

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

Special Attention of:

Notice FHEO 96-1

All Directors, Fair Housing
Enforcement Centers

Issued: May 24, 1996
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All Directors, Program Operations
and Compliance Centers

Cross References:

Subject: Multi-jurisdictional Complaints

I. Overview

The purpose of this Notice is to describe the policies and procedures for accepting and processing multi-jurisdictional complaints. These are complaints that are investigated under more than one statutory authority. 1 Please implement this guidance immediately. More detailed guidance, including specific procedural instructions and data entry directions, will be issued in the future.

The following general principles, which are described in greater detail below, should apply to your concurrent processing activity.

1. Except under unusual circumstances, file complaints under all of the Department's relevant statutory authorities.
 2. In most instances, treat multi-jurisdictional complaints as one investigation, prepare one final investigative report and document them in one file.
- 1 The statutory authorities included in the scope of this memorandum are: the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 109 of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; and Executive Order 11063.

EECC: Distribution: W-3-1, R-3-1 (FHEO), W-2(FHEO)

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3. Where possible, a single document should contain the terms of the settlement or conciliation of the multi-jurisdictional complaint. As with single complaints, such resolutions may occur before the completion of the investigation and the issuance of findings.
4. When possible, execute settlements of currently processed complaints in one agreement, address all of the practices of the respondent that were found to have caused the violation and cite all applicable regulations, statutes, Executive Orders, etc.
5. Whenever possible, communicate the Department's findings from the consolidated investigation to the parties at the

same time, in one document.

6. Potential violations of one or more statutes unrelated to the complainant's allegations that are uncovered during the investigation shall be referred for appropriate Department-initiated action rather than addressed in the context of the complaint.

This notice consists of two parts. The first describes various substantive and procedural facts that affect consolidated investigations of multi-jurisdictional complaints. The second part addresses specific case processing issues, such as when a complaint may be "filed" and how much time may be allocated to investigations when the regulations provide different answers to these questions.

II. Multi-jurisdictional Processing: Substantive Issues

Fair Housing Act and Other Statutes

The Department has an obligation to enforce all of the statutes for which it is responsible. Moreover, it strengthens the Department's enforcement efforts to conduct investigations using all relevant civil rights statutes. A common instance of a concurrent complaint is one filed under the Fair Housing Act and Title VI. The benefits of investigating a complaint under the Fair Housing Act are apparent. Usually the complainant's monetary remedy is greater than it might be under Title VI. Second, because the Fair Housing Act covers both Federally funded and private housing it gives the Department clear authority to conduct investigations and to seek remedies for proven violations without the necessity of establishing Federal financial assistance.

Unlike the Fair Housing Act, both Title VI and Section 504 provide for the termination of funds, disapproving funding requests, conditioning funds,

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debarment, and other sanctions. The immediate impact of this remedy often persuades a recipient respondent to ameliorate findings of housing discrimination.

Consequently, when a potential complaint of housing discrimination is filed, determine whether the respondent is a recipient of Federal funds. In some cases this can be determined easily, as when the respondent is a housing authority. Sometimes, the complainant will know whether the respondent receives HUD funds. In some cases, however, the intake analyst should inquire of a program office or conduct other research to determine whether the respondent receives Federal financial assistance.

A. Concurrent Processing

If the respondent in a Fair Housing Act complaint receives Federal funds, and the complaint meets the other jurisdictional requirements,² it should be concurrently processed under all relevant statutes³ except under the following circumstances:

1. The complainant insists on anonymity.

Title VI and Section 504 regulations require that the identity of the complainant be kept confidential absent written authorization from the complainant to the contrary.

2 Timeliness of a complaint is one "jurisdictional" element to review. However, the Department may extend the 180 day filing period for "good cause" under Title VI, Section 109, the Age Discrimination Act, the ADA, and Section 504. Field Offices should grant "good cause" extensions when evidence suggests that the complainant was misinformed by a government official about the complainant's rights, when it isn't clear until the investigative stage that the respondent is a Federal recipient, or when it otherwise would be in the best interest of the government to process the complaint, especially where the same complaint is timely under Title VIII. The filing period under Title VIII is one year.

