
Legislative Program Review and Investigations Committee
Connecticut General Assembly

Commission on Human Rights and
Opportunities: Discrimination
Complaint Processing

Staff Findings and
Recommendations

December 7, 2016

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

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Commission on Human Rights and Opportunities: Discrimination Complaint Processing

Background

The study focus was to evaluate the discrimination complaint processing function within the Commission on Human Rights and Opportunities (CHRO) as it exists for employment, housing, public accommodation, and credit matters. Of particular interest was the impact of P.A. 11-237 on CHRO's performance.

The commission is a nine-member volunteer panel appointed to enforce various anti-discrimination laws, provide education and outreach to "establish equal opportunity and justice," support and oversee the development and implementation of state agency affirmative action plans, and monitor state contracting for compliance with small contractor set-aside provisions.

Discriminatory practice complaint processing is the commission's most visible function. Investigative staff is mainly located in four regional offices in Bridgeport, Hartford, Norwich, and Waterbury, while all housing-related complaints are processed by a separate fair housing unit located in the central office.

The commission processes complaints on behalf of the federal Equal Employment Opportunity Commission and Department of Housing and Urban Development. This work generates state General Fund revenue through payments from those two agencies.

State law requires certain actions to be taken during the complaint process, and within certain timeframes. The law also requires the commission to report annually to the legislature and the governor on how expeditiously it has been processing discrimination complaints.

Public Acts 11-237 and 15-249 fundamentally changed CHRO's case processing function, including shortened timeframes in certain areas.

Main Staff Findings

Additional data collection and reporting are needed. CHRO has a relatively robust complaint tracking system, but information necessary to fully track performance is lacking in some instances. The agency also has not fulfilled all of its statutory reporting requirements in recent years.

Budget and staffing resources have generally decreased. The commission's FY 16 expenditures are roughly the same as those of FY 10 (adjusted for inflation). Investigative staff within the regions responsible for processing discrimination complaints was at a six-year low as of July 1, 2016, due to vacancies

Written policies and procedures are outdated. The current policies and procedures manual for processing discrimination complaints was developed in the mid-1990s. Although recent efforts have been made by the commission to update the manual, additional work is needed.

Regional disparities exist in process outcomes and workload. Not all regions use the same practices for various parts of the discrimination complaint process. There are differences across regions in the number of inquiries received, complaints filed, types of disposition reached, and numbers of investigative staff available to process complaints.

The workload of all units processing cases is not fully accounted for in overall performance. The commission's Legal Division acts as another unit conducting various case processing functions, yet the division is not required to report on its entire performance, particularly as it relates to "aged" cases.

Key PRI Staff Recommendations

Address data limitations. Incorporate relevant information into the central complaint tracking system to allow better recognition of case processing outcomes and workload disparities across the units processing cases.

Begin reporting on the performance of all units for greater accountability. Provide the commission, legislature, and governor with complete information about how all units involved in case processing are performing.

Focus on meeting statutory case processing timeframes. Track and report on compliance with all statutory timeframes. Identify the underlying reasons and implement corrective changes when timeframes are not met.

Develop uniform case processing procedures. Ensure consistent implementation and application of discrimination case processing practices across all units with case processing responsibilities.

Make technical changes to the housing statutes. Revise the General Statutes to separate the housing discrimination complaint process from the non-housing process.

Acronyms

APO	Administrative Purposes Only
BEST	Bureau of Enterprise Systems and Technology (state)
CAR	Case Assessment Review
CHRO	Commission on Human Rights and Opportunities (state)
CTS	Case Tracking System
EEOC	Equal Employment Opportunity Commission (federal)
ELI	Early Legal Intervention
FEPA	Fair Employment Practice Agency
FY	Fiscal Year (state)
HRO	Human Rights Officer
HUD	Department of Housing and Urban Development (federal)
MAR	Merit Assessment Review
NRC	No Reasonable Cause
OPH	Office of Public Hearings (within CHRO)
PAC	Pre-Answer Conciliation
PRI	Program Review and Investigations (Committee)
RC	Reasonable Cause
ROJ	Release of Jurisdiction
UAPA	Uniform Administrative Procedures Act

Staff Recommendations

Commission on Human Rights and Opportunities: Discrimination Complaint Processing

Chapter I: Operations

1. The regional manager vacancy within CHRO's Southwest regional office should be filled as soon as feasible. If this is not possible, there should be a consolidation of regional offices under the existing complement of regional managers.
2. CHRO should ensure its revised policies and procedures manual is fully completed and implemented by July 1, 2017. As part of its efforts to implement the new manual, the agency should provide the necessary training to all applicable case processing staff, including regional managers and relevant central office staff, and that such training (and retraining) be provided on an on-going basis. Executive agency staff should develop a process to frequently monitor implementation of the policies and procedures to ensure their consistent application by case processing staff.

Chapter II: Process

3. CHRO should clearly communicate to both respondents and complainants that compliance with the Schedule A: Request for Information is purely voluntary on the part of the respondent.
4. C.G.S. Sec. 46a-83 should be clarified to provide clear timeframes for cases that are not subject to Mandatory Mediation due to use of the Pre-Answer Conciliation process. Statutory timeframes should address when Early Legal Intervention can be requested and when the case should be assigned for Investigation.
5. CHRO should develop written policies for the Early Legal Intervention process to inform the parties, regional staff, and Legal Division attorneys when the process is appropriate and what criteria will be applied in reaching a decision.
6. CHRO should develop and implement a process to track cases and specifically document when one or both three-month extensions of the Investigation timeframe are granted and for what reason(s).

Chapter III: Assessment

7. CHRO should establish a monthly reporting system to track: 1) the number of intake meetings scheduled; and 2) the outcome of the intake meeting – potential

complainant a no show, a complaint drafted and filed, or potential claimant met with HRO and elected not to proceed with the complaint process.

8. **CHRO should determine a uniform process to be used by each region to record and report the number of monthly inquiries and whether each inquiry results in: an intake interview being scheduled; the potential complainant indicating that he or she will proceed independently; a referral being made to another agency or service provider; or CHRO staff being unable to contact the caller.**
9. **CHRO should make efforts to ensure that regions are using the same criteria to identify inquiries and their outcomes and review inquiry data again at the end of FYs 17 and 18. If the data continue to reflect disparate numbers of inquiries and intake meetings per region and per HRO, and different ratios of inquiries to complaints filed, CHRO should consider whether handling inquiries and intakes is an appropriate regional function.**
10. **CHRO should continue to track whether regions are applying the criteria for issuing ROJs consistently. If this is not the case, efforts should be made to ensure uniformity in the use of the ROJ issuance process.**
11. **CHRO should make efforts to ensure regions are using the same closure codes in CTS and review data regarding closures by type at the end of FY 17 and FY 18. If the data continue to resemble the results for FY 16, CHRO should work to identify what regional differences account for the differential use of various types of closures and consider whether, based on available resources, the trends in regional use of closure types are acceptable, or if more training should be provided to staff in different regions to ensure greater uniformity.**
12. **CHRO should frequently examine the caseloads of its regional staff and take the necessary steps to make sure any drastic discrepancies in such caseloads are addressed, including transferring cases across regions for processing or moving to more centralized functions where feasible (such as for inquiries and/or intakes) to ensure an equitable distribution of caseloads among staff.**
13. **CHRO should consider having Legal Division staff conduct all CARs statewide. If the four regions were similarly relieved of CAR responsibilities, all cases pending in the regions would either be at the Mandatory Mediation or Investigation phase. This would make a comparison of both the intake demands per HRO and caseloads per HRO a meaningful way to assess whether the distribution of pending cases among regions was equitable.**
14. **The agency should report its performance related to ELI to the full commission and to the legislature and governor as part of its compliance with C.G.S. Sec. 46a-82e(b).**
15. **The Legal Division should begin tracking and analyzing whether the complainant, respondent, or CHRO is requesting to use ELI, in order to obtain data about**

whether the process is viewed more or less favorably by complainants and respondents.

Chapter IV: Accountability

16. The commission work with DAS-BEST to develop CTS functionality to generate reports for all cases filed containing the filing date, the service date, the answer date, and MAR (or CAR) date, and the outcome of the MAR (or CAR). This data, including but not limited to the percentage of cases in which CAR occurs within 60 days, should be reported to the Commission quarterly, along with data about the outcomes of such CARs.
17. CHRO's Legal Division should issue its decisions for the Early Legal Intervention cases within the 90-day timeframe required by law. The division should identify the underlying reasons why any case takes longer than 90 days to process and implement the necessary procedural changes to correct any deficiencies, or seek a statutory change to extend the timeframe. The division should also record data to analyze processing timeliness based on the actual dates of ELI requests, not the dates the division sends out its initial ELI letter to the parties. Frequent reports should be made to the human rights commissioners on the Legal Division's compliance with ELI timeframes.
18. CHRO should work with DAS-BEST to develop a report that can form the basis of an annual report to the judiciary committee and then regarding compliance with the 190 day timeframe and/or the permissible extensions of this timeframe for investigating complaints and issuing findings. Such a report should be filed annually and include a statement of the reasons why cases are not closed in compliance with the statutory timeframe.
19. CHRO should develop an internal system for regional and Legal Division staff processing cases before finding to request one or two extensions of the 190 day investigation period and the reasons for any such requests. The system should include a mechanism for the executive director or her designee to specifically grant or deny requested extensions.
20. CHRO should institute uniform procedures for the regular identification of cases that have been pending for 21 months and the issuance of notice to the parties with the date the notice is sent being recorded in CTS. The commission should also routinely report the aggregate number of cases pending beyond 21 months to the commission, the legislature, and the governor.
21. CHRO should include all cases pending at the Legal Division in all reports to the commission. This could be done in at least two ways. First, these cases could be accounted for by having the Legal Division file a monthly report on all pre-finding cases on its caseload that mirrors the regional monthly reports and accounts for the region in which pending complaints were filed. Alternatively, the regional reports

could be compiled in a way that accounts for all cases pending and indicates whether those cases are pending at the region or in the Legal Division.

22. The Commission on Human Rights and Opportunities should fully examine the reason(s) why reconsideration requests are being accepted beyond the required timeframe. Following this review, the agency should decide if changes are needed to its internal practices for accepting reconsideration requests. The agency should also begin using the date its notice is sent informing complainants of the agency's no reasonable cause finding or case dismissal as the date for when the statutory timeframe for the reconsideration process must begin.
23. CHRO should examine the reason(s) why reconsideration requests are being processed beyond their required timeframe for a decision. Following this review, the agency should decide if changes are needed to its internal practices to meet the 90-day decision deadline. The agency should also report its performance related to requests for reconsideration to the full commission, and to the legislature and governor.
24. CHRO should focus its public reporting on the number of cases settled through mediation and the overall ratio of cases settled to total cases closed during a fiscal year, and not the total settlement amounts for settled cases. CHRO staff should also be made aware the agency's primary goal for settled cases is not on the overall monetary value of settlements but that cases are ultimately settled by both parties through mutually accepted agreements.
25. CHRO staff should work with DAS-BEST to create new CTS fields to indicate whether each party to a case is represented by counsel, and one or more new CTS reports that compare outcomes for all cases filed and/or closed annually by both complainant and respondent representation status. CHRO should analyze these data, determine whether there are any significant disparities in outcomes, and report findings to the commissioners annually.
26. All three statutorily required human rights referee positions in the Office of Public Hearings should be filled. The full Commission on Human Rights and Opportunities should also regularly monitor the overall performance of the Office of Public Hearings.

Chapter V: Housing

27. CHRO should advise both parties that while it may make Mandatory Mediation more productive and streamline the Investigation process for respondents to comply with the Schedule A Request for Information, no enforcement action will be taken for failure to comply with a Schedule A Request until a complaint is assigned for Investigation.
 28. CHRO should continue to monitor the number of housing discrimination complaints filed yearly and attempt to identify internal and external factors that
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might correlate with increases and decreases in order to make appropriate adjustments to its processes if indicated.

29. CHRO should continue to monitor the number of monthly inquiries received by the Housing Discrimination Unit along with the number of complaints filed and attempt to identify internal and external factors that might correlate with increases and decreases in order to make appropriate adjustments to its processes if indicated.
30. Technical revisions should be made to the General Statutes and state regulations applicable to CHRO complaint processing in order to separate the housing complaint process from the non-housing process, thus making it clear how the timeframes differ and what steps do and do not apply. At the same time, all protected characteristics should be consolidated in a single statute.
31. CHRO amend its policies and procedures in housing discrimination matters to eliminate the requirement that a respondent submit his or her answer under oath.
32. CHRO should work with DAS-BEST to generate one or more CTS reports that track, for all complaints filed during each fiscal year or quarter, the dates of: complaint filing; service on the respondent; receipt of answer; Mandatory Mediation; assignment for Investigation; and issuance of finding of reasonable cause or no reasonable cause, for purposes of determining whether adjustments to current timeframes could improve compliance with the statutory 100-day Investigation timeframe.
33. CHRO report on the performance of the Housing Discrimination Unit separately from the four regions, include analysis of year-over-year trends in inquiries, complaints filed, pending workload, and closures.
34. CHRO include reporting on the Housing Discrimination Unit's compliance with the statutory 100-day Investigation timeframe in annual reports to the judiciary committee and governor pursuant to C.G.S. Sec. 46a-82e(b).
35. CHRO education and outreach activities in relation to the elimination of housing discrimination include partnering with property owners whenever possible in order to deliver training in multiple formats (i.e., written materials, in-person presentations, recorded and/or live on-line or other digital media).

Commission on Human Rights and Opportunities: Discrimination Complaint Processing

Connecticut’s Commission on Human Rights and Opportunities (CHRO) is a nine-member volunteer panel appointed by the governor and the legislature to enforce various anti-discrimination laws, provide education and outreach to “establish equal opportunity and justice,” support and oversee the development and implementation of state agency affirmative action plans, and monitor state contracting for compliance with small contractor set-aside provisions. The commission has a \$6.5 million budget and a staff of 76 employees to support its mission. The staff is located in the agency’s central office and four regional offices in Bridgeport, Hartford, Norwich, and Waterbury.

Discriminatory practice complaint processing is the commission’s most visible function. CHRO receives and investigates complaints involving discrimination in employment, housing, credit practices, and public accommodations. The commission received a total of 2,403 non-housing complaints in FY 16, most of which were employment discrimination. The number of cases closed by CHRO that same year was 2,568. Housing discrimination complaints are processed by a separate statewide unit within CHRO, and received 224 complaints and closed 224 in FY 16. The commission also generates General Fund revenues through payments for cases processed on behalf of the federal Equal Employment Opportunity Commission (EEOC) and Department of Housing and Urban Development (HUD). Since FY 08, these payments have averaged \$1.2 million annually.

Current state law requires certain factors to be taken during the discrimination complaint process within specific timeframes, with some differences for housing complaints. The commission is also required by law to report annually to the legislature and the governor on how expeditiously it has been processing discrimination complaints.

Two recent legislative acts fundamentally changed CHRO’s case processing function. Together, Public Act 11-237 and Public Act 15-249 created new case processing procedures for the commission to use, shortened time frames within which certain steps of the process must be completed, and placed an emphasis on parties resolving their complaints prior to a full investigation by the commission.

Study Scope

In April 2016, the program review committee voted to examine the Commission on Human Rights and Opportunities’ process for handling discrimination practice complaints as it relates to employment, housing, public accommodation, and credit. The study did not examine CHRO’s responsibilities and processes relating to outreach and advocacy, state agency affirmative action plans, or contract compliance, nor did it evaluate or review the merits of any discrimination complaint before the commission or previously decided by the commission.

Key areas of analysis included: 1) describing how CHRO's discrimination complaint function is organized and how the commission processes discrimination complaints pertaining to employment, public accommodation, and credit; 2) determining the commission's workload and identifying any trends in the number of complaints received and resolved; and 3) analyzing the impact of P.A. 11-237 and P.A. 15-249 on CHRO's discrimination complaint function, focusing on the commission's overall timeliness in processing complaints.

PRI staff's proposed recommendations in this report focus on operational improvements in an effort to address deficiencies identified. The recommendations focus on:

- Improving data collection and analysis;
- Implementing up-to-date and consistent internal policies and procedures for processing complaints; and
- Developing, managing, and reporting on timely and relevant data for greater accountability.

Research Methods

This study relied on many sources. To learn about CHRO's operations and processes, committee staff completed the following:

1. Literature review, including Connecticut and federal statutes and regulations, to learn about legal requirements and legislative history
2. Interviews/discussions with state agency personnel:
 - Commission on Human Rights and Opportunities: Executive Director, Deputy Director, Principal Attorney, central office Legal Division staff, and managers in each the commission's four regions
 - Connecticut Office of Public Hearings: Chief Human Rights Referee
 - Department of Labor budget staff (CHRO is under the labor department for administrative purposes only)
 - Department of Administrative Services - Bureau of Enterprise Systems and Technology staff (the bureau provides data management and support services to CHRO)
3. Interviews/discussions with federal government representatives:
 - Equal Employment and Opportunities Commission: Director, New York District Office (jurisdiction over EEOC matters in all New England states); Investigator, New York District Office
4. Interviews/discussions with other key stakeholders:
 - Connecticut Business and Industry Association
 - Connecticut Employment Lawyers Association
 - Connecticut Fair Housing Center

- Connecticut Legal Aid Society
 - Tenant Tracks Landlord Association
 - Connecticut Apartment Association
 - Wolcott Land Owners Protective Association
 - Connecticut Legal Rights Project, Inc.
 - Connecticut Associations Institute
5. Collected and analyzed information from:
 - Commission on Human Rights and Opportunities: automated Case Tracking System (CTS) data base, and data bases maintained by the central office Legal Division and the Office of Public Hearings
 - Department of Labor
 - CORE-CT
 6. Observed:
 - Commission on Human Rights and Opportunities meetings
 - CHRO executive staff meetings
 7. Developed, distributed, and analyzed results from a survey of all Human Rights Officers (HROs) and a survey of all central office Legal Division attorneys
 8. Used information from testimony provided at PRI's September public hearing on this topic

Report Organization

This report has five chapters and three appendices, with staff findings and proposed recommendations interspersed throughout the chapters. Chapter I examines the commission's operations, including: organizational structure; expenditures and revenues; staffing; internal policies and procedures; and management information system. Chapter II describes the law and process used by CHRO for processing non-housing discrimination complaints. Chapter III examines CHRO's non-housing complaint processing workload. Chapter IV assesses CHRO's performance with processing non-housing cases according to statutory time frames. Chapter V describes and analyzes the process used by CHRO for housing-related complaints. Appendix A is a copy of the program review committee's study scope for this study. Appendix B provides additional background information about the commission, and Appendix C is a list of current Commission on Human Rights and Opportunities members.

CHRO Overview and Operations: Discrimination Complaints

The Commission of Human Rights and Opportunities is a nine-member volunteer panel with a staff of 76 and a budget of \$6.5 million. The staff fulfills the commission's statutory responsibilities related to the enforcement of laws prohibiting discriminatory practices and advancing equal opportunity through certain affirmative action and contract compliance requirements. The focus of this study is the performance of CHRO's discriminatory practice complaint process as it relates to employment, credit, public accommodation, and housing (Chapter V contains a description of the process and analysis regarding housing-related discrimination complaints).

With an emphasis on discrimination complaint processing, this chapter describes CHRO's organizational structure, expenditures and revenues, and staffing, along with the condition of two key operational factors: policies and procedures and the management information system.

Key Findings

- *In constant 2016 dollars, CHRO's FY 16 operating expenditures were 24 percent lower than in FY 08, when the agency experienced its highest expenditure level since FY 05; the FY 16 expenditure total was roughly the same as the FY 10 level.*
- *Over 98 percent of the agency's expenditures for FYs 05-16 were funded from the state's General Fund, and the remaining amount from federal funds.*
- *CHRO's personnel expenditures – as a percent of the agency's total expenses – were 92 percent for FYs 05-16.*
- *Since FY 08, CHRO averaged almost \$1.2 million in annual reimbursements for processing discrimination cases on behalf of two federal agencies. This amount equates to just over 18 percent of the agency's average yearly state appropriation.*
- *Since FY 12, the number of investigators processing employment, public accommodation, and credit discrimination complaints fell from 27 to 25. The number of human rights attorneys in the agency – who assist with discrimination case processing responsibilities – increased during this period, from 8 to 14, and the number of staff processing housing discrimination complaints rose from 5 to 6.*
- *The agency has operated without updated written policies and procedures for several years.*

Organization

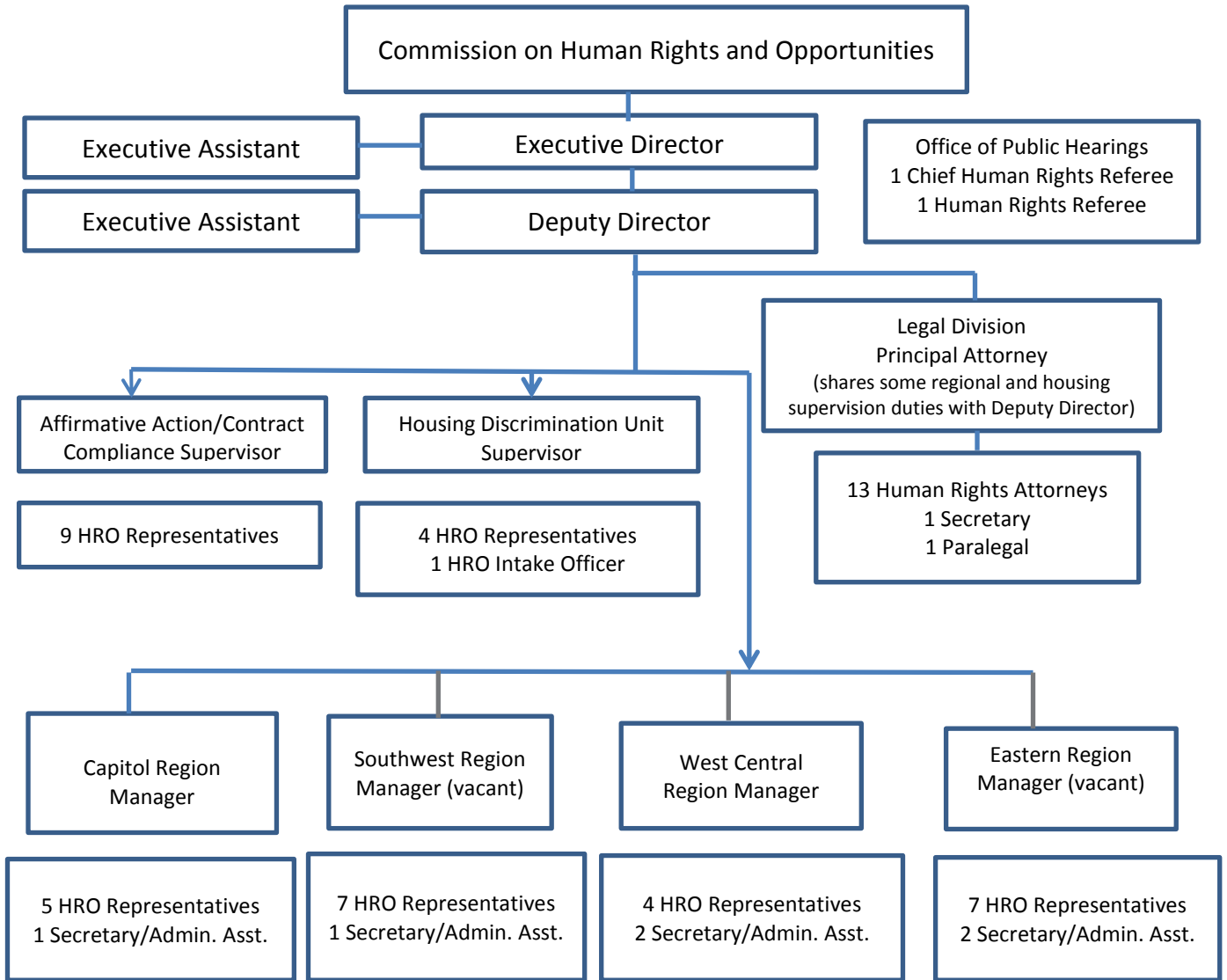
Figure I-1 shows how CHRO staff is organized, along with its staffing levels as of October 1, 2016. As the figures illustrates, CHRO has a central office in Hartford and four regional offices. The executive director, deputy director, and principal attorney work from the central office. Also located in the central office are the Legal Division, the Housing Discrimination Unit, and the Affirmative Action/Contract Compliance Unit.

CHRO is organized into the following administrative and program-based functions for handling employment and housing discrimination complaints:

- *Office of Executive Director:* Executive director, deputy director, and administrative staff.
- *Regional Offices:* Four offices throughout the state handle discrimination complaints and serve as the main contact points for complainants, respondents, and the general public. The offices support the agency by receiving, processing, assessing, and investigating non-housing discrimination complaints received from the public. Human Rights Officers (HROs) staff the offices and are responsible for these case processing duties.
- *Legal Division:* A centralized unit responsible for assisting regional offices with processing cases, representing the agency in cases involving legal matters, and providing public education and outreach about Connecticut's anti-discrimination laws.
- *Special Enforcement Unit:* Known as the Housing Discrimination Unit, it is dedicated to handling discrimination issues involving housing matters.
- *Office of Public Hearings:* Hears cases in which the agency has found reasonable cause to believe discrimination has occurred as alleged in a complaint; also processes whistleblower cases filed with the state.

CHRO maintained its own business services unit prior to being designated APO to the Department of Administrative Services in FY 08. CHRO also maintained a Field Operations Unit based in the central office responsible for coordinating and overseeing operations at the regional level. The agency almost fully reduced that unit's budget in FY 11 and eliminated the unit in FY 13.

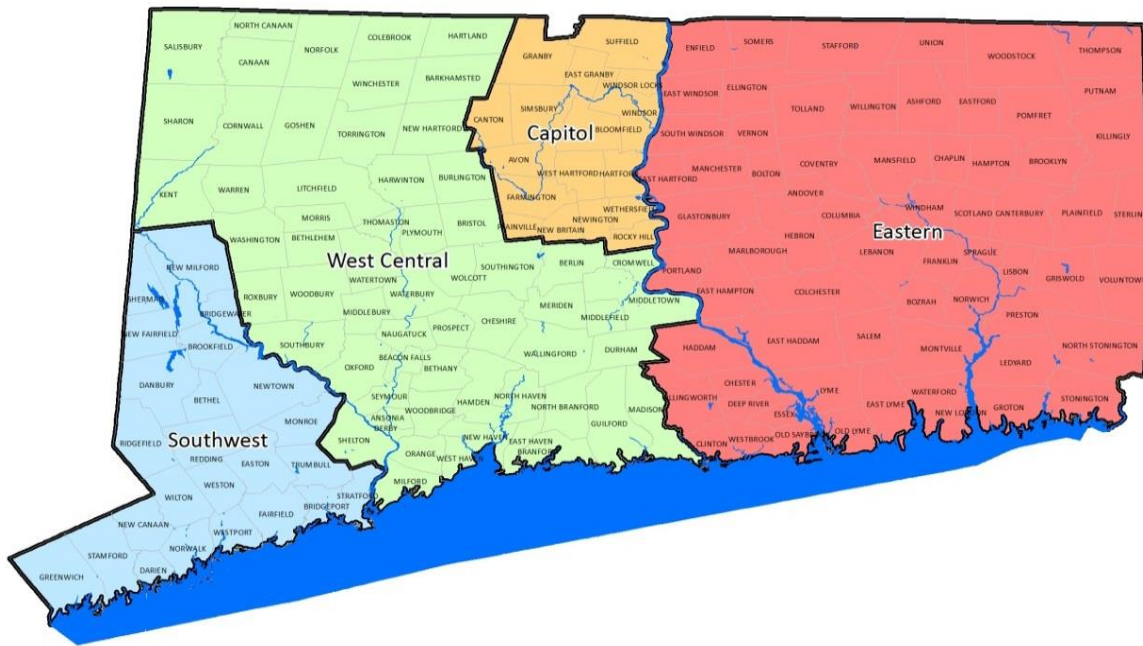
Figure I-1: CHRO Organization (as October 1, 2016).



Source: PRI staff

Non-housing complaint processing is largely a function of CHRO’s four regional offices located in Bridgeport, Hartford, Norwich, and Waterbury. These four regional offices receive all non-housing discrimination complaints, based on where in the state the alleged act or acts of discrimination occurred. Figure I-2 shows the intake jurisdiction of each regional office. These regional boundaries were initially established based on the estimated number of employers and employees within each geographical area and have not been redrawn in at least 35 years.

Figure I-2: CHRO Regions.

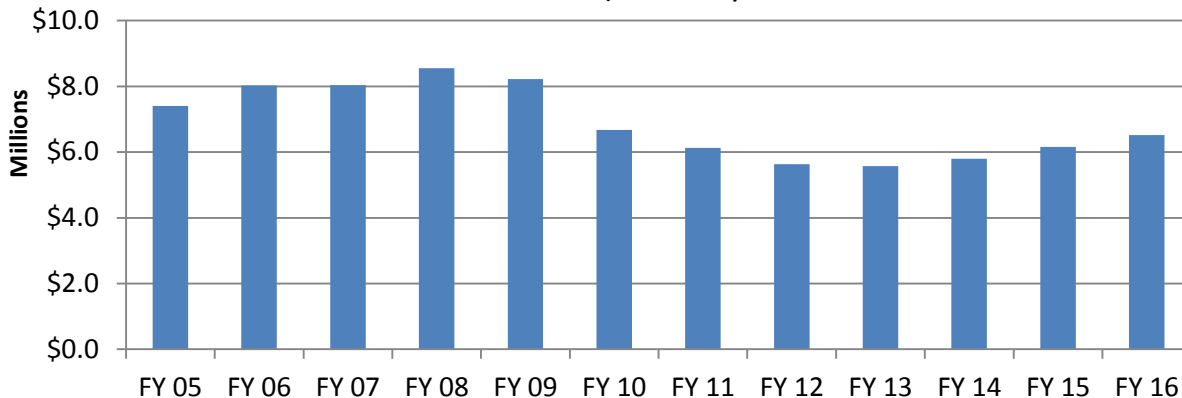


Budget Expenditures

The Commission on Human Rights and Opportunities receives funding from several sources, with the largest percentage coming from the state’s General Fund. To help support its mission, the agency also receives grant funding from the federal Equal Employment Opportunities Commission (EEOC) and the Department of Housing and Urban Development (HUD), a small dedicated state appropriation to commemorate the Martin Luther King, Jr. holiday, and a relatively small amount of private donations. Similar to state agencies as a whole, the commission’s main cost drivers for ongoing operations are personal services (e.g., staffing) and “other expenses” (e.g., office equipment, space leases, and utilities).

