

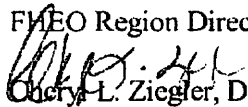


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

March 25, 2009

MEMORANDUM FOR: FHEO Region Directors

FROM:  Cheryl L. Ziegler, Deputy Assistant Secretary for
Enforcement and Programs, ED

SUBJECT: Guidance for Handling Allegations of Internet-based Discriminatory
Advertising against Unidentified Respondents

This memorandum sets forth guidance for processing allegations of discriminatory advertisements on craigslist or other interactive computer services against unidentified parties. Section 804(c) of the Fair Housing Act makes it unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

Upon receipt of an inquiry alleging that an advertisement posted on craigslist or other interactive computer service is a violation of Section 804(c), the Regional Office should immediately determine whether the inquiry identifies the poster of the advertisement in sufficient detail to properly name a respondent. All jurisdictional complaints must include an identified respondent. While certain inquiries may not directly identify a respondent, the inquiry may contain sufficient information that would lead to the identification of a potential Respondent in a timely manner. As described in Chapter 4, Section 7 of the Handbook, creative methods may be required during intake to properly identify and name a respondent. Regional Offices should review this Section of the Handbook in processing allegations against unidentified parties. [Note: According to OGC, it will not issue a subpoena prior to the official filing of a complaint.] The following questions and answers provide further guidance for processing these types of inquiries.

What steps must a Regional Office take to identify an unnamed respondent?

FHEO should take reasonable steps to identify potential respondents using all information provided in the inquiry, such as a telephone number or e-mail address. In addition to methods discussed in Chapter 4 of the Handbook, these steps may also include requests to other identified parties, including newspaper publishers, interactive computer service providers, or internet service providers, that are believed to retain records containing the name and address of a potential respondent.

Should FHEO ever close an inquiry upon receipt due to an unidentified respondent?

FHEO should close an inquiry that does not contain at least one of the following:

- 1) An identified respondent;
- 2) Information that would lead to the identification of a potential respondent in a timely manner; **or**
- 3) An identified person or entity that likely holds the name and address of a potential respondent.

FHEO should close the inquiry for lack of jurisdiction and advise the aggrieved person that a complaint cannot be filed unless a respondent can be identified.

When should FHEO subpoena information to identify an unnamed respondent?

In order to identify an unnamed respondent, FHEO may issue a subpoena against an entity that is believed to hold records containing the name and address of a potential respondent. FHEO will not issue a subpoena where the subpoena is unlikely to directly result in the identification of a respondent. As such, FHEO will not issue a subpoena against an interactive computer service provider for the purpose of identifying a potential respondent, where that service does not solicit the names and addresses of its users.

What if FHEO is unable to identify a respondent based on information contained in the inquiry within 20 days?

If FHEO has taken reasonable steps, as described herein, to identify a respondent and these steps have not resulted or are not likely to result in either identifying a respondent or identifying a third party that likely holds the name and address of a respondent, the inquiry should be closed for lack of jurisdiction. FHEO should advise the aggrieved person that the complaint cannot be filed unless a respondent can be identified.

Can an inquiry be converted to a complaint if the identity of the respondent is unknown?

No, all jurisdictional complaints must include an identifiable respondent, which may only consist of an email address or property address. If FHEO has identified a respondent, but additional information is necessary to narrow the identification or precisely name that respondent or determine the location of the Respondent for notification, the inquiry should be filed as a complaint. FHEO should continue with the collection of information necessary to notify the respondent and proceed with the investigation. The complaint should be amended, if necessary, once the respondent can be precisely and properly named. If FHEO has accepted a complaint based on information it believed would be sufficient to precisely name and notify a respondent, but FHEO will be unable to perfect a jurisdictional complaint within 100 days, the complaint should be closed.