to convey an offer, complainants may welcome the opportunity to restructure their relief proposals to encompass settlement goals that are feasible under the Act.

5. Separate conciliator assigned. In the event that the complaint is assigned to a different person for investigation, the conciliator should keep the investigator fully informed of the status of the conciliation efforts.

B. Documenting Conciliation under a Separate "Conciliation" Tab

The documents pertaining to conciliation should include a Document Control Cover Sheet and be placed under a separate tab entitled "Conciliation" in the Deliberative Section of the case file (see Chapter 10, Preparation of the Case File). The separate "Conciliation" tab should be created at the very beginning of an investigation. Conciliation documents should not be commingled with other deliberative materials such as fair housing test results.

C. Documenting Conciliation in TEAPOTS

All conciliation-related contacts should be noted in TEAPOTS. The Conciliation Section in TEAPOTS must demonstrate on its face that the Department fulfilled its statutory obligation to attempt conciliation. Telephone contacts, receipt of notes, correspondence, or other documentation relating to the specific relief sought by the complainant, conciliation offers, rejections or counteroffers should be documented in TEAPOTS.

D. Documenting Conciliation in the FIR

The FIR should not include a detailed discussion regarding conciliation. The FIR should indicate generally whether conciliation was conducted and that conciliation was unsuccessful.

E. Documenting Conciliation in the Evidentiary Section

1. Evidence from parties. If the parties or their representatives submit documents, which include a mix of conciliation matters and investigative evidence, HUD must make every effort to protect the confidentiality of the conciliation material. For example, if a portion of a complainant's supplemental statement, or a letter from the respondent's attorney includes proposals or counteroffers of settlement, the conciliator should mask-over the conciliation-related passages and photocopy the documents. Label each resulting blank space with the phrase: "CONCILIATION MATERIAL DELETED," place the original unedited document under a separate tab entitled "Conciliation" in the Deliberative Section of the case file, and give the edited version to the investigator for placement in the Evidentiary Section of the case file.

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2. Other documents created by the HUD conciliator. Conciliation-related interview reports should be prepared in the same detailed narrative format used for party and witness investigative interviews. Where appropriate, the narrative should describe the manner in which the conciliator informed the party of the rules and privileges specifically applicable to the conciliation process. Where the HUD conciliator has reduced a party's verbal offer, rejection or counter-offer to written form in order to convey it to the other parties, the conciliator should include a dated and signed copy in the conciliation record.

11-7 CONCILIATION RELATED ISSUES AT INTAKE

During the intake stage of complaint processing, the parties (if both complainant and respondent are contacted at intake) should be informed of their right to pursue conciliation. The subject of conciliation should be raised with the complainant and respondent during the initial intake interview and discussed in the standard notification letters to the parties. In order to introduce the parties to the conciliation process and generally describe the nature of the relief available through voluntary resolution, the intake analyst should be thoroughly familiar with HUD's regulations for "Conciliation Procedures" at 24 C.F.R., Subpart E, Sections 103.300 through 103.335.

As the first point of contact in the administrative complaint process, the intake analyst is in a unique position to start fulfilling the Department's responsibility for fully informing the parties about their rights and responsibilities in conciliation.

Generally, the only conciliation functions that are performed at intake are to advise the complainant (and respondent if applicable) of the HUD process, remind the complainant to retain receipts and other records of damages, and send out an invitation to conciliate letter and Conciliation Fact Sheet with the Notification Letter. A Conciliation Fact Sheet is included in the Appendix to this chapter.

11-8 DETERMINING WHEN TO CONCILIATE

The parties should be made aware that conciliation could occur at any time during the investigation of an open complaint. In order to build the administrative record of conciliation, it is recommended that the last line of all correspondence sent to the parties state, "If you are interested in conciliating this case, please contact [name of conciliator]."

Any party to a complaint may initiate conciliation by making an offer to, or requesting an offer from, an opposing party. The HUD conciliator should promptly convey such offers and counter-offers to the opposing party. If the parties indicate a mutual desire to reach a settlement, the conciliator should promptly initiate negotiations.

A party may react to the receipt of a notification letter by proposing a settlement. The conciliator must remember that a party's unsolicited settlement proposals and offers must

receive the same protection and confidential treatment as proposals and offers made in response to HUD initiatives. Aside from these circumstances, during the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint, HUD has an affirmative obligation to initiate bona fide conciliation attempts.

11-9 IDENTIFYING APPROPRIATE PARTIES TO CONCILIATION

In addition to the assigned conciliator, the following persons and/or entities are entitled to participate in the conciliation process:

A. The Parties

1. Complainants. Where more than one complainant has signed a HUD complaint, each individual complainant must be offered the opportunity to become involved in the conciliation process. However, each individual complainant is free to accept or reject conciliation with the respondent. If the parties are unable to negotiate a conciliation agreement that contains individual relief provisions acceptable to all the named complainants, HUD must continue to process the complaint with respect to those complainants who were not included in the conciliation agreement.
2. Respondents. Similarly, where more than one respondent is identified on a HUD complaint, each individual respondent must be offered the opportunity to become involved in the conciliation process. Each individual respondent is free to accept or reject conciliation with the complainant. If the parties are unable to negotiate a conciliation agreement that contains individual relief provisions acceptable to all the named respondents, HUD must continue to process the complaint with respect to those respondents who were not included in the conciliation agreement. However, it is not unusual for one respondent to take the lead in conciliating and negotiate a settlement on behalf of all the named respondents.

Conciliation should be offered to all parties, whether individual or institutional, who could be held liable for the alleged discriminatory housing practice if the complainant's allegations are true. If the complaint is amended to add an additional respondent or complainant, he/she must be offered an opportunity to conciliate before a cause determination or charge is issued.

3. Organizational Representatives. It is critical to identify organizational representatives who have the authority to negotiate and execute conciliation agreements on behalf of the respondent(s). It is important for a conciliator to identify who actually owns, manages, or otherwise controls access to the monetary relief and/or housing benefit sought by the complainant. Conciliation overtures made to an employee or official who lacks authority to negotiate on behalf of the respondent who actually owns, manages, or otherwise controls

access to the monetary relief and/or housing benefit sought by the aggrieved person are insufficient to fulfill the Department's statutory obligation to attempt conciliation with the respondent(s).

B. The Parties' Authorized Representatives

Each party has the right to be accompanied or represented by an attorney, or other individual, during any communication in which conciliation is discussed.

If complainant or respondent is represented (either by counsel or another individual), the conciliator must negotiate with the party through the named representative. Do not contact the complainant or respondent directly unless the representative clearly specifies that his or her client may be contacted directly. If the complainant or respondent does communicate directly with the conciliator, the conciliator should promptly notify the party's representative, and should make it clear that the party initiated the contact.

In order to ensure confidentiality, a conciliator should not permit persons or organizations who are not named in the complaint, or who have not been designated as an authorized representative by any party, to participate in conciliation negotiations.

C. The Assistant Secretary for FHEO

Under Section 808(c) of the Act, the Secretary of HUD may delegate (i.e., assign) any of his or her " ... functions, duties, and powers with respect to investigating, conciliating, hearing, determining... " etc., to designated employees of the Department. Shortly after the effective date of the Act, the Secretary delegated the authority to approve conciliation agreements to the Assistant Secretary for FHEO. The Assistant Secretary has re-delegated this approval authority to the FHEO Regional Office Directors (see Federal Register, Vol. 68, No. 149, August 4, 2003, pages 45847 and 45848).

In accordance with this delegation of authority, an FHEO Regional Director must conduct a final review of the provisions of a conciliation agreement and approve the conciliation agreement on behalf of the Department by signing the Agreement.

11-10 PREPARING FOR AND CONDUCTING CONCILIATION

The HUD conciliator is obligated to initiate conciliation on behalf of the Department, as well as to respond to initiatives from the parties. Before commencing negotiations, a conciliator should make the following preparations:

A. Compiling Source Materials For Conciliation

The conciliator should decide in advance how to go about informing the respondents of their obligations, and how best to assist the parties in making informed evaluations of their risks in an enforcement proceeding.

The conciliator should identify key source materials related to the Act, which may help all parties to the conciliation understand the issues raised by the complaint. Source materials can also suggest possible resolution through appropriate relief provisions. Examples of source materials include the Act, implementing regulations, guidance documents and memoranda, court decisions, conciliation agreements in similar cases and any consent decrees negotiated by HUD's Office of General Counsel or the Department of Justice following the issuance of a charge.

B. Assessing The Parties' Positions and Objectives

The HUD conciliator should assess all available evidence relating to the parties' respective positions and resources, including information collected during intake (see Chapter 4, Complaint Intake).

As the investigation proceeds, the conciliator should routinely review any answer(s) filed by a respondent, together with any responses to data requests and notes from investigative interviews with the respondent. There is no prohibition against the use of information from the investigative record in the conciliation process. However, the Act does prohibit the use of information learned during the conciliation process in the investigation or in any subsequent proceeding under the Act without the written consent of the parties.

A respondent's answer(s) may reveal his or her:

- Predisposition to settle,
- Degree of personal involvement in the activity complained of,
- History of association with the complainant,
- Level of authority within the respondent organization,
- Standard business practices,
- History of fair housing compliance, and
- Participation in HUD-sponsored programs.

After becoming familiar with the positions and resources of each of the parties, the conciliator should attempt to determine whether any of the parties' objectives are compatible.

C. Setting the Stage

1. Physical setting, location, timing and content of the conciliator's contact. The physical setting, location, timing and content of the conciliator's contact with each party and/or party representative may be critical to the success of the effort, and may affect the attitude with which the parties approach the conciliation process. The conciliator should invest as much care in his or her approach to conciliation by telephone as he/she would in circumstances where one or both parties are physically present.

The conciliator should make every effort to ensure that the timing of the contact is mutually convenient and that the site selected and overall environment is acceptable to the parties. Assess each party's circumstances when determining whether it is best to conduct conciliation via telephone, or whether a series of "one-on-one" meetings at the HUD Office, the party's residence or work place, or a "neutral" location such as a library, community center, etc., would be more effective. When telephoning a party to discuss conciliation, first inquire whether he/she feels comfortable holding the discussion in his/her current physical setting, whether he/she has sufficient privacy, and whether the party can remain at the location for a reasonably sufficient time to conclude the discussion.

2. Accommodating Disabilities. Arrangements should be made so that individuals with disabilities (i.e., complainants, respondents, their representatives or anyone associated with a complainant or respondent) will be accommodated in conciliation. Ascertain whether any individuals involved in conciliation have any special needs that would require a reasonable accommodation of a disability (e.g., visual, audio, verbal or mobility impairments, mental or developmental disability). If so, attempt to structure the format of conciliation in a manner that will best enable the individuals with disabilities to fully participate. Although accommodation must be handled on a case-by-case basis, attempt to utilize the Department's own resources (e.g., computers, TDD machines, interpreters, large-print publications) to convey and assist the individuals with disabilities with communications.

D. Establishing Protocol

A conciliator is responsible for setting the stage for conciliation and establishing the protocol for conciliation discussions.

1. Set protocol. Inform the parties of the ground rules that they must observe during the negotiations and the overall conciliation process. The conciliator should make it clear that he/she will support the mechanics of the conciliation process by conveying offers and counter-offers between the parties, by providing a sample conciliation agreement and by drafting and finalizing the conciliation agreement.
2. Define the permissible scope of conciliation. Provide the parties with information regarding their rights and obligations under the Act. Educate them about the Act's requirements as related to the specific allegations of the complaint.
3. Avoid parties "arguing the case." The conciliator should stress to the parties that conciliation is not an acceptable forum to argue the merits of the case.
4. Avoid arguments among the parties. The conciliator should explain that personal arguments among the parties will not be permitted during conciliation. Explain

that if such arguments do occur, the conciliator will suspend conciliation negotiations.

5. Allow for breaks during the conciliation process. The conciliator should inform the parties that they are permitted to take a break(s) during conciliation negotiations, if necessary. The parties may choose to use a break to discuss matters with a representative before continuing negotiations. In addition, the conciliator may want to separate the parties at various times for one-on-one discussions.
6. Maintain the Focus. Keep the parties focused on areas of agreement, while reducing areas of disagreement. Involve the complainant as well as the respondent in the negotiations regarding the public interest relief provisions.
7. Notification of participants. Determine whether it is necessary to send the parties written notification of the commencement of conciliation efforts in addition to the information they have already received during intake. The conciliator should include in any written notification the agreed upon date(s), time(s), and site, a request for written confirmation of attendance and a description of the protocol that must be observed during the conference.