Figure I-3 shows CHRO’s expenditure totals from all sources for FYs 05-16 (adjusted for inflation using 2016 dollars). The agency’s funding ranged from \$5.6 million in FY 13, to \$8.5 million in FY 08. During the 12-year period analyzed, CHRO’s expenditures decreased 12 percent – from \$7.4 million to \$6.5 million. After four years of growth totaling 15 percent beginning in FY 05, CHRO experienced five straight years of decline. During that time, CHRO’s expenditures decreased 35 percent, from \$8.6 million to \$5.6 million. Since the agency’s budgetary low point in FY 13, its expenditures steadily increased through FY 16 – from \$5.6 million to \$6.5 million, or 17 percent. On average, the agency’s annual expenditures for FYs 05-16 were \$6.8 million. In constant 2016 dollars, CHRO’s FY 16 total expenditures were roughly the same as those in FY 10.

Figure I-3. CHRO Total Expenditures: FYs 05-16
(2016 dollars)



Source: PRI staff analysis of DOL data.

A closer look at CHRO’s budget shows its operations are almost entirely supported by state appropriations, while the agency receives a small amount of federal funding along with other grants. As discussed more below, through formal agreements with the federal Equal Employment Opportunity Commission and the Department of Housing and Urban Development, CHRO processes employment and housing discrimination cases on behalf of those two agencies. In return, EEOC and HUD provide reimbursements to the state for CHRO’s efforts. The reimbursements go to the state’s General Fund.

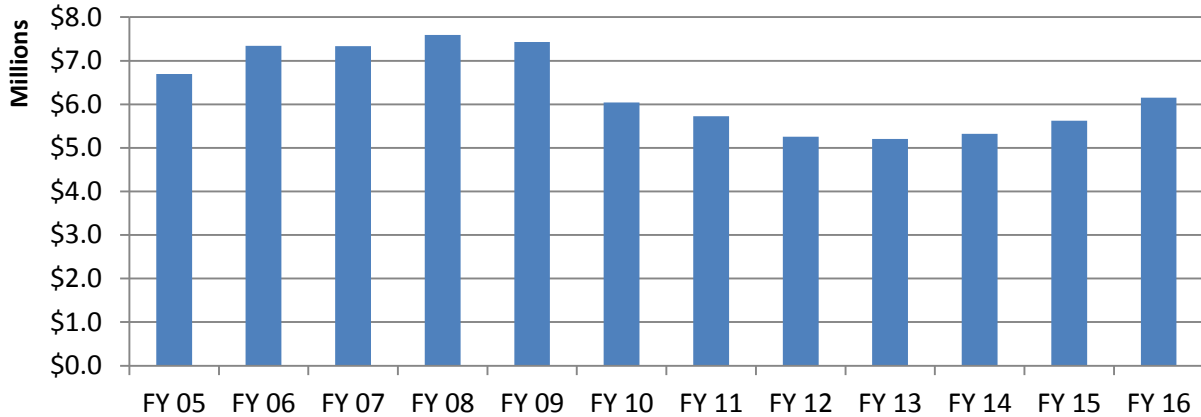
For the twelve-year period examined, CHRO spent a combined \$75.1 million in operating expenses. Of the total, state appropriations totaled \$74.1 million (98.6 percent), with the remaining \$1 million (1.4 percent) coming from federal and other restricted sources.

Personal services. Staffing-related costs – such as salaries and wages of full-time and part-time staff, overtime, and accumulated leave – make up the bulk of the agency’s expenditures. For FYs 05-16, 92 percent of the CHRO’s expenditures were for personal services.

Figure I-4 shows CHRO’s personal services expenditures for FYs 05-16 (adjusted for inflation). Overall, personnel expenses decreased eight percent for the twelve-year period – from \$6.7 million to just under \$6.2 million. The agency’s staffing budget reached a high of \$7.6 million in FY 08, followed by five years of decline, when expenditures reached a low of \$5.2 million in FY 13. Since then, personnel costs steadily increased to \$6.1 million (18 percent) in FY 16. Similar to the agency’s overall expenditures, CHRO’s FY 16 personal services expenditures were roughly at the same level as they were in FY 10.

Other expenses. Another key cost for CHRO is “other expenses” necessary for agency operations. This is a broad category of expenses, and for CHRO includes court reporting services, postage, office equipment lease/rental, rent, and utilities. Examining other expenses in addition to staffing costs provides a more complete understanding of CHRO’s operational costs.

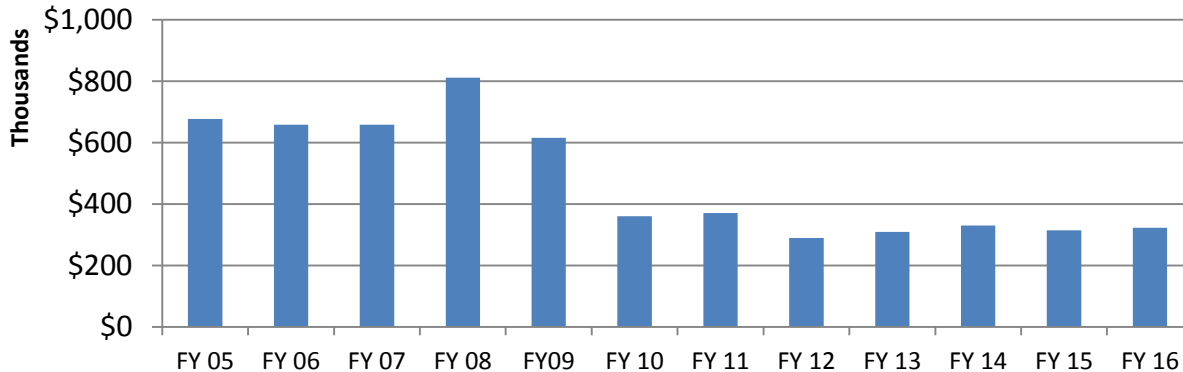
Figure I-4. CHRO Personal Services Expenditures: FYs 05-16
(2016 Dollars)



Source: PRI staff analysis of DOL data.

Figure I-5 shows CHRO’s other expenses (adjusted for inflation) for FYs 05-16 averaged \$477,000 per year, and ranged from \$290,000 (FY 12) to \$812,000 (FY 08). Other expenses sharply decreased by 56 percent between FYs 08-10, from \$812,000 to \$361,000. Since then, these expenses have averaged \$323,000 annually. Overall, since FY 05, CHRO’s other expenses decreased by half, from \$678,000 to \$323,000.

Figure I-5. CHRO Other Expenses: FYs 05-16
(2016 Dollars)



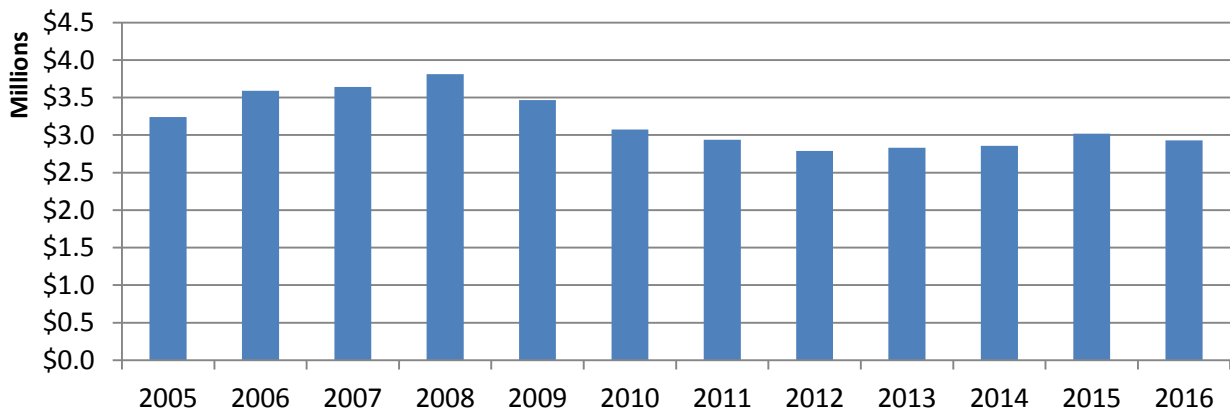
Source: PRI staff analysis of DOL data.

Regional and central office expenditures. Expenditures based on the agency’s individual operating units were analyzed as a way to more closely identify expenditure activity and trends for functions associated with the scope of this study. As such, this excludes the agency’s Affirmative Action/Contract Compliance Unit, which totaled ten percent of CHRO’s FY 16 budget. Moreover, it is difficult to pinpoint the exact costs related to complaint processing for other central office units with responsibility for the entire agency, such as the executive director’s office and the agency’s Legal Division.

CHRO’s internal organization has changed over time. Although the agency has maintained the same four regional offices for the period examined (FYs 05-16), several central office functions have been reorganized. To account for the agency’s administrative changes, expenditure levels for central office functions and the four agency regions were examined separately. In addition, given the increased role CHRO’s Legal Division has had in processing discrimination complaints, particularly since major legislative changes in 2011 and 2015, additional analysis of its expenditures is provided.

Regions. CHRO’s four regional offices provide the bulk of the agency’s discrimination complaint processing services, from intake through investigation and cause finding. Figure I-6 shows the annual expenditures (adjusted for inflation) for CHRO’s regional offices combined. Similar to the agency-wide expenditures, regional office expenditures reached their peak in FY 08, followed by several years of decline. Regions’ budgets ranged from \$2.8 million in FY 12, to \$3.8 million in FY 08. Since FY 05, regional expenditures decreased to \$2.9 million, or 9.6 percent.

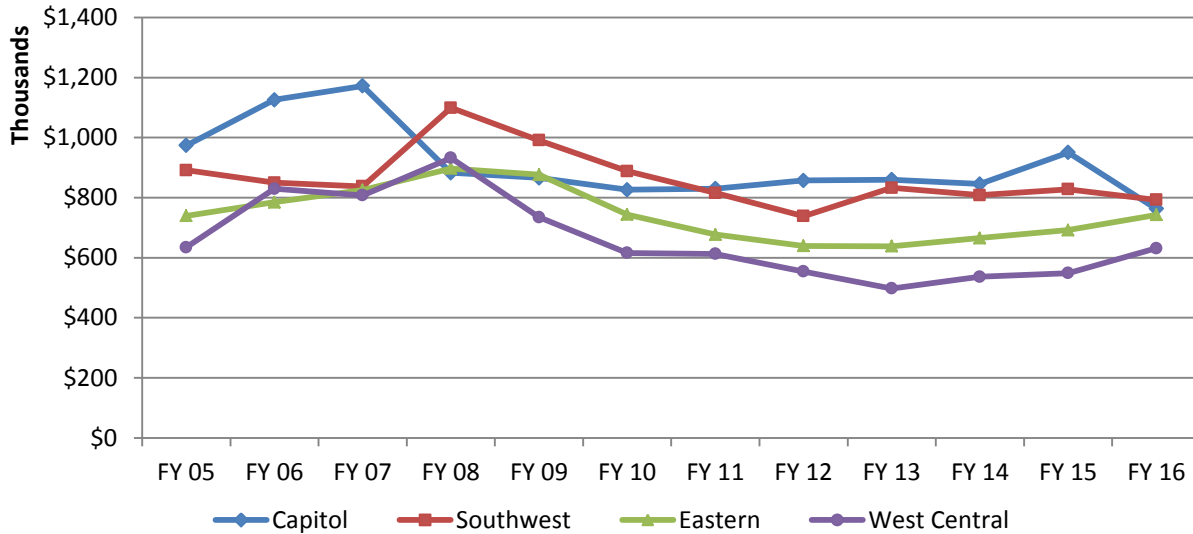
Figure I-6. CHRO Regional Offices - Combined Expenditures: FYs 05-16
(2016 Dollars)



Source: PRI staff analysis of DOL data.

Figure I-7 provides a closer look at expenditures by individual region for FYs 05-16. The Capitol and Southwest regions generally had the largest expenditures of the four regions – except for FYs 08 and 09, when Capitol’s expenditure levels dipped below other regions. The West Central Region typically had the smallest expenditure levels of the four regions, and consistently so since FY 08. Comparatively, while the regions experienced contrasts in their expenditure levels at various points over the 12-year period, total expenditures for the Capitol, Southwest, and Eastern regions were very similar in FY 16, at roughly \$750,000. West Central’s expenditure total that year was almost 16 percent lower at \$632,000, namely because its staffing level was the lowest of the four regions.

Figure I-7. CHRO Regional Expenditures: FYs 05-16
(2016 Dollars)



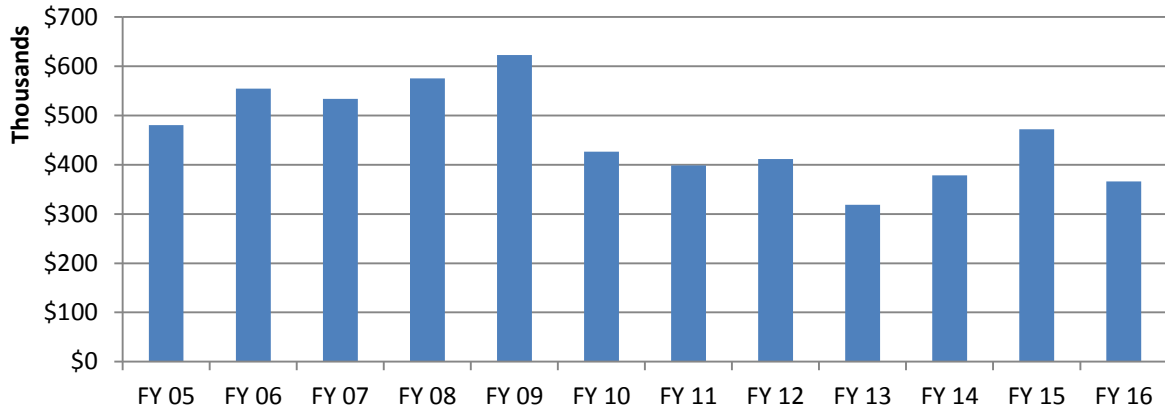
Source: PRI staff analysis of DOL data.

When comparing expenditure totals, three of the four regions experienced some level of decrease since FY 05. The Capitol Region’s budget dropped almost 22 percent, from \$974,400 in FY 05 to \$743,000 in FY 16 – the largest decline of any region. Expenditures for the Southwest Region decreased 11 percent, from \$892,000 to \$793,000, while the West Central Region’s expenditures decreased only slightly, from \$635,000 in FY 05 to \$632,000 in FY 16. The Eastern Region was the only one of the four regions to experience an overall expenditure increase – albeit very minor – from \$740,000 to \$743,000, or 0.4 percent. Overall, FY 16 expenditures for two of the four CHRO regions were below their FY 05 levels, while expenditures for the other two regions remained almost unchanged from 12 years ago.

Central office. A detailed analysis of CHRO’s central office budget is not helpful for this study because organizational changes in central office functions have occurred over the years, as noted above. At the same time, the amount of time dedicated by central office staff to the various functions of the office is unclear. For example, how much time do executive and legal staff spends on matters pertaining to discrimination complaints as compared to affirmative action, contract compliance, legal issues, and other commission activities? Committee staff believes a closer look at two key central office functions – the Housing Discrimination Unit (i.e., Special Enforcement) and the Legal Division – is helpful in relation to this study’s focus on discrimination complaint processing.

Housing Discrimination Unit. Figure I-8 shows expenditures for CHRO’s Housing Discrimination Unit for FYs 05-16. Overall, the unit’s expenditures decreased 24 percent, from \$480,200 to \$366,300, adjusted for inflation. Similar to the agency as a whole, the unit’s lowest annual expenditure total (\$318,400) occurred in FY 13, which was 41 percent lower than its high of \$622,800 in FY 09. Since FY 13, the unit experienced a 48 percent budget increase in FYs 14 and 15, to \$472,200, only to be followed by a 22 percent drop to \$366,300 in FY 16, due in part to fluctuations in federal grant funding.

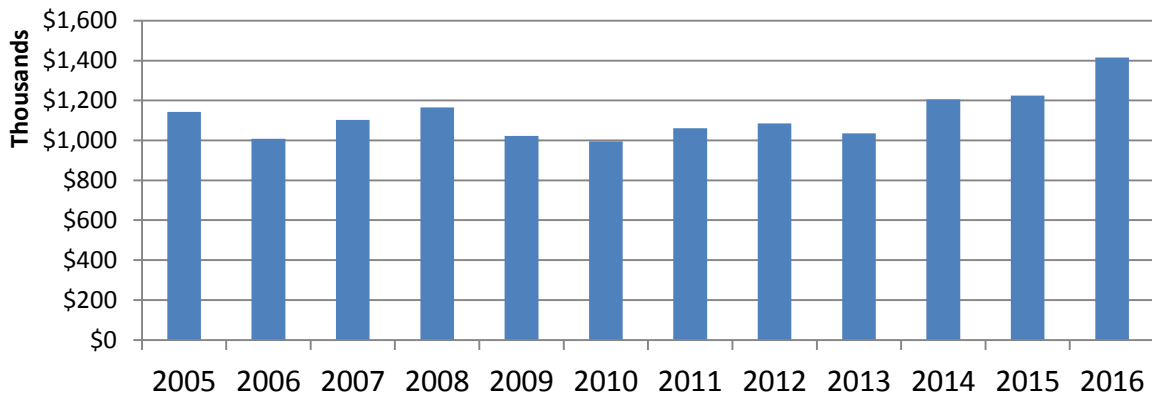
Figure I-8. CHRO Housing Discrimination Unit Expenditures: FYs 05-16
(2016 Dollars)



Source: PRI staff analysis of DOL data.

Legal Division. Figure I-9 shows the Legal Division’s expenditures for FYs 05-16 (adjusted for inflation). Overall, expenditures fluctuated during the 12 years, ranging from \$995,000 in FY 10 to \$1.4 million in FY 16. Since FY 05, the unit’s expenditures increased almost 24 percent. In comparison, CHRO’s total expenditures decreased 12 percent, and expenditures across the four regions declined almost 10 percent. In the last four years, the Legal Division experienced a budget increase of almost 37 percent, to its highest expenditure total since FY 05. This is more than twice CHRO’s overall increase of 17 percent for the same four years, and ten times the increase in the four regions. Thus, since FY 05, CHRO’s Legal Division experienced relatively large budget growth, while the rest of the agency, including regional offices, saw negative or stagnant growth. According to CHRO, this is due in large part to the additional case processing responsibilities placed on the division as a result of the 2011 and 2015 public acts and increased responsibilities regarding municipal contract compliance laws.

Figure I-9. CHRO Legal Division Expenditures: FYs 05-16
(2016 Dollars)



Source: PRI staff analysis of DOL data.

Revenue

As referenced above, the discrimination complaint function within CHRO generates revenue for the state on a net basis. The federal Equal Employment Opportunity Commission and the federal Department of Housing and Urban Development reimburse CHRO for cases it processes on behalf of those federal agencies based on amounts pre-determined by the federal government. The federal reimbursements for case processing are deposited directly in the state's General Fund; the payments received equate to roughly 15 percent of CHRO's annual operating budget, although it is unclear how much CHRO staff time such cases require.

Equal Employment Opportunity Commission. The Equal Employment Opportunity Commission recognizes CHRO as a Fair Employment Practices Agency (FEPA). This is a designation given by EEOC to non-federal entities responsible for implementing laws prohibiting discrimination either consistent with or stricter than EEOC's anti-discrimination requirements. FEPAs are the certified review agencies for EEOC in that they have been deemed as substantially similar to EEOC, and have the authority to process EEOC cases.

Discrimination complaints may be filed with EEOC, a FEPA, or both, meaning complainants in Connecticut may file their charges with CHRO and/or EEOC. Any complaint CHRO receives is dual-filed with EEOC if the allegation(s) is covered under federal law enforced by EEOC. If a charge is originally filed at the federal level but is covered by state law, EEOC will send CHRO a copy of the complaint, but it is usually processed by EEOC. Each agency designate the other as its agent for the purpose of receiving and drafting complaints, including those that are not jurisdictional with the agency initially receiving the complaint.

Connecticut and EEOC enter into annual work-sharing agreements.¹ The agreement spells out the conditions for when either EEOC or CHRO has jurisdiction of a case, and the number of cases CHRO agrees to process on behalf of EEOC as a sub-contractor. Currently, CHRO receives \$700 for each EEOC case it closes.² CHRO also receives \$50 for every case in which it begins the intake process but then sends the case to EEOC for full processing, which CHRO said occurs infrequently.

Table I-1 shows the annual revenue CHRO generated through its EEOC work-sharing agreements for FYs 08-16. Since FY 08, CHRO's efforts processing discrimination complaints on behalf of EEOC have resulted in an annual average of \$1 million for the state's General Fund. When compared with yearly state appropriation amounts received by CHRO for the last nine years, the agency-generated revenue averaged almost 16 percent of its appropriations. As noted above, this revenue goes to the General Fund.

Department of Housing and Urban Development. Similar to CHRO's relationship with EEOC, the agency processes discrimination complaints on behalf of the federal housing agency – Department of Housing and Urban Development (HUD). For CHRO's efforts,

¹ https://www.eeoc.gov/employees/feпа_wsa_2012.cfm

² Cases must be closed through administrative means within five years. If substantial work is done for a case that is dismissed because of a lack of jurisdiction, CHRO will receive EEOC resolution payment for that case. Conversely, a case dismissed for lack of jurisdiction may not qualify for resolution payment.

Connecticut receives federal reimbursement from HUD. The revenue generated by CHRO goes to the state's General Fund, similar to the EEOC funding.

Table I-1. EEOC Case Processing Revenue: FYs 08-16

Fiscal Year	Total GF Deposit	State Appropriation	% of Annual State Approp.
2008	\$1,440,570	\$7,349,351	19.6
2009	\$1,142,350	\$7,305,232	15.6
2010	\$350,350	\$5,995,580	5.8
2011	\$924,899	\$5,611,343	16.5
2012	\$1,121,550	\$5,259,862	21.3
2013	-	\$5,339,440	0.0
2014	\$1,388,400	\$5,552,069	25.0
2015	\$1,043,250	\$5,928,530	17.6
2016	\$1,061,200	\$6,477,869	16.4
Annual Avg.	\$941,397	\$6,091,031	15.5

Note: CORE-CT information shows no General Fund receipts from EEOC for FY 13, indicating no requests were sent that year to draw down federal EEOC funding. PRI staff was told there was a transition within CHRO as to who was responsible for submitting invoices for EEOC payment, which could be a reason for the FY 13 anomaly, and that there have been no similar issues since then.

Source: PRI staff analysis of DOL data.

Connecticut receives various reimbursement amounts for each housing discrimination case it processes or at the time the case is closed or sent to public hearing or court.³ Previously, HUD reduced its payments on cases not investigated within 100 days. The department no longer follows this practice to avoid creating disincentives to thorough investigations that they may take more than 100 days to complete.

Table I-2 shows the revenue generated by the CHRO Housing Discrimination Unit from processing of dual-filed discrimination cases for FYs 08-16. The annual average amount received by the state was \$184,000. When compared with annual state appropriations for the nine-year period, the amount of federal revenue generated averaged three percent of CHRO's average General Fund appropriation.

Combined, federal reimbursements for CHRO's case processing services on behalf of EEOC and HUD averaged almost \$1.2 million annually since FY 08. This amount equates to just over 18 percent of the agency's average yearly state appropriation.

³ The current HUD fair housing complaint processing reimbursement rates are: *Effective Conciliation* (\$3,100); *Cause or No Cause Finding* (\$2,800); *Post Cause Enforcement Action – Administrative Hearing* (\$5,000), *Civil Action* (\$8,000); *Administrative Closure* (\$1,400); and *Withdrawal with Resolution* (\$1,400). Payments for cases filed either in court or with the Office of Public Hearings are paid when the case is filed and not when it is resolved.

Table I-2. HUD Case Processing Revenue: FYs 08-16

Fiscal Year	Total GF Deposit	State Appropriation	% of Annual State Approp.
2008	\$403,784	\$7,349,351	5.5
2009	-	\$7,305,232	0.0
2010	\$213,285	\$5,995,580	3.6
2011	-	\$5,611,343	0.0
2012	\$209,086	\$5,259,862	4.0
2013	\$161,154	\$5,339,440	3.0
2014	\$162,600	\$5,552,069	2.9
2015	\$221,809	\$5,928,530	3.7
2016	\$282,300	\$6,477,869	4.4
Annual Avg.	\$183,780	\$6,091,031	3.0

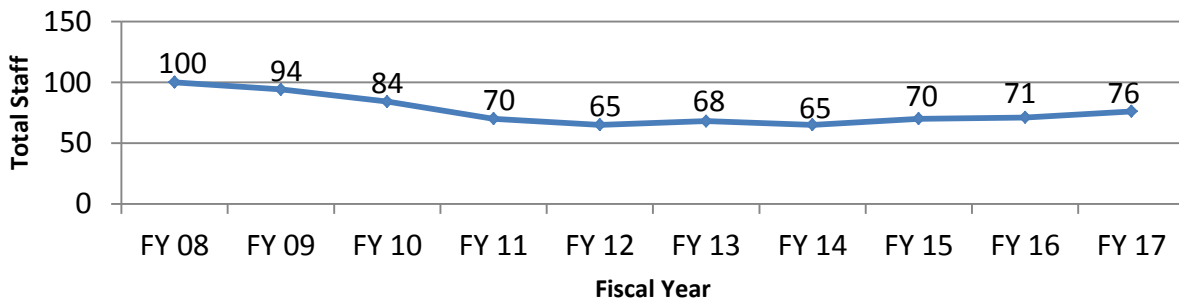
Note: CORE-CT data show no receipts from the Department of Housing and Urban Development for FYs 09 and 11, indicating no requests were sent to draw down any HUD funds in those years.

Source: PRI staff analysis of DOL data.

Staffing

Figure I-10 shows CHRO staffing totals for FYs 08-17, as of July 1 of each year. Although the figure shows staffing from an agency-wide perspective, a large portion of the agency’s staff is focused on various responsibilities for processing discrimination complaints filed with the agency. Since FY 08, CHRO’s total number of staff has decreased 24 percent, from 100 to 76. The sharpest decline occurred over the four-year span of FYs 08-12, when staffing totals fell 35 percent, to 65 staff. For the next several years, staffing remained relatively steady, but increased in FYs 15-17. The 76 staff in FY 17 was the agency’s highest total since FY 11.

Figure I-10. CHRO Staffing Totals - FYs 08-17 (filled positions as of July 1 annually)



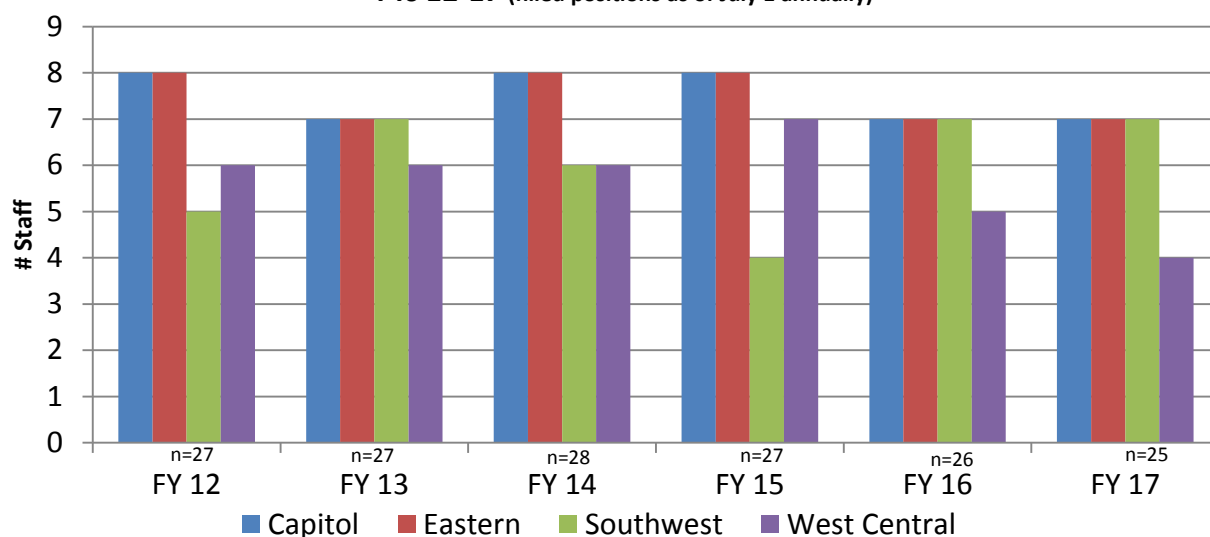
Source: PRI staff analysis of CORE-CT data.