3 Where a complainant is alleging discrimination on more than one protected basis, the complaint may be concurrently processed under more than two statutes. For example, a housing discrimination complaint filed against a Federal recipient that alleges discrimination on the bases of national origin, age, and disability, should be processed under the Fair Housing Act, the Age Discrimination Act, Section 504, and the Americans with Disabilities Act. Please note of the different procedures for mediating Age discrimination Act claims. (see i.e., supra)

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Therefore, in order to process a concurrent complaint, the intake specialist should obtain and include in the investigative file a written waiver of confidentiality. If the Title VI, Section 109, and/or Section 504 complaint is submitted on the HUD-903 form, it is not necessary to obtain a waiver of confidentiality.

If there is a need to obtain a waiver, the intake specialist should explain to the complainant that it is more difficult to investigate complaints and to obtain relief on behalf of the complainant, if the Department cannot disclose the complainant's identity. The intake specialist also should explain that the complainant's individual remedy may be greater if the complaint is processed under the nonconfidential provisions of the Fair Housing Act. If the complainant refuses to provide a waiver, contact the Office of Investigations at Headquarters for instructions on filing a possible Jane Doe or John Doe complaint.

2. The complainant refuses to file a complaint under more than one statute.

In some rare instances, a complainant, after counselling, may refuse to file a complaint under a statute that the complainant did not initially contemplate. Of course, in such instances, the wishes of the complainant must be honored. It would be advisable to obtain a statement from the complainant stating that he or she understands the implications of his or her decision, and that he or she voluntarily refuses to file under other statutes.

B. Exceptions to A Single, Combined Investigation

In most instances, cases that are concurrently processed should be consolidated in one investigation for reasons of consistency and efficiency. The exceptions to this general rule include the following:

1. When a Fair Housing Act complaint is referred to a substantially equivalent agency.

In these cases, complaints should be taken under all relevant statutes. When the Fair Housing Act complaint is to be handled by the substantially equivalent agency, the complaint may be separated with the Title VIII portion being dually-filed with the agency, and the allegations under all other

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civil rights authorities will be handled by HUD. This is appropriate in single-issue or straight forward cases without systemic implications. In the discretion of the FHEC Director (with consultation with the POCC Director, if appropriate), cases with broad implications under civil rights authorities may be retained to permit the entire case to be handled by the Department. The Enforcement Center should establish procedures to coordinate the investigation of the complaints and to ensure that the investigations do not result in inconsistent findings. There will be one case file for the substantially equivalent agency with a Title VIII case number, and one case file for the HUD office with the remaining case numbers. Before the substantially equivalent agency issues a determination, both HUD and the agency must coordinate the findings and the dates of the issuance of the findings/determination.

In making the initial determination whether to retain or refer mixed Title VIII cases, those cases in which other civil rights statutes offer stronger protection should be kept by HUD.

For example: A complainant files a complaint against a housing authority alleging that the housing authority failed to allow the resident to

install a ramp. Under Section 504, the housing authority must install the ramp at their own expense, as long as it is not an undue financial and administrative burden, whereas, a Title VIII remedy would result in the tenant paying for installation of the ramp.

Of course, allegations under civil rights authorities that are not covered by Title VIII are only investigated by HUD.

For example: an activity under the CDBG program involving an employee of a city planning department alleging failure to promote based on racial discrimination and failure to accommodate for a disability.

At any point in this process, the Director of the Fair Housing Enforcement Center may determine whether a request for reactivation will be made by mutual consent with respect to the Fair Housing Act complaint.

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2. The complainant alleges systemic regulatory violations.

A complainant may specifically allege that the respondent's actions are part of a broader systemic violation of one or more statutes, and include claims which appear to be regulatory violations.

In those cases, complaints should be taken under all appropriate statutes. The Fair Housing Act complaint may be identified for systemic processing using a mutual reactivation procedure, even if the investigation is in progress by the substantially equivalent agency.