E. Methods of Contact During Conciliation

As part of the conciliator's responsibility for setting protocol, he/she must determine the appropriate method(s) of communication among the parties during negotiations.

1. "Face-to-Face" negotiations. "Face to Face" conciliation conferences offer a productive forum for negotiations under certain circumstances.
2. "Shuttle diplomacy" negotiations. "Shuttle diplomacy" involves a conciliator conveying offers and counter-offers to the parties separately and can be an effective technique for complaint resolution. This method of negotiation can be accomplished through a combination of in-person interviews, correspondence and telephone contacts, with the conciliator receiving and relaying messages from the parties.
3. "Tele-conferences." Where "shuttle diplomacy" has achieved a fundamental accord between the parties, and only minor areas of disagreement or uncertainty remain to be resolved, the conciliator may find it effective to arrange a conference call among the parties in order to finalize the provisions of the conciliation agreement. Conference calls can be both time- and cost-effective where considerable geographical distances separate the parties. All the parties and their representatives should be included in any conference calls.

F. Negotiating Without the Conciliator's Involvement

The conciliator should caution the parties about communicating during the conciliation process without the conciliator's involvement. When the parties deal directly with each other during the conciliation process, without the participation or knowledge of the HUD conciliator, the process is susceptible to abuse. The result may be that offers and counter-offers are not properly documented, and opportunities may be created for the parties to coerce, intimidate, or threaten each other. Most importantly, this method encourages the parties to make private settlements, without HUD oversight or enforcement of individual relief provisions for the complainant, and without appropriate relief in the public interest. The conciliator should advise the respondent that HUD may, if the public interest is not addressed in a private settlement, initiate a Secretary-initiated complaint and continue to investigate the allegations.

11-11 INFORMING PARTIES OF THEIR RIGHTS DURING CONCILIATION

Any party involved in the conciliation process should be informed of his or her rights, including the following:

1. Confidentiality. Describe to the parties the Act's provisions regarding disclosure and nondisclosure of information obtained during conciliation. Where appropriate, explain that financial and medical information will be closely guarded, and that its disclosure to third parties is protected under the Right to Financial Privacy Act of 1978 and other privacy laws.
2. Representation. Explain to the parties that they have the right to have an attorney or other person represent their interests during any conciliation-related negotiations and that the conciliator does not represent either party.
3. Binding Arbitration. Explain to the parties that they have the option to resolve certain questions involving the individual relief provisions in a conciliation agreement through binding arbitration. The term "binding arbitration" refers to a process by which two parties agree to allow an impartial third party to render a decision on a disputed issue and to abide by the third party's decision. The specific types of relief that can be submitted to arbitration under a HUD-approved conciliation agreement are described later.

11-12 CONCILIATION TECHNIQUES

It is the conciliator who selects and communicates the approach to be used during conciliation. Sometimes the technique may vary based on the parties and/or issues in a particular case.

A. Explaining the Nature and Purpose of Conciliation

The conciliator should explain to each party that the goal of conciliation is to reach a resolution of the complaint that is acceptable to the complainant, the respondent and HUD. The conciliator should describe, in general terms, the procedural effect of a failure to resolve a Title VIII complaint through conciliation.

B. The Importance of Maintaining Neutrality

A conciliator must never depart, or give the impression of departing, from the role of a neutral, dispassionate intermediary seeking to facilitate a mutually agreeable settlement. The conciliator should avoid behaving in a manner that suggests to the parties that he/she has an emotional or professional stake in any outcome of the proceedings. Conciliators should discourage efforts by any party to involve them in any personal disputes between parties, or to encourage them to express a bias for or against any party's position in the case. A conciliator must never threaten, or appear to threaten, a party with adverse consequences for failing to conciliate a complaint. A conciliator should refrain from characterizing any offer as fair or unfair, but should address proposed provisions that, on their face, violate the Act or HUD policy.

C. Explaining Provisions for Individual Relief

Conciliators should bear in mind that any monetary settlement between the parties is simply a sum that the respondent agrees to pay to resolve the complaint. The settlement amount may consist of a lump sum agreed upon by the parties. There is no prohibition against earmarking specific sums as "actual damages," "damages for humiliation and embarrassment," etc., as a court or ALJ might require. However, do not permit the issue of itemized damages to create an impasse in the negotiations.

The parties must understand that individual relief, which often involves monetary damages to complainants, is central to the conciliation process. It is important to provide both complainant and respondent with a realistic context within which to assess the proposed provisions of the conciliation agreement. This can be accomplished by describing the remedies for housing discrimination provided under the Act, as well as the types of relief that have been awarded by Administrative Law Judges or Federal judges to complainants who have prevailed on the merits of complaints based upon similar allegations.

Individual relief offered during the conciliation process for a complainant need not be limited to the type of relief that can be ordered after adjudication on the merits of the complaint. The conciliation agreement may include any terms that are not offensive to the public interest or fair housing and that are acceptable to all parties and to HUD.

D. Explaining the Purpose of Public Interest Provisions

The parties must clearly understand that relief to vindicate the public interest in furthering fair housing is mandated by HUD's regulations. If a Secretary-initiated investigation is conducted, the Assistant Secretary is under no obligation to refrain from pursuing evidence of discrimination obtained during the investigation of a complaint that was withdrawn because of a private settlement between the parties. Additionally, respondents should be made aware that, under limited circumstances, a Secretary-initiated investigation may allow a housing discrimination complaint to be filed against a respondent who has executed a HUD-approved conciliation agreement.

1. Minimum standards for relief in the public interest. Guidance is provided for the types of relief that may be sought for the public interest in the regulations at 24 C.F.R. 103.320. The public interest provisions of a conciliation agreement routinely require the elimination of the alleged discriminatory housing practice and impose a duty of future compliance with all provisions of the Act. Affirmative educational and outreach responsibilities may be imposed upon the respondent. The respondent may be required to provide HUD with periodic reports documenting his or her compliance with the terms of the Agreement. The scope of the public interest provisions in a HUD-approved conciliation agreement may vary depending upon the stage that the complaint investigation has reached and the facts available at the time that the Agreement is executed.
2. The complainant's role in developing and furthering public interest relief. As appropriate, interested complainants should be involved in the development of affirmative public interest relief provisions. Explain to the complainant that, by filing the complaint, he/she has asked HUD to explore the respondent's housing practices and by participating in the conciliation process, the complainant has a unique opportunity to assist HUD in creating an enforceable plan to remedy the effects of unlawful discrimination experienced by the complainant and other home-seekers. If, for example, the parties will have an ongoing landlord-tenant relationship after the case is resolved, the complainant should understand that providing for the overall reform of the respondent's housing practices will benefit not only the complainant, but also the complainant's current and future neighbors.
3. Addressing respondents' concerns for future liability. Respondents sometimes ask conciliators for assurances that specific proposals for public interest relief under consideration in draft conciliation agreements will satisfy the requirements of the Act. A conciliator should not offer blanket assurances in reply (e.g., that compliance with the conciliation agreement's terms will guarantee compliance with the Act). Instead, the conciliator should emphasize that the respondent's implementation of a given fair housing policy will ultimately determine whether or not the respondent is in compliance with the Act. Respondents also may be referred to local private fair housing groups that offer consulting services for housing providers.

11-13 EARLY- AND LATE- STAGE CONCILIATION

As previously noted, conciliation can occur at any time that a complaint is open with HUD. However, conciliation seems to be more successful at one of two different points in the processing of a complaint. These are often referred to as “early-stage” and “late-stage” conciliation. As the names indicate, “early-stage” conciliation occurs right after the complaint has been filed and before much, if any, investigation has been completed. “Late-stage” conciliation occurs at that point in complaint processing when investigative fact-finding is concluded, and the HUD investigator believes that he/she has gathered sufficient evidence on which to base a recommendation for a determination of reasonable cause or no reasonable cause.

A. Early-Stage Conciliation

In general, HUD-initiated “early-stage” conciliation efforts may commence as soon as jurisdiction has been established and the parties have been served with notice of the complaint. By definition, the execution of a valid HUD conciliation agreement rests upon the filing of a valid, signed and affirmed complaint. Although conciliation efforts on a complaint may sometimes commence even before the aggrieved person has signed the HUD complaint, a conciliation agreement will not be enforceable unless the complaint has been signed or affirmed.

The conciliator should not attempt to negotiate with a respondent prior to the issuance of notification letters and confirmation that the respondent has been served with notice of the complaint. Exceptions include situations in which it can be demonstrated that a respondent has constructive notice of the filing of the complaint, and/or where appropriate, to prevent irreparable injury to the complainant. If the respondent has not yet received notice of the complaint, the conciliator can provide a copy of the notification letter, complaint and Conciliation Fact Sheet at the time of initial contact. If the file record does not include an answer to the complaint, ascertain if the respondent has filed an answer.

In the event that a conciliation agreement is negotiated before the aggrieved person has signed the HUD complaint, the aggrieved person should sign the complaint at the same time that he/she executes the Agreement.

1. Assessing the appropriateness of “early-stage” conciliation. A conciliator should be alert to time constraint situations in which a complainant is about to suffer irreparable harm and should make a concerted effort to facilitate conciliation as soon as possible.
 - The complaint may involve the attempted purchase of a single-family house that the complainants need within 60 days because they have sold and agreed to vacate their current residence by that time.

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- A complainant may be seeking to move into a dwelling prior to the commencement of the next school year and may indicate that he/she is unwilling to change addresses after the school year begins.

In each of the above cases, the complainant's needs may be satisfied in the immediate future and will become more difficult to satisfy with time because of the unique nature and brief availability of the most desirable form of relief.

2. When "early-stage" HUD-initiated conciliation may be inappropriate. After making initial contacts with the parties and reviewing the available factual record, the HUD conciliator may, in some situations, find it necessary to decide whether the circumstances of the case make it inappropriate (i.e. contrary to the public interest) for the Department to initiate "early-stage" conciliation efforts. Examples of circumstances that might justify the Department's decision to refrain from initiating "early-stage" overtures include, but are not limited to, the following:
 - Jurisdiction is questionable and the complainant seeks substantial damages;
 - The respondent is a large-scale housing provider with a history of making early-stage settlements of HUD complaints alleging similar discriminatory housing practices, and the Department has accordingly had little or no opportunity to investigate the manner in which the respondent does business;
 - The respondent has other similar complaint investigations still pending with HUD and/or certified substantially equivalent agencies, and the conciliator has had no access to potentially relevant evidence from those companion cases before commencing negotiations with the parties; and/or
 - HUD is investigating whether to initiate an action to request a temporary restraining order or injunctive relief.
3. Public interest provisions in "early-stage" conciliation. Every HUD conciliation agreement should include provisions for relief in the public interest. However, during the early phase of fact-finding, the investigative record may not contain sufficient evidence to determine whether or not the respondent has violated the Act. Therefore, public interest provisions in early-stage conciliation agreements may be relatively general.

The conciliator may consider the following factors when drafting such provisions:

- The nature of the allegation;
 - The nature of the respondent;
 - The respondent's fair housing history;
 - The size and scope of the respondent's housing-related operations; and
 - The nature and quality of the totality of evidence then available.
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It is not necessary to suggest substantial public interest reporting requirements to every respondent. The complexity and the duration of any reporting requirements imposed on a respondent will increase as the investigation progresses and/or as credible evidence of a violation is discovered.