The figure above does not specifically show the number of CHRO staff with case processing duties related to employment, public accommodation, credit, and housing complaints – the specific areas under review in this study. Staffing information to this level of detail was not

available through CORE-CT. As such, a request was made of CHRO for historical staffing levels for staff with case processing responsibilities at the regional office level, where the bulk of non-housing complaints are processed. CHRO provided data covering FYs 12-17.

Figure I-11 shows regional investigator filled staffing totals for FYs 2012-17. The annual totals are from July 1 of each fiscal year and do not account for staff who left CHRO during the year or who transferred across regions during the year, or regional managers, who told committee staff they assist with case processing functions as much as feasible, but they do not carry formal caseloads. Regardless, PRI staff believes the information is the most complete available as it relates to regional case processing investigative staff.

Figure I-11. CHRO Regional Investigative Staff
FYs 12-17 (filled positions as of July 1 annually)



Source: PRI staff analysis of CHRO data.

According to CHRO, a full complement of investigators is eight per region, yet the figure above shows the number of investigators on the job varied across regions. Capitol and Eastern regions each averaged 7.5 investigators over the six-year period, while the Southwest Region averaged 6.0 investigators, and the West Central Region 5.7 investigators – all below the agency’s staffing standard for HROs. As the figure shows, over the past three years, the West Central Region lost two investigators, or one third of its investigative staff. Given the total number of case processing staff is low in each region, an increase or decrease of even one position can impact the overall worker-to-case ratio. As such, additional analysis examining those ratios is provided in Chapter III.

The Commission on Human Rights and Opportunities, as an agency, discussed with PRI staff its difficulty in getting position refill authority for vacant investigator and regional manager positions. As of October 1, 2016, the most recent staffing data available from the agency shows six of 29 (21 percent) investigator positions were vacant – three each in the Capitol and West Central regions – along with a regional manager position in both the Eastern and Southwest regions. In addition, Figure I-11 above shows CHRO’s full complement of eight investigators

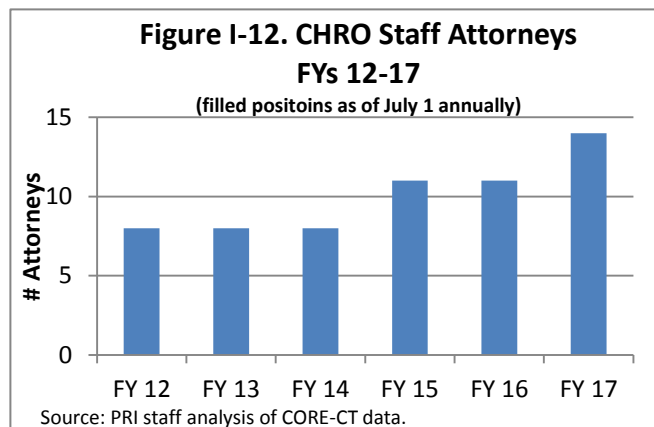
per region has only been met six of 24 times since FY 12, or just 25 percent of the time. It should also be mentioned, as of early November, the Eastern regional manager position had been vacant for two months and the Southwest regional manager position for one month. CHRO has received approval to fill the Eastern regional manager position, and is in the process of doing so.

To help ensure operational continuity in the Eastern and Southwest offices while the regional manager positions have been vacant, CHRO's deputy director has been overseeing the two offices in addition to her other job responsibilities. PRI staff believes this is not optimal and unsustainable from an agency operations perspective (even if one regional manager position is filled), and accountability and performance will undoubtedly suffer at some point. Short of consolidating the four regional offices under the existing offices with regional managers, there is a strong need to provide greater operational control and accountability in each region than currently can be provided in the absence of a regional manager. PRI staff recommends:

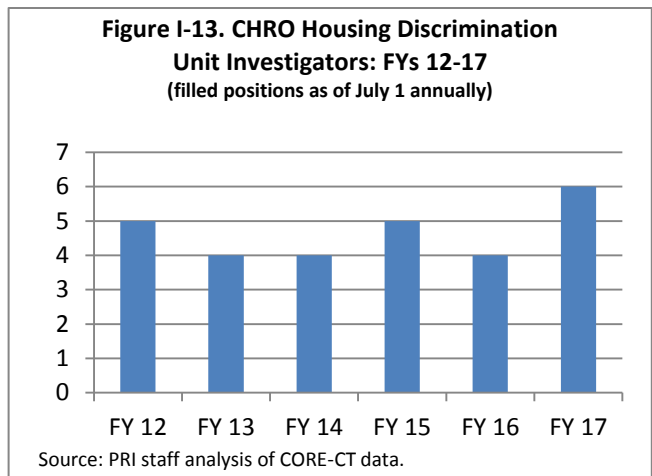
- 1. The regional manager vacancy within CHRO's Southwest regional office should be filled as soon as feasible. If this is not possible, there should be a consolidation of regional offices under the existing complement of regional managers.**

Legal. The number of attorneys in the Legal Division was examined separately by committee staff. Figure I-12 shows the unit's attorney positions, including the unit's principal attorney who has case processing and supervisory duties. The number of attorneys in the Legal Division has increased by six since FY 12, with the largest increases came at the beginning of FYs 15 and 17. At present, the current number of attorneys in the CHRO Legal Division is 14, including the principal attorney.

According to CHRO, there was an influx of attorney positions in the Legal Division due in large part with increased responsibilities on part of the division relating to recent municipal contract compliance requirements passed by the legislature, as well as increased case processing functions. As part of the increased duties, two attorneys from the state's labor department transferred to CHRO as part of layoffs in that department. The two staff left CHRO shortly after arriving. While the division's new attorneys were hired to help with new contract compliance requirements, not all their time is spent of those responsibilities, according to CHRO. That staff is also used to help with discrimination case processing functions.



Housing. The agency’s Housing Discrimination Unit operates similarly to CHRO regional offices in that its main function is processing discrimination complaints. The unit’s investigators, along with the supervisor, are the key staff discrimination complaints. Figure I-13 shows the number of investigative staff in the unit has fluctuated somewhat since FY 12, and staffing has ranged from 4 investigators in FYs 13, 14, and 16, to its current level of 6.



Management Information System

A key component of effective and efficient discrimination complaint processing is having an automated management information system in place to collect appropriate information to ensure proper system oversight and accountability. At present, CHRO maintains several data collection “systems” designed to monitor the agency’s case processing function. CHRO’s primary agency-wide management information system is its Case Tracking System (CTS). In addition to CTS, some regional managers told committee staff they have created their own databases to monitor case flow and investigator assignments. Regions are also required to use separate data systems developed by EEOC and HUD when processing discrimination complaints filed with CHRO and each respective federal agency.

Case Tracking System. Development of CTS began in the 1990s with an elementary automated case tracking system via an Access database, which was followed by various iterations over the years. In 2013, when CHRO’s administrative services unit was abolished and the information management function was assumed by DAS, it was determined that CHRO’s Access database could no longer be supported and existing complaint information was in jeopardy if the system was not redesigned using a more stable database. Staff from the two agencies worked together to develop the current CTS, which became fully operational in mid-2015 and contains information for roughly 16,000 complaints filed with CHRO since 2007.

CTS is a “read-only” system for CHRO’s regional managers, investigators, and housing unit staff. The system only allows designated staff within each region and the central office to enter complaint information into the system. Attorneys in the Legal Division, however, have “read and write” access to CTS. The system handles information for roughly 2,400 various discrimination complaint cases filed annually with CHRO.

CTS can currently produce over twenty reports for management purposes. Information about each case affidavit, investigators working on cases, and case disposition is available through various CTS reports. After using CTS, PRI staff determined that some reports generated by the system seem more relevant for case processing management purposes than others. There is also inconsistency across regions and within the Legal Division in making sure CTS includes complete and timely information. PRI staff makes pertinent recommendations about the agency’s

management information system throughout this report as they relate to specific parts of the complaint process.

Policies and Procedures

CHRO implemented a discrimination case processing Policies and Procedures Manual in 1996. The purpose of the manual is to provide guidance to all pertinent CHRO staff on the agency's policies and procedures for processing discrimination complaints. The manual was drafted to augment the day-to-day oversight of the case processing function by regional managers and central office executive staff. The manual reflects state law and regulations in place when the manual was developed, and covers the employment and housing complaint processes. The 1996 manual is extensive, and includes hundreds of pages of instructions and dozens of forms. However, the manual is dated and has not kept up with relevant changes to the discrimination complaint process.

The agency created a special committee three years ago to revise and update the policies and procedures manual.⁴ Using ideas from various staff, the committee has been developing policies and procedures aimed at providing greater uniformity across regions. The group's main focus has been on standardizing forms for use by case processing staff to help ensure the case processing function is implemented consistently across regions.

CHRO says it is planning to have the revised manual fully completed and introduced to agency staff by early December 2016, which PRI staff believes is ambitious given all the changes that are required to the 1996 manual. Committee staff was provided a copy of the manual two months ago and only two of seven sections had been fully updated by that point, even though the revision process had begun many months before.

PRI staff's survey of HROs in each of the agency's four regional office shows 41 percent do not think the agency currently has adequate policies in procedures for intake, preparing complaints for filing, case assessment reviews, investigation, or writing decisions following investigations. In addition, the state auditors have made the recommendation for CHRO to update its policies and procedures manual in their last two audits of the agency in September 2011 and most recently in April 2016.

PRI staff believes a new manual is a critical component to standardizing the case processing function – a process that is not consistently applied across regions, as discussed later in the report. At the same time, the manual needs to be uniformly implemented by all CHRO staff responsible for processing discrimination complaints for the new policies and procedures. Moreover, without proper oversight of regional operations and case processing practices to ensure uniform implementation of policies and procedures, the agency will continue its ad hoc case processing practices. PRI staff recommends:

⁴ CHRO's Uniformity Committee consists of 18 members: three from each of CHRO's four regions, the Legal Division, and the Housing Discrimination Unit. The regional office members were the regional manager, a designee of the manager, and a staff person voted for by all the region's employees.

- 2. CHRO should ensure its revised policies and procedures manual is fully completed and implemented by July 1, 2017. As part of its efforts to implement the new manual, the agency should provide the necessary training to all applicable case processing staff, including regional managers and relevant central office staff, and that such training (and retraining) be provided on an on-going basis. Executive agency staff should develop a process to frequently monitor implementation of the policies and procedures to ensure their consistent application by case processing staff.**

Non-Housing Complaint Process

This chapter provides an overview of the discrimination complaint process as set forth in state law in relation to employment, public accommodations, and credit discrimination complaints. Remaining sections of the chapter describe the various phases of the CHRO complaint process as implemented. The distribution of case processing work among the four regions and the Legal Division⁵ is addressed in Chapter III, and compliance with statutory timeframes applicable to the process in Chapter IV.

Overview of the Non-Housing Complaint Process

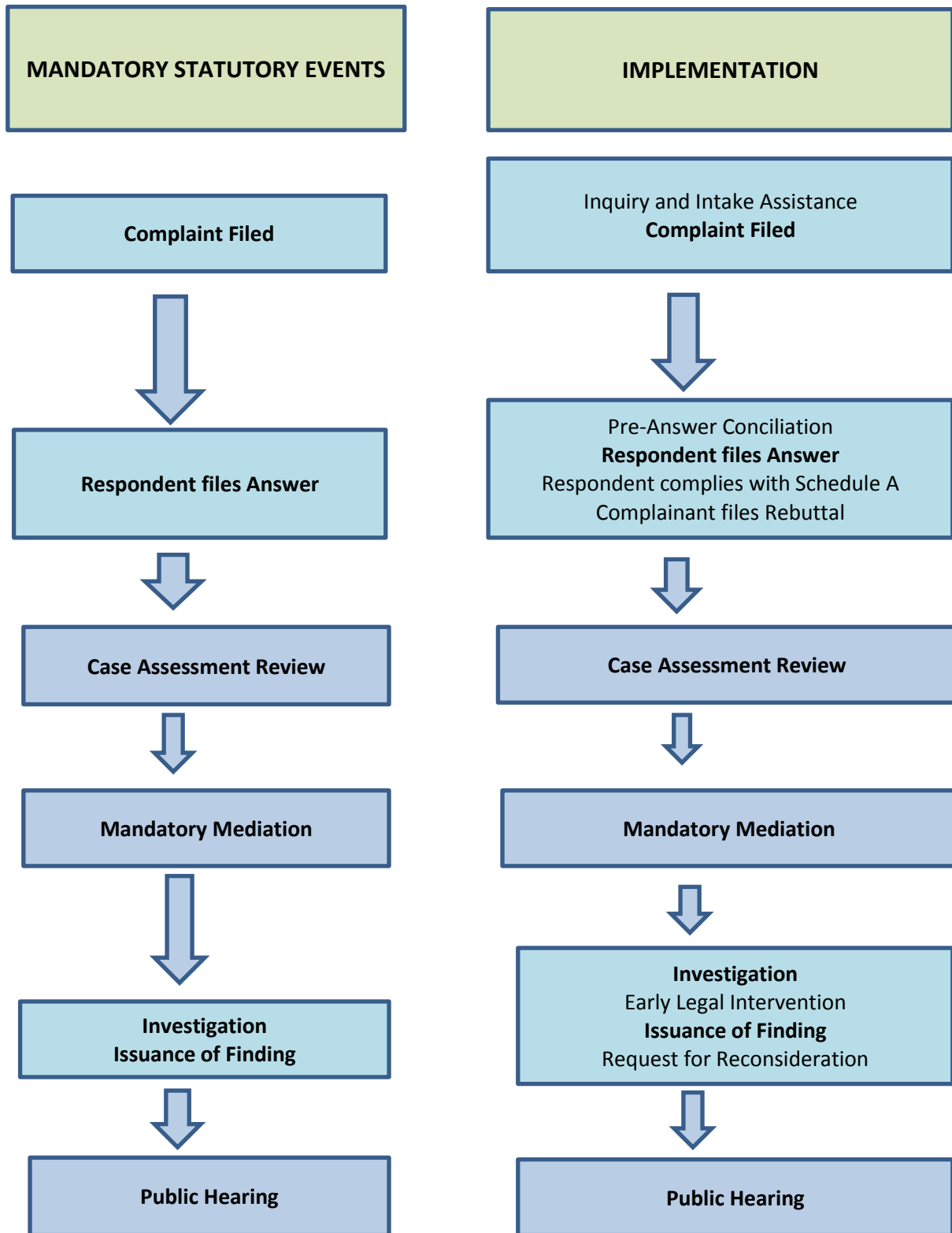
Figure II-1 shows the six mandatory statutory stages in the discrimination complaint process for non-housing complaints alongside a depiction of how three of the six stages may be implemented more expansively as a complaint passes through the process. The non-mandatory events that may expand the “Complaint Filed” stage include the possibility that a potential complainant will seek and receive assistance from CHRO prior to filing the complaint, including receiving CHRO assistance in drafting the complaint. There are also several non-mandatory events that may expand the “Answer” phase, including: a possible early attempt at settlement; the respondent providing responses to CHRO’s Schedule A: Request for Information; or the complainant submitting a rebuttal. At the Investigation stage, there is an optional Early Legal Intervention program that may allow CHRO to direct a case toward expedited disposition.

A few key points, which are elaborated on as part of the discussion of each of the six phases include:

- Based on statutory timeframes, an answer should be received within 60 to 100 days of a complaint being filed and Case Assessment Review (CAR) completed within 60 days of the answer being filed (120 to 160 days from filing).
- Case Assessment Review is a screening mechanism based solely on the complaint, the answer, and any other documents provided by the parties. A complaint can only be dismissed at the CAR stage if certain statutory grounds are met.
- At any time after a complaint is filed, the parties may settle the case and it will be closed.
- The Investigation should be completed within 190 to 370 days of CAR (310 to 530 days from filing). This means complaints should typically be resolved well within 18 months of filing.

⁵ Although the four regional offices continue to conduct the majority of CHRO’s case processing work, given that the total number of CHRO staff, particularly regional human rights officers (HROs), has been decreasing over the past several years, the Legal Division of the CHRO has assumed more involvement in discrimination complaint processing.

Figure II-1: Non-Housing Complaint Process.

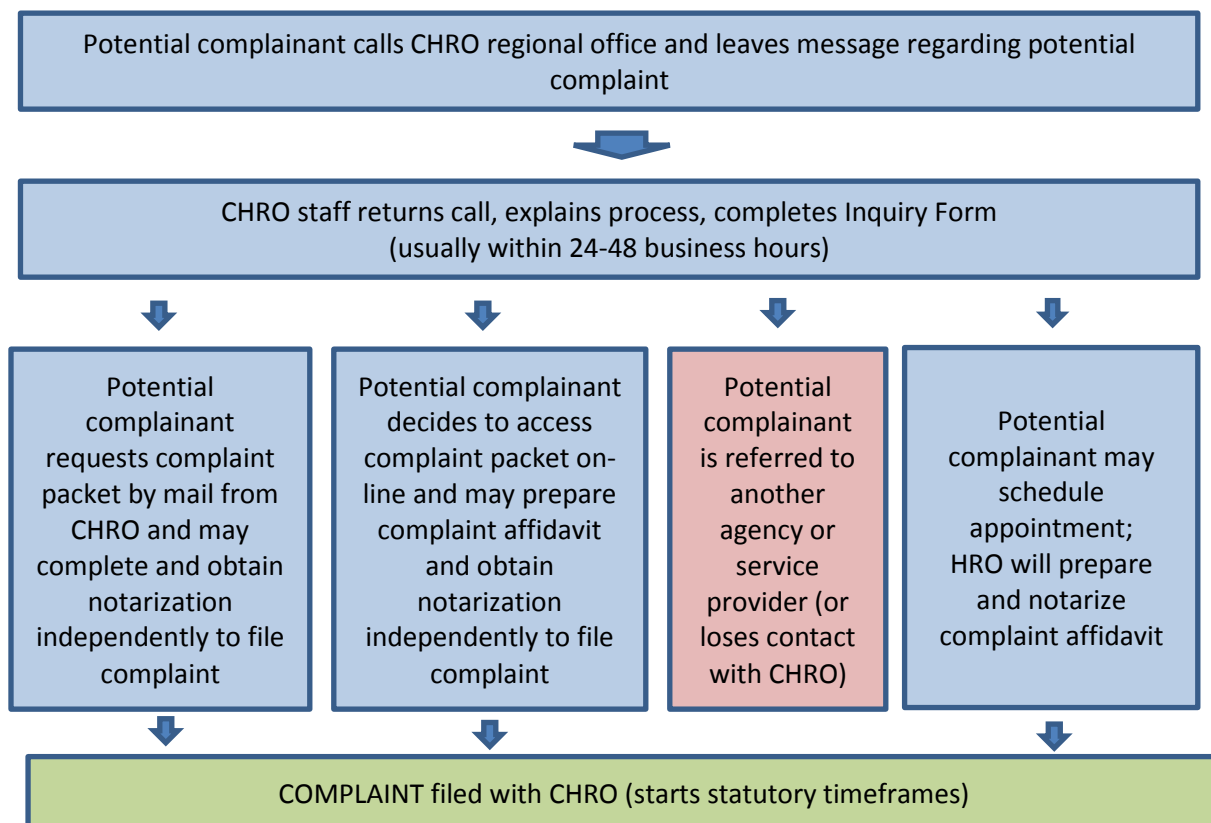


Complaint Filing and Intake

The discrimination complaint process begins with the filing of a written and notarized complaint affidavit that describes one or more alleged discriminatory acts and identifies the person(s) who committed these acts.⁶ CHRO assists many potential complainants before a complaint is filed, including providing information by phone and, at times, meeting with potential complainants to assist them by preparing a complaint.

Figure II-2 depicts the available process of Intake leading up to Complaint Filing. The Intake process is typically initiated when an individual calls⁷ a regional office to report “a belief” that he or she has been discriminated against and would like to file a complaint. Such an individual (i.e., the potential complainant) must usually leave a voice mail message as only one region reported having staff answer the inquiry phone line, and in that region this occurred only occasionally.

Figure II-2: Non-Housing Complaint Intake Process.



⁶ C.G.S. Sec. 46a-82(a) and Regs. Conn. State Agencies Sec. 46a-54-35a.

⁷ The vast majority of inquiries in each region are via telephone. Each regional manager reported receiving the occasional walk-in or email inquiry, but these were the exception rather than the rule. Regardless of whether an inquiry was made initially by phone, in-person, or via email, regional managers indicated that follow-up should occur and an Inquiry Form should be completed.

A regional CHRO staff member (i.e., a Human Rights Officer (HRO)) will call the potential complainant back, typically the same day or the next business day. Regional managers consistently estimate that an HRO will spend between 15 and 20 minutes on the phone with each potential complainant, largely to complete an internal CHRO Inquiry Form.

Inquiry Form. The Inquiry Form prompts the HRO to obtain, from the potential complainant: information about the alleged discrimination; the person(s) responsible; and when such acts of discrimination occurred. As part of completing an Inquiry Form, the HRO will ask the potential complainant to choose how he or she would like to proceed:

- 1) schedule an appointment to meet with an HRO at the regional office to prepare the necessary complaint paperwork and notarize the complaint in person;
- 2) access the necessary forms on-line, draft a complaint affidavit and obtain notarization independently, and deliver the notarized complaint to the regional office; or
- 3) have CHRO mail him or her the necessary paperwork to be completed independently (including drafting and notarization) and delivered to the regional office.⁸

Not all inquiries lead to the filing of a complaint. Some potential complainants are referred to other community agencies or services because through talking with an HRO it is determined that they have either contacted the wrong agency or it appears that their potential complaint about discrimination is really an indication of some other unmet need. Others may decide not to pursue a complaint after receiving information about the process and timeframe. There are also potential complainants that cannot be contacted after they have left a message. All CHRO staff indicated that a potential complainant is always told that he or she has a right to file a complaint regardless of the opinion of the HRO conducting the inquiry call as to the likelihood that a complaint will result in some sort of remedy.

It is through completion of the Inquiry Form that a caller is formally identified as having made an “inquiry” for purposes of CHRO’s internal data collection and reporting processes. Inquiry data are explored in Chapter III.

Complaint intake interview. There are no statutory or regulatory requirements that the CHRO intake process be completed within any particular timeframe, as long as a complaint is filed within 180 days of the alleged discrimination. In discussions with CHRO staff, the four regions reported differing lengths of time that typically elapse between the phone call during which the Inquiry Form is completed and a complaint intake meeting with an HRO. In one region, complaint intake meetings generally are scheduled to take place within one to two weeks, and in another region they are scheduled to take place within two to three weeks. In the other two regions, intake meetings are scheduled for approximately six weeks after the inquiry phone call.

⁸ One CHRO region piloted a program in which there was a self-service computer station available for complainants to prepare a complaint affidavit independently at the regional office so it could be printed and notarized by an HRO. The regional manager reports that there was little use of this computer station and that most HROs expressed a preference for meeting with potential complainants to prepare complaint affidavits so that they are better organized and easier to process.

Intake meetings are scheduled for two-hour time slots. The HRO conducting the intake takes the information provided by the potential complainant and drafts a complaint. The potential complainant fills out any supplemental forms, reviews the draft complaint affidavit for accuracy, signs it, and the document is notarized. A copy is given to the complainant and the original is retained by the CHRO for filing.

Each regional manager indicated that it was not unusual for one or more potential complainants not to show for a scheduled intake appointment on any given day. When this occurs, at least one regional manager indicated that one or two follow up phone calls to the potential complainant might be placed. In at least one region no efforts are made to contact a potential complainant who fails to keep an intake appointment.

Rotation of duties. Daily Inquiry and complaint Intake duties are rotated among the Human Rights Officers in each regional office. This means that the HRO who returns a phone call and completes an Inquiry Form for a potential complainant will not necessarily be the same HRO who meets with the potential complainant to draft a complaint affidavit at an Intake meeting. The rotating Inquiry and Intake duties include:

- returning phone calls to the region’s inquiry line;
- meeting with up to three potential complainants who have scheduled intake appointments for the day; and
- on Fridays only, reviewing and beginning the processing of any complaints received by mail during the week.

As noted, there is a statutory requirement that discrimination complaints be filed with CHRO within 180 days of the last alleged act of discrimination. In all four regions, CHRO staff will ensure during the initial phone call that the potential complainant will have an opportunity to meet with an HRO for purposes of drafting an affidavit immediately if it appears the 180 day filing period is nearing an end.

Filing of completed complaint. However a discrimination complaint is prepared, the complaint is not considered “filed” with CHRO until a document describing the alleged discrimination has been signed by the complainant, notarized, and received in the CHRO regional office. If a complainant is represented by counsel, the Intake process is bypassed and the CHRO regional office typically receives the written notarized statement of the complaint from complainant’s counsel. After the complaint is received at a CHRO regional office, it is considered “filed.” Information from the complaint will also be entered into the electronic case tracking system (CTS) and assigned a case number, allowing CHRO to track certain data including the running of various timeframes for other steps in the complaint process.

It should be noted that according to both state and federal law, an individual has an absolute right to file a complaint with CHRO even if the intake HRO indicates that he or she does not think the complaint is likely to result in a finding of reasonable cause to believe discrimination occurred. In other words, CHRO is expected to accept for filing all complaints that meet the minimal legal requirements (i.e., submitted on time, being in writing, describing the

perceived discrimination, and being signed and notarized) without any screening on the basis of merit. Each regional manager indicated that this was in fact the practice in his or her region.

Answer

Once a complaint has been filed, CHRO must serve the complaint upon the respondent within 15 days.⁹ Generally, the respondent must answer the complaint,¹⁰ in writing, within 30 days of service. Once the answer is filed, the complainant may file a rebuttal within 15 days. Any documents filed during the answer stage may be considered by CHRO when it conducts the Case Assessment Review (CAR), but the only necessary document to trigger CAR is the respondent's answer.

Figure II-3 depicts the various activities that may occur during the Answer Phase. First, the respondent may request an opportunity to discuss settlement before filing an answer, through Pre-Answer Conciliation (PAC). In addition to serving the complaint, CHRO will serve respondent with a Schedule A: Request for Information, which the respondent may respond to at the same time he or she answers the complaint. The respondent may request a 15 extension of time to respond to the complaint and the complainant may seek a 15 day extension of time in which to submit a rebuttal of the answer and any responses to the Schedule A Request.

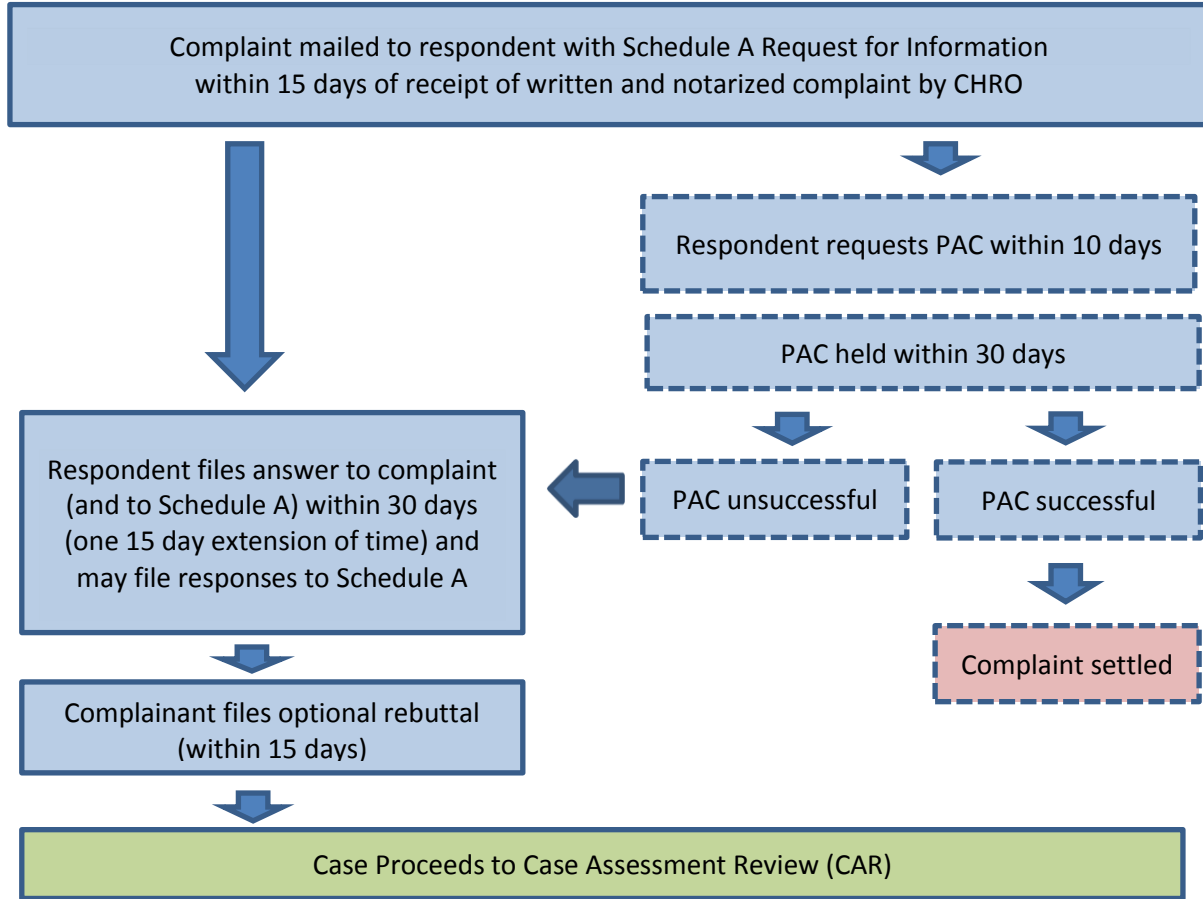
Pre-Answer Conciliation. Since October 1, 2015, a respondent has had the option, within 10 days of receiving a copy of a complaint, to request an opportunity to settle the complaint prior to preparing an answer.¹¹ Such a request, which must be made within 10 days of receiving the complaint, requires CHRO to attempt Pre-Answer Conciliation (PAC) within 30 days. A PAC conference may be conducted in person or by phone. After requesting PAC, the respondent is not required to answer the complaint until 30 days after a conference is held. There were differences across regions in what staff conducted Pre-Answer Conciliation conferences. In at least one region, the regional manager handled all PAC conferences. In other regions, PAC conferences were assigned to each HRO.