For example: HUD receives two complaints from residents at a public housing authority alleging disparity in maintenance. The complaints are forwarded to the substantially equivalent agency for investigation. The next week HUD receives 25 additional complaints alleging the same disparity in maintenance. Even though the substantially equivalent agency has initiated an investigation of the two complaints, these may be reactivated by mutual consent for a systemic investigation by HUD.

HUD may want to open a compliance review. After consultation between the Director of the Enforcement Center and the Director of the Program Operations and Compliance Center (PoCC) , a decision should be made by the Director of the POCC as to whether a compliance review is warranted and feasible. This decision will be based on a number

of factors, including:

- The identity of the recipient(s). This includes consideration of the recipient's location and the size of its program (how many beneficiaries are potentially affected by the practice at issue), whether it has recently been the subject of other compliance/enforcement activity.
- The practice or policy at issue. Does it affect (or have the potential to affect) a significant number of beneficiaries or program applicants?
- The availability of resources to conduct the review.

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3. The Fair Housing Act complaint will be referred to the Department of Justice for prompt judicial action.

A complaint that is identified as requiring prompt judicial action may be processed separately. The decision to separate the processing should be made only after the Department of Justice (DOJ) has agreed to prosecute the Fair Housing Act complaint. The investigation of the non-Fair Housing Act complaints can proceed; however, they should be coordinated closely with the Assistant General Counsel in the Area Office and with the DOJ representative.

C. Section 504 and Americans with Disabilities Act complaints

1. General

The DOJ requires that HUD investigate disability discrimination complaints under both Section 504 and the ADA whenever possible. This applies to the vast majority of the Section 504 and ADA complaints. One result of this requirement is that a concurrent Section 504 and Title VIII complaint, in most instances, will be processed under the ADA. Because the complaint procedures under the ADA and Section 504, by design, are very similar, concurrent case processing will pose few procedural problems. The differences in processing are discussed below.

2. Employment

Employment discrimination complaints for which the Department has jurisdiction or responsibility under both Section 504 and the ADA present special

concurrent processing problems. Section 504 coverage of employment complaints extends only to recipients of HUD funds. Title II of the ADA covers all state or local governmental units, whether or not the unit receives Federal funds. Title I of the ADA covers private and public entities, if the entity had 25 employees from July 26, 1992 to July 26, 1994, or 15 employees from that date forward. The procedures for processing employment discrimination complaints filed on the basis of disability are included in a separate memorandum, entitled: "Procedural Guidance on Implementation of Title II of the Americans with Disabilities Act of 1990."

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Note that some employment cases also may involve violations of the Fair Housing Act. For example, when an employee alleges discrimination against the employer for opposing discriminatory practices. Such cases should be processed concurrently under the Fair Housing Act.

D. Title VI and Section 109 Complaints

The majority of complaints against State and local governments that are covered under Title VI also are covered under Section 109. If a complainant does not insist otherwise, an allegation that falls under both Title VI and Section 109 normally should be accepted under both statutes. Typically, these allegations should be consolidated for processing.

E. Age Discrimination and Other Statutes

When a complainant alleges discrimination on more than one basis, and one of the protected basis is age, complaints should be taken under all of the relevant statutes, including the Age Discrimination Act. However, allegations of age discrimination typically will not be consolidated in the concurrent investigation. This is because the requirement for initial referral to the Federal Mediation and Conciliation Services (FMCS) for mediation makes concurrent processing of the complaint not feasible. The age discrimination complaint should be processed under the provisions of 24 CFR part 146.

F. Example of a Multi-jurisdictional Complaint

An employee of a city government receiving Community Development Block Grant (CDBG) funds alleges that she was fired because she refused to limit information concerning the availability of housing rehabilitation money only to White persons and because she had become legally blind. The Department would have jurisdiction to investigate her claims under the Fair Housing Act, Title VI, Section 109, Section 504, and Title II of the ADA. The complaint

should be concurrently processed under all of those statutes.

Title VI applies because the actions against the employee had the effect of denying the participation of non-White persons in the benefits of the program. A Title VI investigation would focus on discrimination on the basis

4 Keep in mind that Section 109 also covers religion and sex, unlike Title VI.

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of race in program services and benefits. The Section 109 investigation would also focus on whether the complainant was fired because the employee opposed an unlawful practice under Section 109. The ADA and Section 504 investigations would focus on whether the complainant was fired because of her disability. The Fair Housing Act investigation would focus on whether the respondent violated Section 818, as well as the other race-based allegations.