4. Interim Relief for Mitigation of Damages During the Early Stages of Complaint Processing. During the course of a complaint investigation, opportunities may arise to provide interim relief for complainants outside the confines of a HUD conciliation agreement or a court order for injunctive relief issued in connection with a Prompt Judicial Action proceeding. Depending on the circumstances of the case, the duration of the interim relief offered by a respondent may extend through the resolution of the complaint on the merits, or indefinitely. Complainants confronted with such offers may be reluctant to accept the offer, even if they would thereby benefit from the offer, because they fear that they would impair or forfeit their rights under the Act to pursue their complaints to resolution. Conciliators should therefore take special care to explain to any party that acceptance of relief offered after the filing of the complaint may be appropriate to mitigate the full amount or extent of the damages that the complainant might incur by the time that the complaint is formally resolved. Complainants should further understand that courts have held that complainants have an obligation to take advantage of valid opportunities to mitigate (i.e., reduce or minimize) the total amount of their potential damages, when such opportunities do not adversely affect their rights under the applicable law.
 - a. Provision of housing benefits. During an initial conciliation contact, a respondent may offer to rent an apartment to a complainant who has alleged that the respondent falsely denied that a similar unit was available. If the complainant has not yet located alternative housing, and the unit offered is similar in all respects to that sought by the complainant, she should be advised that she may accept the proffered unit for the sole purpose of mitigating her ultimate damages--without, however, compromising her right to negotiate a HUD conciliation agreement or her right to proceed to a determination on the merits. Similarly, the respondent should be advised that the complainant's acceptance of a unit will not resolve the case, but may reduce the complainant's injury, and thereby reduce any damages which could be ordered, if the investigation results in a cause determination.
 - b. Provision of reasonable modifications and accommodations. Post-complaint offers by a housing provider to permit a complainant with a physical disability to modify the interior of his or her dwelling unit, or to waive the imposition of a monthly fee for a service animal as a reasonable accommodation may be accepted by the complainant solely as mitigation of ultimate damages, pending the resolution of the complaint at issue.

B. Late-Stage Conciliation

In general, "late-stage" conciliation may offer a unique opportunity to rethink previous strategies of approaching the parties. The end of fact-finding also could be the most effective time to undertake "face-to-face" negotiations between the parties, particularly if such contacts have not been attempted or were previously unsuccessful.

1. Initiating "late-stage" conciliation. Particularly in cases where the facts support a reasonable cause determination, existing case law and policy generally require that the Department initiate "late-stage" good faith conciliation efforts at the close of investigation, preferably immediately after the investigator has conducted the final investigative ("rebuttal") interviews with the parties and witnesses (see Chapter 7, Planning and Conducting the Investigation). At this point in complaint processing, the investigator has had an opportunity to confront the parties and witnesses with any evidence that appears to support or contradict their respective positions with respect to the issues in the complaint, thereby providing each with the opportunity to rebut damaging evidence, clarify inconsistencies in the record, and, where appropriate, to rethink earlier assessments of the relative strengths and weaknesses of their positions.

The close of investigative fact-finding also marks an appropriate time for the conciliator to review both the investigative and the conciliation records with each party, thereby providing each with a final opportunity to assess the totality of the evidence in light of his or her position with respect to conciliation.

Because the entire investigative record also is available to the conciliator at the close of fact-finding, he/she can make a more accurate assessment as to whether or not the Act was violated, for purposes of drafting appropriate public interest provisions.

2. Nondisclosure of Field Office recommendations. Although a conciliator may discuss aspects of the investigative record with the parties, he/she must not disclose recommendations as to the disposition of any issues raised in the complaint.
3. "Late-stage" contact with the parties. If there have been no recent negotiations among the parties, it is important to reestablish the terms and ground rules of the relationship by emphasizing the nature and purpose of the conciliation process. As always, if a party is represented, then contact should be initiated through the representative. If either of the parties expresses anger or impatience at being contacted again, the conciliator should emphasize that he/she is acting in furtherance of HUD's obligation under the Act to ensure that the parties have meaningful opportunities to participate in conciliation at every key stage of the process while the case remains open.

The parties should be advised that the HUD conciliator is prohibited from commenting on the merits of the evidence. The conciliator should emphasize that he/she is willing to review aspects of the investigative record with the parties, but that ultimately, the parties (and, where applicable, their representative) must draw their own conclusions from the record.

As in previous negotiations, the conciliator should actively discourage efforts by any party to "argue the case" with the conciliator or to turn the session into a continuation of the investigation process.

The conciliator also should inquire whether the complainant has any specific proposals to put before the respondent before the case determination is prepared. Regardless of whether the complainant has anything new to propose, the complainant should be asked whether he/she is interested in considering any new overtures that the respondent might make. If the complainant expresses general interest in further negotiations (even though no specific proposals are yet on the table), the conciliator should proceed to discuss the preferred format and schedule. If the answer is in the negative, the conciliator should advise the complainant that he/she also is obligated to offer the respondent a final opportunity to conciliate, and that, in the event that the respondent makes a final offer, the conciliator must convey it to the complainant.

4. Determining the appropriate format for "late-stage" negotiations. A conciliator should determine the appropriate format for late-stage negotiations depending on the facts and circumstances of each particular case. Refer to the discussion at Preparing for Conciliation, in deciding on the appropriate format.
5. Establishing a reasonable time frame for "late-stage" conciliation. In general, when setting time frames for "late-stage" conciliation, the HUD conciliator should be guided by the same considerations that shaped his or her approach to earlier efforts. In each case, the conciliator should base the length of the time frame permitted on his or her assessment of the expressed positions of the parties after the initial contact, as well as on the overall nature and complexity of the factual record, as it may affect the necessary complexity of the proposed public interest provisions in the conciliation agreement.
6. HUD-Initiated "late-stage" conciliation of cases with "No Reasonable Cause" recommendations. If the evidentiary record at this stage of the investigation indicates a likelihood that the complaint will be dismissed with a "no reasonable cause" determination, additional conciliation efforts should only be undertaken where the parties initiate contact and changes in circumstances suggest the likelihood that the parties will reassess their attitudes towards settlement; where the "no-cause" recommendation is a "borderline" assessment; or where earlier conciliation efforts were not conducted and there is an indication that one of the parties is interested in seeking resolution.
7. Party-Initiated "Late-Stage" Conciliation of Cases With "No Reasonable Cause" Recommendations. Conciliation initiatives by parties to complaints that appear to be "no reasonable cause" cases should be conveyed and pursued in the same manner and to the same degree as those generated in connection with a complaint that appears more likely to result in a charge. The reason for this policy is two-fold: (1) neither

the Act nor the regulations provides a basis for making such a distinction; and (2) the complaint may, after further review, prove to be meritorious.

8. Additional "Late-Stage" Conciliation Opportunities. On occasion, conciliation may be extended to the parties after the case has been referred for determination. A conciliator may receive additional conciliation offers from parties to complaints that have been referred to Headquarters for determination, or that are under review for determination by a HUD Regional Office and/or the Office of Regional Counsel. When this occurs, the conciliator should immediately contact the reviewing office to ascertain the status of the case. If a determination on the merits has not yet been issued, the conciliator should:
- Consult with his or her supervisor as to whether or not the posture of the case warrants a request for suspension of further activity by the reviewing Office pending the outcome of renewed conciliation efforts; and
 - Promptly request that the reviewing Office suspend further activity and formally transfer the case file back to the appropriate Regional Office so that conciliation efforts may continue; or
 - Promptly inform the reviewing Office that renewed conciliation efforts are underway in the HUD Regional Office, but that it will not be necessary to suspend any pending actions by the reviewing Office.

11-14 CONCILIATION EFFORTS DURING THE COURSE OF AN INVESTIGATION

Conciliating complaints in the early stages of complaint processing and in the latter stages of an investigation has been discussed above, but conciliation can also be successful throughout an investigation.

Circumstances that change the way in which parties approach conciliation may arise directly from the investigation at hand, or they may stem from outside factors. Factors that may contribute to successful conciliation during an investigation include, but are not limited to, the following:

A. New Evidence

Generally, if a party to a complaint becomes aware during the course of the investigation that the Department has obtained evidence damaging to his or her position, the party will be more interested in attempting to conciliate the complaint. For example, suppose that during a respondent's final interview, a HUD investigator produced evidence showing that several independent witnesses identified during the investigation corroborated the complainant's account of the alleged discriminatory housing practice. Knowledge of

such unfavorable evidence gives the respondent an opportunity to realistically assess the likelihood that he/she will be found in violation of the Act.

B. Changes In the Complainant's Status

A complainant may experience significant changes in circumstances after filing a housing discrimination complaint. Such changes may substantially alter a complainant's view of what relief is desired. For example, receipt of notice of a change in a complainant's address or place of employment may be an indicator that a renewed conciliation effort may be in order.

C. Changes In the Respondent's Status

Changes in a respondent's circumstances may also influence attitudes towards conciliation. For example, a respondent owner may sell the subject property to an innocent third party or a respondent rental manager may obtain new employment.

D. Changes in the Fair Housing Act

New judicial interpretations and Administrative Law Judge decisions may enlarge or diminish the scope of the Act to include or exclude conduct that a respondent contends is lawful under the Act.

E. Changes in Other Applicable Laws or Requirements

Changes in Federal program regulations that are intended to bring policies and procedures into conformity with the Act can result in an increased risk of liability for respondents who continue to apply the old criteria. For example, suppose that the tenant selection committee of a Federally-subsidized housing project rejects a mobility-impaired rental applicant on the ground that she failed to demonstrate during her applicant interview that she was capable of "independent living." Confronted with evidence that the Department notified all program participants approximately eight months prior to the date of the alleged violation that this selection criterion was no longer valid under the current regulations, the respondent may embrace conciliation as its best option.

F. Changes in Market or Economic Conditions

Suppose that a respondent, who refused to sell a single-family home to an African-American couple that was willing to meet her initial asking price, finds that the house is still on the market with no qualified prospects in sight. The conciliator may ascertain whether the complainant is still interested in occupying the dwelling at issue. If the complainant still wants the dwelling, the conciliator should attempt to reopen negotiations with the respondent, with a view towards obtaining the desired housing and other appropriate compensatory relief.

G. Completion of Final Investigative Interviews

The end of the fact-finding phase of complaint processing is a potentially advantageous time for the HUD conciliator to inquire whether the parties are interested in renewing conciliation efforts, particularly where one of the parties has been confronted with potentially damaging evidence during a final interview.

11-15 TERMINATION OF CONCILIATION

During the conciliator's interaction with the parties, certain situations may arise that indicate that continued efforts at conciliation would be inappropriate. 24 C.F.R. Section 103.325 sets forth the circumstances under which HUD may terminate conciliation efforts.

A. Mandated Termination of Conciliation Efforts

Circumstances that mandate the termination of conciliation efforts include:

1. Lack of Jurisdiction. Information obtained during the course of conciliation may establish that:
 - a. The dispute does not involve a Title VIII basis or issue;
 - b. The complainant lacks standing; or
 - c. The subject property is exempt under Section 803 of the Act.

Under the circumstances set forth in a. through c. above, conciliation efforts should be documented in the record and the complaint should be administratively closed for lack of jurisdiction or recommended for a no reasonable cause determination.

2. Dismissal of a Respondent as a Party to the Complaint. If the evidence shows that one or more respondents is not a proper party to the complaint, the complainant should be informed and given an opportunity to provide additional evidence as to why that person should be named in the complaint. The dismissal of one or more respondents to a complaint prior to the close of the investigation terminates conciliation efforts with that respondent. However, conciliation efforts may continue with respect to each remaining respondent until a charge of discrimination is issued.

If a respondent raises an affirmative defense that must be fully investigated (i.e. he/she was mistakenly identified as having been involved in, or responsible for, the alleged discriminatory housing practice), conciliation efforts may continue against this respondent.

3. Effect of commencement of trial in a civil action on HUD conciliation efforts. 24 C.F.R. Section 103.325(b) of the implementing regulations states that:

Where the complainant has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, HUD will terminate conciliation unless the court specifically requests assistance from the Assistant Secretary.

The conciliator always should obtain credible written verification that trial actually has commenced, and should not rely solely upon representations that trial is scheduled to commence on a specified date. Examples of credible written verification may include, but are not limited to, the following:

- A signed, dated statement describing the status of the trial, executed by an authorized legal representative for the complainant(s) or the respondent(s);
- A signed, dated statement describing the status of the trial, executed by the Docket Clerk or Judge's Clerk assigned to the civil court in which the trial is taking place;
- An executed (date-stamped) copy of an Order issued by the judge presiding over the civil action, if the Order shows on its face that the trial has in fact commenced (Orders issued in connection with pre-trial matters (e.g., TROs, discovery proceedings) do not satisfy the verification requirement).

B. Discretionary Termination of Conciliation Efforts

In accordance with 24 C.F.R. Section 103.325(a) the Department may also terminate conciliation if:

- The respondent fails or refuses to confer with HUD;
- The complainant or the respondent fails to make a good faith effort to resolve any dispute; or
- HUD finds, for any reason, that voluntary agreement is not likely to result.

