
CHAPTER 9. ADMINISTRATIVE CLOSURES AND WITHDRAWALS WITH RESOLUTION

9-1 INTRODUCTION

This chapter establishes standards and procedures to ensure consistency in the handling of administrative closures and describes the conditions and factors that must be assessed in administratively closing a complaint. This chapter also discusses closures for lack of jurisdiction and withdrawals with resolution.

Administrative closures should be used neither casually nor routinely. It is critical that cases not be closed administratively except under specific circumstances as set forth in this chapter. Whenever possible, intake activities should be conducted that will avoid the need for a later administrative closure.

Administrative closures should be distinguished from closures on the merits, and may not be used in place of making recommendations or determinations of reasonable or no reasonable cause. If the investigation is virtually complete, and there is sufficient evidence to support a determination of no reasonable cause, the case should be closed with a no reasonable cause determination rather than administratively. If the investigator has completed the investigation, and the facts and circumstances support a reasonable cause determination, consult with the Office of Regional Counsel.

There are essentially four circumstances where administrative closures may be appropriate:

1. Failure to Cooperate: When an investigation cannot be completed because the investigation requires additional information that can only be provided by the complainant to make any determination, and the complainant fails or refuses to respond to reasonable requests for the information, the complainant has failed to cooperate with the investigation based on the standards set forth below.
2. Inability to Locate: When an investigation cannot be completed, and completion of the investigation requires additional information that can only be provided by the complainant to make any determination, and the complainant cannot be located through the reasonable efforts of the investigator, the complaint may be closed because of the inability to locate the complainant.
3. Withdrawal without Resolution: When a complainant expressly states his or her decision not to proceed or participate in the investigation, or has lost the right to proceed with further actions, and to withdraw the complaint.
4. When Civil Trial has Commenced: When a trial has commenced, pursuant to the provisions of the Fair Housing Act (the Act).

Complainants may request that the Secretary reopen a case that has been closed administratively if the request is within one year from the date of the alleged discriminatory housing practice described in the original complaint. Under certain circumstances, after a complaint has been closed administratively, a complainant may re-file the same fair housing complaint within one year after the date of the alleged discriminatory housing practice.

9-2 CIRCUMSTANCES FOR ADMINISTRATIVE CLOSURES

An administrative closure may not be threatened or used because a party fails to return an investigator's or conciliator's telephone call, fails or refuses to sign a proposed conciliation agreement, or is hospitalized or otherwise temporarily unavailable to assist in the investigation. (However, it is appropriate to inform the complainant of his or her obligation to fully cooperate with the Department during the investigation of his or her civil rights complaint and that failure to cooperate is a basis for an administrative closure.)

A. The Investigation Cannot Proceed

1. Failure to Cooperate

The investigator has a responsibility to use all resources to gather the information needed to complete the investigation. There are points in the investigation, however, where the investigator requires information from the complainant that can only be provided by the complainant. Where the complainant fails or refuses reasonable requests for that information and the investigation cannot be completed, the case may be closed administratively because of the complainant's failure to cooperate.

A case may not be closed administratively for failure to cooperate because, in one instance, the complainant either does not respond to a request for information or fails to return a telephone call within a given time period. A repeated history of receipt of telephone calls and letters by the complainant or his or her representative, combined with the failure to return calls or respond to requests for information, may serve as the basis for such a closure if there is a documented history of these problems and the complainant has been given written warning that such failures might result in the closure of the case.

Complainants and their representatives must be informed about their duty to cooperate during the course of the investigation and the consequences of either person's failure or refusal to cooperate. In addition, the complainants and their representatives must be informed that the representative's failure or refusal to cooperate in the investigation will be treated as though the complainant actually failed to cooperate, and will support the decision to administratively close the case.

All failures to respond to requests for data or information should be documented by written notes and then by letter, which should be retained in the file. Before a complaint may be closed administratively for failure to cooperate the complainant and the complainant's representative must be given written notice, by regular and certified mail, that the failure to cooperate will result in administrative closure unless the information is provided within 10 calendar days.

Closures for failure to cooperate should be used only when completion of the investigation requires information from the complainant that is necessary for the investigation, and no other person or source can provide the information. A copy of the letter must be sent to any person who has been properly identified as the complainant's representative.