III. Multi-Jurisdictional Processing: Administrative Issues

A. Complaint Notification Procedures

The general principle that applies to multi-jurisdictional complaints is that there should be one investigation, one record of that investigation, and one effort to resolve the matter. This principle applies during the notification process as well. However, assign a separate complaint number for each statutory basis in the complaint.

1. Consolidated Fair Housing Act Case Processing

Enter the Fair Housing Act number into the Integrated Title VIII Tracking System (ITTS) Indicate that the complaint is being concurrently processed under Title VI, Section 504, or Section 109⁵ as described on pages 30 and 31 of the ITTS Data Dictionary.

Unfortunately, the regulations are not consistent with regard to complaint notification procedures.

-- The Fair Housing Act regulations, at 24 CFR Sec. 103.40, state that a complaint is considered to be filed when it contains the names of the complainant and respondent, the address of the dwelling, if relevant, and a statement of facts and dates concerning the alleged discriminatory practice. The respondent must be notified

5 As stated above, the Department has prepared a proposed rule implementing Section 109. The complaint processing procedures under the proposed rule are very similar to those under Section

504. Until the final rule is published, Field Offices should follow Section 504 processing procedures with respect to Section 109 complaints. References in this discussion of notification procedures should be read to include Section 109 complaints.

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within 10 calendar days of the filing of the complaint under 24 CFR 103.50, except in the case of an amended complaint which is, nonetheless, considered to be filed as of the original date of filing (24 CFR 103.42).

- The Section 504 rule, 24 CFR 8.56(e), provides for a two-step process. In step one, the complaint is filed and, within 10 calendar days, the respondent is provided with notice to that effect. In step two, however, the Department conducts an evaluation of whether to "accept" the complaint. This evaluation period takes place over 20 calendar days. The parties (and the award official, if the complaint is accepted) are then notified of the Department's decision to accept, reject, or refer the complaint to another agency.
- There is no formal notification period described in the ADA rule. However, the Department of Justice rule, 28 CFR 35.171, states that Section 504 procedures are to be applied to concurrent Section 504/ADA complaints.⁶

Note that a complaint is "filed" under the ADA when it is received by any Federal agency. Therefore, there may be different filing dates for the Section 504 and the ADA complaint if the ADA complaint is received first (e.g., via a referral from the Department of Justice). In that case, the filing date of the ADA complaint is the date that it was received in any Federal agency; the filing date of the Section 504 complaint is the date that the complaint was received by the Department.

To facilitate consolidated processing with Fair Housing Act cases, the two-step process described above should be eliminated. Otherwise, for the reasons discussed in III (A) (2), a respondent's answer to the non-Fair Housing Act complaint may not be required, delaying the investigation until 60 days after the complaint is filed. The Section

6/ The Department must first review the complaint and determine whether it has jurisdiction under Section 504 or under the ADA because it is the designated agency to process the complaint under subpart G of the Title II regulations. If HUD is not the proper agency, it must refer the complaint to the appropriate agency or to the Department of Justice. This should be accomplished within the

20 day "acceptance" period specified in Section 504.

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The Section 504/ADA complaint should be considered to be accepted at the same time as the initial 10-day notice is given under the Fair Housing Act and Section 504. This 10-day notice/acceptance period will be applied to Title VI and Section 109 complaints that are consolidated for processing with Fair Housing Act complaints.^{7/}

Presently, the Fair Housing Act 10-day notification letters are generated by the computerized database. Until we develop the capability to issue one notification letter including all appropriate statutes, regulations and Executive Orders, use current notification letters under Section 504, the ADA, and Section 109. Moreover, send all of these notification letters to the respondent(s) at the same time, in one envelope.