Some indicators of failed conciliation include, but are not limited to:

1. Non-cooperation by a respondent. The HUD conciliator should continue to convey offers from a complainant even if a respondent has refused to negotiate. In some cases, offers may be communicated in writing.
 2. Documentation of a respondent's refusal to participate in conciliation. The conciliator should fully document any contact where a respondent indicates that
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- he/she does not wish to participate in conciliation. However, in cases that appear to be reasonable cause, the conciliator should offer the respondent a final ("late-stage") opportunity to conciliate after the fact-finding phase of the investigation has concluded.
3. Party misconduct. Examples of "bad-faith" negotiations include the use of blatant stalling tactics (i.e., throwing tantrums, suddenly becoming "unavailable" during critical negotiations, abruptly adding new demands when it appears that the other party is about to accept the previous terms, or attempting to provoke a breakdown of the process by making outrageous offers or counter-offers). Regardless of such conduct, in cases that appear to be reasonable cause, the parties should be offered a final ("late-stage") conciliation opportunity after fact-finding is concluded. However, such an offer may be made in writing rather than in person, if appropriate.
 4. The conciliator's assessment that "voluntary agreement is not likely to result". While situations that would warrant such a negative assessment may be rare, they might include, but not be limited to, the following scenarios:
 - a. The respondent has been served with notice of the complaint, but has refused to file an Answer, to be interviewed by the investigator, to comply with formal data requests, or to participate in conciliation;
 - b. The respondent refuses to produce records requested under a HUD subpoena or seizure order;
 - c. The respondent is in contempt of a Temporary Restraining Order (TRO) or a Preliminary Injunction granted in accordance with a prompt judicial action proceeding under Section 812 of the Act; or
 - d. The respondent has lost control of his or her assets as a result of legal proceedings (e.g., foreclosure of real property, insolvency resulting from bankruptcy proceedings, imprisonment, etc.).
 5. Respondent in bankruptcy. If a respondent alleges that he/she is in bankruptcy, the conciliator should consult with Regional Counsel. Generally, conciliation should continue throughout an investigation despite an alleged bankruptcy. However, the conciliator can ask for some assurances from the respondent and the bankruptcy trustee as to how potential damages will be paid.

11-16 RELIEF AVAILABLE DURING CONCILIATION

HUD's regulations at 24 C.F.R. 103.315 describe the types of relief that may be available to complainants through conciliation. They include:

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1. Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney's fees;
 2. Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or
 3. Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the complainant or other persons.

A. Individual Relief

Determining the appropriate relief is critical in the conciliation process. The conciliator should review the entire case file in an effort to determine appropriate relief.

The damages worksheet, emotional distress damages worksheet and the lost housing opportunity damages worksheet that are appended to this chapter should be used primarily for investigative purposes, but also may be used for conciliation. The damages worksheets are evidence of the complainant's injuries and should be filed under Complainant's Evidence in the evidentiary section of the case file. If a complainant completes any of the damages worksheets during the investigation of his/her complaint, the conciliator should become thoroughly familiar with these worksheets and may use them to prepare for conciliation.

The damages worksheets are not intended to limit a complainant's damages, because the parties may ask for anything they want during the course of conciliation. A conciliator should never tell a complainant how much his/her complaint is worth but may educate the parties about settlements and court decisions in similar cases.

- Relief from association fees. Circumstances may arise in which a conciliation agreement provides for monetary relief that is payable out of fees assessed by a homeowners' or condominium association that has been named as a respondent in the complaint. The complainant may be concerned that his or her association fees will be increased in order to meet the association's financial obligations incident to the filing of the complaint. In such circumstances the conciliator may propose a draft provision that fixes the complainant's association fees during the term of the Agreement, or fixes the fees of the entire membership during the same period. However, the respondent association may reasonably reject such a restriction, and HUD cannot prohibit the respondent from increasing its general membership fees in a nondiscriminatory and non-retaliatory manner.

The components of individual relief are:

1. Out-of-Pocket Expenses. Individual relief includes compensatory damages awarded to a complainant including, but not limited to, monetary relief in the form of actual damages for reimbursement for such out-of-pocket expenses as:

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- Loan or rental application fees;
 - Sales or rental deposits;
 - Occupancy surcharges;
 - Fines and other housing-related assessments;
 - Case-related loss of income or other monetary benefits;
 - Moving expenses;
 - Cost differential for substitute housing;
 - Case-related travel expenses, such as the difference in miles driven by the complainant from the replacement dwelling to places of necessity (i.e., work, school, health care providers) as compared to miles driven from the subject property to places of necessity;
 - Case-related attorney's fees (See Section 812(p) of the Act, 42 U.S.C. § 3612(p), and 24 C.F.R. Section 103.315(a)(1) of the implementing regulations);
 - Case-related professional therapy and/or counseling fees;
 - Case-related medical expenses; and
 - Case-related property loss/damage.
2. Emotional Distress Damages. In addition to reimbursements for actual expenditures, individual relief may include intangible losses, including compensation for humiliation, embarrassment, and mental or emotional distress resulting from the alleged discriminatory housing practices. For more information regarding the factors used in determining damage awards for intangible injuries, refer to an article by Heifetz & Heinz entitled Separating the Objective, Subjective and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications, 26 J. Marshall L. Rev. 3, 19 (1991).
3. Equitable Remedies. Individual relief may also include equitable remedies in the form of "specific performance" by the respondent of certain actions intended to make the complainant whole. For example, equitable remedies may include, but are not limited to:
- Withdrawal of eviction orders against complainant;
 - Offer of the next available unit to the complainant;
 - Cessation of adverse job actions in connection with allegations of retaliation against employees who assisted protected persons or cooperated with complaint investigations;
 - Offer of reduced rent, lowered security deposits or more favorable amenities in connection with housing;
 - Requiring housing providers to reconsider a complainants' rental application for the next available unit in accordance with non-discriminatory tenant selection criteria;
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- Requiring lending institutions to reconsider a complainant's loan application in accordance with nondiscriminatory loan processing/underwriting guidelines; and
 - Revision of other housing-related policies, practices and/or procedures that adversely impact complainants and others protected under the Act.

B. Public Interest Relief

When negotiating public interest provisions in a conciliation agreement, look beyond the specific concerns of the complainant(s). When drafting these provisions, consider the Department's mandate to affirmatively further fair housing by protecting potential aggrieved persons in the general public from injury by reason of the respondent's housing practices.

Examples of acceptable public interest relief, include, but are not limited to:

1. Elimination of ongoing discriminatory housing practices. The public interest provisions of the conciliation agreement must fully address the alleged discriminatory housing practices at issue in the complaint. For example, suppose that a complainant alleges a refusal to rent a mobile home space based upon familial status. The investigation revealed no evidence that the park satisfied the criteria for the "housing for older persons" exemption. However, there was evidence of a routine practice of segregating families within the park, including the presence of signs and maps designating specific areas for "adults only," and language in the rules and regulations restricting sales of units in specific sections of the park to all-adult households. In such circumstances, a conciliator is free to review the investigative record, discuss the evidence with the parties, and apprise them that the public interest is best served by requiring the respondent to promptly cease all efforts to enforce residential segregation among park residents by removing all discriminatory signs and maps from the property, and by revising any rules, notices, regulations, lease agreements, etc., which contain language restricting residency on the basis of familial status.
2. Prevention of future discriminatory housing practices by respondent's employees/agents. Conciliators may find that the imposition of additional remedies is appropriate where agents or employees have allegedly implemented a respondent's discriminatory housing practices (i.e., fair housing training for respondent and all current employees, revising respondent's manuals, notices etc., to set forth new operating procedures).
3. Remedial affirmative activities. Depending upon the size and scope of the respondent's housing-related operations (i.e., State- or county-wide housing authority, State-wide or multi-State private housing provider), a conciliator may find it appropriate to urge that substantial remedial actions be required in the conciliation agreement to ensure that other aggrieved persons housed by the

respondent will be treated in a nondiscriminatory manner in their future dealings with the respondent and his or her agents and employees.

Affirmative relief provisions to be undertaken by the respondent in a conciliation agreement may include:

- Establishment of resident advisory groups;
 - Provision of resident complaint mediation/dispute resolution and/or counseling services;
 - Implementation of on-site social, educational, and/or recreational services for the benefit of resident youth and/or adults;
 - Establishment and maintenance of on-site facilities to support social, recreational, and educational services for residents;
 - Implementation and enforcement of effective on-site security procedures;
 - Targeted fair housing training for management staff and other employees involved in resident contact; and
 - Outreach to underrepresented groups at local churches, community groups or other local organizations.
4. Periodic reporting requirements. Conciliators should include in a conciliation agreement details of any specific reporting requirements imposed on the respondent. Specific time frames, as well as an accurate description of what is to be reported on, are essential. The conciliation agreement should include the name, title, address and telephone number of the person to whom such reports should be sent.
5. Monitoring and enforcement activities by HUD. All HUD-conciliation agreements must include provisions (1) allowing HUD to monitor the respondent's compliance with an agreement and (2) stating that HUD determines whether a respondent has complied with an agreement. See Paragraph 19 of attached model conciliation agreement. The conciliation agreement should clearly set out for the parties any monitoring of the respondent the Department intends to conduct. The conciliation agreement should clearly describe the conduct that will be deemed to constitute a breach of the Agreement. The consequences of a breach of conciliation should also be described in accordance with the procedures for enforcement set forth in Sections 810(c) and 814 of the Act, and at 24 C.F.R. 103.335 of the implementing regulations.

C. Relief on Behalf of Aggrieved Persons Who Are Not Parties to the Complaint.

The Assistant Secretary has authority to seek relief in a conciliation agreement on behalf of other persons who also have been injured by the alleged discriminatory housing practice.

1. Individual relief for all aggrieved persons. In a conciliation agreement, individual relief can be obtained for all household members and minor children. Although not
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necessary for conciliation purposes, it is strongly recommended that all adult aggrieved household members sign the complaint so that relief can be obtained for these individuals if a charge of discrimination is issued.

2. Relief for complainant based on services/discrimination of non-parties. It may be appropriate for the complainant to request compensatory relief in a conciliation agreement for the services of, or discrimination against, individuals who are not parties under the following circumstances:

(a) Individual Relief Provisions.

- (1) As part of complainant's individual relief in a conciliation agreement, he/she may request compensatory relief for the services of non-parties where there is a clear nexus between the services provided and the complainant's exercise of rights protected under the Act. For example, a complainant who was advised and assisted in the filing of a complaint by a private fair housing group or by an attorney, may ask for compensatory relief based on these persons helping the complainant exercise his or her rights under the Act. Any relief based on the services of non-parties should be directed to the complainant.

Private fair housing groups that are not aggrieved under the Act should not be granted individual relief in the terms of a conciliation agreement. It is also inappropriate to include in a conciliation agreement any provision for compensation (e.g. representational fees) for a private fair housing group that is participating in conciliation negotiations as an advocate on behalf of a complainant but is itself not aggrieved within the meaning of the Act. Such compensation could be viewed as collusion between HUD and the private fair housing group (Preamble II, 24 C.F.R. ch. 1, subch. A, app. I, 54 Fed.Reg. 3265-66 (Jan. 23, 1989)). If a private fair housing group is considered aggrieved, a separate HUD complaint should have been executed; a separate conciliation agreement also may be executed.

- (2) As part of complainant's individual relief in a conciliation agreement, he/she can ask for compensatory relief based on discrimination against similarly situated aggrieved persons discovered during an investigation (i.e., witnesses, etc.).

(b) Public Interest Relief Provisions.

- (1) Public Interest relief for similarly situated aggrieved persons. A complainant can also request compensation for similarly situated aggrieved persons through provisions for relief in the public interest. Public interest relief on behalf of individual aggrieved persons is permitted under 24 C.F.R. Section 103.320 (b) of the regulations, which authorizes the Assistant Secretary to impose "[r]emedial affirmative activities to overcome discriminatory housing practices."