⁹ C.G.S. Sec. 46a-83(a).

¹⁰ Pursuant to CHRO Regulations (Regs. Conn. State Agencies Sec. 46a-54-42(a)), all complaints are subject to a jurisdictional review to determine whether the complaint is timely filed within a period of 180 days from the date the alleged discriminatory act occurred and to ensure the complaint alleges a violation of state or federal law. If CHRO determines the complaint does not satisfy each criterion, the regulations call for a dismissal of the complaint with a finding of No Reasonable Cause–Lack of Jurisdiction following notice to the parties and an opportunity to be heard. Based on PRI staff's review of CTS data, only 20 complaints (out of over 12,000 filed) have been dismissed for No Reasonable Cause–Lack of Jurisdiction without a Case Assessment Review since the beginning of FY 11. Moreover, none of the regional managers indicated that this preliminary jurisdictional screening takes place. For these reasons, the jurisdictional screening is not depicted in Figure II-3.

¹¹ P.A. 15-249. Prior to 2015 and still existing in CHRO's regulations, there is a process called "no-fault conciliation" which allows a respondent to make an offer to settle, without admission of wrong-doing. If the complainant accepts the offer prior to the expiration of the time for the filing of the respondent's answer and the settlement was approved by CHRO, the case is closed without need for the respondent to file an answer (see Regs. Conn. State Agencies Sec. 46a-54-63a.)

Figure II-3: Non-Housing Answer Phase.



Schedule A: Request for Information. Figure II-3 shows when CHRO serves a complainant upon a respondent it also typically sends the respondent a list of questions that are captioned Schedule A: Request for Information.¹² These questions seek information about the respondent’s business or employment practices relevant to the allegations raised in the complaint.

Although the Schedule A: Request for Information is sent to all respondents, PRI staff determined through interviews with counsel for both complainants and respondents that, as a matter of practice, there are no immediate consequences for a respondent failing to respond, as long as the respondent files an answer admitting or denying the specific allegations in the complaint within the required timeframe. CHRO staff confirmed that agency policy is not to sanction the failure to respond to a Schedule A Request and to pursue responses only if and when the complaint proceeds to Investigation. PRI staff recommends:

- 3. CHRO should clearly communicate to both respondents and complainants that compliance with the Schedule A: Request for Information is purely voluntary on the part of the respondent.**

¹² Many attorneys who practice before CHRO and even CHRO staff refer to the Schedule A requests as “interrogatories.”

Respondent’s answer. Connecticut law gives the respondent 30 days from receipt of the complaint, or from the date of a PAC conference, if requested, to file a written answer.¹³ The respondent can request a single 15 day extension of this time period. According to each of the four regional managers, respondents almost always request this extension of time and these requests are routinely granted in each region.

The respondent’s answer is required to admit or deny each specific allegation in the complaint, or to indicate that the respondent lacks sufficient information to either admit or deny that allegation.¹⁴ In the past, in addition to filing an answer, many respondents would file a lengthy position statement outlining the facts and applicable law from the respondent’s point of view. PRI staff heard from CHRO staff, complainants’ attorneys, and respondents’ attorneys, that this practice has largely been abandoned as a result of changes in the case assessment process that were implemented shortly before, and in conjunction with, the enactment of P.A. 11-237. These changes are addressed in Chapters III and IV, which assess various aspects of the non-housing discrimination complaint process.

Complainant’s rebuttal. Complainants have a 15 day period to file a written rebuttal to the respondent’s answer.¹⁵ CHRO may also grant the complainant a single 15 day extension of time. Regional managers report that if an extension is requested, it will automatically be granted if the respondent had been given a 15 day extension of time to file its answer.

Not shown in Figure II-3 is the possibility that the respondent will file a “surrebuttal” – a response to the complainant’s rebuttal. Although neither CHRO’s governing statutes nor regulations specifically provide for the filing of such a document, some regional managers indicated that a surrebuttal will be accepted and considered during Case Assessment Review. As discussed below, because the time for completing CAR runs from the date the answer is received, CHRO will assign a complaint for CAR about 30 days after the respondent’s answer was received without waiting to receive either a rebuttal or surrebuttal.

Case disposition during the Answer phase. There are three ways a case could reach disposition after a complaint is filed but prior to CAR: 1) the complainant withdraws the complaint; 2) the complainant and the respondent reach a settlement, including through Pre-Answer Conciliation; 3) CHRO concludes that it does not have jurisdiction over the complaint and a finding of No Reasonable Cause – Lack of Jurisdiction is issued based on a review of the complaint without need for the respondent to file an answer.¹⁶

Timeframe for Answer phase. Based upon statutory criteria, the time elapsing between the filing of the complaint and receipt of an answer should normally be between 60 to 100 days (two to three-and-a-half months) depending on whether the respondent requested Pre-Answer Conciliation.¹⁷ Thereafter, Case Assessment Review is to be completed within 60 days.

¹³ C.G.S. Sec. 46a-83(b).

¹⁴ Regs. Conn. State Agencies Sec. 46a-54-43a.

¹⁵ Regs. Conn. State Agencies Sec. 46a-54-48a.

¹⁶ See footnote 6.

¹⁷ There is also the possibility that a complaint will be amended. When a complaint is amended, the respondent has 30 days to answer the amended complaint. If an amendment was made before right before an answer was due, it

Case Assessment Review

Since 1994, Connecticut law has required all non-housing complaints to undergo an assessment review (i.e., screening) after the complaint has been filed and the respondent has provided an answer. Previously called Merit Assessment Review (MAR), and, since 2015, Case Assessment Review (CAR), the purpose of this screening is to determine whether the complaint should be retained for further processing or dismissed according to the following statutory standards:

- “1) it fails to state a claim for relief or is frivolous on its face;
- 2) the respondent is exempt from the provisions of this chapter; or
- 3) there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause.”¹⁸

The CAR process is shown in Figure II-4. As noted, CAR is based on documents received by CHRO to date: the complaint; the respondent’s answer to the complaint; respondent’s responses (if any) to the commission’s Schedule A Request for Information; and the complainant’s rebuttal or response to the respondent’s answer to the complaint. Based on a review of those documents, CHRO determines whether to dismiss the complaint for one of the statutory reasons or to retain the complaint for further processing.

Regional practice differences. In practice, there were some differences in the CAR process across regions. In some regions, each HRO is expected to conduct a certain number of CARs as part of his or her regular workload, whereas in other regions all CARs are conducted by the regional manager. The Legal Division also reported that it currently conducts all CARs for one region.

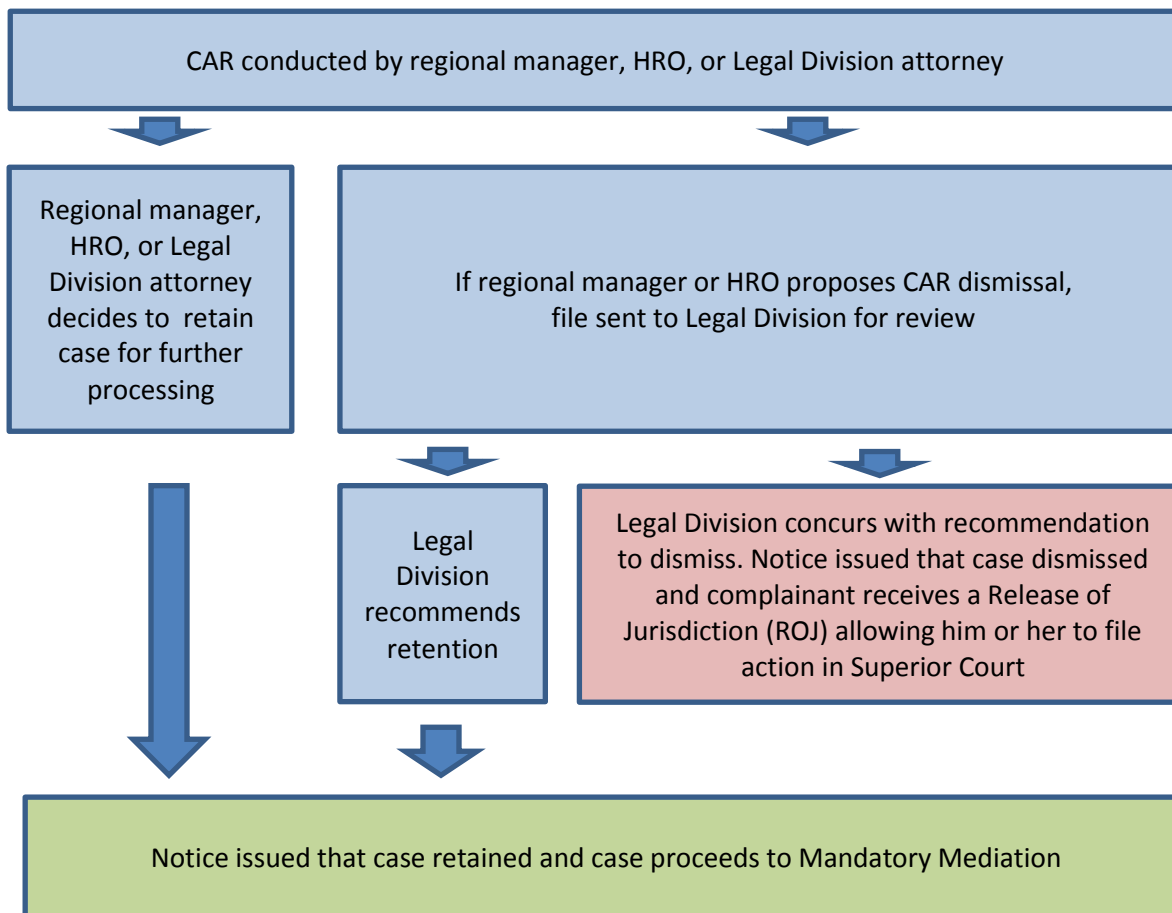
In all regions, if the CAR conducted by regional staff results in a recommendation for dismissal, the case file is sent to the Legal Division for review before the dismissal can be finalized. The Legal Division reviews the case file and either concurs with the decision to dismiss or instructs the region to retain the case. It should be emphasized that current practice is that no case is dismissed from any region at the CAR stage unless it is first reviewed by the Legal Division.¹⁹

could extend the time a complaint was pending before CAR. An amendment can be made during any phase, however, so the impact of amendment is not specifically discussed in relation to any one case processing phase.

¹⁸ C.G.S. Sec. 46a-8 (c). See also Regs. Conn. State Agencies Sec. 46a-54-49a(b). The regulation breaks the statutory language into the four numbered standards, separating the items “fails to state a claim for relief” and “is frivolous on its face.” In the past, CHRO’s Forms and Procedures Manual (currently in the process of being revised) treated these as two distinct analytic standards.

¹⁹ The process of having the Legal Division review all proposed CAR dismissals before they are issued evolved as a result of changes contained in P.A. 11-237. That act allowed a complainant receiving notice of a merit assessment dismissal to request a release of jurisdiction within 15 days of the MAR notice, and required that any MAR dismissal that did not lead to a complainant requesting an ROJ be reviewed by the Legal Division as a check against mistaken dismissals. In practice, CHRO began conducting the legal review before regions issued MAR dismissals and P.A. 15-249 reflects this internal procedural change by the repeal of the P.A. 11-237 MAR process.

Figure II-4:Case Assessment Review Process.



Release of Jurisdiction. At the conclusion of the CAR phase, a complaint can be dismissed by CHRO. If this occurs, the notice of dismissal is issued with a Release of Jurisdiction (ROJ), a document establishing that the complainant has “exhausted administrative remedies” by filing his or her complaint with CHRO. This ROJ formally grants complainant permission to initiate a civil court action on the claimed discriminatory act(s).

Timeframe. Based on the estimate that a respondent’s answer should be filed within 60 (without Pre-Answer Conciliation) to 100 (with unsuccessful Pre-Answer Conciliation) days, the statutory requirement that CAR be concluded within 60 days of the filing of the answer means that the case assessment process should be concluded within 120 to 160 days (four to five-and-a-half months) of the filing of a complaint. Prior to the enactment of P.A. 15-249, however, CHRO had 90 days to complete the assessment process, which began approximately 65 days after the complaint was filed in all cases.²⁰ This means that prior to October 1, 2015, CHRO would have been successful in complying with statutory timeframes if MAR was concluded within 155 days.

²⁰ Prior to P.A. 15-249, the complaint was to be served on the respondent within 20 days, and the answer filed within the same 45 days period as is currently in place. There was no option for Pre-Answer Conciliation.

Mandatory Mediation

Mediation of non-housing discrimination complaints prior to Investigation has been legislatively mandated since October 1, 2011, the effective date of P.A. 11-237. Prior to that time, state regulations contained a provision captioned “Mandatory Mediation,” ostensibly providing a mechanism by which parties could be required to engage in mediation,²¹ but in practice the use of mediation to resolve CHRO complaints was treated as voluntary. There was also no requirement that mediation precede Investigation or be conducted by someone other than the HRO assigned for Investigation. As a result, CHRO staff and other stakeholders report that, prior to P.A. 11-237, mediation often occurred as an adjunct to Investigation, thus reducing the possibility of successful resolution (because the parties had been actively preparing for a more adversarial exchange during Investigation) or delaying Investigation (which might be rescheduled if the parties came to a fact-finding conference and chose to use the time to discuss settlement).

Process. The current process for Mandatory Mediation is depicted in Figure II-5. Mandatory Mediation conferences are usually conducted by regional HROs or attorneys in CHRO’s Legal Division. In some regions, the regional manager conducts some mediation conferences. State law specifically requires that CHRO staff conducting the mediation not be assigned to investigate the complaint and that the Mandatory Mediation not be scheduled for the same time as a fact-finding conference for purposes of Investigation.²²

Mandatory Mediation typically involves an in-person conference attended by the complainant, the respondent, and counsel if either or both are represented by counsel. In some situations a mediation conference may be conducted by phone, but this is the exception rather than the rule.

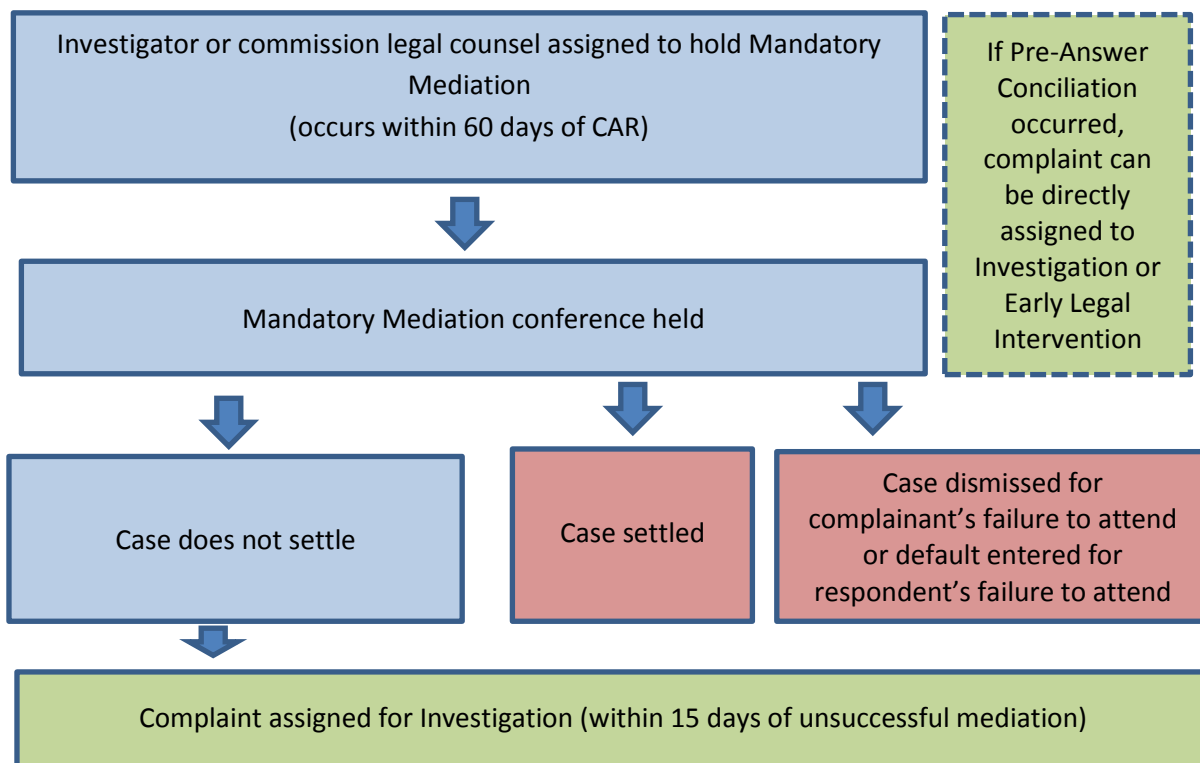
Once a Mandatory Mediation conference is scheduled, a party can request to reschedule and offer alternate dates if the original date poses a conflict. Both parties are required to attend the Mandatory Mediation and can be required to bring information relating to claimed damages. If a complainant fails to attend this, or any other scheduled conference, CHRO can *administratively dismiss* the complaint for failure to cooperate. If a respondent fails to attend this, or any other scheduled conference, CHRO can enter a *default order*, which results in the case being referred to Public Hearing for an assessment and award of damages.

Timeframe. Once a complaint has been retained following CAR, it is assigned to an investigator for Mandatory Mediation within 60 days. Although the statutory language suggests that it is only the assignment that must be completed within 60 days, not the mediation itself, in practice each region reported assigning an investigator within 30 days of CAR with the expectation that the Mandatory Mediation conference would occur within 30 days of that assignment.

²¹ Regs. Conn. State Agencies Sec. 46a-54-56a. See also C.G.S. (Revision of 1995) Sec. 46a-83(c).

²² C.G.S. Sec. 46a-83(d).

Figure II-5: Non-Housing Mandatory Mediation Process.



If a case is exempted from Mandatory Mediation because a Pre-Answer Conciliation conference has already taken place, there is no statutory or regulatory provision delineating when it should be referred to an HRO for Investigation or if and when it could be referred to Early Legal Intervention. It appears, however, that assignment to an investigator or to ELI usually occurs within 30 days of the CAR if there is to be no Mandatory Mediation. PRI staff recommends:

4. **C.G.S. Sec. 46a-83 should be clarified to provide clear timeframes for cases that are not subject to Mandatory Mediation due to use of the Pre-Answer Conciliation process. Statutory timeframes should address when Early Legal Intervention can be requested and when the case should be assigned for Investigation.**

Outcomes. There are three possible outcomes of Mandatory Mediation: 1) the case is settled; 2) the complainant or respondent fails to attend the Mandatory Mediation conference and the case is administratively dismissed or a default is entered;²³ or 3) the parties participate in a Mandatory Mediation conference, the case does not settle, and the case advances to either Investigation or Early Legal Intervention.²⁴

²³ See C.G.S. Secs. 46a-83(l) and (m). Following administrative dismissal, the complainant may: 1) file a request to re-open that is ruled upon by the full-CHRO Commission (see C.G.S. Sec. 46a-94a(c)); or 2) file an administrative appeal of the dismissal (see C.G.S. Sec. 46a-94a(a)). Following the entry of an order of default, a respondent can file a request that CHRO's executive director vacate the default (see C.G.S. Sec. 46a-83(l)).

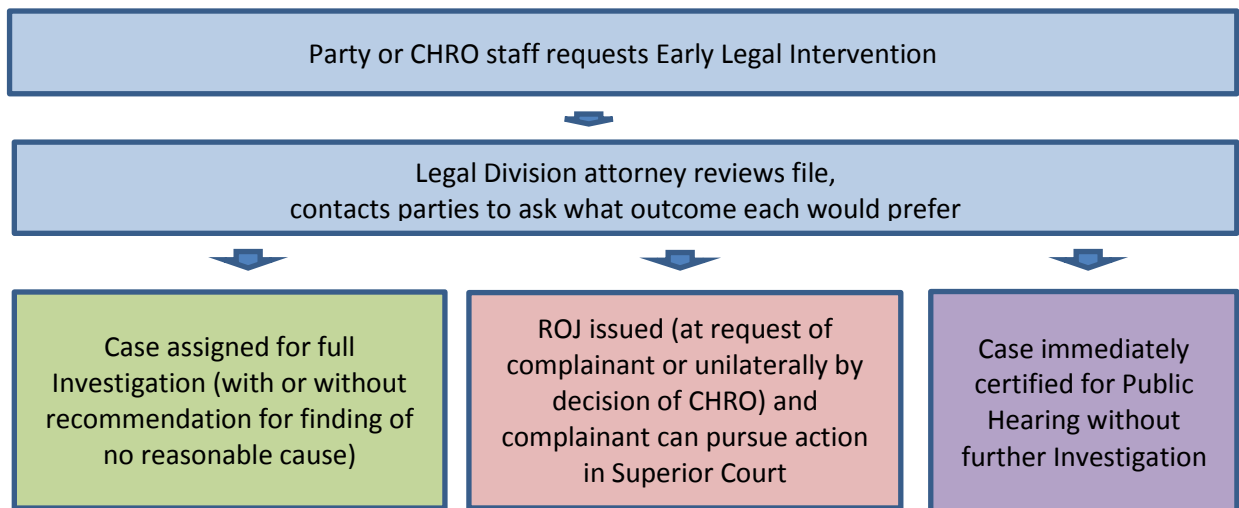
²⁴ Another possible mechanism for disposition of a complaint is available if the respondent offers "make whole relief." If a respondent does so, and CHRO agrees that the respondent has eliminated the discriminatory practice

PRI staff had the opportunity to discuss Mandatory Mediation and settlement with advocates representing CHRO complainants and respondents as well as with CHRO staff. Committee staff was told that even when cases did not settle during a Mandatory Mediation conference, there were always opportunities for the parties to discuss settlement independently later in the complaint process and possibly settle the complaint then. CHRO staff indicated that if parties raised the possibility of settlement during the Investigation phase, efforts were always made to make the HRO who had conducted the Mandatory Mediation conference available for further settlement discussions, or to identify another CHRO staff person who could assist in the settlement process.

Early Legal Intervention

Early Legal Intervention (ELI) was introduced to the non-housing complaint process through P.A. 11-237 for the purposes of allowing CHRO to identify cases that could be moved expeditiously to certain dispositions. Figure II-6 depicts the Early Legal Intervention process and its possible statutory outcomes. ELI can occur at any time after Mandatory Mediation has been conducted without resulting in settlement of the complaint. Thus, it can either precede Investigation or occur as an interruption of the Investigation phase once an investigator has been assigned.

Figure II-6: Early Legal Intervention Process.



Request. ELI can be requested by either the complainant or the respondent. Once a request is made by either party, ELI automatically occurs. In addition, a regional office may decide that a case should be referred for ELI without either party having made a request. All

complained of, taken steps to prevent a like occurrence in the future, and offered to put the complainant in the same position as if the discrimination had not occurred (this might involve offering reinstatement to a terminated complainant with payment of all wages lost during a period of unemployment), the complainant must accept the offer or CHRO will dismiss the complaint. See C.G.S. Sec. 46a-83(m) and Regs. Conn. State Agencies Sec. 46a-54-67a(f)(1)(D). CHRO staff and counsel for complainants and respondents all indicated that this mechanism is seldom used to resolve complaints.

regional managers indicated that although an HRO can request referral of a complaint to ELI, the regional manager makes the final decision about referral. Finally, if a Legal Division attorney has conducted Mandatory Mediation, he or she may recommend the complaint be referred to ELI.

Process. The ELI process is set forth in statute²⁵ and is further described through two letters issued by the Legal Division. When ELI is requested, the case file is forwarded to the Legal Division and an initial letter is issued advising the parties of the referral to ELI and explaining to the parties that a Legal Division attorney will be reviewing the file in order to determine whether to:

- 1) refer the case directly to the Office of Public Hearings (OPH), thus bypassing an Investigation and reasonable cause finding;
- 2) issue a Release of Jurisdiction allowing the complainant to file a civil action in Superior Court but foreclosing the possibility of further CHRO proceedings; or
- 3) retain the case at CHRO for Investigation.

This letter informs the parties they each may identify, in writing and within 15 days, which case disposition they prefer, with the caveat that CHRO is not bound by either party's preference.

Although the statute provides that commission legal counsel may "hold additional proceedings," CHRO does not hold typically do this during the ELI phase. The parties are free, of course, to settle the complaint at any time, including while a case has been referred to ELI and before the ELI decision is rendered. Once the Legal Division attorney's review is complete, the parties receive a letter informing them of the ELI decision.

If a case is referred to OPH as a result of ELI, then there is no further Investigation, although there are opportunities to exchange written discovery once the Public Hearing process is underway and before the actual hearing commences. The *initial* ELI letter also indicates that a complainant requesting referral to Public Hearing without Investigation must be prepared to put on his or her own case at Public Hearing if requested to do so by commission legal counsel. Similarly, the Legal Division's standard letter notifying parties of the *outcome* of ELI indicates that if the complainant requested ELI, he or she will be required to put on the case at Public Hearing unless the assigned commission attorney decides to do so.²⁶ In practice, CHRO staff indicates that no complainant is required to present his or her own case at Public Hearing except when he or she desires to do so.

Not stated directly in the initial letter notifying the parties of the ELI process, is that the attorney conducting the ELI review may recommend for any case retained for Investigation that it be administratively dismissed, or that a finding of no reasonable cause be entered. When an

²⁵ C.G.S. Sec. 46a-83(e).

²⁶ This outcome is described in the ELI decision letter as follows: "If the complainant or the complainant's attorney requested ELI, the complainant or complainant's attorney will be expected to put on the case at public hearing, unless the Commission attorney assigned the case decides otherwise."

attorney conducting ELI recommends that a finding of no reasonable cause be entered, a subsequently assigned investigator may only make a finding of reasonable cause if he or she consults with the Legal Division before doing so.

Other than the two letters sent to the parties, CHRO does not currently have any written policies or regulations, beyond the text of the statute, that govern ELI. It is not clear, for example, when it is appropriate for a region to refer a case to ELI, or exactly what standards the Legal Division applies in rendering a decision. PRI staff recommends:

- 5. CHRO should develop written policies for the Early Legal Intervention process to inform the parties, regional staff, and Legal Division attorneys when the process is appropriate and what criteria will be applied in reaching a decision.**

Investigation

Within 15 days of an unsuccessful Mandatory Mediation conference or an ELI decision that a complaint be retained for Investigation, a complaint is assigned to a regional HRO or to an attorney within the Legal Division for Investigation. The assigned investigator will not be an HRO or attorney who conducted the mediation in the case.²⁷ The Investigation process is depicted in Figure II-7.

Procedure. During the Investigation phase, the assigned HRO is not required to follow any specific steps.²⁸ Most investigators use fact-finding conferences attended by both parties and may subpoena witnesses and documents to these conferences as deemed necessary. Some investigators simply conduct witness interviews and request documents be delivered to them *ex parte*, without notifying or inviting the parties or counsel. All fact-finding conferences and interviews are conducted under oath and audio recorded. The parties can request copies of the audio recordings and obtain copies of documents collected by the investigator upon request.

In practice, once an investigator determines all the necessary information has been collected, he or she must prepare a draft finding of reasonable cause or no reasonable cause²⁹ “for believing that a discriminatory practice had been or is being committed as alleged in the complaint.” Some regional managers indicated that most cases only require one full day of fact-finding conference, but other regional managers thought 2 or 3 days was closer to the norm.

Timeframe to begin Investigation. As noted, the assignment of an HRO to conduct an Investigation must occur within 15 days of an unsuccessful Mandatory Mediation conference or an ELI decision that the case should be investigated.³⁰ In practice, some regions reported waiting for up to 30 days after a mediation conference before assigning an HRO to conduct the

²⁷ C.G.S. Sec. 46a-83(d).