2. Consolidated non-Fair Housing Act Cases

When the Fair Housing Act is not one of the statutes under which a consolidated case is being processed (e.g., Section 504 and ADA; Title VI and Section 504), follow Section 504's 20-day period for review and acceptance and rejection of the complaint for all statutes. (Depending on the facts, it may be appropriate to reject the 504 complaint and to accept the Title VI complaint.) Note that the complaints should be recorded as being received in the MCATS system on the date that they are received.

a. Respondent's Answer

Only the Fair Housing Act and the Section 504 regulation contain formal requirements involving the respondent's answer to the complaint. The Fair Housing Act provides that the respondent's answer may be submitted within 10 days of receipt of notice that a complaint has been filed. Section 504 requires that the respondent answer the complaint within 30 days of receiving notification of acceptance of the complaint. In situations where the concurrent complaint is under the Fair Housing Act and other statutes, follow the 10-day time period, not 10 days for the FHA and 30 days for 504.

7/ The proposed Section 109 rule follows Section 504; Title VI does not include a formal notification requirement.

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b. Pre-finding Settlement Attempts

All of the civil rights statutes encourage informal resolution of complaints. The fact that complaints are being concurrently processed should not hinder those attempts. If a complaint is being concurrently processed, it can be resolved at any time. If the settlement does not resolve all of the issues in all of the concurrently processed complaints, the agreement must ensure that the settlement does not preclude processing under the remaining statutes. Under no circumstance should the proposed relief violate other statutes.

The relief that the Department obtains in concurrently processed cases should be the relief that the complainant requests and, to which the respondent agrees, as well as any other relief that the Department, at that stage of the investigation, believes is appropriate. In most cases, all specific relief (as opposed to general formula statements about complying with the law, non-retaliation, etc.) will be tailored to the allegations raised by the complainant.

The Agreement should be entitled "Conciliation and Voluntary Compliance Agreement." It should indicate which statutes and complaint numbers it covers. 8/

Occasionally a situation will arise when a complainant is dissatisfied with monetary relief to which the Department otherwise would agree in resolution of a complaint. Under the Fair Housing Act, the complainant must sign a conciliation agreement to resolve the complaint; however, the complainant does not have to agree to the terms of a Voluntary Compliance Agreement (VCA) and does not sign the agreement. As a practical matter, there is little advantage to a respondent in a concurrent case agreeing to a settlement that does not entirely resolve the dispute(s). However, if the respondent does

8/ The right of the Department to conduct a Department initiated complaint (either a Secretary-initiated complaint investigation or a compliance review) of facts and issue not covered in the Agreement should be stated explicitly in the Agreement.

agree to enter into a VCA, the Enforcement Center may choose to take one of the following courses of action:

- 1) eliminate any reference to individual relief in the VCA, and continue the Title VIII complaint;
- 2) include a non-disputed amount in the VCA, include the remaining disputed amount in the Title VIII negotiations, enter into the VCA, and close the non-Title VIII complaint.

c. Investigation

Concurrent complaint investigations should be assigned to one person for investigation. In complex cases, more than one person may be assigned to the investigation, but all issues should be investigated at one time. The Equal Opportunity Specialist(s) should investigate all aspects of the complaints under all statutes and record the results of his fact-gathering in one file. If the investigation focuses on the allegations related to the complainant and the harm that the complainant suffered, investigations of concurrent complaints should not take longer to complete.

Use the Fair Housing Act case file format for locating and tabbing evidence. The investigative plan should include an anticipated completion date of 75 days after the complaints were filed. The subpoena power available under the Fair Housing Act may be helpful in meeting this deadline. Use the case analysis worksheet(s) to reflect the analysis under all of the statutes. The record of the investigation should be made in one Final Investigative Report (FIR). The format of the FIR should follow the Title VIII format in accordance with the guidance dated April 27, 1995.

If the investigation is being conducted under more than one statute other than the Fair Housing Act, then either the Section 504 format for compiling the file and preparing a FIR or the Fair Housing Act format may be used. There should be one file and one FIR. The investigative plan should include an anticipated completion date of no longer than 155 days.