If neither the complainant nor the representative provides the information, the case may be closed administratively by written notice, by regular and certified mail, to all parties and their designated representatives, including attorneys. If such a letter is returned by the post office, the procedures described for inability to locate the complainant should be followed and, if there is no response, the case should be closed for inability to locate the complainant.

2. Inability to Locate Complainant

The nature of housing discrimination is such that complainants are likely to relocate during the course of an investigation. However, a complaint may not be closed administratively because a complainant cannot be located unless and until the investigator has taken adequate steps to locate that complainant. During intake a prospective complainant must always be asked to provide the name, address and telephone number of a person or persons who will know how to reach the complainant at all times. This information must be entered in TEAPOTS under complainant's contact information. This information should also be documented and retained in the case file. During the investigation, the investigator should routinely confirm that this information is accurate and update the entries as necessary.

Similarly, during intake, the Equal Opportunity Specialist (EOS) assigned to intake should advise the complainant of his or her responsibility to keep the Department informed of any change of address or telephone number. The investigator should update the information regarding the complainant's address and telephone number routinely as the investigation proceeds. Any change in the complainant's address should be entered in TEAPOTS and recorded in the file. It is not necessary to amend the complaint to reflect changes in addresses and telephone numbers.

The following procedures should be used before administratively closing a complaint due to the Department's inability to locate a complainant:

1. If correspondence has been returned after it was sent by regular mail, check the envelope to ascertain whether it identifies a forwarding address;

2. Verify that the letter was correctly addressed based on the most recent information; and
3. Attempt to reach the complainant by phone, making attempts (at home and business numbers) during regular business hours and non-business hours.
4. If these efforts are unsuccessful, call and write the back-up contact persons listed for the complainant;
5. Contact the post office to find out whether a forwarding address is on file; and
6. Use Internet resources, attempt to locate a more current telephone number through directory assistance and check any other resources, such as the complainant's witnesses, who may know the most current information about the complainant.

All efforts should be documented, and the documentation retained in the investigative file. If these efforts are unsuccessful, a letter must be sent to the complainant's last known address, by regular and certified mail, advising the complainant of the Department's intent to close the case unless information regarding a current mailing address and/or telephone number is provided within 10 calendar days. After the 10th day has elapsed without a response the case may be closed administratively, with notice sent to all parties, including the complainant's last known address. Notice of an administrative closure of a case should be provided to all parties and their representatives in the same way that parties receive notice of no reasonable cause determinations.

3. Inability to Locate the Sole Respondent

The Act requires notice to the respondent in the case. Each EOS assigned intake responsibilities should make every effort to identify the correct name and address for each respondent in each case. Complaints that identify a person as a respondent who has no legal relationship to the actual respondent do not allow FHEO to fulfill its statutory duty to notify the respondent. Consequently, the EOS assigned intake responsibilities must perfect those complaints that name a "John or Jane Doe" as the sole respondent before the allegations of discriminatory housing practices can be accepted as complaints under the Act.

On rare occasions there may be circumstances where a complaint names only one person as the respondent, whether an individual or entity. If a sole respondent cannot be identified or located, the investigator must attempt to obtain additional information from other available sources that could result in identification of the respondent or location. These sources include Internet resources, cross reference directories, or property tax records that may identify the owner or prior resident of the property in question and provide enough information to identify or locate the respondent, serve the complaint, and begin the formal investigation. In some situations, an on-site visit can help to locate and identify the respondent.

If the complaint identifies several respondents and only one cannot be adequately identified the complaint should not be closed administratively. Rather, the investigation should proceed and further efforts made to identify the respondent whose correct name or address remains unknown during the investigation. If the respondent is ultimately identified and located during the investigation, the complaint should be amended, if necessary, and served at that time, using a corrected notification letter.

If all efforts to locate or identify a sole respondent are unsuccessful, a letter should be sent to the complainant, giving him or her 10 days to provide information identifying the respondent. In the absence of sufficient further information the case may be closed administratively, and written notice by regular and certified mail should be sent to the parties, insofar as they are identifiable.