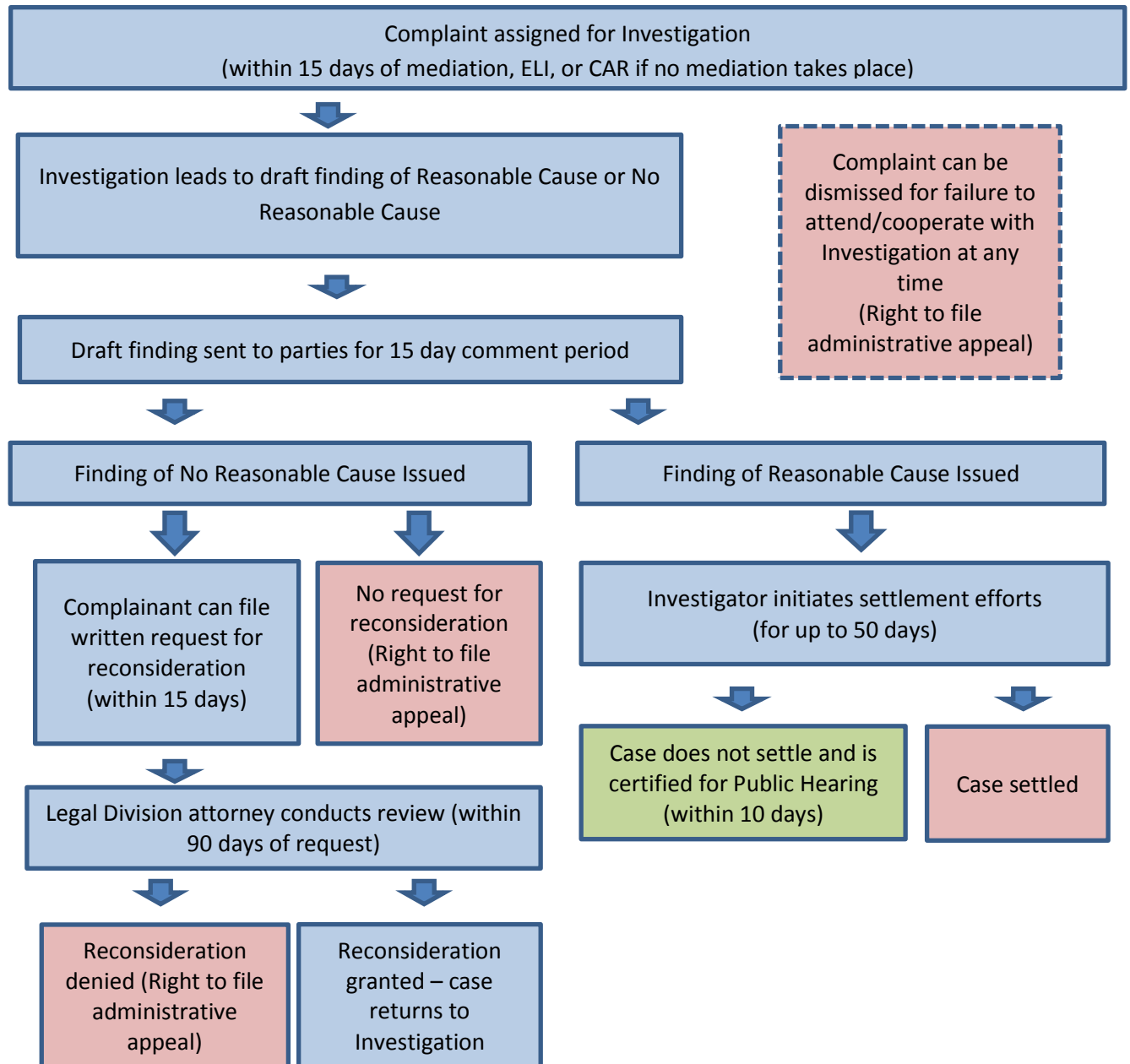
²⁸ C.G.S. Sec. 46a-83(e) provides: “The investigator may process the complaint by any lawful means of finding facts, including, but not limited to, a fact-finding conference, individual witness interviews, requests for voluntary disclosure of information, subpoenas of witnesses or documents, requests for admission of facts, interrogatories, site visits or any combination of these means”

²⁹ Reasonable cause means: “a bona fide belief that the material issues of fact are such that person of ordinary caution, prudence and judgment could believe the facts alleged in the complaint.” C.G.S. Sec. 46a-83(f).

³⁰ C.G.S. Sec. 46a-83(f).

Investigation, as there are a variety of reasons a case that is reported “settled” may require more than 15 days before the parties have executed the terms of the settlement.

Figure II-7: Non-Housing Investigation Process.



In the context of the earlier phases of the non-housing complaint process, a case that has not yet settled is likely to have been pending at least six months and as much as eight months before entering the Investigation phase. If the case has been referred to ELI it will have been pending for at least nine months and possibly as long as 11 months.

Issuance of a finding. Statute requires the investigator to make a final written finding of reasonable cause or no reasonable cause, providing the factual basis for the finding, within 190 days of CAR. Two three-month extensions of time can be granted for good cause shown.³¹

Some investigators prepare a brief summary of the potential finding within 24 hours of conducting a fact-finding conference. This summary of potential findings can then be discussed with the investigator's regional manager to allow reflection on what additional fact-finding, if any, needs to take place and what issues might need close attention when preparing the draft findings document for review by the parties. Other investigators, either as a result of having a heavy workload or a different work style, may only prepare draft findings of cause or no reasonable cause months after the fact-finding conference, relying on audio recordings of fact-finding conferences, notes, documents, and other evidence collected when they are ready to generate the findings document.

The first step of finalizing the written finding of reasonable cause or no reasonable cause is for the regional manager to review a draft finding and provide feedback to the investigator to revise the draft before submitting it to the parties. The draft finding is then sent to the parties for a 15 day comment period. During this period, each party has the opportunity to prepare written comments on the draft finding and any evidence or testimony he or she deems relevant. The investigator who has examined the evidence and prepared the draft finding is to consider such comments before issuing a final finding. In some cases, as a result of a party's comments, the investigator may choose to gather additional evidence or reexamine existing evidence before issuing the final findings document.

Scheduling and requests for continuances. Scheduling practices during the Investigation phase also vary across regions. In some regions, investigators simply manage their own calendars and may schedule only a single fact-finding conference, thus having to schedule a new date if the first date becomes unavailable or is insufficient to complete the Investigation. In such situations, the second fact-finding conference may occur some months after the first. In other regions, there is an expectation that upon assignment to an investigator, the investigator will schedule at least two dates for the fact-finding conference. The logic is that even if the fact-finding conference is concluded in a single day, it is better to have a second day already scheduled "just in case" and the second scheduled day is likely to remain available should the first scheduled fact-finding date be cancelled. This practice maximizes the possibility that a single fact-finding conference will happen sooner and that if two fact-finding conferences are needed they will be closer in proximity than if the second conference was only scheduled upon completion of the first.

Regions have different processes for handling requests to reschedule or "continue" a fact-finding conference date. In some regions, all requests for rescheduling must be approved by the regional manager, who may require some showing of "good cause" beyond a party's verbal report that they have a conflict.³² In other regions, the regional manager allows investigators to

³¹ C.G.S. Sec. 46a-93(g)(1).

³² The regional manager may, for example, ask for documentation of what the conflict is and when it was scheduled rather than just relying on representations that it is "unavoidable."

grant a first request to reschedule but requires that a second request be approved by the regional manager and good cause shown.

Timeframe for completion. There is a statutory 190 day timeframe, running from the date of Case Assessment Review, for the investigator to issue the final finding of reasonable cause or no reasonable cause.³³ In cases where no CAR decision is issued, there is no clear statutory guidance as to when the Investigation should be completed. The applicable statute also allows no more than two three-month extensions of this 190 day Investigation timeframe “for good cause shown.”³⁴ The statute is silent, however, as to how CHRO is supposed to monitor and manage the “granting” of these three-month extensions. None of the regional managers identified any efforts to complete investigations within 190 days of the CAR decision or to document when and why investigations continued into either the first or second permitted 90 day extension of time. The regulation addressing the 190 day timeframe³⁵ does not identify any process and PRI staff did not identify any forms or procedures in place to document requests for or granting of the three-month extensions of the 190 day Investigation period. For these reasons, PRI staff recommends:

- 6. CHRO should develop and implement a process to track cases and specifically document when one or both three-month extensions of the Investigation timeframe are granted and for what reason(s).**

This recommendation will be further discussed in Chapter IV in relation to CHRO’s requirements to report how many cases are resolved outside of statutory timeframes and for what reasons.

Administrative appeal of a finding of no reasonable cause. It is only when the commission issues a finding of reasonable cause that a complainant is eligible for a Public Hearing in front of a CHRO Human Rights Referee. When the commission issues a finding of no reasonable cause, the complainant can file an administrative appeal in Superior Court pursuant to the Uniform Administrative Procedures Act.³⁶

Reconsideration of finding of no reasonable cause. If, after the 15 day comment period, the investigator issues a final finding of no reasonable cause, the complainant has 15 days from the issuance of notice of the finding to file a written request for reconsideration by the executive director or the executive director’s designee. In practice, such requests for reconsideration are reviewed and ruled upon by staff attorneys within the commission’s Legal Division. If reconsideration is granted, the decision will direct the further activities of the investigator – explaining what additional evidence should be gathered and considered or how certain evidence should be treated in a revised findings document. If the request for reconsideration is denied, the final finding of no reasonable cause remains the final decision of

³³ C.G.S. Sec. 46a-83(g)(1).

³⁴ C.G.S. Sec. 46a-83(g)(1).

³⁵ Regs. Conn. State Agencies Sec. 46a-54-65a.

³⁶ C.G.S. Sec. 46a-94a.

the agency, but the denial of reconsideration can be appealed to Superior Court under the Uniform Administrative Procedures Act (UAPA).³⁷

Disposition upon Finding of Reasonable Cause and Public Hearing

Further proceedings upon a finding of reasonable cause. If a final finding is one of reasonable cause, this starts a 50 day period in which the same HRO who investigated the complaint and issued the finding communicates with both parties and attempts to settle the complaint before certifying it to Public Hearing. If attempts to settle the complaint prove unsuccessful, the case is certified to both the CHRO's executive director and the Attorney General's office as ready for Public Hearing. At this point, the case has reached a final disposition for the regional office, as it remains pending only for purposes of a Public Hearing, which does not involve the regional office.

Public Hearing. A finding of reasonable cause is not an adjudication on the merits of a complaint of discrimination in employment, public accommodations, or credit. Instead, it represents the CHRO investigator's determination that the complainant could potentially establish that such discrimination did occur in an evidentiary hearing before an impartial tribunal.³⁸ The evidentiary hearing will be conducted by CHRO's Office of Public Hearings (OPH), which will render a decision on the merits of the complaint and award any appropriate damages.

Historically, in most proceedings before OPH, the complainant's interests will be represented by an attorney from CHRO's Legal Division, who will present the complainant's case, cross-examine the respondent's witnesses, and otherwise attempt to secure a decision that finds that discrimination occurred and awards the complainant monetary damages in addition to any other available and appropriate relief.

As a result of P.A. 11-237's creation of the ELI process, it is now possible that the Legal Division will require that a complainant, with or without counsel, present his or her own case to the Human Rights Referee with commission legal counsel merely monitoring the process. To date, CHRO staff has indicated that this does not occur except when the complainant opts to do so.

Pre-hearing proceedings. Cases certified to Public Hearing are not immediately scheduled for a full evidentiary hearing. Following certification, the complaint is served upon the respondent by OPH along with a notice that the parties attend a pre-hearing conference.³⁹ Connecticut law requires that a pre-hearing conference be convened within 45 days of certification.⁴⁰ At this conference the parties are expected to agree upon timeframes for: any amendments to the complaint; the respondent's answer to the complaint; the exchange of written discovery; and deadlines for filing any pre-hearing motions. The parties will also be given the

³⁷ Ibid.

³⁸ See C.G.S. Sec. 46a-84(b). The Public Hearing on a complaint that has led to a finding of reasonable cause to believe that discrimination has occurred "shall be a de novo hearing on the merits of the complaint and not an appeal of the commission's processing of the complaint prior to its certification [to Public Hearing]."

³⁹ C.G.S. Sec. 46a-84(b).

⁴⁰ Ibid.

opportunity to schedule a settlement conference, with a different referee than the one assigned to conduct the hearing, if desired.⁴¹

Timeframe. Although by statute the Public Hearing must “proceed with reasonable dispatch,”⁴² it is often a year or more after certification that a case will be scheduled for the first days of evidentiary hearing. This delay occurs not only to accommodate pre-hearing proceedings, but because of a large backlog of cases assigned to OPH and a current vacancy in one of the three statutory hearing referee positions. CHRO staff and counsel for both complainants and respondents all indicated to PRI staff that unless a case settles after certification to Public Hearing, it is likely to remain pending for two or more years. Further analysis of the OPH process and timeframes is provided in Chapter IV.

Remedies. If at the conclusion of a Public Hearing the human rights referee determines that discrimination has occurred, he or she can order any of a several possible remedies:

- the complainant be hired, promoted, reinstated, or otherwise placed in the position he or she would have been in but for the discrimination;
- the respondent cease and desist from any unlawful behavior;
- award complainant monetary damages for lost income or other demonstrable expenses and losses;
- award complainant compensation for emotional pain and suffering;
- award complainant reasonable attorney’s fees.⁴³

Following a human rights referee’s final decision and order, whether in favor of the complainant or the respondent, any aggrieved party can file an administrative appeal in Superior Court.

⁴¹ The assigned hearing referee may request CHRO decertify a case that has been referred for Public Hearing. This happens infrequently.

⁴² C.G.S. Sec. 46a-84(b).

⁴³ C.G.S. Sec. 46a-86.

Non-Housing Complaint Workload Analysis

This chapter looks at a number of activity statistics related to the CHRO discrimination complaint process described in Chapter II. They are analyzed at a statewide and regional level, and take staffing into consideration where relevant.

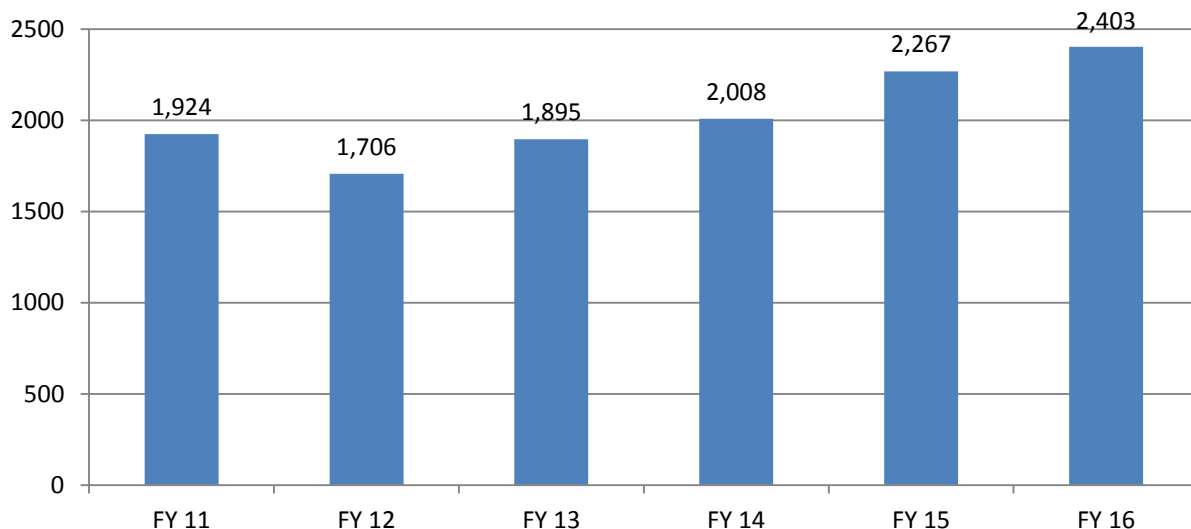
Key Findings

- *The number of cases filed each year each year has been increasing since FY 12, with variation across regions in numbers of both inquiries received and complaints filed.*
- *In light of the total statewide numbers of inquiries reported and the estimated number of inquiry appointments being held, these duties require the equivalent of time of two or more FTEs.*
- *The number of cases closed each year has been increasing, with variation across regions in numbers and types of closures.*
- *Striking changes have occurred in the kinds of dispositions made over the past six years, particularly in fewer cases being dismissed as a result of the merit or case assessment review (MAR/CAR) and more cases being closed through settlements and issuance of releases of jurisdiction (ROJs).*
- *The central office Legal Division at CHRO plays a significant role in the processing of cases that have not reached finding – in FY 16 the division was responsible for at least 30 percent of all cases closed before or with a finding of reasonable cause or no reasonable cause. Currently, over 25 percent of all pending pre-finding cases are assigned to the Legal Division.*
- *Even with the Legal Division participating in pre-finding case processing, there does not appear to be an equitable workload division across the four regions, particularly in regard to:*
 - *CAR processing responsibilities;*
 - *Inquiry and intake responsibilities; and*
 - *Per-HRO caseloads.*
- *In FY 16, the Early Legal Intervention resulted in 62 percent of referred cases being closed, and another 7 percent of referred cases were referred to Public Hearing without investigation. This process shortens the time to disposition for cases referred to ELI and conserves agency resources for use in relation to other cases.*

Complaints Filed Annually

Figure III-1 shows the number of non-housing complaints filed statewide for FYs 11-16. There was a 25 percent increase in complaints filed over this period. Since FY 12, there has been a steady increase in the number of cases filed with CHRO; after reaching a low of 1,706 cases filed in FY 12, there was a 40 percent increase to 2,403 cases filed in FY 16.

Figure III-1: Non-housing complaints filed statewide (FY 11-16).



Source: PRI staff analysis of CHRO data contained in CTS (September 2016)

Some stakeholders have asked whether there should be a decrease in the number of complaints filed if CHRO is achieving success in its broad goal of eliminating discrimination. The agency's response to this query is that the increasing number of complaints does not necessarily reflect increased incidents of discrimination, but an expanding awareness of the ability to remedy instances of discrimination through the procedures afforded at CHRO.

Complaints filed by region. Table III-1 shows the number of complaints filed in each fiscal year by region. Generally, the regions experienced the same drop in complaints filed from FY 11 to FY 12, and then on-going increases. Historically, more complaints have been filed in the Capitol and West Central regions than in the Southwest and Eastern regions. This gap has been narrowing for the Southwest Region since FY 13. In FY 16, all but the Eastern Region saw over 600 complaints filed. The West Central Region consistently saw the most complaints filed in each fiscal year; the 652 complaints filed in the West Central Region in FY 16 was 33 percent more than the 492 complaints filed in the Eastern Region.

As shown in Table III-1, the increase in number of complaints filed has not been consistent across regions. In each of the last three fiscal years, the Eastern Region has seen only single digit percentage increases in the number of complaints filed, in contrast to the Southwest Region, which has seen double-digit percentage increases. In fact, the Eastern Region has only seen a 5.5 percent increase in the number of complaints filed over the full six year period, whereas the Southwest Region has seen a 40 percent increase.

Table III-1 also shows that the Eastern Region has replaced the Southwest Region as the region receiving the fewest complaints. The Southwest Region received just over 20 percent of all cases filed in FY 12, while the other regions received closer to 25 percent; in FY 16 it was the Eastern Region that received just over 20 percent of all cases filed while each of the other regions received over 25 percent.

Table III-1: Complaints Filed by Region (FY 11-16).

		FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
Statewide	Number Filed	1,924	1,706	1,895	2,008	2,267	2,403
	Change over Prior FY	N/A	-11%	11%	6%	13%	6%
Capitol	Number Filed (Percent of Total)	469 (24%)	471 (28%)	502 (27%)	495 (25%)	596 (26%)	635 (26%)
	Change over Prior FY	N/A	<0.5%	7%	-1%	20%	7%
Southwest	Number Filed (Percent of Total)	446 (23%)	350 (21%)	419 (22%)	467 (23%)	563 (25%)	624 (26%)
	Change over Prior FY	N/A	-21%	20%	12%	20%	11%
West Central	Number Filed (Percent of Total)	542 (28%)	483 (28%)	519 (27%)	598 (30%)	635 (28%)	652 (27%)
	Change over Prior FY	N/A	-10.9%	8%	16%	6%	3%
Eastern	Number Filed (Percent of Total)	467 (24%)	402 (24%)	455 (24%)	448 (22%)	473 (21%)	492 (21%)
	Change over Prior FY	N/A	-14%	13%	-2%	6%	4%

Source: PRI staff analysis of CHRO CTS data (September 2016).

Impact on regional workloads. The disparity among the number of complaints filed has repercussions for the workload of HROs in the different regions. Daily intake duties are rotated among the HROs in each regional office. Such duties involve returning phone calls to the region’s inquiry line and meeting with up to three potential complainants who have scheduled intake appointments for that day. Intake appointments can be scheduled for all five days of the week, with three appointment slots being available on every day but Friday. On Fridays only two appointments are scheduled and the HRO assigned to Friday is also responsible for reviewing and beginning the processing of any complaints received by mail during the week.

The rotation of intake duties among HROs means that in the two regions with seven HROs, most will have intake duties twice every three weeks, while in the two regions with fewer HROs, each will have intake duties once a week. Moreover, in regions with a high volume of inquiries, it is likely that at least three intake interviews will be scheduled for each day of the

week, with some regional managers telling committee staff that it is not unusual to schedule two potential complainants for the same time slot with the expectation that one may be a “no show.” If both do arrive for the same appointment, another HRO or the regional manager could meet with the “extra” potential complainant. In the Eastern Region, with the lowest number of complaints being filed, some appointment slots may remain unfilled. This is also why the Eastern Region can typically meet with a potential complainant within two weeks, while in the West Central and Capitol regions the wait for an intake appointment is six weeks or more.

Intake meetings, as described in CHRO’s Uniform Forms and Procedures Manual, are scheduled for two-hour time slots. The intake HRO takes the information provided by the potential complainant and drafts a complaint affidavit. The potential complainant fills out any supplemental forms, reviews the draft complaint affidavit for accuracy, signs it, and the document is notarized. All regional managers agreed that two hours is an accurate reflection of how long an intake appointment takes. However, CHRO does not track the number of intake appointments held by each HRO or within each region, making it impossible to accurately determine how many intake appointments are held in each region or by each HRO.

7. CHRO should establish a monthly reporting system to track: 1) the number of intake meetings scheduled; and 2) the outcome of the intake meeting – potential complainant a no show, a complaint drafted and filed, or potential claimant met with HRO and elected not to proceed with the complaint process.

In the interest of better estimating the statewide resources being devoted to intake duties, each regional manager was asked for an estimate of the percentage of complainants that were represented by counsel in his or her region. These estimates ranged from 30 percent (Eastern Region) to 80 percent (Southwest Region), with the other two regions (Capitol and West Central) indicating about half of complainants were probably represented. The regional managers agreed that in light of the differing demographics and resources of the four regions, it was not surprising that different regions reported different percentages of complainants being represented by counsel.

Table III-2 provides the number of complaints filed in each region in FY 16 along with the regional managers’ estimates of the likely percentage of complainants represented by counsel. The remaining columns of the table provide the estimated percent of complainants scheduling intake appointments and the number of intake appointments that would have been held, based on these estimates.

If these estimates are accurate, each of the seven HROs in the Southwest Region likely participated in 18 intake appointments (36 hours) during FY 16, while each of the five HROs in the West Central Region participated in 65 (130 hours), and the seven in the Eastern Region participated in 49 (98 hours). Even if these regional estimates are not accurate, if half of all complaints filed statewide are drafted by HROs (the estimate of two regional managers), at least 1,200 (50 percent of all complaints filed in FY 16) intake appointments were held statewide in FY 16. These estimates suggest that, statewide, between 2,200 and 2,400 hours of HRO time are spent in intake meetings. This represents the workload of at least one FTE.

Table III-2: Estimated Number of Intake Appointments Statewide and by Region (FY 16).

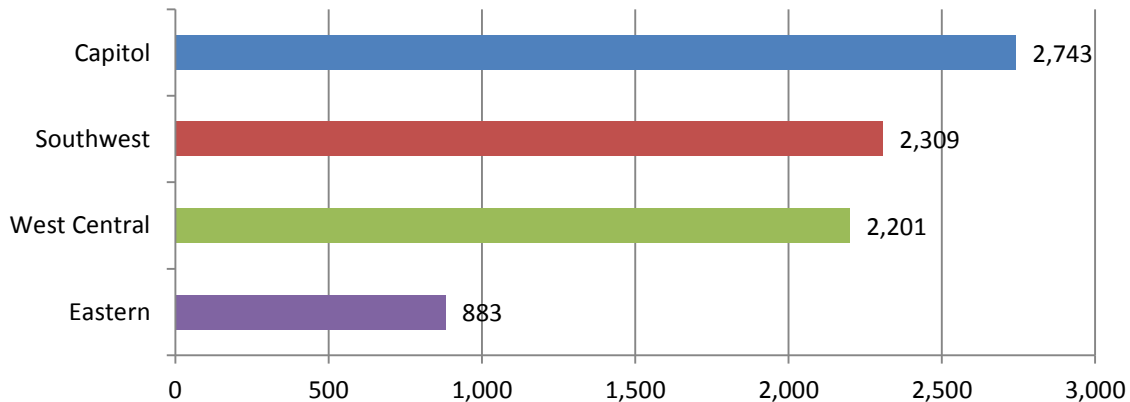
	Complaints Filed FY2016	Estimated Percent Represented Complainants	Estimated Percent Unrepresented	Estimated Intake Meetings	Hours of Intake Meetings
Capitol (7 HROs)	635	50%	50%	317	634
Southwest (7 HROs)	624	80%	20%	125	250
West Central (5 HROs)	652	50%	50%	326	652
Eastern (7 HROs)	492	30%	70%	344	688
Statewide (26 HROs)	2,403	--	--	1,112	2,224

Note: Staffing is of July 1, 2015.

Sources: PRI staff analysis of CHRO CTS data (September 2016).

Regional comparisons of inquiries. Although the West Central Region saw more complaints *filed* than any other region in FY 16, the Capitol Region received the most *inquiries* from potential complaints. Figure III-2 summarizes the number of inquiries each region reported receiving during FY 16. In total, there were 8,136 reported inquiries for all regions.

Figure III-2: Inquiries Received by Region (FY 16).



Source: PRI staff analysis of CHRO data.

Although CHRO asks regions to report the number of inquiries received to the executive director each month, there is no consistent approach to counting these inquiries. The Eastern Region, for example, collects completed inquiry forms in a single folder each month and counts the forms and reports the number of forms to the executive director. As the Eastern region reports what is by far the fewest inquiries of any region, PRI staff questions whether all inquiry sheets in this region are being collected in the central folder. In another region, inquiry sheets are collected for a 6 or 12 month period and placed in a filing cabinet alphabetically but not individually counted each month. In that region, each investigator informs the office

administrator how many inquiries he or she fielded during the month for reporting to the executive director. Apparently, no one in that region has ever confirmed that the numbers reported are consistent with the number of inquiry sheets that have been completed. Finally, because inquiry forms do not contain a field for the intake HRO to indicate “unable to return call,” it is possible that one or more regions is not including inquiries made unless there is some response to an HRO’s efforts to return the initial inquiry phone call. PRI staff recommends:

- 8. CHRO should determine a uniform process to be used by each region to record and report the number of monthly inquiries and whether each inquiry results in: an intake interview being scheduled; the potential complainant indicating that he or she will proceed independently; a referral being made to another agency or service provider; or CHRO staff being unable to contact the caller.**

Because the most glaring discrepancy in Figure III-2 above was in the Eastern region reporting fewer than half as many inquiries as any other region, PRI staff believes that any irregularities in the reported number of inquiries received for FY 16 more likely reflects *under*-counting of inquiries rather than *over*-counting.

Impact on HRO workloads. To put the number of inquiries received in context, regional managers consistently estimated that an inquiry phone call takes 15-20 minutes to complete, excluding any consideration of the number of phone calls made before reaching the potential complainant by phone, or phone calls made to potential complainants who are never reached. Table III-3 contains estimates of the time spent on inquiry phone calls at each region and within each region by each HRO.

Table III-3: Time Spent on Inquiries by Region (FY 16).

	Capitol	Southwest	West Central	Eastern	Statewide
Number of Inquiries	2,743	2,309	2,201	883	8,136
Total Time on Inquiries (15 minutes per call)	686 hours	577 hours	550 hours	221 hours	2,367 hours
Number of HROs (July 1, 2015)	7	7	5	7	26
Inquiries per HRO	392	330	440	126	313
Time on Inquiries per HRO	98 hours	83 hours	110 hours	32 hours	78 hours

Source: PRI staff analysis of regional CHRO data (September 2016).

In the Eastern Region, with 883 inquiries, HROs collectively spent approximately 221 hours on inquiry phone calls during FY 16. Thus, each of the seven HROs working in the Eastern Region would have spent about 32 hours out of the year on inquiry phone calls. In the Capitol Region, with 2,743 inquiries, HROs would have collectively spent approximately 686 hours. Because the West Central Region had five HROs (at the beginning of the fiscal year), this means each would have spent approximately 110 hours on inquiry phone calls in the course of the fiscal year. Cumulatively, the 8,136 inquiries required 2,367 hours of HRO time, or 78 hours per HRO, despite the fact that HROs in the Eastern Region spent less than 50 percent of this

number of hours and in the West Central Region HROs spent 40 percent more hours. Without regard to the distribution of inquiries across regions, the estimated 2,367 hours spent on inquiries statewide represents the workload of at least one FTE.

Intakes and inquiry by HRO. As noted, due to lack of data collection relating to numbers of intake meetings and committee staff’s concerns about accurate counting of inquiries, PRI staff can only estimate that inquiries and intakes each absorb the equivalent of one FTE. Due to concerns that spreading intake duties across regions with different staffing levels, resulted in the inequitable distribution of this workload, PRI staff also surveyed HROs about the time spent on inquiries and intakes.

In response to this survey, individual HROs reported spending anywhere from 10 to 30 percent of their total work time on inquiry and intake duties. Nine of the fourteen (64 percent) HROs responding to the question reported spending 20 to 30 percent of their time on these intake duties.⁴⁴ Only two (14 percent) HROs reported spending less than 10 percent of their time on intake duties and the remaining three HROs (21 percent) reported spending about 15 percent of their time on intake duties. These survey responses suggest that a few HROs may be spending no more than one full day every two weeks on intake duties, while others are possibly spending as much as three days every two weeks. Moreover, if the time represented by these survey responses is totaled,⁴⁵ it adds to over two FTEs.

Inquiries and intakes by region. It is interesting to note how the ratio of the number of complaints filed to inquiries varies from region to region. As shown in Table III-4, three of the four regions have ratios that cluster around the statewide ratio of four inquiries to every complaint filed, but the Eastern Region’s ratio is only two inquiries for each complaint filed. This could reflect the Eastern Region’s ability to provide better “customer service” to potential complainants (with shorter wait times for intake appointments and less pressure to conclude phone calls and appointments to get to other duties) due to its comparatively smaller caseload, or it could reflect that in other regions more inquiries result in referrals to other agencies due to a different mix of community demographics and difficulty in navigating available resources in those regions. It is also possible that in the regions with longer wait times for intake appointments, there is a higher percentage of “no shows” to intake appointments or other factors that discourage individuals with potentially meritorious discrimination complaints from moving beyond inquiry to actually filing a complaint.