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- (2) Release of liability under the Act. A respondent may insist that any aggrieved persons who obtain relief through a conciliation agreement execute a release of any fair housing claims arising from the alleged discrimination. However, the HUD conciliator should review the provisions of any proposed release with Regional Counsel to confirm that the scope of the release is appropriately limited to fair housing issues specifically related to the events surrounding the complaint. The HUD conciliator also should advise an aggrieved person to seek legal counsel before executing a release of liability in favor of the respondent.
 - (3) Escrow Funds. The investigation may disclose credible evidence that a discriminatory policy or practice is pervasive and has adversely affected numerous unknown persons in addition to the complainant. Under such circumstances the conciliator may request that the respondent establish an escrow account in order to compensate persons who can demonstrate that they were adversely affected by the discriminatory housing practice. The public interest provision should describe the criteria by which aggrieved persons will be identified, the method by which potential victims will be notified, and a timeframe for disbursement of the monetary relief.
 - (4) A respondent who establishes an escrow fund for the benefit of previously unidentified victims of discrimination should be advised that disbursements from the fund will not terminate his or her liability under the Act with respect to the rights of those individual victims. Each victim would retain the right to pursue a timely filed civil action in Federal District Court unless he/she formally waived all potential fair housing claims against the respondent.

D. Relief Provisions for Concurrently Processed Complaints

See Chapter 6, Multi-Jurisdictional Complaints, for a discussion of this issue.

11-17 THE USE OF BINDING ARBITRATION IN HUD CONCILIATION AGREEMENTS

Section 810(b)(3) of the Act states that, "[a] conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief."

A. Binding Arbitration

"Binding arbitration" is a process by which a complainant and a respondent, while negotiating a conciliation agreement, agree to select a disinterested third party (the "arbitrator" or "arbiter") to review the evidence and reach a final decision as to the

specific types of individual relief to which the complainant is entitled as a result of the alleged discrimination.

The outcome of the arbitration process is considered binding upon the parties if they execute a conciliation agreement that includes a provision formally committing them to abide by the arbitrator's decisions.

B. The Scope of Binding Arbitration

If binding arbitration is agreed to, it is voluntary. The parties to a conciliation agreement are under no statutory obligation to submit any issues to binding arbitration. Nor do they have to submit every issue permissible under the Act to binding arbitration just because they may choose to utilize the process to resolve one specific area of dispute.

It is HUD's policy not to impose specific rules and procedures upon the parties once they commit themselves to binding arbitration, and not to choose their arbitrator. This policy is embodied in the following paragraph of the Preamble to the Act's implementing regulations:

HUD wishes to keep the arbitration remedy as flexible as possible in order that individual aggrieved persons and respondents will have the opportunity to adopt the procedures that best suit their circumstances.
(Preamble II, 24 C.F.R. ch. 1, subch. A, app. I, 54 Fed.Reg. 3265 (Jan. 23, 1989)).

C. HUD's Role in the Arbitration Process

HUD's direct participation in the arbitration process itself is neither required nor prohibited by the Act. The Assistant Secretary for FHEO will approve the final product of conciliation if it addresses the public interest in accordance with the criteria set forth at 24 C.F.R. Section 103.310 of the Act's implementing regulations. HUD is generally responsible for monitoring the respondent's compliance with all individual relief provisions in a conciliation agreement, regardless of whether they are the result of binding arbitration.

1. Selection of an arbitrator. An arbitrator may be an individual or a representative of an organization. Neither the Act nor the implementing regulations provides procedures for the parties' selection of an arbitrator--the method of selection is left to the parties' discretion. If the parties request assistance in securing the services of a professional arbitrator, the American Bar Association (ABA) and the National Arbitration Forum can be consulted. These groups offer established arbitration referral services.

2. Determining responsibility for arbitration expenses. The costs of binding arbitration may be borne entirely by the respondent, entirely by HUD or jointly by HUD and the respondent. The terms of the conciliation agreement must specify the manner in which the costs of binding arbitration will be allocated. HUD or the respondent should not pass on the costs of binding arbitration to the complainant.

D. Issues Which May be Submitted to Binding Arbitration

Binding arbitration may be used to determine the amount and type of relief, which will satisfy and protect the interests of all complainants named in the complaint. This includes any individual remedies which the complainant and other aggrieved persons would be entitled to seek through the conciliation process, including monetary relief, equitable relief, and injunctive relief. See discussion above at Section 11-16 regarding “Relief Available Through Conciliation.” Binding arbitration also may be used to resolve non-fair housing issues (such as landlord-tenant disputes), which have arisen between the parties.

E. Issues Which May NOT be Submitted to Binding Arbitration

1. The respondent's legal liability for discriminatory acts. Under Section 812 of the Act, the authority to determine whether a discriminatory housing practice has occurred rests exclusively with HUD Administrative Law Judges and with Federal District Court Judges. The Act does not provide for a transfer of this authority to arbitrators chosen by private individuals.
2. Relief sought for the public interest. Although HUD regulations allow for negotiation of public interest provisions in a conciliation agreement, the implementing regulations do not provide for the use of binding arbitration to determine the award of relief sought for the public interest. Therefore, the complainant and the respondent may not agree to arbitrate the question of what type or amount of relief is appropriate to vindicate the public interest.
3. An arbitrator cannot determine the contents of public interest compliance monitoring provisions in a conciliation agreement. Under the Act, compliance monitoring is a remedy that HUD is authorized to impose upon a respondent as a means of furthering the public interest in fair housing. HUD cannot, therefore, delegate its statutory authority to set the terms of its monitoring responsibility to any private person.

F. HUD's Approval of Conciliation Agreements Providing for Binding Arbitration.

In accordance with 24 C.F.R. Section 103.310 of the Act's implementing regulations, HUD can approve a conciliation agreement that provides for arbitration only if the Assistant Secretary for FHEO is satisfied that the public interest is protected and that the scope of the arbitration is limited to individual relief only.

Because the Act permits the parties to determine the award of individual relief through binding arbitration, their decision to submit to arbitration as a means of achieving conciliation is ultimately subject to the Assistant Secretary's approval.

If a conciliation agreement provides for the award of individual relief through binding arbitration, the agreement must also include procedures by which HUD will monitor the respondent's compliance with the terms of the arbitration award.

G. Effect of a respondent's refusal to comply with the arbitrator's award of damages.

A respondent's refusal to comply with provisions for individual relief awarded through binding arbitration in a HUD-approved conciliation agreement constitutes a breach of the Agreement. Under Section 810 (c) of the Act, when HUD has reasonable cause to believe that a respondent has breached the terms of an arbitration award for individual relief which is part of a HUD-approved conciliation agreement, HUD can refer the matter to the Attorney General with a recommendation to file a civil action in United States District Court on behalf of the complainant. See also Sections 814(b)(1) and 814(b)(2) of the Act.

11-18 THE HUD CONCILIATION AGREEMENT

A HUD conciliation agreement is a written, binding agreement to resolve the disputed issues in a Title VIII housing discrimination complaint. The HUD conciliation agreement must contain provisions to protect the public interest in furthering fair housing.

A. Authority for HUD approval

Section 810(b)(2) of the Act states that a valid conciliation agreement shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary. 42 U.S.C. § 3610(b)(2). The Secretary's authority, other than for those Agreements that are intended to resolve Secretary-initiated complaints, has been re-delegated to the FHEO Regional Directors. Based on the plain language of the Act, a conciliation agreement is subject to HUD approval, but HUD is not a party to a conciliation agreement.

The implementing regulations at 24 C.F.R Section 103.310 (b)(1) are specific as to the criteria which must be satisfied in order to secure the Assistant Secretary's approval of a conciliation agreement:

- The complainant and the respondent must agree to the individual relief accorded to the complainant;
- The agreement must include provisions that adequately vindicate the public interest in fair housing; and
- If the Assistant Secretary is the complainant, all other aggrieved persons named in the complaint also must be satisfied with the relief provided.

Inform the parties that, if the Assistant Secretary recommends a Secretary-initiated investigation, the General Counsel has the right to issue a charge against a respondent who signs an agreement that is not approved by HUD. 24 C.F.R. Section 103.310(b)(2). Where appropriate, describe the public interest relief monitoring provisions typically required under a HUD-approved conciliation agreement.

B. Effective Date of the Agreement

For purposes of HUD monitoring and enforcing a conciliation agreement, the effective date of the agreement is the date the Assistant Secretary for FHEO approves the agreement after it is signed by the complainant and respondent.

C. Elements of Conciliation Agreements

In order to promote uniformity in HUD conciliation agreements, a sample “Title VIII Conciliation Agreement” is attached in the Appendix.

1. Mandatory provisions in HUD conciliation agreements. Although a conciliator has a great deal of flexibility in drafting conciliation agreements, some provisions are non-negotiable, because they represent HUD’s current policy.

All HUD conciliation agreements must include some version of the following provisions:

- A statement that the agreement constitutes neither a binding contract nor a HUD-approved conciliation agreement, unless and until it is approved by HUD, through the FHEO Regional Director, or his or her designee. See Paragraph 2 of attached sample conciliation agreement;
- A statement that upon approval of the agreement by the FHEO Regional Director, or his or her designee, it is a public document (unless special circumstances mentioned in Section 11-20 are applicable). See Paragraph 7 of attached sample conciliation agreement;
- A statement in which the complainant agrees not to sue HUD or the respondent, its heirs, executors, assigns, agents, employees and attorneys with regard to any claims, damages, and injuries arising out of the subject complaint, or which could have been filed in any action arising from the complaint. See Paragraph 11 of attached sample conciliation agreement;
- A statement in which the respondent agrees not to sue HUD or the complainant, its successors, assigns, agents, officers, board members, employees and attorneys with regard to any claims, damages, and injuries arising out of the subject complaint, or which could have been filed in any action arising from the complaint. See Paragraph 12 of attached sample conciliation agreement;

- A statement that HUD determines compliance with the terms of the agreement. See Paragraph 19 of attached sample conciliation agreement;
 - A statement that HUD has the authority to monitor the terms of the agreement in accordance with the HUD regulations. See Paragraph 19 of attached sample conciliation agreement; and
 - A provision stating that if HUD has reasonable cause to believe that the respondent has breached the agreement, HUD will refer the matter to the Department of Justice for enforcement. See paragraph 26 of attached sample conciliation agreement.
2. Recommended provisions in a HUD conciliation agreement. The mandatory provisions listed above are not meant to diminish the importance of other provisions that should be included in a conciliation agreement. Generally, HUD conciliation agreements should contain the following elements:
- The HUD Case Number(s) and HUD Case Name;
 - The names, titles, and addresses of each complainant and respondent;
 - A full description of the property, including the correct address;
 - A description of the complaint allegations including the alleged date(s) of violation, the date of filing and the sections of the Act that were allegedly violated;
 - A statement that the parties have voluntarily agreed to execute the agreement to resolve all issues in the complaint(s);
 - A statement that the agreement does not constitute an admission of liability under the Act by the respondent(s);
 - A statement that no party has been harassed, coerced or intimidated into executing the agreement;
 - A statement that it is a violation of Section 818 of the Act to retaliate against the complainant because of the complainant's exercise of housing rights;
 - Individual relief for the complainant, including monetary relief, equitable (housing) relief, and/or injunctive relief (changes in policies, practices or conditions of housing);
 - Public interest relief provisions, including injunctive/preventive relief, remedial relief (to include, where appropriate, provisions for other

unidentified victims of discrimination such as escrow accounts, affirmative relief and fair housing educational outreach activity);

- Where applicable, appropriate recording and recordkeeping requirements, including the terms and conditions of recordkeeping activity and reporting periods;
- A statement of the term (duration) of the agreement, the effective date of the agreement, the terms and conditions for publication of the agreement, and the terms of payment of monetary relief for the complainant;
- A signature page including the name, title, and signature date for each person executing the agreement (individual signature pages are acceptable); and
- All relevant attachments to the agreement, including notices, lease agreements, rules and regulations, advertisements, training certifications, letters of apology, deficiency lists (accessibility cases), and proofs of payment of monetary relief. Attachments should be referenced in the body of the agreement and tabbed alphabetically.

D. General Guidelines in Drafting Agreements

1. Use simple language. A legal document does not have to be written in legalese. It is better to say that the complainant agrees not to bring any action against the real estate company or “any of its past or present officers, agents, or employees” regarding their past practices than to say that the complainant agrees not to bring an action against “any employee, former employee, supervisor, former supervisor, attorney, former attorney, representative, former representative, etc.”
2. Use exact language; avoid ambiguity in the terms of the agreement. While working out language of a conciliation agreement, look for places where there could be a misunderstanding and address those possible misunderstandings specifically.
3. Know what is being resolved. Where a complainant has multiple issues with the respondent, make sure that the conciliation agreement is clear regarding which matters are being resolved.
4. Address attorney’s fees. A conciliation agreement may address the question of the parties’ entitlement to attorney’s fees.
5. Tax consequences of settlement. If a party asks the conciliator to structure a conciliation agreement in a manner that addresses tax concerns, the conciliator should advise the party to consult a tax specialist and/or accountant. A conciliator should not give tax advice to the parties.