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d. Notification of Findings

Under the Fair Housing Act, findings are communicated through a Determination and Charge. While a Determination of No Reasonable

Cause is a single document, a Determination of Reasonable Cause involves two documents: issuance of a Determination and a Charge of Discrimination. The other civil rights statutes use a different two step process: a Letter of Findings (LOF), which may be subject to challenge by the parties, followed by a Letter of Determination (LOD).

Under Section 504 (and the ADA and Section 109), the parties have a right to request a review of the LOF in Headquarters, whether the finding is one of compliance (complainant requests review) or noncompliance (respondent requests review). There is no right to request a review of a compliance finding under Title VI. Under Title VI, if compliance is found, the LOF and LOD are issued simultaneously. If the LOF finds noncompliance, then the respondent is given a chance to respond to the LOF prior to issuance of the LOD.

These differences make concurrent and consolidated processing at this stage difficult, but not impossible. The most important objectives should be: 1) to ensure that the findings differ only because of substantive differences in the covered bases or the statutes themselves; 9/ 2) to provide timely and effective notice to the parties of the findings, at or near the same time; 3) to communicate effectively the parties' post-finding review rights, if any; and 4) to facilitate the Department's future efforts to obtain a remedy for proven discrimination. A sample Letter of Determination/Letter of Findings is attached.

9/ The Field Office should make sure to issue consistent findings in cases where complaints have been filed under multiple statutes involving the same allegations but a decision has been made to process the cases separately.

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If, under Section 504/ADA/section 109, the complainant requests a review, the review by Headquarters will encompass those statutes and the Fair Housing Act finding. Either the Office of Investigations or the Office of Program Compliance and Disability Rights will take the lead on the review as determined by the appropriate Assistant Secretary. If a decision is made to remand or reverse the finding of compliance, and that decision would apply to the Fair Housing Act finding as well, the parties will be notified that the Assistant Secretary has exercised her

discretion to review and reopen the Fair Housing Act finding.

e. Post-finding settlement Attempts 10/

The only major difference among the statutes in post-finding settlements is the name of the document that memorializes the agreement. The document is either a Conciliation Agreement (Title VIII) or a Voluntary Compliance Agreement (Section 504/ADA/Section 109>Title VI) This difference is rather easily solved; any such document should be entitled "Conciliation and Voluntary Compliance Agreement." The substance of the document will identify and treat relief that is provided under different statutes as separate remedial provisions.

For example, the individual relief section might provide that under the Fair Housing Act and Section 504, the complainant is being provided a public housing unit and compensation for higher rent than the complainant paid while the complainant was unlawfully denied the unit because of disability. A separate paragraph under that section of the Agreement might state that the complainant is being paid pursuant to the Fair Housing Act, \$25,000 for the humiliation, anxiety and emotional distress suffered as a result of the discrimination. A third paragraph may state that under

10/ This section refers to settlement attempts of Title VIII cases during the 26-day period after the issuance of the charge but before either an election is made or the administrative proceeding has commenced. After that time, any efforts to settle a case must involve the participation of either the Office of General Counsel or the Department of Justice.

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Section 504, the Public Housing Authority (PHA) will install a ramp and a roll-in shower in the complainant's unit at the PHA's expense.

f. Enforcement of Findings of Violations

The language of that part of the Conciliation and VCA that discusses how the Agreement will be enforced will reflect the different mechanisms and options under all statutes. For example, a concurrent Fair Housing Act case will specify that a breach of the Agreement could lead to direct court enforcement action by the DOJ. The agreement

will also state that the Department will take all other available actions for a breach of the agreement, up to and including termination or refusal to approve funds. If one of the concurrent violations is of the ADA, then the Agreement will reflect that violations will be referred to the Attorney General.

In some cases, the substantive provisions of the ADA are broader than Section 504. If the recipient is found to be in noncompliance with the ADA but not the comparable Section 504 standards, the Department will seek funding termination only with respect to those acts that do constitute a violation of Section 504. All of the other noncompliance findings will be referred to the DOJ for other appropriate action, if conciliation is not possible.

Elizabeth K. Julian
Assistant Secretary

Attachments

ATTACHMENTS INCLUDE TABLES OF COMPARISON OF COMPLAINT PROCESSING REGULATORY REQUIREMENTS.