Table III-4: Ratio of Inquiries to Complaints by Region (FY 16).

	Capitol	Southwest	West Central	Eastern	Statewide
Inquiries Made	2,743	2,309	2,201	883	8,136
Complaints Filed	635	624	652	492	2,403
Ratio of Inquiries to Complaints Filed	4.3:1	3.7:1	3.4:1	1.8:1	3.9:1

Source: PRI staff analysis of regional CHRO data (September 2016).

⁴⁴ Assuming 2,000 hours in a work year, 20 percent of an HRO’s time would be 400 hours.

⁴⁵ Nine HROs spending 20 percent of their time on intakes and inquiry is the equivalent 1.8 FTEs, and two spending 15 percent of their time represents another .3 FTE, for a total of 2.1 FTEs.

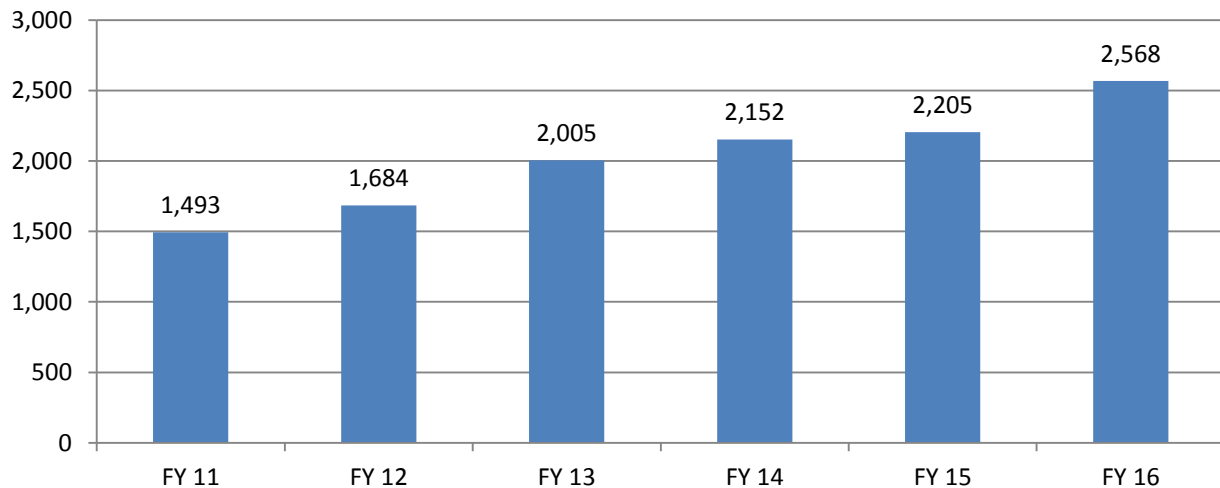
While existing intake and inquiry data may be of questionable quality, they do raise a concern that different staffing levels and different numbers of inquiries may impact regions and HROs inequitably and have repercussions for providing equivalent and high quality service to all potential complainants regardless of the region in which they are required to file a complaint. In addition to tracking the number of intake meetings held, PRI staff recommends:

9. **CHRO should make efforts to ensure that regions are using the same criteria to identify inquiries and their outcomes and review inquiry data again at the end of FYs 17 and 18. If the data continue to reflect disparate numbers of inquiries and intake meetings per region and per HRO, and different ratios of inquiries to complaints filed, CHRO should consider whether handling inquiries and intakes is an appropriate regional function.**

Annual Closures and Types of Dispositions

CHRO’s Case Tracking System (CTS) can be used to generate a report of cases closed within a calendar month or specific fiscal year. Figure III-3 reflects the 72 percent increase in total cases closed across the six year period. There were particularly large increases in the number of cases closed between FY 12 and FY 13 (19 percent) and in the number of cases closed between FY 15 and FY 16 (16.5 percent).

Figure III-3: Statewide Total Non-Housing Case Closures (FYs 11-16).



Source: PRI staff analysis of CHRO CTS data (September 2016).

Types of closures. Complaints involving allegations of discrimination in employment, public accommodations, and credit practices may be closed by the four regions or by the Legal Division. Table III-5 presents summary information for the number of cases closed statewide in fiscal years 2011 through 2016 and the dispositions of those cases.

Table III-5: Number of Closures by Type (FYs 11–16).

	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
Closure Type	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)
Settled (pre-finding)	539 (36%)	753 (45%)	889 (44%)	940 (44%)	978 (44%)	1,118 (44%)
MAR Dismissal	390 (26%)	118 (7%)	151 (8%)	103 (4%)	117 (5%)	131 (5%)
Release of Jurisdiction	277 (19%)	376 (22%)	468 (23%)	593 (28%)	549 (25%)	600 (23%)
Finding of No Reasonable Cause	132 (9%)	182 (11%)	197 (10%)	236 (11%)	258 (12%)	357 (14%)
Withdrawn by Complainant	74 (5%)	105 (6%)	101 (5%)	118 (6%)	139 (6%)	143 (6%)
Administrative Dismissal	37 (3%)	77 (5%)	137 (7%)	118 (6%)	104 (5%)	156 (6%)
Closed post-finding (conciliation or public hearing)	40 (3%)	61 (4%)	53 (3%)	32 (2%)	55 (3%)	53 (2%)
Other ^a	4 (0.3%)	12 (0.5%)	9 (0.4%)	12 (0.6%)	5 (0.2%)	10 (0.4%)
Total Closed	1,493	1,684	2,005	2,152	2,205	2,568

^a "Other" includes cases that remained pending as of the date PRI staff ran closure data reports in CTS as well as a few cases (less than ten cases over the six year period) closed with codes used too infrequently to separate into categories.

Sources: PRI staff analysis of CHRO CTS data (September 2016).

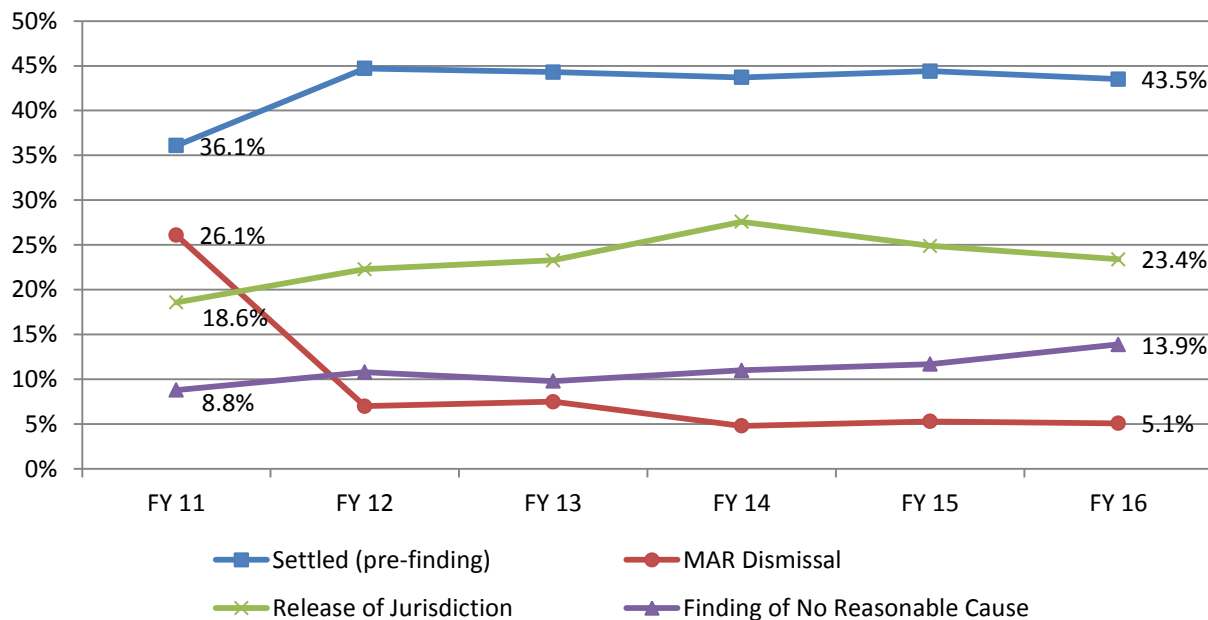
Figure III-4 provides a closer look at four kinds of case closures that occurred with increased or decreased frequency over the six year time period: settlements; MAR dismissals, releases of jurisdiction; and findings of no reasonable cause.

Many stakeholders report that there has been a significant decrease in the percentage of cases dismissed as a result of MAR/CAR, which is apparent from the data in Table III-5 and Figure III-4. The percentage of closures by MAR/CAR dismissal dropped from 26 percent of all closures in FY 11 to only 5 percent of all closures in FY 14 (a decrease of 66 percent).⁴⁶ Figure III-4 also shows that the use of three other types of closures increased over the same six-year

⁴⁶ The Connecticut Business and Industry Association (CBIA), which testified critically at the September 2016 PRI public hearing on this topic about the decreased number of MAR/CAR dismissals, has publicized data showing that one type of MAR/CAR closure went from representing 44 percent of all closures in FY 01 to only one percent of all closures in FY 15. CBIA obtained this data from the CHRO's Annual Case Processing Reports which can be accessed through: <http://www.ct.gov/chro/cwp/view.asp?a=2523&Q=315780>. PRI staff chose not to rely on the data contained in these reports for at least two reasons: 1) CHRO's Case Tracking System (CTS) contains complete data only from FY 11 forward and the current CHRO administration cannot guarantee the accuracy of the numbers contained in Annual Case Processing Reports prior to this time; and 2) because there is no dispute that there was significant decrease in the frequency with which cases are dismissed pursuant to MAR/CAR, it seems unnecessary to determine the magnitude of the change over any specific time period; the larger issue is whether the change has impacted the efficiency, effectiveness, or fairness of the CHRO discrimination complaint process.

period. Cases closed through settlement went from 36 percent of all closures to 43.5 percent of all closures; releases of jurisdiction went from being issued in 18 percent of all cases closed to being issued to 23 percent of all cases closed, and findings of no reasonable cause went from almost 9 percent of all closures to 14 percent of all closures.

Figure III-4: Frequency of Select Closure Types (FYs 11-16).



Source: PRI staff analysis of CHRO data (September 2016).

Decrease in Frequency of MAR/CAR Dismissals

As was seen in Figure III-4 and Table III-5, there was a marked drop in the proportion of closed cases that were dismissed pursuant to MAR/CAR between FY 11 and FY 16, and particularly between FY 11 (26 percent of all dispositions) and FY 12 (7 percent of all dispositions). CHRO staff attributes this drop off to internal process changes that roughly coincided with the passage of P.A. 11-237, which made review of regional MAR dismissals by the central office Legal Division mandatory unless a complainant immediately requested a Release of Jurisdiction signifying an intention to pursue the complaint in Superior Court.

Even before this legislative change was enacted, CHRO had revisited the standards and procedures for dismissing a case at MAR. CHRO updated its MAR procedures in light of decisional law⁴⁷ and a growing awareness that when MAR dismissals were subject to requests for reconsideration a majority of those dismissals were reversed on reconsideration.⁴⁸ Given that

⁴⁷ See, e.g., Torres v. C.H.R.O., No. CV 950323545S (March 11, 1999, McWeeny, J.)

⁴⁸ CHRO. P.A. 11-237 at 1: How is it Working? How Can We Make It Work Better (The Candle Report). (2012). On page 2 of that report, CHRO explains: “The Legal Division granted reconsideration of MAR dismissals in excess of 60% of the requests, meaning there was a low confidence level that the original dismissal was correct. Few complainants took advantage of the process, however – only about 30% made such requests – and so many potentially erroneous dismissals escaped review.”

not all MAR dismissals became the subject of requests for reconsideration, CHRO administration was concerned that cases that did in fact have merit were being dismissed through the MAR process, thus depriving complainants of a fair and effective mechanism for addressing their complaints of discrimination.

By FY 14, only 5 percent of all cases filed were dismissed through the MAR process. By this time, CHRO was requiring that all proposed MAR dismissals to be reviewed by the Legal Division before the dismissal was issued. This practice is reflected in P.A. 15-249, which revised the MAR process in three ways:

- the process was renamed Case Assessment Review (CAR);
- the time for completion of CAR was reduced from 90 days post-answer to 60 days post answer; and
- procedurally, the issuance of a release of jurisdiction was made automatic at the time the CAR dismissal was issued.

This procedural change precludes a complainant from requesting reconsideration of a CAR dismissal, because reconsideration would be conducted by the Legal Division, which was already reviewing all MAR dismissals before they were finalized. Given that P.A. 15-249 became effective on October 1, 2015, it is too early to say what, if any, consequences this change will have.

MAR/CAR dismissals as a percent of all cases filed. As noted, Table III-5 and Figure III-4, above, show types of case closures for cases closed in specific fiscal years. This is a somewhat problematic way to assess the effectiveness and efficiency of CHRO's processes because it results in combining cases that were filed in many different fiscal years. Most of the cases closed through MAR/CAR in a single fiscal year were likely filed during that fiscal year or in the few months immediately prior, whereas those cases closed through findings of no reasonable cause or even the issuance of a release of jurisdiction are likely to have been filed in prior fiscal years. Therefore, PRI staff asked Department of Administrative Services' Bureau of Enterprise Systems and Technology (DAS-BEST) to create a CTS report that allowed tacking of complaints by fiscal year filed, regardless of whether they were closed in the same or a subsequent fiscal year.

This new CTS "Lifespan Report" is particularly helpful in identifying the percentage of cases closed within various statutory timeframes (explored in Chapter IV), but it can also be used to illustrate the experience of parties to complaints filed with CHRO during specific periods of time, and how such experience changed over time. Figure III-5 shows MAR/CAR dismissals as a percentage of all cases filed for FY 11 and FY 15.

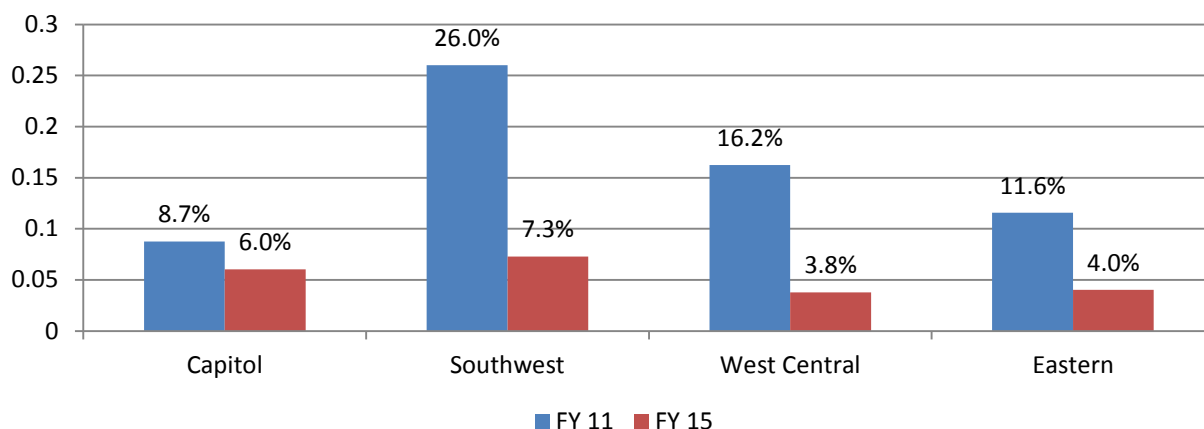
Figure III-5: MAR Dismissals as a Percentage of all Complaints Filed (FYs 11 and 15).



Source: PRI staff analysis of CHRO CTS data.

This statewide data masks the fact that, as shown in Figure III-6, for complaints filed in FY 11, individual regions had MAR dismissal rates ranging from 8.7 percent of all cases filed (Capitol Region) to 26 percent of all cases filed (Southwest Region). In contrast, for complaints filed in FY 15, regions' MAR dismissal rates ranged from 3.8 percent in the West Central Region to 7.3 percent in the Southwest Region. These data suggests, on the one hand, that the changes in CHRO processes surrounding Case Assessment Review have resulted in more consistent use of CAR across regions. On the other hand, given the low number of MAR dismissals in FY 15, these data show that one region (Southwest) is still dismissing 90 percent more cases at CAR as another (West Central).

Figure III-6: MAR Dismissals as Percentage of All Cases Filed (FYs 11 and 15).



Source: PRI staff analysis of CHRO data (September 2016).

Statewide Changes in Other Dispositions

Table III-6 shows the aggregate closure status for all cases filed statewide in FY 11 and FY 14⁴⁹ This method of analysis shows only two types of dismissals that have changed

⁴⁹ These numbers differ from those in Table III-5 because these are derived from the newly developed CTS Lifespan Report in order to determine the disposition and time pending until disposition of cases filed during the same fiscal

noticeably in the frequency with which they are used – those closed through MAR and by issuance of releases of jurisdiction.

Increased issuance of releases of jurisdiction. The data contained in Table III-6 suggest that the decreased use of MAR dismissals led to a corresponding increase in disposition through the issuance of ROJs. ROJs were issued in 17 percent of the cases filed in FY 11 and in 28 percent of cases filed in FY 14 – a 65 percent increase. CHRO staff indicates that the increased rate of issuance of ROJs was the result of two factors. First, more cases remain pending following MAR/CAR. Second, mechanisms were put in place to make it easier for complainants to request an ROJ and for CHRO to issue an ROJ through Early Legal Intervention (ELI) (as discussed in more detail later in this report).

Table III-6: Disposition of Cases Filed (FYs 11 and 14).

	FY 11		FY 14	
	Number of Cases	Percent of Total	Number of Cases	Percent of Total
Settled (pre-finding)	786	41%	836	42%
MAR Dismissal	299	16%	105	5%
Release of Jurisdiction	330	17%	558	28%
Finding of No Reasonable Cause	196	10%	223	11%
Withdrawn by Complainant	94	5%	115	6%
Administrative Dismissal	106	6%	82	4%
Closed post-finding (conciliation or public hearing)	85	4%	29	2%
Pending and Unknown ^a	28	2%	60	3%
Total	1,924		2,008	

^a The closure status for 3 cases filed in FY 11 could not be determined from CTS.

Source: PRI staff analysis of CHRO CTS data (September 2016).

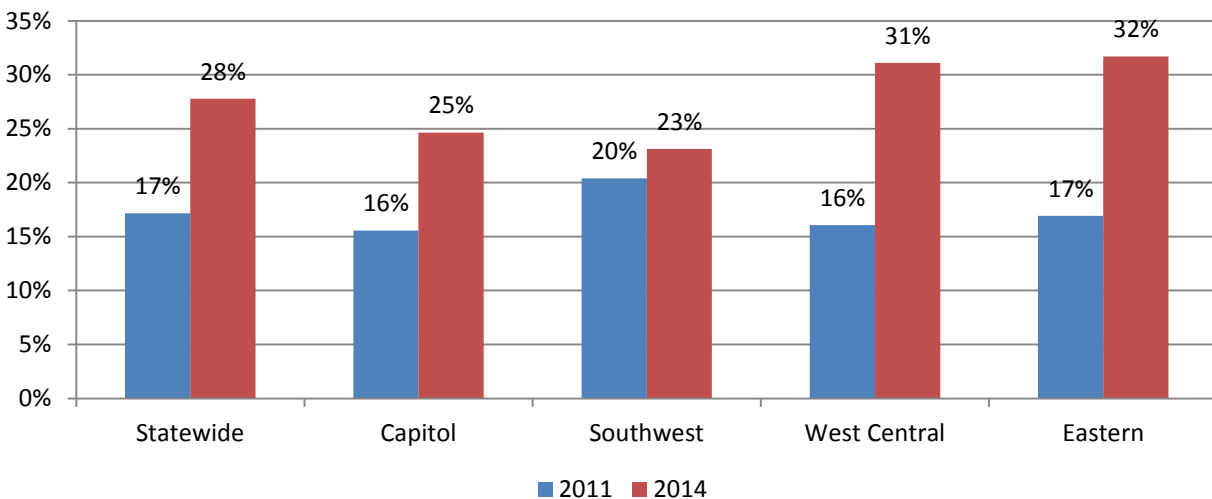
Complainants were likely to request an ROJ after MAR/CAR review if they were interested in the possibility of obtaining different remedies in Superior Court or if they were pursuing their discrimination complaints in addition to other claims relating to allegedly illegal conduct by an employer. Moreover, prior to 2011, a complainant could request an ROJ only with the consent of the respondent or after the complaint had been pending at the commission for 210 days or more. Public Act 11-237 still allowed a joint request for an ROJ at any time, but permitted a complainant to request an ROJ unilaterally at any time following MAR or after the complaint had been pending for 180 days.

year rather than just the number of dispositions of a certain type within a single fiscal year without regard for time of filing.

Differential use of ROJ disposition by region of filing. Figure III-7 shows, for FYs 11 and 14, statewide and for each region, the percentage of cases closed by CHRO with the issuance of a release of jurisdiction. Although the statewide rate increased from 17 percent to 28 percent (an increase of 65 percent), the regional rates increased as little as 13 percent in the Southwest Region and as much as 98 percent in the West Central Region. This suggests that there are either regional differences in the issuance of ROJs by regional staff or that some regions are referring more cases to Early Legal Intervention resulting in the issuance of ROJs by the Legal Division. PRI staff recommends:

10. CHRO should continue to track whether regions are applying the criteria for issuing ROJs consistently. If this is not the case, efforts should be made to ensure uniformity in the use of the ROJ issuance process.

Figure III-7: Percentage of Cases Filed by Region in which ROJ Issued (FYs 11 and 14).



Source: PRI staff analysis of CHRO CTS data.

Closures by Unit

In attempting to determine closures by CHRO unit, PRI staff ran into two significant challenges. First, the central office Legal Division has been identified as having a large role in processing cases, not only at public hearing but also pre-finding. In other words, division staff was not only prosecuting cases following a finding of reasonable cause, but was also conducting mediations and investigations and preparing findings of reasonable cause or no reasonable cause in the first instance. Second, due to changes in administrative staffing and responsibility for maintenance and updating of CHRO’s CTS system, large numbers of closed cases from FYs 11-14 cannot be accurately attributed to any specific investigator or attorney, and thus cannot be attributed to a particular unit.

Table III-7 reflects the available data from CTS regarding closures by individual unit staff, including those in the Legal Division. In terms of cases closed by the Legal Division, this

table shows the division not only functions as an additional pre-finding case processing unit, but was responsible for 33 percent of all cases closed in FY 16.⁵⁰

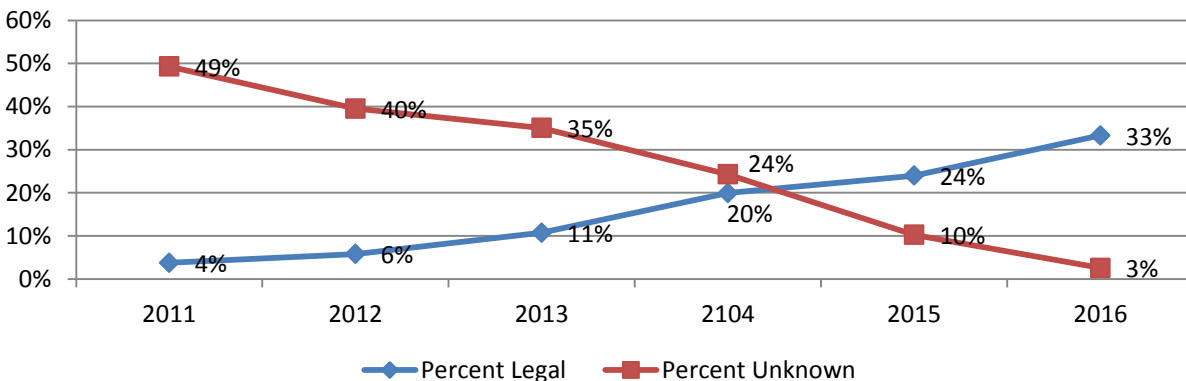
Table III-7: Non-Housing Closures by Unit (FYs 11-16).

	Closed by Capitol Staff	Closed by Southwest Staff	Closed by West Central Staff	Closed by Eastern Staff	Closed by Legal Staff	Closed by Unknown Staff	Total Statewide Closures
FY 11	155 (10.4%)	213 (14.3%)	188 (12.6%)	145 (9.7%)	56 (3.8%)	736 (49.3%)	1,493
FY 12	279 (16.6%)	203 (12.1%)	267 (15.9%)	171 (10.1%)	98 (5.8%)	666 (39.6%)	1,684
FY 13	248 (12.4%)	256 (12.8%)	358 (17.9%)	225 (11.2%)	215 (10.7%)	703 (35.1%)	2,005
FY 14	326 (15.2%)	225 (10.5%)	372 (17.3%)	277 (12.9%)	429 (19.9%)	523 (24.3%)	2,152
FY 15	469 (21.3%)	325 (14.7%)	319 (14.5%)	337 (15.3%)	529 (24.0%)	226 (10.2%)	2,205
FY 16	461 (18.0%)	361 (14.1%)	414 (16.1%)	411 (16.0%)	855 (33.3%)	66 (2.6%)	2,568

Sources: PRI Staff Analysis of CHRO CTS data (September 2016).

Figure III-8 shows that while 49 percent of all closures were not attributable to individual staff members in FY 11 and only 3 percent in FY 16, there has either been a decrease in total closures by the Legal Division or other units were contributing to the “unknown” closures throughout this 6 year period. As a result, it is impossible to say if the percentage of all cases closed by the Legal Division is increasing, decreasing, or remaining the same. Looking forward, CHRO will be better able to track the Legal Division’s role in closing cases in future years, now that CTS contains more reliable data about case assignments.

Figure III-8: Percent of Annual Closures by Legal and Unknown Staff (FYs 11-16).



Source: PRI staff analysis of CHRO data (September 2016).

⁵⁰ This percentage includes cases closed at or after certification to Public Hearing. However, in FY 16, only two percent of all cases closed were reported closed through Public Hearing or after a finding of reasonable cause.

Closures without attribution. As noted, almost half of the 1,493 closures in FY 11 were not attributed to specific staff and thus cannot be identified with a specific region. It was only in FY 16 that the percentage of closures without attribution to a specific staff member dropped to single digits. As a result of this high percentage of cases not formally closed by a known investigator or region in prior fiscal years, PRI staff was unable to compare closures by regions or unit across multiple years. Instead, committee staff used the most recent year of closure data to make observations and recommendations for future analyses, understanding the limits of not being able to see trends.

Table III-8 looks at a single year of case closure data (FY 16) to compare types of closures by region. The first row reiterates the percentage of all statewide closures done in the indicated region. If each unit closed cases in a similar manner, the percent of each type of closures would largely parallel the percentage of statewide closures. Because certain types of closure are unique to the Legal Division (e.g., closures through Public Hearing), in some rows the regional percentage of all closures would be lower but it would be expected that there would be some correspondence with the percentage of all closures by that region.

Table III-8: Percentage of Closures by Type by Region (FY 16).

	Capitol	Southwest	West Central	Eastern	Legal & Unknown ^a	Statewide
Percent of All Cases	461 (18%)	361 (14%)	414 (16%)	411 (16%)	921 (36%)	2,568
Settled (pre-finding)	229 (21%)	160 (14%)	229 (21%)	222 (20%)	278 (25%)	1118
CAR Dismissal	20 (15%)	29 (22%)	22 (17%)	12 (9%)	51 (37%)	131
Release of Jurisdiction	103 (17%)	53 (9%)	105 (18%)	63 (11%)	276 (46%)	600
Finding of No Reasonable Cause	40 (11%)	88 (25%)	26 (7%)	51 (14%)	152 (43%)	357
Withdrawn by Complainant	34 (24%)	20 (14%)	21 (15%)	34 (24%)	34 (24%)	143
Administrative Dismissal	33 (21%)	10 (6%)	11 (7%)	29 (19%)	73 (47%)	156
Closed post-finding (conciliation or public hearing)	2 (4%)	0 (0%)	0 (0%)	0 (0%)	51 (96%)	53
Other	0 (0%)	1 (10%)	0 (0%)	0 (0%)	9 (90%)	10

Notes: Table should be read horizontally – each row adds up to the statewide column at the far right.

^a Legal and Unknown are combined as CHRO administrative staff believe most “unknown” closures, at least in the past two or three fiscal years, are probably attributable to the Legal Division. Moreover, with Unknown closures representing less than 3 percent of all closures, the combination allows the reader to continue to keep in mind the total number of closures contained in prior Tables and Figures.

^b “Other” includes those cases that have “unknown” as the closure status or a closure status that occurs so infrequently that it is not helpful to analyze data separately.

Source: PRI staff analysis of CHRO CTS data.

There is far from perfect correspondence between the percent of each type of closure across units. The Eastern Region, for example, was responsible for the smallest percentage of CAR dismissals but a larger percentage of withdrawals for all but one other region. This leads to the question: in the Eastern Region, are staff less likely to dismiss at CAR but more likely to convince a complainant that the case is unlikely to lead to a finding of reasonable cause and/or any negotiated settlement? Similarly, both the Eastern Region and the Southwest Region issue a smaller percentage of ROJs, leading to the question: do these regions refer more cases to Early Legal Intervention when they believe an ROJ should be issued? Finally, the Southwest and West Central Regions dispose of fewer cases through administrative dismissal than would be expected, raising the question: do questions of law, policy, or procedure lead these regions to make referrals to Early Legal Intervention when the case appears ripe for administrative dismissal? Therefore, PRI staff recommends:

- 11. CHRO should make efforts to ensure regions are using the same closure codes in CTS and review data regarding closures by type at the end of FY 17 and FY 18. If the data continue to resemble the results for FY 16, CHRO should work to identify what regional differences account for the differential use of various types of closures and consider whether, based on available resources, the trends in regional use of closure types are acceptable, or if more training should be provided to staff in different regions to ensure greater uniformity.**

Legal Division involvement in pre-finding case processing. Although it is not possible to ascertain whether and how much the Legal Division’s caseload has increased over the past six years, CTS can be used to determine the current Legal Division caseload for purposes of comparison with the four regions. Committee staff determined that this was necessary in light of the fact that the Legal Division, in addition to its many other duties, plays a significant role in performing the same case processing work as the regions.