B. Complainant's Decision not to Proceed with the Complaint (Withdrawal Without Resolution)

A representative of the Department should not attempt to encourage or persuade a complainant to withdraw a complaint with or without resolution. Complainants may voluntarily decide to withdraw their respective complaints at almost any time for personal or other reasons. A complainant may choose to withdraw the complaint as a means to conclude the investigation, discontinue any further personal participation in the investigative process, for reasons of convenience or for undisclosed reasons.

Every case involving a proposed withdrawal without resolution should be assessed to identify any public interest issues that might be addressed appropriately through a Secretary-initiated investigation or complaint. This includes determining whether there are possible discriminatory policies in effect and whether there are other potential victims of the alleged unlawful practice.

Whenever a complainant expresses his or her intent to withdraw the complaint without resolution, the investigator should make a good faith effort to obtain a written statement from the complainant that:

1. Has been signed and dated by the complainant or his or her legal or designated representative;
2. Recites or identifies the respondents to whom the withdrawal applies and provides sufficient information to identify the case;
3. Contains the complainant's reasons for withdrawal;
4. Acknowledges the complainant's awareness that the withdrawal will result in the termination of proceedings involving the matter; and

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5. Affirms that the withdrawal does not result from duress, intimidation, coercion, retaliation or fear of retaliation from any person, not just the respondent.

If the complainant only provides a verbal expression of intent to withdraw the complaint, and fails or refuses to provide a written statement within a reasonable time, the investigator should send a letter to the complainant that contains the information outlined in the preceding paragraph, confirms the complainant's intent to withdraw the complaint, and informs the complainant that the complaint will be closed within a specified time frame, e.g., 10 business days, if the complainant does not affirmatively oppose the closure of the complaint.

The letter should also explain the potential risks and probable impact associated with the complainant's decision to withdraw the complaint. Those risks and impacts include:

- Closure of the complaint ends all efforts by HUD to investigate the complaint.
- If the complainant re-files the same complaint more than one year after the date of the most recent alleged act of discrimination, the complaint will not be timely filed.
- If more than two years pass before the complainant files a private lawsuit in court for the same discriminatory housing practice, that lawsuit may be untimely and dismissed by the court for that reason.
- Witnesses may become difficult, if not impossible to locate, and documents may be destroyed or lost with the passage of even a short amount of time.

C. Trial has Commenced

Under the Act, 42 U.S.C. § 3610(g)(4), the Secretary may not issue a charge of discrimination regarding an alleged discriminatory housing practice after the trial begins in a civil action commenced by the aggrieved person under an Act of Congress or a State law seeking relief with respect to that discriminatory housing practice. A complaint should not be closed merely because the aggrieved person has filed a lawsuit, or because the court has set a trial date.

The determination of whether legal action bars further investigation requires consultation with Regional Counsel. If the trial has begun, an administrative closure should be supported by documentation. The best documentation is written information from the clerk of the court in the jurisdiction that hears the case. Other forms of documentation may be letters from the complainant, the complainant's representative, the respondent or the respondent's representative that the court has begun the trial. If the investigator receives any of these documents, the investigator must verify the accuracy of the information with the clerk of the court.

9-3 LACK OF JURISDICTION

Administrative closure may not be appropriate when jurisdiction is found to be lacking under the Act once the complaint has been filed in the system and the investigator has begun a substantive inquiry into the merits of the complaint. If the complaint is jurisdictional under another civil rights law that the Department enforces, it should be processed under that law.

If, during the investigation, the investigator determines that the Department does not have jurisdiction over the claim under the Act, the investigator should prepare an abbreviated final investigative report (FIR) and a Determination that contains the findings and conclusion that support the no reasonable cause determination. The abbreviated FIR can be limited to the investigative activity required to determine that jurisdiction has not been established. Closure letters should clearly describe the rationale for the no reasonable cause determination by describing the elements required to establish jurisdiction and how the investigation revealed that one or more elements of jurisdiction was missing or that an exemption to the Act was proven.