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6. A waiver of the right to file a HUD complaint for a future incident is invalid.
 7. Confidentiality clauses. If an agreement contains a confidentiality clause, understand that a disclosure beyond those specified individuals identified in the agreement constitutes a breach.
 8. Consider the timeframe for completing what is required in the agreement. When a conciliation agreement is silent regarding the time or duration of performance, a reasonable time under the circumstances will be presumed.

11-19 VERIFICATION OF DISTRIBUTION OF INDIVIDUAL RELIEF

A. Verification of Distribution of Individual Relief

A respondent has no obligation to provide individual relief under a conciliation agreement until the agreement has been fully executed by all parties and approved by HUD. See paragraph 2 of attached model conciliation agreement.

1. HUD's responsibility. Once a conciliation agreement has been executed by the complainant and respondent and approved by HUD, HUD must verify the respondent's compliance with the individual relief provisions. If HUD receives information from any party or party representative to the effect that a potential breach of the agreement has occurred, or is about to occur, HUD should attempt to verify the information.
2. Verifying payments of monetary relief. If a conciliation agreement requires a respondent to make payment of money damages on a specified date, it is recommended that HUD not act as the agent for transmittal of funds to the complainant. To this end, it is advisable to request that the respondent make payment directly to the complainant(s) by certified or cashier's check and provide a copy of the check and any related correspondence to HUD. Any transfer of money damages incident to a conciliation agreement must be documented in writing to HUD. Copies of all financial documentation should be attached to the parties' executed copies of the conciliation agreement.
3. Special scheduling for payments of monetary relief. Some respondents are small-scale housing providers who are unable to pay the agreed-upon amount in a single installment. If the complainant agrees, accommodate the respondent by arranging a series of payments in accordance with the procedures described in paragraph 2. Attempt to limit the total payment period to the shortest time possible but, ultimately, the time period will be whatever the complainant and respondent agree to. Be sure that any extended payment plan is fully acceptable to the complainant.
4. Verifying receipt of housing benefits. If the conciliation agreement requires a respondent to lease a specific dwelling unit to the complainant, the respondent should

be required to execute a lease for the unit at the same time that he/she executes the conciliation agreement. This enables the complainant to sign the lease agreement at the same time that he/she executes the conciliation agreement. Obtain a copy of the executed lease agreement as an attachment to the conciliation agreement. In order to verify that the complainant has actually taken possession of the dwelling, personally contact the complainant within an agreed-upon time period. However, if the dwelling unit cannot be identified at the time that the conciliation agreement is executed (e.g. "the next available three-bedroom apartment"), the conciliation agreement should specify that the respondent will notify the Department of the offer when made, and, upon acceptance, provide an executed copy of the lease agreement.

5. Verifying changes in rules, policies, practices and procedures. If the conciliation agreement requires a respondent to change rules, policies, procedures or practices (e.g., change pool rules, make reasonable accommodations, etc.) it may be feasible for the conciliator to personally verify the respondent's compliance by contacting the complainant within an agreed-upon time period, if the complainant resides at the subject property. In addition, if the allegedly discriminatory policy had previously been published in tenant handbooks, advertising brochures or employee manuals, the respondent should be required to submit, within a time frame specified in the conciliation agreement, objective proof that the discriminatory language contained in these documents has been eliminated, and, where appropriate, replaced by affirmative language in accordance with the Act.

11-20 PUBLIC DISCLOSURE OF HUD CONCILIATION AGREEMENTS

24 C.F.R. Section 103.330(b) of the Act's implementing regulations provides that conciliation agreements shall be made public unless:

- The complainant and the respondent in writing both request nondisclosure; and
- The Assistant Secretary for FHEO determines that disclosure is not required to further the purposes of the Act.

All conciliation agreements must be disclosable unless the factual circumstances of the case justify nondisclosure. For example, a complainant whose complaint of sexual harassment was successfully conciliated might request nondisclosure of the terms of the agreement on the basis that the notoriety which might result would publicly embarrass and humiliate her, and would, therefore, constitute an unwarranted invasion of her privacy. It may be appropriate for the Department to agree to nondisclosure under these circumstances. Nondisclosure of the content of a conciliation agreement also might be appropriate in some cases involving disability discrimination, where public disclosure of relief provisions relating to a complainant's disability might constitute an unwarranted invasion of privacy.

A. Parties' Requests for Nondisclosure

Provisions relating to confidentiality of conciliation agreements, or to particular provisions of a conciliation agreement, are not favored. A party's request for specific exceptions to the requirement of public disclosure should be forwarded to the appropriate FHEO Regional Director, together with supporting information describing the justification for an exception, before execution of a conciliation agreement.

If the complainant(s) and respondent(s) request and/or consent to nondisclosure of portions of an Agreement, and the supporting information is acceptable to the FHEO Regional Director, the Director should consult with FHEO's Office of Enforcement in Headquarters to determine if an exception to the usual practice of full disclosure is warranted. In the event that some, but not all parties request and consent to nondisclosure, the request should be denied. Any nondisclosure provisions agreed to by the parties do not apply to HUD.

B. Use of Summaries of Conciliation-Related Information

FHEO staff may routinely disclose information to the public about average amounts awarded through conciliation, percentages of cases conciliated, typical monitoring arrangements, and other facts which do not reveal the identities of complainants, respondents or witnesses. For example, if a respondent wants to know the average monetary relief HUD obtained through conciliation by complainants alleging discriminatory occupancy policies, the conciliator may provide a list of representative amounts, as long as the list does not identify the parties to those conciliation agreements. The Act's implementing regulations also provide that HUD may publish tabulated descriptions of the results of all conciliation efforts (for example, in the Secretary's Annual Report to Congress) even when it is determined by the parties and the Assistant Secretary that individual conciliation agreements shall not be disclosed to the public (see 24 C.F.R. 103.330(b)).

11-21 THE EFFECT OF PRIVATE SETTLEMENTS OF TITLE VIII COMPLAINTS (WITHDRAWALS WITH RESOLUTION)

As used in this Chapter, the term "private settlement" refers to an agreement executed by a complainant and a respondent for the express purpose of resolving the issues in a Title VIII complaint. HUD cannot be a party to a private settlement of a complaint filed pursuant to the Act. Private settlements differ from HUD conciliation agreements in that HUD plays no role in the negotiation of the private settlement, and HUD does not approve the private settlement agreement; therefore the private settlement cannot be enforced by HUD or the Department of Justice. In addition, the private settlement agreements generally contain no provisions for the vindication of the public interest. When asked to participate in the negotiation of private settlements, the conciliator should remind the requesting party that HUD only has the authority to work toward the conciliation of cases as provided under the Act, which excludes private settlements between and among the parties.

A. The Potential Effect of A Private Settlement on an Aggrieved Person's Rights Under the Act

A complainant may enter into a private settlement with a respondent that invariably includes the withdrawal of the Title VIII complaint previously filed with HUD as a condition of that settlement. However, the complainant should be advised that, if the respondent subsequently breaches the private settlement agreement, neither HUD nor the Department of Justice would have authority to enforce the terms of the settlement on behalf of the complainant.

1. The parties should be informed that neither the private settlement of a HUD complaint, nor its resolution through HUD-approved conciliation, prohibits a complainant from filing a new complaint with HUD, based on alleged violations of the Act that occurred after the filing of the original complaint. The new complaint must be timely filed, in accordance with Section 810(a) of the Act. 42 U.S.C. § 3610(a).
2. The parties should be informed that a complainant who has withdrawn a HUD complaint because of a private settlement may file a new complaint based on timely allegations that a respondent subsequently engaged in retaliatory conduct in violation of Section 818 of the Act.

B. The Effect of a Private Settlement on a Respondent's Continuing Liability under the Act

The parties should be informed that entering into a private settlement agreement that has not been approved by HUD does not necessarily terminate a respondent's potential liability under a complaint alleging a Title VIII violation.

1. 24 C.F.R. Section 103.310(b)(2) of the Act's implementing regulations authorizes the General Counsel to issue a charge if the complainant and respondent executed an agreement that was not approved by the Assistant Secretary by reason of its failure to meet the acceptance criteria set forth in 24 C.F.R. Section 103.310 (b) (1).
2. In practical terms, this means that a respondent who convinces an individual complainant to withdraw his or her complaint through a private settlement may yet be subjected to a Secretary-initiated proceeding based upon the issues of the complaint. FHEO Regional Directors should assess each such case in order to determine whether a Secretary-initiated complaint should be filed to pursue matters involving the public interest.

C. Procedures for Processing Requests for Withdrawals of HUD Complaints by Reason of A Private Settlement

In general, if the parties to a Title VIII complaint execute a private settlement at any time during the course of a HUD investigation, the complainant should immediately notify HUD of the settlement in writing. If the parties reach a private settlement during conciliation negotiations, the complainant should immediately notify the HUD conciliator of such settlement in writing, so that conciliation efforts may be formally terminated.

1. Minimum contents of a model complaint withdrawal notice. Conciliators should check with their FHEO Regional Director to see if a model withdrawal notice is utilized in their office. A complainant's withdrawal notice should contain, at minimum, the following elements:
 - a. It must be signed and dated by the complainant and/or his or her designated representative;
 - b. It must identify the respondents to which the withdrawal request applies, and provide sufficient information to identify the case;
 - c. It should identify the reason(s) for the withdrawal;
 - d. It must include a declaration that the withdrawal is made voluntarily and with knowledge of the effect of the withdrawal on the complainant's rights under the Act; and
 - e. It must include a declaration that the withdrawal request is not made under threat or duress, and that no person in connection with the withdrawal of the complaint has subjected either the complainant, or anyone associated with the complainant, to threats, harassment, or intimidation.
2. Appropriate action when all complainants settle privately. In cases where all the complainants withdraw their complaints and enter into private settlements with the respondents, the FHEO Regional Office should close the complaints and enter the appropriate closure codes into the TEAPOTS database.
3. The effect of multiple complainants when not all of them settle privately. Where two or more complainants have jointly filed a HUD complaint, but, for example, only one complainant agrees to settle privately, the withdrawing party's notification to HUD should specifically state that he/she has executed a private settlement and wishes to be dismissed as a complainant from the ongoing investigation. The FHEO Regional Director should close the privately settled complaint(s), enter the appropriate closure codes in the TEAPOTS database, and continue to process the open complaints. HUD must continue its investigative and conciliation efforts unless or until each person who signed the HUD complaint provides written notice of intent to withdraw from the complaint in question.

11-22 CONCILIATION OF SECRETARY-INITIATED COMPLAINTS

In accordance with the Act and the implementing regulations, attempts to conciliate shall be made in all Secretary-initiated cases. However, because the Assistant Secretary for FHEO is the complainant, a conciliation agreement cannot be executed without his/her approval.

11-23 MEDIATION OF CASES AT THE ADMINISTRATIVE LAW JUDGE LEVEL

Public policy favors conciliation agreements that serve to avoid unnecessary litigation and to encourage fair and speedy resolution of issues. In that regard, HUD's Administrative Law Judges have agreed to accept some cases filed pursuant to the Act for mediation before a determination of reasonable cause or no reasonable cause is made in a case. If mediation is successful, the Administrative Law Judge will return the file and the conciliation agreement to the FHEO Regional Director for closure. If mediation is unsuccessful, the Administrative Law Judge will notify the FHEO Regional Director and the case will be returned to FHEO for processing.

11-24 ALLEGED BREACHES OF HUD-APPROVED CONCILIATION AGREEMENTS

Often times Intake staff are faced with allegations from a complainant that a respondent breached a HUD-approved conciliation agreement. Timely processing of alleged breaches of conciliation and collection of information is critical to determining if the alleged breach warrants referral to the Department of Justice.

Under the Act, the Attorney General has authority to enforce a HUD-approved Conciliation Agreement against a respondent who fails or refuses to provide relief or remedies specified in the agreement. Under Section 814(b)(2)(B) of the Act, the Attorney General must file suit in U.S. District Court on behalf of the complainant not later than ninety (90) days after HUD refers an alleged breach of conciliation to DOJ for enforcement proceedings.