As of September 1, 2016, there were 684 non-housing cases pending at the Legal Division. The division’s caseload can be divided into two categories: pre-finding and post-finding. Pre-finding refers to cases pending at any phase up to and including the end of the Investigation phase, which ends only when a finding of reasonable cause or no reasonable cause is issued. Any case disposition prior to a finding – MAR/CAR dismissal, administrative dismissal, settlement, withdrawal – and including a finding of no reasonable cause, normally results in the case being “closed.” If there is a finding of reasonable cause, the case is forwarded to CHRO’s central office for post-finding proceedings, which typically involve certification for public hearing with OPH.⁵¹

Table III-9 shows the number of non-housing cases pending in the Legal Division as of September 1, 2016. The first numerical column includes all cases that appear on the CTS Legal Division caseload, both pre- and post- finding, and the second column excludes the following cases:

⁵¹ In two situations, neither of which arises frequently, a “closed” case may remain pending for post-dispositional proceedings. This occurs: 1) if a default occurs, the case is referred to OPH for a public hearing upon default to assess and award damages; and 2) if a complainant filed a request for reconsideration of a decision or to reopen a case.

Table III-9: Legal Division Non-Housing Caseload (September 1, 2016)

Region Filed	All Non-Housing Cases Assigned to Legal Division	Pre-Finding Non-Housing Cases Assigned to Legal Division
Capitol	153	109
Southwest	198	146
West Central	244	188
Eastern	89	60
TOTAL	684	503

Source: PRI staff analysis of CHRO CTS data.

- 135 non-housing cases which CTS indicates are certified to or pending at Public Hearing or in court (this includes cases that show up as assigned to Early Legal Intervention but with a last event indicating the determination at ELI was to send the case to public hearing);

- 43 cases pending on reconsideration; and

- 3 cases pending on the Legal Division caseload following a request for default.⁵²

It should also be noted that 60 of the cases pending at the Legal Division are pending ELI. These cases are included in Table III-9 because they are pending pre-finding and must be considered when assessing the extent of the Legal Division’s role in pre-dispositional case processing. It is the caseload identified in the right hand column of Table III-9 that is considered in the following analysis of the statewide caseload of non-housing and pre-finding cases.

Staff Caseloads by Unit

Staffing levels and the number of cases filed by region vary. As such, not all investigatory staff has the same caseloads. Table III-10 provides the total number of pre-finding cases pending within each region and the Legal Division, the number of staff available to process cases (including regional managers), and the resulting per staff caseloads as of September 1, 2016. CHRO pending case information is only available in CTS on a point in time basis, since the database is updated daily and does not remain static.

Table III-10: Case Processing Staff Caseloads (September 1, 2016).

Region/Unit	Cases Pending within Region	Number of Investigative Staff and/ or Attorneys	Per staff caseload
Capitol	431	7	62
Southwest	399	7	57
West Central	321	4	80
Eastern	323	7	46
Legal Division	503	13	39

^a Staffing information is taken from CORE-CT (and confirmed by CHRO) as of July 1, 2016. The staffing data do not include regional managers and the Legal Division’s principal attorney, who do not formally carry caseloads.

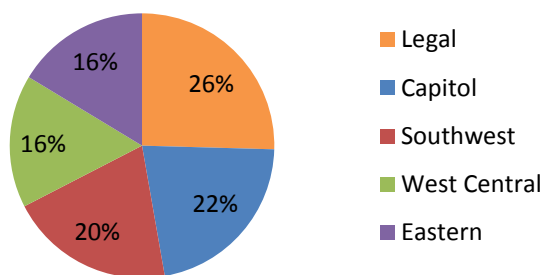
Source: PRI staff analysis of CHRO data.

⁵² These 181 cases comprise just over 25 percent of the Legal Division’s caseload, indicating that approximately three-quarters of the Legal Division’s caseload involves pre-finding cases that could be processed in the regions.

The table shows per staff caseloads vary across the five units responsible for processing complaints prior to finding. The Legal Division – which assists regions with handling discrimination cases before finding, along with its many other responsibilities – and the Eastern Region had the lowest per staff caseloads of the five case processing units, at 39 and 46 cases respectively. The West Central and Capitol regions had the highest per staff caseloads at 80 and 62 cases. Just within the regions, there was a 74 percent difference in per staff caseloads between the West Central Region (80 cases) and the Eastern Region (46 cases).

Figure III-9 shows the units to which all pending pre-finding cases were assigned as of September 1, 2016. On that date, the Legal Division was responsible for 26 percent of all pending pre-dispositional cases, with each region being responsible for 16 to 22 percent.

Figure III-9: Pre-Dispositional Caseload by Unit Assigned (September 1, 2016).



Source: PRI staff analysis of CTS data.

Comparison of Legal Division and regional pre-dispositional caseload. Of the various phases of case processing, only two phases are handled at both the regional level and within the Legal Division: Mandatory Mediation and Investigation.⁵³ Therefore, to better compare workload across the four regions and the Legal Division, it is helpful to look exclusively at cases pending at these phases. Table III-11 shows, for cases pending at Mandatory Mediation and Investigation, whether they are assigned to one of the four regions or to the Legal Division.

Although the Legal Division is handling similar numbers of cases at each phase, this reflects 31 percent of all pending Mandatory Mediations and only 23 percent of all Investigations. Overall, the Legal Division is handling the same 26 percent of cases pending at these two phases as they are of all pre-finding cases. It should also be noted that the Legal Division is responsible for more cases at each of these phases than any other single unit.

⁵³ Cases are filed and remaining pending only in the regions prior to the CAR phase. CAR is handled differently across regions with the Legal Division having greater and lesser involvement depending on the region. ELI and Public Hearing are conducted exclusively by the Legal Division.

Table III-11: Cases Pending Mandatory Mediation and Investigation by Region and Legal Division^a (September 1, 2016)

	Number of Cases Pending Mandatory Mediation (Percent Statewide Total)	Number of Cases Pending Investigation (Percent Statewide Total)	Total Number Pending (Percent Statewide Total)
Statewide	452	640	1,092
Capitol	103 (22.8%)	145 (22.7%)	248 (22.7%)
Southwest	33 (7.3%)	112 (17.5%)	145 (13.3%)
West Central	72 (15.9%)	135 (21.1%)	207 (19.0%)
Eastern	101 (22.3%)	100 (15.6%)	201 (18.4%)
Legal	143 (31.6%)	148 (23.1%)	291 (26.6%)

^a This analysis omits 144 cases pending at the Legal Division and 18 cases pending within the four regions for which the phase status could not be determined.

Source: PRI staff analysis of CHRO CTS data.

Adjustments to accommodate staffing levels. A decrease in staffing in individual regions has led to ad hoc adjustments in the way cases are processed. For example, the West Central Region has been having the Legal Division perform all CARs as way to better help balance its workload. In addition, before his retirement the Southwest Regional Manager indicated he was handling all the CAR decisions for that region to give investigators additional time to focus on their other case processing duties. The Legal Division’s role in pre-finding case processing also seems to reflect the ad hoc approach to managing discrepancies in regional caseloads. Table III-12 shows the number and percentage of cases on the Legal Division’s caseload originating in each of the four regions.

It is not surprising that the highest percentages of the Legal Division’s caseload come from the West Central and Southwest regions. The West Central Region had only four HRO’s at the start of FY 17 as compared to the Eastern Region’s seven. In addition, as was noted earlier in the chapter, there are simply more cases filed in the West Central Region than in some other regions, particularly the Eastern Region.

Table III-12: Legal Division Non-Housing Pre-Finding Caseload (September 1, 2016).

Region Filed	Cases Assigned to Legal Division	Percentage of Legal Division Pre-Finding Caseload
Capitol	109	21.7%
Southwest	146	29.0%
West Central	188	37.4%
Eastern	60	11.9%
TOTAL	503	100%

Source: PRI staff analysis of CHRO CTS data.

Changes in how and where cases are processed beg the question of whether staffing resources are strategically balanced across the regions. For example, Table III-10, above, shows there was a 50 percent difference in the per staff caseloads between the Eastern (40 cases per HRO) and Capitol (62 cases per HRO) regions, yet the number of staff available to process cases

was the same. The Capitol Region, in turn, has 23 percent fewer cases pending per HRO than the West Central Region.

There may be adequate explanations for why one region has a lower per staff caseload at any single point in time (for example employees out on leave or working reduced schedules). Moreover, this single metric does not reflect that regions also have different ways of handling cases at CAR and have different workloads relating to inquiries and intakes. Finally, CHRO reports that collective bargaining agreements provisions may limit CHRO's ability to transfer staff within the state to equalize workloads. Nevertheless, PRI staff believes regional workloads should be monitored and reported on regularly, to ensure that there is no systemic inequity between the regions, and recommends:

12. CHRO should frequently examine the caseloads of its regional staff and take the necessary steps to make sure any drastic discrepancies in such caseloads are addressed, including transferring cases across regions for processing or moving to more centralized functions where feasible (such as for inquiries and/or intakes) to ensure an equitable distribution of caseloads among staff.

In conjunction with this recommendation, the observation that CAR dismissals occur with different frequency in different regions, and the fact that the Legal Division is already conducting CARs for one region and reviewing recommended CAR dismissals for all regions, PRI staff also recommends:

13. CHRO should consider having Legal Division staff conduct all CARs statewide. If the four regions were similarly relieved of CAR responsibilities, all cases pending in the regions would either be at the Mandatory Mediation or Investigation phase. This would make a comparison of both the intake demands per HRO and caseloads per HRO a meaningful way to assess whether the distribution of pending cases among regions was equitable.

Early Legal Intervention

As discussed in Chapter II, Public Act 11-237 implemented a new method of closing cases prior to a full investigation – Early Legal Intervention (ELI). Any complaint that has completed Mandatory Mediation without a settlement but has not formally completed Investigation may enter Early Legal Intervention. ELI can be requested by either party or the agency (i.e., manager of the region processing the case or by the Legal Division's principal attorney). Attorneys in the Legal Division are responsible for processing ELI cases within 90 days after a request is made.⁵⁴ By law, there are three possible dispositions for a case referred to ELI:

1) a release of jurisdiction is issued giving the complainant the right to pursue the case in Superior Court,⁵⁵

⁵⁴ C.G.S. Sec. 46a-83(e).

⁵⁵ A release of jurisdiction may be requested by a complainant or issued unilaterally by the Legal Division.

- 2) the case is referred to the CHRO Office of Public Hearings for a hearing; or
- 3) the case is sent back to the region for a full investigation.⁵⁶

Early Legal Intervention is not used for housing discrimination complaints.

Usage. PRI staff examined the ELI process to determine the extent of its use and the frequency of each disposition type, including the total number of cases closed without a formal investigation (i.e., through referral to OPH or issuance of a release of jurisdiction).⁵⁷ The agency's main data management system does not include information about ELI, presumably due to the newness of the process, but the principal attorney in the Legal Division maintains a database containing ELI information. The database was provided to committee staff and serves as the information source for the analysis below. It should be noted that Early Legal Intervention was implemented by CHRO beginning in October 2011. To avoid examining data for a partial fiscal year, PRI staff examined ELI beginning with FY 13, the first complete fiscal year for which ELI information was available.

Table III-13 shows the number of cases referred to Early Legal Intervention, the number closed through ELI, and the number retained for investigation, for FYs 13-16. The number closed through ELI are then reported as a percentage of all closures for each fiscal year. Over the four year period, the number of cases referred to ELI increased steadily from 194 to 345 (78 percent). The number of cases retained for investigation ranged from 15 percent (in FY 15) to 25 percent (in FY 16). During the four years, a total of 81 percent of referred cases were closed or referred to Public Hearing as a result of the ELI process. ELI closures for this period reflected 7.5 percent of all case closures.

Table III-13: Early Legal Intervention Referrals and Closures (FYs 13-16).

	FY 13	FY 14	FY 15	FY 16	Four Year Total
Cases Referred to ELI ^a	194	275	264	345	1,078
Cases Retained For Investigation Following ELI	37 (19%)	44 (16%)	39 (15%)	87 (25%)	204 (19%)
Cases Reaching Disposition Through ELI	157 (81%)	106 (84%)	153 (85%)	258 (75%)	674 (81%)
Total Cases Closed	2,005	2,152	2,205	2,568	8,930
ELI Closures as a Percentage of All Closures	7.8%	4.9%	6.9%	10.0%	7.5%

^a Two additional cases in FY 15 and 22 cases in FY 16 did not have applicable dates in the CHRO database based on the date of PRI staff's receipt of the ELI database. They are excluded from this analysis as it is unknown whether they were

Source: PRI staff analysis of CHRO data.

⁵⁶ If an investigation is necessary, the Legal Division may recommend the investigator make a finding of no reasonable cause. Such finding will be made unless the investigator believes the commission legal counsel made a mistake of fact. If the investigator intends to make a finding of reasonable cause after the Legal Division recommends otherwise, the investigator must consult with the division.

⁵⁷ How well the Legal Division has met the 90-day statutory requirement to conclude the process is discussed in Chapter IV.

CHRO indicates the intent of Early Legal Intervention is to move cases more expeditiously to proper disposition. Given 674 of 1,078 cases referred to ELI (63 percent) were closed without a full investigation since FY 13, the ELI process clearly decreased the amount of time many complainants and respondents had to wait for resolution of their cases by CHRO. Moreover, the use of ELI to dispose of cases without investigation or public hearing also conserved agency resources for use in relation to other cases. PRI staff also believes the increased use of ELI over the last four fiscal years shows the process is meeting its goals. At the same time, there is little information reported by the agency on ELI results. To that end, PRI staff recommends:

14. The agency should report its performance related to ELI to the full commission and to the legislature and governor as part of its compliance with C.G.S. Sec. 46a-82e(b).

ELI outcomes. As noted earlier, CHRO has three options for resolving cases referred to Early Legal Intervention. Cases sent back to the region for a full investigation may include a recommendation from the Legal Division that a no reasonable cause finding be made. ELI cases may also be closed through administrative dismissal, which usually happens due to some legal deficiency in the complaint or in the complainant’s ability to go forward with the case (this is a very rare outcome and CHRO notes such cases probably should not have been retained by the agency at the Case Assessment Review stage). The parties may also settle a case while it is pending at ELI or the complainant may choose to withdraw the complaint without a settlement. Table III-15 shows CHRO’s usage of the various ELI resolutions for FYs 13-16.

Table III-15: Early Legal Intervention Case Dispositions (FYs 13-16).

Disposition Type	FY 13 (n=194)	FY 14 (n=275)	FY 15 (n=264)	FY 16 (n=345)
Release of Jurisdiction (unilateral by CHRO)	82 (42%)	152 (55%)	172 (65%)	133 (39%)
Investigation (Full)	29 (15%)	40 (15%)	37 (14%)	86 (25%)
Administrative Dismissal / Administrative Dismissal-No Reasonable Cause	5 (3%)	1 (0%)	12 (5%)	72 (21%)
Public Hearing	32 (17%)	23 (8%)	24 (9%)	25 (7%)
Release of Jurisdiction (complainant request)	18 (9%)	26 (10%)	9 (3%)	12 (4%)
Withdrawal with Settlement	17 (9%)	19 (7%)	5 (2%)	6 (2%)
Withdrawal without Settlement	2 (1%)	4 (1%)	0 (0%)	5 (1%)
Other (cases missing a formal disposition)	1 (0%)	6 (2%)	3 (1%)	5 (1%)
Investigation (Recommendation for No Reasonable Cause Finding)	8 (4%)	4 (1%)	2 (1%)	1 (0%)

Percentages are rounded.

Source: PRI staff analysis of CHRO data.

Release of jurisdiction. A release of jurisdiction (ROJ) may be initiated by the complainant/complainant’s counsel or unilaterally by the agency. The most frequent disposition

for ELI cases for FYs 13-16 was for CHRO to issue a release of jurisdiction on its own accord and not at the request of either party. Of the 1,078 total ELI cases closed during the four year period, 539 (50 percent) were given an ROJ initiated by CHRO. This is in contrast to only 65 (6 percent) cases closed by granting a complainants' request for an ROJ.

According to CHRO, if the agency initiates the release of jurisdiction, there is usually some factual or legal basis for the claim. Nevertheless, some stakeholders, particularly counsel who typically represent complainants, expressed concern that a complainant could be issued an ROJ by the agency despite his or her preference for proceeding at CHRO and not in Superior Court. The concern that this may occur creates a disincentive for some parties or advocates to request ELI. Given that CHRO issued unilateral ROJs to close only 39 percent of ELI cases in FY 16, as compared to 65 percent in FY 15, it is possible that CHRO is responding to this concern, but PRI staff recommends:

15. The Legal Division should begin tracking and analyzing whether the complainant, respondent, or CHRO is requesting to use ELI, in order to obtain data about whether the process is viewed more or less favorably by complainants and respondents.

Retention for investigation or referral to public hearing. Over this four year period, 18 percent of ELI decisions directed a region to conduct a full investigation. This statistic obscures the fact that during FYs 13, 14, and 15, only 14 or 15 percent of ELI cases were sent for full investigation, while in FY 16, 25 percent were. In contrast, 17 percent of cases closed through ELI in FY 13 were sent to the Office of Public Hearings without investigation, but in FYs 14, 15, and 16, this occurred with less than 10 percent of ELI cases. Concerns were raised to committee staff about cases being sent to OPH without a full investigation, because there may be reasons that such cases should be dismissed or could be settled that will not be discovered until substantial CHRO/OPH resources have been committed to the public hearing. This was particularly troubling to stakeholders with concerns about the current OPH backlog. The data in Table III-15 suggests that the Legal Division may have been responding to concerns about the referral of cases to public hearing without investigation by using this disposition less frequently and referring cases for investigation more frequently, particularly in FY 16.

In all but FY 13, no more than one percent of cases were sent back to regions for investigation with a recommendation that a finding of no reasonable cause be made (it is unclear how many of those cases were closed with that finding). In addition, just over five percent of cases were withdrawn during the ELI process, either with or without a settlement, although withdrawal seems to be occurring less frequently in FY 16 than it was in FY 13, despite the large increase in the number of cases being referred to ELI.

Accountability

The Commission on Human Rights and Opportunities is required by statute to follow specific timeframes for processing complaints alleging discrimination in non-housing matters involving employment, public accommodation, and credit. This chapter highlights Program Review Committee staff's analysis of CHRO data to determine how well the agency has complied with such timeframes and other statutory requirements.

Key Findings

- *The percentage of filed complaints for which the merit assessment review was conducted in a timely manner increased over FYs 11 through 15. In FY 15, 86 percent of complaints filed were closed or had a merit assessment review within 160 days of the complaint being filed, up from 62 percent in FY 11.*⁵⁸
- *The percentage of complaints closed, or in which a finding of reasonable cause or no reasonable cause is issued, within the initial statutory 190-day investigation timeframe increased from 40 percent of cases filed in FY 11 to 59 percent of cases filed in FY 15.*
- *Currently “aged cases” (complaints that remain pending 24 months after filing) represent just under four percent of cases pending statewide. The majority of aged cases are pending in the Legal Division.*
- *The commission does not regularly receive relevant information on case processing from commission staff, particularly in regard to:*
 - *The cases filed in each quarter and fiscal year that reach milestones in compliance with statutory timeframes for CAR, Investigation, ELI, and Reconsideration;*
 - *The total number of cases pending at the Legal Division; and*
 - *Process outcomes, specifically for CAR, investigations, ELI, and reconsiderations.*
- *The percentage of reconsideration requests granted by CHRO declined five of the six years between FY 11 and FY 16. This is a general indicator of improved accuracy of decisions made during the case resolution process.*

⁵⁸ As explained in Chapter III, in the absence of any CTS report that includes both the Answer date and the MAR date, 160 days from filing is used as a proxy for timeliness of MAR.

Compliance with Statutory Timeframes for Investigation and Findings

CHRO staff, commissioners, and other stakeholders indicated to PRI staff that an important metric for assessing agency performance is compliance with statutory timeframes. Committee staff examined CHRO's compliance with such timeframes, and the results are provided below.

Summary of applicable timeframes. Table IV-1 outlines the complaint processing timeframes CHRO must follow and the obligations imposed on the agency in connection with each one. Note that these are the timeframes that predate P.A. 15-249, and comport with data from FYs 11-15, which is analyzed in this chapter.

Service of complaint and receipt of answer. CHRO does not routinely track or report compliance with these two timeframes. Nevertheless, no concerns were expressed to PRI staff that there are any systemic issues with CHRO's ability to comply with these provisions.

Completion of Merit Assessment Review. CHRO's computerized Case Tracking System (CTS) currently is able to generate, at any given time, a listing, by region, of cases pending in which the respondent's answer has been received and MAR (now CAR) has not yet been completed. This report appears to be used by CHRO to identify cases approaching or over the deadline for assessment. This report represents a snapshot in current time and cannot be used historically to determine for cases filed in a particular quarter or year how many had merit assessment reviews were completed within 90 days of the respondent's answer being filed. In other words, CTS is currently not configured to allow CHRO to report quarterly to the commission on the outcomes of MAR (or CAR) for all cases filed.⁵⁹

In order to work around the current limitations of the CTS report system, PRI staff determined that for cases filed in FY 11 through FY 14, the following timeframes were in place:

- Complaint filing date; (Day 1)
- Complaint served upon respondent within 20 days; (Day 20)
- Answer to be filed within 45 days (30 days plus 15 day extension of time); (Day 65)
- Merit Assessment Review to be completed within 90 days after answer filed. (Day 155)

⁵⁹ Such reporting was required by C.G.S. (Revision of January 1, 2015) Sec. 46a-83(b), and is now required by Sec. 46a-83(c) of the statutes as revised. The relevant language reads: "The executive director shall report the results of the case assessment reviews made pursuant to this subsection to the commission quarterly during each year."

Table IV-1: Summary of Statutory Case Processing Timeframes (as of January 1, 2015).

Timeframe	Statutory Authority	Significance
Service of complaint on respondent within 20 days from filing	C.G.S. Sec. 46a-83(a) (Revised through January 1, 2015)	<ul style="list-style-type: none"> Service marks the beginning of timeframe for respondent filing answer
Receipt of respondent’s answer within 30 days – can be extended by up to 15 days	C.G.S. Sec. 46a-83(a) (Revised through January 1, 2015)	<ul style="list-style-type: none"> Receipt of answer marks beginning of timeframe for CHRO to complete merit assessment review (MAR)
Completion of MAR within 90 days of answer ^a	C.G.S. Sec. 46a-83(b) (Revised through January 1, 2015)	<ul style="list-style-type: none"> Complete MAR and send parties notice of result If complaint dismissed, complainant may request a release of jurisdiction (ROJ). In the absence of ROJ request, Legal Division to review MAR dismissal within 60 days^b
Mandatory Mediation conference to occur within 60 days of MAR	C.G.S. Sec. 46a-83(c) (Revised through January 1, 2015)	<ul style="list-style-type: none"> The requirement of Mandatory Mediation does not suspend the 190 day Investigation period, which runs from the date of notice of MAR
Completion of investigation and issuance of written findings within 190 days of MAR – can be extended by up to two three-month extensions of time	C.G.S. Sec. 46a-83(e)(1) (Revised through January 1, 2015)	<ul style="list-style-type: none"> Extensions of time are to be granted by the executive director or designee for good cause shown
Notification of complainant and executive director of cases pending for 21 months without findings	C.G.S. Sec. 46a-82e(c)	<ul style="list-style-type: none"> Executive director is to investigate the cause for delay and may schedule a date certain for issuance of findings.
After complaint pending for 24 months either complainant or respondent may petition superior court for order that findings issue.	C.G.S. Sec. 46a-82e(d)	<ul style="list-style-type: none"> To report annually to the judiciary committee and governor on the number of actions brought in superior court pursuant to this provision
Early Legal Intervention review to be completed within 90 days of request.	C.G.S. Sec. 46a-83(c)(2)	<ul style="list-style-type: none"> Use of Early Legal Intervention may result in more expeditious processing of referred cases
Reconsideration requests to be acted upon within 90 days of notice sent indicating the underlying decision	C.G.S. Sec. 46a-83(f)	<ul style="list-style-type: none"> Reconsideration can be requested following merit assessment dismissal, finding or no reasonable cause, or administrative dismissal

^a Per P.A. 15-249, as of October 1, 2015, MAR was renamed CAR (Case Assessment Review) and the time for completion was shortened to 60 days after receipt of the answer. The applicable provision is found at C.G.S. Sec. 46a-83(c) of the Statutory Supplement of January 1, 2016.

^b In practice, CHRO’s Legal Division was reviewing all MAR dismissals prior to issuance – if a case was dismissed pursuant to MAR as reviewed by the legal division an ROJ was issued automatically. This practice of automatically issuing an ROJ is now codified through amendments contained in P.A. 15-249.

^c As a result of P.A. 15-249, this provision is now codified at C.G.S. Sec. 46a-83(g)(1) in the Statutory Supplement of January 1, 2016.

Source: PRI staff analysis of Connecticut General Statutes, Revision of January 1, 2015, and Supplement of January 1, 2016.

This means that barring unusual circumstances (which CHRO indicates do not frequently arise), a MAR would be considered timely if completed on or before the 155th day after a complaint was filed. Based on this determination, allowing time between issuance of service or answer and receipt by the relevant party and accounting for possible delays in the entry of data into CTS or due to other process irregularities, PRI staff's analysis uses 160 days from filing as a proxy for 90 days from respondent's answer to assess the timeliness of MAR.

Table IV-2 indicates, for FYs 11, 13, and 15, the percentage of cases in which MAR was timely (using the 160 day proxy), along with the percentage of cases in which there was a disposition (i.e., settlement or withdrawal) prior to the expiration of the 160 day period, and the percentage of cases with untimely MAR or no MAR. Over this five year period, CHRO increased the percentage of cases in which MAR was conducted in a timely manner or some other disposition was reached within the MAR period (from 62 percent to 86 percent), while decreasing the percentage of cases in which there was an untimely MAR or no MAR at all (from 38 percent combined to 14 percent combined).

Table IV-2: MAR Completion Status: Complaints filed (FYs 11, 13, and 15).

	FY 11 (n=1,924)	FY 13 (n=1,895)	FY 15 (n=2,267)
Cases in which MAR Completed within 160 days of Filing	1,072 (56%)	1,223 (65%)	1,777 (78%)
Cases with Disposition Prior to 160 Days	117 (6%)	115 (6%)	171 (8%)
Cases with Untimely MAR	602 (31%)	463 (24%)	234 (10%)
Cases pending after 160 days with NO MAR	133 (7%)	94 (5%)	85 (4%)

Source: PRI staff analysis of CHRO CTS data.

Overall, in FY 15, the vast majority of complaints (86 percent) either received MAR or was resolved within 160 days. This reflects that CHRO is doing well in complying with the MAR requirement and timeframe, although there remains room for improvement. It must be noted that for complaints filed on and after October 1, 2015, the MAR/CAR period was shortened to 60 days after receipt of respondent's answer.

Through review of CTS data and communications with DAS-BEST, committee staff determined BEST has the ability to generate historical reports that include, for all complaints filed in a given time period, the filing date, the date of service, the answer date, and the MAR (or CAR) date and outcome. These reports could be used by the agency to generate quarterly reports to the commission that are called for in the CAR statute as well as to track compliance with the timeframes for service of the complaint and receipt of the answer. PRI staff recommends:

16. The commission work with DAS-BEST to develop CTS functionality to generate reports for all cases filed containing the filing date, the service date, the answer date,

and MAR (or CAR) date, and the outcome of the MAR (or CAR). This data, including but not limited to the percentage of cases in which CAR occurs within 60 days, should be reported to the Commission quarterly, along with data about the outcomes of such CARs.

Early Legal Intervention. Early Legal Intervention may be requested any time after the mandatory mediation conference is held with no settlement being reached. State law requires that the ELI process be completed by a commission legal counsel (i.e., the agency’s Legal Division) within 90 days of the date ELI is requested.

PRI committee staff examined ELI data to determine the length of time the ELI process has taken to complete and whether the agency is in compliance with the statutory timeframe. The Legal Division’s ELI database contains the date when the division’s letter is sent to the parties notifying them that ELI has been requested, which is the date that has been used by the division as the start time of the 90-day processing requirement (rather than the date the written request for ELI was received by the division). Table IV-3 shows CHRO’s timeliness in processing ELI cases in accord with the Legal Divisions current practice.

Table IV-3: Early Legal Intervention Process Completion Times: FYs 13-16

Fiscal Year	Number of ELI Closures	Number Cases Exceeding 90 Days	Percent Cases Exceeding 90 Days	Average # Days to Complete Process
FY 13	194	92	47%	124
FY 14	275	81	29%	75
FY 15	264	81	31%	86
FY 16	345	107	31%	68

Notes: Two additional cases in FY 15, and 22 cases in FY 16, did not have applicable dates in the CHRO database provided to PRI staff. Those cases that did not have closure information have also presumably not been closed and would increase both number and percent of cases exceeding 90 days and the average number of days to complete the process.

Source: PRI staff analysis of CHRO data.