If the facts and circumstances gathered in the course of the investigation ultimately reveal that the Secretary lacked jurisdiction, and reasonable cause exists to believe that the respondent committed a discriminatory housing practice, then the case should be administratively closed for lack of jurisdiction. Consult with Regional Counsel and Headquarters to discuss referral to the Department of Justice.

Jurisdiction may be lacking for one or more of the following reasons:

- The investigation shows that the complainant has not suffered the requisite legal harm to have standing.
- The investigation reveals that the one-year statute of limitations for filing an administrative complaint has expired.
- The investigation reveals that there is no jurisdiction over the respondent because of the operation of some exemption contained in the Act.
- The investigation shows that the subject matter or the basis of the alleged violations is not covered by the Act.

9-4 WITHDRAWAL WITH RESOLUTION

Withdrawals with resolution are not favored because they do not always reflect appropriate resolutions of the public interests. There is no mechanism for the Secretary to enforce private settlement agreements that the parties may enter into without the Department as a signatory. The investigator or conciliator assigned to the case should encourage the parties to reach an agreement that includes the Department as a signatory,

and which contains provisions that address the public interest issues as well as resolves the case for the complainant. Early discussions with the complainant regarding the advantages of conciliation through the Department are encouraged. If the investigator becomes aware of private negotiations between the parties, the complainant should be advised that private counsel should be retained to protect his or her interests and the respondent should be notified that the complainant's withdrawal may not conclude HUD's involvement with the issues raised in the complaint.

Notwithstanding the complainant's decision to file a housing discrimination complaint, both the complainant and the respondent retain the right to enter into a private agreement to resolve any issues related to the complaint. The investigator, however, must not encourage these private settlements, including the subsequent withdrawals with resolution, and must not assist the parties in reaching a private settlement.

Withdrawals with resolution occur when the complainant and respondent agree, in the absence of the investigator or conciliator, to settle a housing discrimination complaint upon terms and conditions mutually agreeable to the parties. Typically, these agreements will be reduced to writing and signed by both parties. Settlement agreements can be distinguished from conciliation agreements in several ways:

- As previously stated, these settlement agreements occur without any discussion with or involvement of the investigator or conciliator;
- These settlement agreements do not generally address the public interests in the elimination of housing discrimination;
- These settlement agreements cannot be enforced through the Department, which means the complainant cannot file an administrative complaint alleging a breach of the settlement agreement. (That would be a contract dispute between the parties.)

Further, if a respondent or other person coerces, intimidates, or threatens the complainant to obtain the withdrawal of a complaint, the Department's only role in this process would be to receive a subsequent complaint alleging intimidation, coercion or retaliation. The Department would also process new or different and unrelated issues left unresolved by the settlement agreement.

Every case involving a proposed withdrawal with resolution should be assessed to identify any public interest issues that might be addressed appropriately through a Secretary-initiated investigation or complaint, including determining whether there are possible discriminatory policies in effect and whether there are other potential victims of the alleged unlawful practice.

Whenever a complainant expresses his or her intent to withdraw the complaint with resolution, the investigator should make a good faith effort to obtain a written statement from the complainant that:

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1. Has been signed and dated by the complainant or his or her legal or designated representative;
 2. Recites or identifies the respondents to whom the withdrawal applies and provides sufficient information to identify the case;
 3. Describes or recites the relief that justifies the withdrawal, or encloses a copy of the settlement agreement;
 4. Acknowledges the complainant's awareness that the withdrawal will result in the termination of proceedings involving the matter; and
 5. Affirms that the withdrawal does not result from duress, intimidation, coercion, retaliation or fear of retaliation from any person, not just the respondent.

If FHEO closes the case as a withdrawal with resolution, all parties must be sent notice of the Department's decision by regular mail. The letter should also explain the potential risks and probable impact associated with the complainant's decision to withdraw the complaint. Those risks and impacts include:

- Closure of the complaint ends all efforts by HUD to investigate and conciliate the complaint.
- Withdrawal of a complaint with resolution may operate to limit the complainant's options to pursue relief or remedy in case of any disagreement about fulfillment of the terms of the resolution, including the respondent's failure to comply with the terms of the resolution.
- FHEO, the Office of Regional Counsel and DOJ cannot assist the complainant in obtaining full relief under the withdrawal with resolution.