In many instances, complainants contact Intake staff to report that a respondent has breached the Conciliation Agreement. If a complainant alleges that a respondent has failed or refused to provide any relief to which the complainant is entitled under the terms of a Conciliation Agreement negotiated by HUD, the intake analyst should:

- Locate the original complaint in TEAPOTS to ascertain the file number, filing date, the identities of the parties, nature and bases of the allegations, the date the Conciliation Agreement was executed, and the name of the Conciliator who negotiated the Agreement;

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- Locate the original case file, and review the terms of the Conciliation Agreement;
 - Conduct a preliminary interview with the complainant to obtain further details relating to the respondent's alleged conduct, including relevant dates, descriptions of any verbal contacts between the parties, identities of any witnesses, etc. If necessary, assist the complainant in drafting an affidavit describing the alleged breach, and ask the complainant to have it notarized. In any case, the details of the alleged breach should be prepared in writing;
 - Determine whether the complainant has any documentation, including correspondence from the respondent or the respondent's representatives, relating to the respondent's alleged failure or refusal to comply with the Conciliation Agreement; if so, acquire copies for the file;
 - Review the results of the follow-up interview in order to make a preliminary assessment as to whether any, or all, of the complainant's allegations involve new issues that fall outside the scope of the allegations which were raised in the original complaint, and which were addressed by the terms of the Conciliation Agreement;
 - If the complainant raises new allegations, which differ from those that were resolved by the Conciliation Agreement (e.g., for example, retaliation), and if the new allegations appear timely, advise the intake supervisor of the possibility that a new complaint should also be filed against the respondent;
 - If any or all of the complainant's allegations specifically relate to the matters which were intended to be resolved through the individual relief provisions of the Conciliation Agreement, the original complaint must be reopened for an investigation of the alleged breach;
 - Brief your supervisor, and, if appropriate, the Conciliator, regarding the alleged breach. They may need to assess the gravity of the allegations, as well as the likelihood that additional investigation will be necessary before the matter is referred to DOJ for enforcement; and
 - Document all contacts with parties and prepare dated narrative interview reports covering each contact. Include this information in the Evidentiary Section of the case file.

11-25 MONITORING CONCILIATION AGREEMENTS

Conciliation agreements normally contain provisions that require the respondent to undertake and complete specific actions, and to submit reports to confirm that they have undertaken and completed specific activities, to satisfy compliance with the Act.

Conciliation agreements must clearly set out the terms of the relief monitoring which the Department intends to conduct.

Conciliation monitoring requires oversight and review of compliance with the terms of a conciliation agreement. The ability to effectively monitor compliance with a conciliation agreement will be significantly influenced by clarity and precision of the terms and conditions of performance.

A. Effective Monitoring

1. Understanding the terms and conditions of the Conciliation Agreement. Effective monitoring begins with a thorough understanding of the terms and conditions of the conciliation agreement. Review the signed Conciliation Agreement and become thoroughly knowledgeable about the terms and conditions of the agreement. To the extent possible, this knowledge should extend beyond the written terms and conditions in the agreement to the parties' understanding and interpretation of those terms and conditions.

Once the monitor understands the terms and conditions of the Conciliation Agreement, the monitor can effectively review the reports submitted by the respondent. The respondent should send complete and accurate reports that reveal the extent of the respondent's compliance with the terms and conditions of the agreement.

2. Conciliator may be the best person to monitor the Conciliation Agreement. The conciliator who negotiated and drafted the agreement will generally be the best person to monitor the agreement, because he/she should have the ability to recall statements and events, when the words or actions require interpretation, and the notes from the conciliation negotiations do not clarify the issue.

B. Ways to Monitor Conciliation Agreements

Every review of compliance with the terms and conditions of a Conciliation Agreements must be performed on-site or as a "desk audit."

1. On-site monitoring. On-site monitoring takes place when a conciliator or investigator travels to the site where the respondent keeps the business records, and reviews those records in the place where the respondent maintains those records in the ordinary course of business. On-site monitoring allows for an examination of records that form the basis for the respondent's report(s). On-site monitoring also allows the monitor to examine any other records that may have been omitted from the report. The monitor examines the respondent's records to compare the reports with the actual records, verifies the accuracy of the reports, and determines whether the respondent has complied with the terms and conditions of the conciliation agreement.

When the comparison of the reports with the records reveals inconsistencies that cannot be explained as reasonable or legitimate clerical errors or omissions, reasonable interpretation of vague or ambiguous language in the agreement, or some other legally acceptable explanation, the inconsistencies provide the monitor with a basis to find noncompliance with the reporting requirements, or additional violations of the Act, or both. Noncompliance with the reporting requirements may be cured with technical assistance or an extension of the reporting period to allow the respondent to submit accurate reports.

When the comparison of the reports with business records reveals additional violations of the Act, the monitor should choose between immediate rectification of the violations by the respondent, referral to DOJ as a breach of Conciliation Agreement, or a recommendation for a Secretary-initiated complaint or investigation. The choice depends on the seriousness of the inconsistencies, plausible explanations for the inconsistencies, the availability of housing and a number of other factors. The monitor should consult with FHEO management and Regional Counsel's office before trying to resolve the issues presented by the inconsistencies.

On-site monitoring may be necessary in a design and construction case or other disability case if modifications are scheduled over a period of time, and FHEO wants to ensure that all work is being done with accuracy.

2. Desk Audit Monitoring. Desk audit monitoring requires an additional skill set because the monitor must be able to review the reports from the respondent and to identify, recognize and determine the need for additional information exclusively from the reports. Once the monitor has discerned the need for additional information, the monitor must clearly communicate the request for additional information to the respondent in writing, so that the respondent can review the records, retrieve and send the additional information to the monitor.

After the monitor receives the additional information from the respondent he/she should engage in the review and analysis of the information as though he/she were present in the respondent's office. The monitor must make relevant comparisons between the reports and the additional information submitted by the respondent. The monitor must determine whether the comparison verifies the accuracy of the reports or contains inconsistencies that require further inquiry.

- a. Examples. If, for example, the Conciliation Agreement requires the respondent to make offers to rent units to similarly-situated persons whose rejected applications were discovered during the investigation, the respondent should submit signed and dated copies of certified offer letters addressed to each identified rejected applicant accompanied with return receipts, written responses received from each rejected applicant accepting or rejecting the respondent's offer, and evidence of the respondent's reprocessing of each rejected applicant who expressed a desire to reapply, in accordance with such nondiscriminatory procedures as were set forth in the agreement.

If the Conciliation Agreement requires a respondent to change a policy previously published in tenant handbooks or occupancy policies, the respondent should submit, for HUD's review, proof that any discriminatory language has been removed or other changes have been made in accordance with the terms of the Conciliation Agreement. It is critical that HUD carefully monitor any reporting requirements to ensure compliance.

- b. Documenting monitoring efforts. Monitoring and review of compliance with Conciliation Agreements should be well documented. Any time a review takes place, a document is submitted, or other information received in terms of compliance with an agreement, a chronology should be maintained and description of the monitoring activity noted.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII

CONCILIATION AGREEMENT

Between

XXXXXXXXXXXXXXXXXXXXXXXXXX

(Complainant)

And

XXXXXXXXXXXXXXXXXXXXXXXXXX

(Respondent)

Approved by the FHEO Regional Director on behalf of the United States Department of
Housing and Urban Development

FHEO CASE NUMBER: XX-XX-XXXX-X

A. PARTIES AND SUBJECT PROPERTY

- LIST EACH PARTY TO THE AGREEMENT AND IDENTIFY THE COMPLAINANT'S PROTECTED CLASS
- IDENTIFY EACH PERSON'S ROLE IN THE CASE (E.G., PROPERTY OWNER, PROPERTY MANAGER, ARCHITECT, LOAN OFFICER, etc.)
- DESCRIBE THE SUBJECT PROPERTY (E.G., 6-UNIT MULTIFAMILY DWELLING, etc.), AND PROVIDE THE FULL ADDRESS, INCLUDING COUNTY. IF A CASE ALLEGES DESIGN AND CONSTRUCTION VIOLATIONS, THE UNIT NUMBERS FOR ALL COVERED MULTIFAMILY UNITS SHOULD BE IDENTIFIED.

B. STATEMENT OF FACTS

A complaint was filed on [DATE] with the United States Department of Housing and Urban Development (the Department) alleging that the Complainant was injured by a discriminatory act of the Respondent. Complainant alleges that the Respondent, [NAME], violated [§...] of the Fair Housing Act as amended in 1988, 42 U.S.C. 3601 et seq. (the Act), on the basis of [BASIS] by [REFUSING TO RENT; STATEMENTS, etc.], stating that he would not rent an apartment to “[DISCRIMINATORY STATEMENT].”

Respondent denies having discriminated against Complainant, but agrees to settle the claims in the underlying action by entering into this Conciliation Agreement. (NOTE: The conciliator may not want to include this paragraph in a first draft of the agreement. While most respondents will insist on a non-admission provision, it can be a point of negotiation depending on the particular facts of the case.)

C. TERM OF AGREEMENT

1. This Conciliation Agreement (hereinafter “Agreement”) shall govern the conduct of the parties to it for a period of [whatever time period is agreed upon] years from the effective date of the Agreement.

D. EFFECTIVE DATE

2. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the U.S. Department of Housing and Urban Development, through the FHEO Regional Director or his or her designee.

3. This Agreement shall become effective on the date on which it is approved by the Director, Fair Housing and Equal Opportunity (FHEO) [OFFICE LOCATION] of the United States Department of Housing and Urban Development (HUD).

E. GENERAL PROVISIONS

4. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
5. The Respondent acknowledges that he or she has an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act. Respondent further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act.
6. This Agreement, after it has been approved by the FHEO Regional Director, or his or her designee, is binding upon [RESPONDENT], his employees, heirs, successors and assigns and all others in active concert with him in the ownership or operation of [SUBJECT PROPERTY].
7. It is understood that, pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by the FHEO Regional Director or his or her designee, it is a public document.
8. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondent made pursuant to the Fair Housing Act, or any other complaint within the Department's jurisdiction.
9. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved and signed by the FHEO Regional Director.
10. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.
11. [COMPLAINANT] hereby forever waives, releases, and covenants not to sue the Department or [RESPONDENT], its heirs, executors, assigns, agents, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of HUD Case Number XX-XX-XXXX-X, or which could have been filed in any action or suit arising from said subject matter.
12. [RESPONDENT] hereby forever waives, releases, and covenants not to sue the Department or [COMPLAINANT] and its successors, assigns, agents, officers, board members, employees and attorneys with regard to any and all claims, damages and

injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Number XX-XX-XXXX-X or which could have been filed in any action or suit arising from said subject matter.

F. RELIEF FOR COMPLAINANT

13. [RESPONDENT] agrees to take the following actions, and, as set forth in this Agreement, will provide the Department with written certification that these requirements have been met:

- a. [RESPONDENT] agrees to pay by certified or cashier's check the amount of [\$] to [COMPLAINANT] within ten (10) days of the effective date of this Agreement. The check shall be made payable to [COMPLAINANT], and mailed to the Complainant by Federal Express or certified mail at the following address:

[ADDRESS OF COMPLAINANT OR COMPLAINANT'S REPRESENTATIVE]

*** Optional ADDITIONAL Relief for Complainant:

- b. Transfer of title to Subject Property or other property.

G. RELIEF IN THE PUBLIC INTEREST

NOTE: THE FOLLOWING ARE EXAMPLES BASED ON A RACE/NATIONAL ORIGIN CASE – TAILOR TO YOUR PARTICULAR CASE

14. Beginning on the last day of every third month beginning [DATE], and continuing for the term of this Agreement, [RESPONDENT] shall compile the following information/documents regarding the property commonly known as [NAME AND FULL ADDRESS OF SUBJECT PROPERTY] for the previous three (3) months:

- a. A copy of each application for all persons who applied for occupancy at the Property, including a statement of each person's race/ethnicity/national origin (if known), whether the person was rejected or accepted, the date of such action and, if rejected, the reason for the rejection
- b. A list of vacancies at the Property, including the departed tenant's race/ethnicity/national origin (if known), the move out date, the reasons for the departure (if known), the date the unit was next occupied, and the race/ethnicity/national origin (if known) of the new occupants;
- c. Current occupancy information indicating the race/ethnicity/national origin (if known) of current tenants at the Property.

15. Within one hundred and eighty (180) days of the effective date of this Agreement, attend [# OF HOURS] of Fair Housing Training to be conducted by the Department's

Office of Fair Housing and Equal Opportunity, or an appropriate agency or facility approved by the Department. Written approval to attend training offered by an organization not listed in this paragraph must be solicited and obtained from the FHEO Regional Director at least ten (10) days prior to the commencement of the training.

16. Within five (5) days of the effective date of this Agreement, display a HUD Fair Housing poster, to be supplied by the Department, in the rental office of the Property. The poster shall be displayed during the term of this Agreement.

*** Optional ADDITIONAL Relief:

17. Within one (1) year of the effective date of this Agreement, perform [# OF HOURS] of community service work for an entity or entities to be identified by Respondent. The entity or entities identified by the Respondent must be approved by the FHEO Regional Director prior to the commencement of any community service work for which credit is sought under this subparagraph.

18. Within thirty (30) days of the effective date of this Agreement, Respondent shall inform all of his agents and employees responsible for compliance with this Agreement, including any officers and board members, of the terms of this Agreement and shall provide each such person with a copy of this Agreement.

H. MONITORING

19. The Department shall determine compliance with the terms of this Agreement. During the term of this Agreement, HUD may review compliance with this Agreement. As part of such review, HUD may inspect Respondent's property identified in Section A of this Agreement, examine witnesses and copy pertinent records of Respondent. Respondent agrees to provide its full cooperation in any monitoring review undertaken by HUD to ensure compliance with this Agreement.

I. REPORTING AND RECORDKEEPING

[NOTE: USE FOLLOWING AS APPLICABLE]

20. Within thirty (30) days of the effective date of this Agreement, Respondent shall transmit a photocopy of the check identified in paragraph 13(a), together with a copy of the delivery tracking report or certified mail receipt as evidence of delivery, to the FHEO Regional Director.

21. On the last day of every third month beginning with the effective date of this Agreement, and every three (3) months thereafter during the term of this Agreement, Respondent shall submit to the Department a report containing all of the information identified in paragraph 14, subparagraphs (a)-(c), regarding the previous three months.

22. The Respondent shall forward to the Department objective evidence of the successful completion of training, in the form of a Certificate or a letter from the entity conducting the training, together with a list of participants, within five (5) days of the completion of the training, as evidence of compliance with paragraph 15 of this Agreement.

23. The Respondent shall forward to the Department, within thirty (30) days of the end of the first year of this Agreement, a letter from each entity for which work is performed under the terms of paragraph 17 of this Agreement, stating the number of hours worked and the nature of the work performed, as evidence of compliance with paragraph 17 of this Agreement.

24. Within forty-five (45) days of the effective date of this Agreement, Respondent shall certify to the FHEO Regional Director, in writing, that he or she has complied with paragraphs 16 and 18 of this Agreement.

25. All required certifications and documentation of compliance must be submitted to:

Regional Director, Office of Fair Housing and Equal Opportunity
[NAME AND FULL ADDRESS]

J. CONSEQUENCES OF BREACH

26. Whenever the Department has reasonable cause to believe that the Respondent has breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U. S. District Court, pursuant to §§ 810(c) and 814(b)(2) of the Act.

K. SIGNATURES

[COMPLAINANT] Date

[RESPONDENT] Date

L. APPROVAL

[FHEO REGIONAL DIRECTOR] Date

U.S. Department of Housing and Urban Development
Fact Sheet

CONCILIATION UNDER THE FAIR HOUSING ACT

During the period commencing with the filing of a housing discrimination complaint, until a determination of "reasonable cause or "no reasonable cause" is reached, HUD must offer the parties every reasonable opportunity to settle the issues raised by the complaint through conciliation. As used in the Fair Housing Act, the term "Conciliation" means the attempt to resolve issues raised in a complaint, or arising during the investigation of a complaint, through informal negotiations involving the aggrieved person(s) and the respondents. Before a Conciliation Agreement will be approved by the Secretary, it must be signed by the complainant and respondent and address the public interest.

The Parties' Rights

Confidentiality. Nothing said or done during the course of conciliation negotiations can be used against a party in a subsequent administrative hearing or civil trial arising from the complaint.

Right to Representation. All parties have the right to be represented by the legal counsel, advocate or organization of their choice during conciliation negotiations.

Voluntary Nature of Conciliation. Participation in conciliation is entirely voluntary. No person may be coerced into conciliating a complaint. There is no penalty for declining to settle a complaint through conciliation. Investigators and conciliators may not bully, threaten or intimidate any party in an effort to reach settlement.

Role of HUD Conciliator

The HUD conciliator:

- Is a neutral participant seeking to facilitate a mutually agreeable settlement;
- Will inform the parties of their rights during conciliation;
- Will inform the parties about the conciliation process, and help formulate negotiation procedures that will further dialogue;
- Will, if necessary, provide interpretations of the Fair Housing Act in order to enable the parties to negotiate from informed positions;
- May describe the evidence gathered during the investigation in order to enable the parties to negotiate from informed positions;

- Must convey offers and counter-offers between the parties;
- Is responsible for drafting a Conciliation Agreement incorporating both individual relief for the aggrieved person and relief intended to further the public interest in preventing future discrimination;
- May describe the potential relief which could be sought or awarded for violating the Fair Housing Act, but will not comment on the likelihood that those penalties would be imposed upon a particular respondent;

Effect of Conciliation Agreement on the Complaint Investigation. A Conciliation Agreement that is approved by the Department terminates the investigation of the complaint. By entering into a Conciliation Agreement, the respondent avoids liability on the facts of the complaint by agreeing to provide individual relief for the aggrieved person, and appropriate public interest relief as imposed by the Secretary. The complainant agrees to accept the relief provided by the terms of the Conciliation Agreement, in exchange for giving up his or her potential right to pursue relief granted through an administrative hearing or a civil trial.

Nature of the Conciliation Agreement. The essential terms of the Agreement will be those negotiated and mutually agreed to by the complainant and respondent, and approved by the Department. The Agreement must also include provisions for relief to protect the public interest.

The Secretary may develop appropriate public relief provisions based upon an assessment of the total factual record then available in each individual case.

Role of the U.S. Department of Justice. Upon receipt and verification of information that a respondent has breached a HUD-approved Conciliation Agreement, the Secretary will refer the matter to the U.S. Attorney General for enforcement proceedings.

CONFIDENTIAL – For Conciliation Purposes

Investigator's Worksheet on Damages

Complainant's Name: _____

Complaint No.: _____

Completed by: EOS _____

To ascertain the extent of complainant's damages so as to assist him/her in making a conciliation proposal, ask complainant the following questions. Complainant's answers should be documented with as much detail as possible.

1. Did respondent's actions cause you to spend money that you would not otherwise have spent on any of the following? If so, how much?

Moving Expenses

More expensive housing as a substitute for the housing you sought from respondent, including rent, mortgage, utilities, security deposit, cost of physical modifications to the housing

Temporary housing costs, including hotels

Loan or rental application fees

Sales or rental deposits

Occupancy surcharges

Lost profit on the sale of your home

Advertising to sell your home

Travel, e.g., increased commuting costs from alternate housing to work, school, church, etc.

Furniture storage

Long-distance telephone calls to respondent or HUD

Medical expenses, e.g., physicians, counseling, medication, treatment or other bills

Attorney's fees

Fines or other housing-related assessments

Property losses/damage

Lost real estate commission

Lost rent

Lost job or other business opportunity

Any other expenses

2. Do you have receipts for any of the above expenses? Complainant should retain the originals in a safe place. Copies should be attached to this worksheet. If complainant does not have receipts but can obtain copies or other proof of the expenses, he/she should do so.
3. What, if any features of respondent's housing made it preferable to other Housing? Describe why you wanted to live there as opposed to somewhere else? E.g., size of unit or property; number of rooms; attractiveness of unit; play area for children; neighborhood; proximity to school, work, church, relatives, playground, shopping, mass transit.
4. Have respondent's actions caused you to take any time off from work, e.g., to look for alternate housing, to file your fair housing complaint or meet with the HUD investigator? How much time did you need to take off? When? What was hourly/daily/monthly wage at that time?
5. Have respondent's actions inconvenienced you in any way? If so, explain how, e.g., required you to look for alternate housing; caused you to lose time with your family or friends.
6. Did respondent's actions affect you emotionally? Complainant's reactions to each question should be described in detail.
 - (a) How did respondent's actions make you feel? E.g.:

Angry	Embarrassed	Troubled
Sad	Afraid	Victimized
Humiliated	Preoccupied	Worried
Intimidated	Tired	Inferior
Shocked	Overwhelmed	Anxious
Depressed	Uptight	Disappointed
Upset	Hyperactive	Ashamed
Moody	Lethargic	Nervous
Discouraged	Stressed	Scared
Fed up	Tense	Mistreated
Other	Irritable	Frustrated

These are examples of the many reactions people have had to discrimination. While the words may be used as examples to aid complainants in talking about their emotional reaction to the allegations, this list should not be used as a checklist.

(b) How, if at all, did the actions affect your self-esteem? E.g., lowered self-esteem; self-criticism; self-depreciation, self-blame.

(c) How did the actions cause you to respond? E.g., cry; yell; use profanity; fear you could not protect your family; be ashamed of your race, color, ethnicity, sex, disability, religion, familial status; lose your sense of humor; become preoccupied with thoughts of discrimination so as to interfere with your normal activities; talk obsessively about the incident or refuse to talk about it; have difficulty making decisions.

(d) How did the actions affect your search for housing? E.g., Were you afraid to look for other housing? Intimidated by other housing providers?

(e) Did respondent's actions negatively impact on your personal relationships? E.g., diminished trust in other people; new negative attitudes toward people in the same group as respondent; family members, friends, co-workers, customers/clients; decreased desire to socialize or enjoy hobbies; inability to work, do housework; lost interest in sex.

(f) Did respondent's actions cause you to have any physical symptoms? E.g., headache; indigestion; stomach pain; lost sleep; nightmares; decreased or increased appetite; nausea; nervousness; ulcers; backache; impotence; intensified allergic reaction.

7. Have you sought medical care or professional counseling because of respondent's actions or the emotional and physical conditions described above? If so, who did you see? What is that person's profession? When did you see him or her? What for? Did you take any medication? How much did this cost you? Will these expenses continue into the future?

8. Who can provide additional information and/or testify at trial about your damages, e.g., family members, friends, co-workers, neighbors, doctor, psychiatrist, psychologist, social worker, counselor. State what each person will say about your damages.

 Lost Housing Opportunity Damages Worksheet

Status: In-Place Tenant _____ Complaint #/Name _____

Prospective Tenant _____ Date: _____

	A Move-out Property	B Subject Property	C Move-to Property	D Current Property
ADDRESS:				
Inspection Date:				
Application Date:				
Move-in Date:				
Move-out Date:				
HOUSING COSTS:				
Security Deposit				
Rent				
Utilities Included? Y/N and estimate monthly amount				
HOUSING QUALITY				
Type: (House, Condo, Duplex, Apt. Hotel, Room Share)				
Condition				
Square Footage				
# of Bedrooms				
# of Bathrooms				
Washer/Dryer? Y/N				
Central Air? Y/N				
Pool? Y/N				
Play Area? Y/N				
Off-Street Parking? Y/N				
Security Gate? Y/N				
Rec Room? Y/N				

EMOTIONAL DISTRESS DAMAGES WORKSHEET

Instructions: Circle any symptoms you have suffered as a result of the housing discrimination. Complete the boxes for each symptom by circling the appropriate response. Please be sure to indicate what the ending date was for your suffering or whether it is ongoing.

Complainant: _____
Date: _____

Case #/Name: _____
Treatment Sought: Yes No

SYMPTOM	SEVERITY – HOW BADLY SUFFERED	FREQUENCY – HOW OFTEN SUFFERED	DURATION – HOW LONG SUFFERED
Depression	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Anger/Irritability	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Discouragement	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Nervousness	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Stomach Ache	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Sleep Loss	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Headache	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____

			Ongoing? Yes No
Appetite Loss	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Withdrawal	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Slept Too Much	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Relived Experience	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No
Other	Mild Severe Moderate Disabling	Hourly Weekly Daily Monthly	Beginning Date: _____ Ending Date: _____ Ongoing? Yes No