For each of the last three fiscal years, CHRO averaged less than 90 days to complete the ELI process. By this measure, the agency could be considered in compliance with the statutory timeframe. However, not all individual ELI cases processed by CHRO were concluded within the 90-day threshold in any given fiscal year. In fact, in each of the last three fiscal years, approximately 30 percent of all ELI decisions have taken over 90 days. It should be noted that PRI staff asked CHRO whether it thought the statutory timeframe to close ELI cases was appropriate or if it needed modifying, and the agency believed the 90-day timeframe was sufficient. PRI staff recommends:

- 17. CHRO’s Legal Division should issue its decisions for the Early Legal Intervention cases within the 90-day timeframe required by law. The division should identify the underlying reasons why any case takes longer than 90 days to process and implement the necessary procedural changes to correct any deficiencies, or seek a statutory change to extend the timeframe. The division should also record data to analyze processing timeliness based on the actual dates of ELI requests, not the dates the division sends out its initial ELI letter to the parties. Frequent reports should be**

made to the human rights commissioners on the Legal Division’s compliance with ELI timeframes.

Investigation. Connecticut statutes require that Investigation be completed and a finding of reasonable cause or no reasonable cause be issued within 190 days after a merit assessment review (MAR). Up to two three-month extensions of this time period can be granted for good cause. Table IV-4 provides, for cases filed during fiscal years 2011 through 2015, the percentage of cases resolved:

- before or within the 190 day period following MAR;
- between 191 and 280 days following MAR (i.e., within one three-month extension of time); or
- between 281 and 370 days following MAR (i.e. within two three-month extensions of time).

Table IV-4: Timeliness of CHRO Investigations: FYs 11-15

	FY 11 (n=1,924)	FY 12 (n=1,706)	FY 13 (n=1,895)	FY 14 (n=2,008)	FY 15^a (n=2,267)
Cases with Disposition before MAR, through MAR, or within 190 Days after MAR	777 (40.4%)	751 (44.0%)	973 (51.5%)	1,135 (56.5%)	1,327 (58.5%)
Cases with Disposition within 280 Days after MAR	202 (10.5%)	218 (12.8%)	243 (12.8%)	252 (12.6%)	288 (12.7%)
Cases with Disposition within 370 Days after MAR	139 (7.2%)	149 (8.7%)	161 (8.5%)	159 (7.9%)	---
Cases with Disposition BEYOND 370 Days after MAR	658 (34.2%)	452 (26.6%)	396 (20.9%)	358 (17.8%)	---
Cases STILL PENDING after MAR	15 (0.8%)	16 (0.9%)	28 (1.5%)	41 (2.0%)	---
Cases with no MAR with Disposition after 160 days	124 (6.4%)	116 (6.8%)	92 (4.9%)	54 (2.7%)	---
Cases STILL PENDING with no MAR	9 (0.5%)	4 (0.2%)	2 (0.1%)	9 (0.5%)	---

^a Only the first two rows are completed for FY 15 as not all cases filed in FY 15 had been pending beyond the second extension of statutory finding period (370 days post-MAR) as of the date data were compiled for this report. This data is included as it shows CHRO has already succeeded in complying with the Investigation time from for 80 percent of the cases filed in FY 15.

Source: PRI staff analysis of CHRO CTS data (September 2016).

The table also shows the percentage of cases that did not have an assessment review but were closed after the MAR period. Without MAR, there is no ability to determine compliance with the statutory Investigation timeframe. Finally, Table IV-4 shows the percentage of cases filed in the indicated year that remained pending following MAR and without MAR. The term “disposition” is used to reflect the fact that cases are considered to have been investigated in compliance with the statutory timeframe if they are closed (e.g.: through settlement, withdrawal, or a finding of no reasonable cause) or if a finding of reasonable cause enters, thus meaning the case remains pending for purposes of Public Hearing only.

Over this five year period, CHRO greatly improved the percentage of cases closed within 190 days of MAR. The percentages of cases being closed within 280 or 370 days after MAR have been largely consistent since FY 12. Adding the percentages in these three rows shows that 77 percent of all cases filed in FY 14 were within the statutory timeframe, including extensions of time, in contrast with only 58 percent of all cases filed in FY 11 (a 33 percent increase in percentage of cases timely investigated).

Post-MAR. Simply looking at the number of cases closed within 190, 270 or 380 days after MAR fails to take into account that fact that cases can be compliant with the 190-day post-MAR timeframes contained in statute even if a MAR is conducted far beyond the required 90-day timeframe.⁶⁰ As described above, Connecticut statute requires MAR to be completed within 90 days of a respondent’s answer.⁶¹ In order to account for the possibility that untimeliness of MAR was leading to an appearance of case processing efficiency, PRI staff computed, for all cases filed in fiscal years 2011 and 2014 and closed by September 2016, the total time that elapsed between filing and closure. PRI staff looked at how many cases were closed within:

- MAR⁶²+190 day investigation timeframe (350 days);
- MAR+190+one three-month extension timeframe (440 days);
- MAR+190+two three-month extension timeframe (530 days);

The results of this analysis are shown in Table IV-5 for fiscal years 2011 and 2014. These data reflect a noticeable increase in the percentage of cases being “timely” closed without regard to timeliness of MAR.

Reporting on timeliness of Investigation. CHRO is required by statute to report annually to the judiciary committee and the governor on cases not closed within the 190 day timeframe to investigate a complaint following MAR and the reasons for such delay.⁶³ PRI was only able to locate such reports for fiscal years 1999 through 2006. CHRO acknowledges that this report has not been produced for any subsequent fiscal years.

⁶⁰ In other words, if MAR is untimely, a case could still be closed within 190 days of that MAR, but still be pending for over 21 or over 24 months.

⁶¹ The 90 day MAR period was decreased to 60 days through P.A. 15-249.

⁶² PRI staff uses 160 days from filing as the proxy for the MAR completion timeframe.

⁶³ C.G.S. Sec. 46a-82e(b).

Table IV-5: Timeliness of CHRO Dispositions (FYs 11 and 14).

	FY 11 (n=1,924)	FY 14 (n=2,008)	Percentage Change
Cases with Disposition ^a within 350 days of filing	851 (44.2%)	1,212 (60.4%)	+36.5%
Cases with Disposition within 440 days of filing	178 (9.3%)	243 (12.1%)	+30.8%
Cases with Disposition within 530 days of filing	154 (8.0%)	148 (7.4%)	-7.9%
Cases Pending beyond 530 days after filing	741 (38.5%)	405 (20.2%)	-18.3%

^a "Disposition" means withdrawal, settlement, or action that allows an opportunity to pursue claim in superior court (ROJ), file a request for reconsideration (AD or NRC finding), or that the case can be sent to PH due to RC finding or ELI).

Source: PRI staff analysis of CHRO data.

PRI staff believes generating annual reports regarding compliance with the Investigation timeframe and the reasons for cases being closed outside the permitted timeframe, as extended, would be helpful to not only the legislature and Governor, but also to CHRO. Just over 400 (20 percent) cases filed in FY 14 were not closed within the statutory timeframe. Although this represented a substantial improvement over the 741 cases not closed timely in FY 11, CHRO's annual documentation of the reasons for the failure to meet timeframes would provide a record of the resource constraints under which the agency is operating, particularly if the number and percentage of cases not closed in a timely manner begins to increase. PRI staff recommends:

- 18. CHRO should work with DAS-BEST to develop a report that can form the basis of an annual report to the judiciary committee and then regarding compliance with the 190 day timeframe and/or the permissible extensions of this timeframe for investigating complaints and issuing findings. Such a report should be filed annually and include a statement of the reasons why cases are not closed in compliance with the statutory timeframe.**

The law requiring annual reporting on cases closed outside the statutory timeframe also contemplates that CHRO would formally identify cases that require one or both 90 day extensions of the 190-day investigation period. Documenting a request for a 90-day extension of time can would focus staff attention on the statutory intent that most complaints be investigated and findings issued within six months of CAR, and, if a case is close to resolution, may provide an impetus for staff to issue final findings to obviate the need for a formal request for an extension of the investigatory timeframe. Moreover, documenting the request and the reason therefore, which could be done through an electronic form, would provide the underlying data for the annual report to the judiciary committee and governor as to the reasons the investigatory timeframe was not met in certain cases. PRI staff recommends:

- 19. CHRO should develop an internal system for regional and Legal Division staff processing cases before finding to request one or two extensions of the 190 day investigation period and the reasons for any such requests. The system should**

include a mechanism for the executive director or her designee to specifically grant or deny requested extensions.

Cases pending over 21 months. As previously discussed, there are specific statutory requirements when cases remain pending 21 months and 24 months after filing. Table IV-6 illustrates what percentage of cases triggered those requirements for fiscal years 2011 and 2014. CHRO has succeeded in decreasing both the percentage of cases pending for 21 months or more (from 38.5 percent of all cases filed in FY 11 to 20 percent of all cases filed in FY 14) and the percentage of cases pending for 24 months or more (from 19 percent of all cases filed in FY 11 to 6 percent of all cases filed in FY 14).

Table IV-6. Compliance with 21 Month and 24 Month Timeframes (FYs 11 and 14).

	2011 (n=1,924)	2014 (n=2,008)
Cases with Disposition within 530 days of filing	1,183 (61.5%)	1,603 (79.8%)
Cases with Disposition within 640 days (21 months) of filing	173 (9.0%)	120 (6.0%)
Cases with Disposition within 730 days (24 months) of filing	172 (9.0%)	118 (5.9%)
Cases with Disposition later than 730 days (over 24 months) after filing	372 (19.3%)	117 (5.8%)
Cases STILL PENDING in September 2016	24 (1.3%)	50 (2.5%)

Source: PRI Staff analysis of CHRO data.

When a case has been pending at CHRO for over 21 months (roughly 640 days), state law requires the agency to notify the complainant of the right to request a release of jurisdiction and to investigate the reason the written findings of reasonable cause or no reasonable cause have not yet been issued.⁶⁴ CHRO staff refers colloquially to the notification provision as the “21-month letter” requirement. Although the statute indicates the executive director is responsible for the sending of the 21-month letter, PRI staff were told that regional staff are expected to send this letter. The CTS system allows any regional manager to generate a list of all cases pending in his or her region and the date that represents 21 months from filing for each case. This report allows regional managers to periodically issue all required 21-month letters or direct assigned HROs to do so. In practice, however, at least one regional manager told committee staff that the region did not routinely send 21-month letters. There is currently no CTS generated report that indicates, for all cases pending 21 months or longer, whether or not the letter has been sent. PRI staff recommends:

20. CHRO should institute uniform procedures for the regular identification of cases that have been pending for 21 months and the issuance of notice to the parties with the date the notice is sent being recorded in CTS. The commission should also routinely report the aggregate number of cases pending beyond 21 months to the commission, the legislature, and the governor.

⁶⁴ C.G.S. Sec. 46a-82e(c).

“Aged cases.” Although not reflected in CHRO’s internal Annual Case Processing Reports, since at least 2014, CHRO’s executive director has been reporting monthly to the commission on the total number of cases that have been pending for 24 months or longer without disposition (i.e., “aged cases”). CHRO reports this as a percentage of all cases pending, in other words, informing the commission: “of all cases pending, this percent have been pending for 24 months or longer and are therefore ‘aged.’” This reporting structure neglects the larger question of why the cases were unable to reach disposition within 24 months and what legislative or other changes would enable CHRO to reduce these numbers.

Table IV-7 details the number of pending pre-disposition complaints by regional or Legal Division caseload by fiscal year filed.⁶⁵ This table shows that 11.5 percent of the cases on the Legal Division’s caseload (58 out of 505 cases) were pending for 24 months or longer. This is a much greater number and percent of aged cases than are pending in the four regions.

Table IV-7: Pending Pre-Dispositional Cases as of September 1, 2016

	Aged Cases (Filed before FY 15) ^a	Filed in FY 15	Filed in FY 16	Filed in FY 17	Total Pending ^b	Aged cases as percent of all pending cases
Capitol	1	53	276	101	431	0.2%
Southwest	3	33	297	66	399	0.8%
West Central	0	23	193	105	321	0.0%
Eastern	12	25	219	67	323	3.7%
Legal	58	90	353	2	503	11.5%
Statewide	74	224	1,338	341	1,977	3.7%

^a As the CTS Caseload Reports from which this table was derived were generated as of September 1, 2016, any case that was filed before the end of FY 14 was pending for 24 months or longer. In fact, this analysis may undercount aged cases as cases filed in the first two months of FY 15 would also have been pending for 24 months or longer.

^b This table and subsequent analyses also exclude cases in which the EEOC has been designated to investigate first, as CHRO is not actively engaged in any processing of such cases. One additional case appears on the Southwest Region’s Caseload Report even though it is identified as a housing case and the “last event” is reported to be “Transfer to Assistant Director.” This case was eliminated for purposes of PRI’s caseload analyses.

Source: PRI staff analysis of CHRO data.

Table IV-8 shows the number of cases filed in each region that remain pending after 24 months. The table also shows whether open cases appear on a regional caseload or the Legal Division caseload. When considered on a statewide basis, by region filed, there is much less disparity in aged caseload among regions. In fact, the West Central Region, which consistently

⁶⁵ Chapter III included a discussion of the Legal Division’s caseload and why it is helpful to view cases pending at the Legal Division as pre-finding (cases which could be processed in the regions but are transferred to the Legal Division for purposes of balancing workloads) and post-finding (cases which are the exclusive work of the Legal Division) as they are pending in court, at public hearing, or on reconsideration.

reports an aged caseload of zero, actually has a number and percentage of aged cases that is similar to the Southwest Region – it is just that all of the West Central Region’s aged cases are pending in the Legal Division rather than in the West Central Region. Moreover, twice as many cases filed in the West Central Region as in the Capitol Region remain pending after 24 months.

Table IV-8. Pending Cases By Region Filed: September 1, 2016

	Total Pending Cases	Aged Cases on Regional Caseload	Aged Cases Assigned to Legal Division	Total Aged Cases	Aged Cases as Percent of Pending Caseload
Capitol	540	1	8	9	1.7%
Southwest	545	3	18	21	3.9%
West Central	509	0	18	18	3.5%
Eastern	383	12	13	25	6.5%
Statewide	1,977	16	57	73	3.7%

Source: PRI staff analysis of CHRO data.

Through observation of commission and executive staff meetings, PRI staff determined that the Legal Division does not currently report on pending aged cases or on any pending cases that have not yet reached a finding a reasonable cause or no reasonable cause, other than those pending ELI. Although not necessarily intentional, CHRO’s current practice of excluding cases pending at the Legal Division in its monthly reports to the commission has resulted in an understatement of the number of aged cases as a percentage of all pre-dispositional cases pending statewide. Moreover, it creates an impression that some regions are doing significantly better than other regions in closing cases, when in fact those regions may simply through happenstance or by intention, have successfully referred their cases that require the greatest amount of time and attention to process to the Legal Division. PRI staff recommends:

- 21. CHRO should include all cases pending at the Legal Division in all reports to the commission. This could be done in at least two ways. First, these cases could be accounted for by having the Legal Division file a monthly report on all pre-finding cases on its caseload that mirrors the regional monthly reports and accounts for the region in which pending complaints were filed. Alternatively, the regional reports could be compiled in a way that accounts for all cases pending and indicates whether those cases are pending at the region or in the Legal Division.**

Case Reconsiderations

When CHRO dismisses a case – 1) with a finding of no reasonable cause; or 2) because of the complainant’s failure to attend a mandatory mediation or fact-finding conference, cooperate with the agency’s staff during complaint process, or accept a make whole relief offer from the respondent (i.e., by administrative dismissal) – the complainant may request the case be reconsidered by the agency. The request must be made in writing within 15 days of the date the

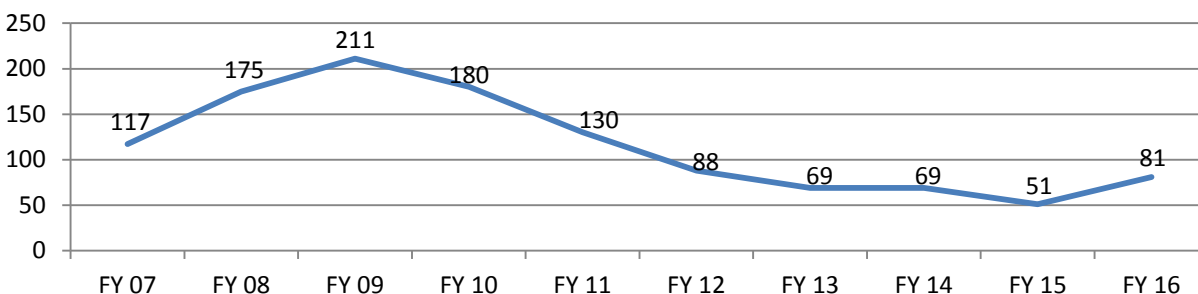
commission sends notice to the parties of the case dismissal and specify the reasons why reconsideration should be granted.⁶⁶ The agency also should not accept late requests.⁶⁷

Attorneys in the agency's Legal Division process all reconsiderations, which are required to be completed no more than 90 days from the date the notice of the original no cause finding or case dismissal date was sent to the parties.⁶⁸ If a reconsideration request is granted and additional investigation by the region with jurisdiction over the case is required, the Legal Division may direct the investigator as to additional evidence to collect and consider. If a reconsideration request is denied and the no reasonable cause finding or other dismissal is affirmed as the CHRO's final decision, the complainant may appeal the reconsideration denial to the Superior Court under the Uniform Administrative Procedures Act.

As is the case with ELI, the agency's central information system does not contain detailed information or outcomes relating to cases in which reconsideration is requested. Instead, the Legal Division maintains its own database with certain information about case reconsiderations. Committee staff obtained the database and reviewed it for trends in the number of case reconsiderations, process timeliness, and decision outcomes. The data used below are for non-housing cases only (housing cases accounted for 11 percent of all reconsideration requests since FY 11).

Number of requests. Figure IV-1 shows the number of reconsideration requests filed in FYs 07 through 16.⁶⁹ There was an 80 percent increase in case reconsideration requests for FY 07 to FY 09, followed by a 76 percent decline over the next six years, to 10-year low of 51 requests in FY 15. During FY 16, the number of reconsideration requests increased to 81 (59 percent).

Figure IV-1: Annual Case Reconsideration Requests (FYs 07-16).



Source: PRI staff analysis of CHRO data.

⁶⁶ C.G.S. Sec. 46a-83(h).

⁶⁷ Regs. Conn. State Agencies Sec. 46a-54-62a(c).

⁶⁸ C.G.S. Sec. 46a-83(h).

⁶⁹ It is because the Legal Division maintains a reconsideration request database separate from CTS that data is available dating back to 2007. This data is included in the analysis, in part, because it illustrates the decline in reconsideration requests (and granting of reconsideration requests) following changes in the MAR process.

PRI staff also compared the number of reconsideration requests to the number of cases closed. As shown in Table IV-9, from FY 11 through FY 15, the percent of all cases in which reconsideration was requested steadily decreased – from 8.7 percent to 2.3 percent. There was an uptick, however, in FY 16 to 3.1 percent.

Table IV-9: Reconsideration Requests as Percent of CHRO Cases Closed (FYs 11-16).

Fiscal Year	Total Cases Closed	Reconsideration Requests	Percent of All Closed Cases in which Reconsideration Requested
FY 11	1,493	130	8.7%
FY 12	1,684	88	5.2%
FY 13	2,005	71	3.5%
FY 14	2,152	69	3.2%
FY 15	2,205	51	2.3%
FY 16	2,568	81	3.1%

Source: PRI staff analysis of CHRO data.

Timeliness. The two key timeframes in the reconsideration process are when complainants must submit their written request for case reconsideration, and when decisions about such requests must be made by the Legal Division. PRI staff examined case reconsideration data to determine CHRO’s compliance with the statutory time requirements. Tables IV-10 and IV-11 show the results for the last six fiscal years.

It should be noted that the timeframes are required to start on the date CHRO sends notice of its finding of no reasonable cause or dismissal to the complainant. CHRO’s data base, however, captures the date a case was closed and the date a reconsideration request was received by the agency, not the actual date the notice was sent. To account for this, committee staff used the “case closed” date as the start of the 15-day period for a complainant to submit a reconsideration request, and the “date request received” as the start time from which the agency must make its decision on the request (not later than 90 days).

Table IV-10: Timeliness of Case Reconsideration Requests: (FYs 11-16).

Fiscal Year	# Reconsideration Requests (with valid filing dates)	Requests Made Later than 15 Days from Case Closed Date	Late Requests Rejected as “Untimely”
FY 11	128	19 (15%)	8 (42%)
FY 12	86	23 (27%)	3 (13%)
FY 13	68	12 (18%)	4 (33%)
FY 14	69	13 (19%)	4 (31%)
FY 15	51	17 (33%)	2 (12%)
FY 16	80	21 (26%)	9 (43%)

Source: PRI staff analysis of CHRO data.

Table IV-10, above, shows that in each fiscal year, 15 to 33 percent of the reconsideration requests CHRO received were untimely. In both FY 15 and FY 16, over 25 percent of requests were untimely. Nevertheless, no more than 43 percent of untimely filed reconsideration requests in any fiscal year were denied as untimely. PRI staff recommends:

22. The Commission on Human Rights and Opportunities should fully examine the reason(s) why reconsideration requests are being accepted beyond the required timeframe. Following this review, the agency should decide if changes are needed to its internal practices for accepting reconsideration requests. The agency should also begin using the date its notice is sent informing complainants of the agency’s no reasonable cause finding or case dismissal as the date for when the statutory timeframe for the reconsideration process must begin.

Table IV-11, below, provides data on CHRO’s timeliness in processing reconsideration the requests during the same six-year period. Even after FY 11 (when the number of reconsideration requests dropped noticeably), CHRO was only issuing timely decisions on reconsideration requests 41 to 83 percent of the time. It is particularly concerning that the percentage of timely decisions dropped from 73 percent to 41 percent from FY 15 to FY 16.

Table IV-11: Case Reconsideration Processing Timeliness (FYs 11-16).

Fiscal Year	# Reconsideration Decisions (with valid decision dates)	Decisions Made w/in 90 Days from Request Received Date
FY 11	128	24 (19%)
FY 12	85	44 (52%)
FY 13	71	29 (41%)
FY 14	69	57 (83%)
FY 15	51	37 (73%)
FY 16	71	29 (41%)

Source: PRI staff analysis of CHRO data.

Committee staff understands there are most likely circumstances for each case that may cause the deadlines to be missed. At the same time, since the deadlines for when CHRO should have accepted reconsideration requests were not followed an average of 22 percent of the time since FY 11 and deadlines for processing reconsideration requests were missed an average of 46 percent of the time, there may be an underlying issue, either with the deadlines, the agency’s internal case processing practices, or both. As such, PRI staff recommends:

23. CHRO should examine the reason(s) why reconsideration requests are being processed beyond their required timeframe for a decision. Following this review, the agency should decide if changes are needed to its internal practices to meet the 90-day decision deadline. The agency should also report its performance related to requests for reconsideration to the full commission, and to the legislature and governor.

Decisions. Table IV-12 shows the outcomes of reconsideration requests for FYs 11-16. The percentage of granted requests decreased in five of the last six years, and PRI staff believes this is a general indicator that the quality of the agency’s decisions has steadily improved and the agency’s original decisions about cases have been accurate.

Table IV-12: Case Reconsideration Decisions (FYs 11-16).

Fiscal Year	Total Cases Reconsidered	Granted	Rejected	Other
FY 11	130	59 (45%)	71 (55%)	0 (0%)
FY 12	88	30 (34%)	55 (63%)	3 (3%)
FY 13	71	22 (31%)	47 (66%)	2 (1%)
FY 14	69	13 (19%)	56 (81%)	0 (0%)
FY 15	51	14 (27%)	37 (73%)	0 (0%)
FY 16	81	8 (10%)	62 (77%)	11 (13%)

Source: PRI staff analysis of CHRO data.

As noted above, cases dismissed but then reinstated upon reconsideration may highlight a discrepancy in how cases are processed. Given that the Legal Division decides whether to grant or deny reconsideration, any trends in whether cases granted reconsideration were originally decided at the MAR/CAR stage or following an investigation could indicate a lack of accuracy within either of those processes. CHRO data provides the phase at which cases granted reconsideration were initially dismissed – either CAR or full investigation⁷⁰ – as shown in Table IV-13. The table indicates that for the last three fiscal years, each case granted reconsideration was originally provided a release of jurisdiction following a full investigation and finding of no reasonable cause.⁷¹ It is more notable, however, that the total number of cases granted reconsideration decreased to only a few cases in FY 16.

Table IV-13: Reconsiderations Granted by Underlying Decision (FYs 11-16).

Fiscal Year	Total Requests Granted	MAR/CAR	Full Investigation	Missing
FY 11	59	45 (76%)	14 (24%)	0
FY 12	30	16 (53%)	14 (47%)	0
FY 13	22	1 (5%)	19 (86%)	2 (9%)
FY 14	13	0 (0%)	13 (100%)	0
FY 15	14	0 (0%)	14 (100%)	0
FY 16	8	0 (0%)*	8 (100%)	0

Note: “Missing” shows the number of cases granted reconsideration but the CHRO data do not show where the original decision regarding the case was made.

Source: PRI staff analysis of CHRO data.

⁷⁰ There were no requests for reconsideration of administrative dismissals during this time frame.

⁷¹ P.A. 15-49 formally eliminated the ability of a complainant to request reconsideration of a CAR dismissal, but the fact that the Legal Division was reviewing all MAR dismissals prior to FY 16 seems to have led to the elimination of any requests for reconsideration at this juncture.

Without regard for what stage the underlying decision was made, committee staff was interested in the percentage of reconsiderations granted for cases filed in each region. Such analysis may suggest poorer decisional quality within certain regions, or simply that some regions have more complainants represented by counsel who may understand more fully the technical nature upon which cases may be granted reconsideration, and make requests for reconsideration.

Table IV-14 shows reconsideration requests granted by region for FYs 11-16. While the number of such requests is generally low, particularly in comparison with the number of complaints filed annually, it nonetheless highlights possible concerns regarding the case processing function in certain regions. For example, on a percentage basis, the Capitol Region accounted for roughly one-half to two-thirds of cases granted reconsideration and requiring further investigation, and the percentage increased each of the last three fiscal years. The Southwest Region was the only other region to experience an increase in the percentage of reconsideration requests granted in the last three years. While PRI staff does not make a formal recommendation in this area, particularly since the actual number of reconsideration requests granted has declined over the six-year period, CHRO needs to give consideration to the full reasons why the Legal Division is granting case reconsideration requests.

Table IV-14: Reconsideration Requests Granted by Region (FYs 11-16).

Fiscal Year	Capitol	Southwest	West Central	Eastern
FY 11 (n=59)	5 (8%)	13 (22%)	25 (42%)	16 (27%)
FY 12 (n=30)	8 (27%)	3 (10%)	15 (50%)	4 (13%)
FY 13 (n=22)	4 (18%)	4 (18%)	7 (32%)	7 (32%)
FY 14 (n=13)	6 (46%)	2 (15%)	2 (15%)	3 (23%)
FY 15 (n=14)	7 (50%)	3 (21%)	4 (29%)	0 (0%)
FY 16 (n=8)	5 (63%)	2 (25%)	0 (0%)	1 (12%)

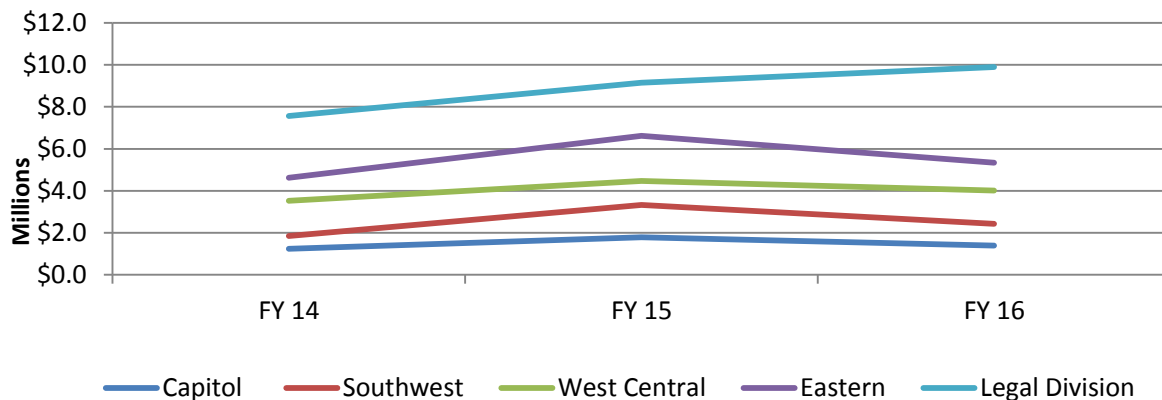
Source: PRI staff analysis of CHRO data.

Settlements

Discrimination complaint cases may settle at any time during the complaint disposition process without the need for a formal finding of cause or no reasonable cause. In its monthly reporting to the full human rights commission and in its administrative reports to the governor, the agency uses monetary settlement amounts as a measure of its performance. According to the agency, making public the monetary value of case settlements in addition to the number of cases settled through mediation puts a value on a complainant’s case having merit – a complainant believed discrimination occurred and a respondent settled the case through a monetary settlement whether or not the respondent admits the alleged discrimination occurred. Others may argue that CHRO – as a quasi-judicial body – should not use the value of monetary settlements as an indicator of performance, which is more similar to how the judicial system handles case settlements.

As a level of analysis, committee staff examined the amounts derived from discrimination complaint settlements for FYs 14-16.⁷² Figure IV-2 shows the annual settlement totals for complainants increased 31 percent, from \$7.6 million to \$9.9 million over the three years. The Legal Division consistently accounted the largest yearly value of settlement amounts, ranging from \$2.9 million to \$4.5 million, while the Capitol Region totaled the lowest of the five units, ranging from \$1.2 million to \$1.7 million. It should be noted the Legal Division's settlement amount include settlements reached in cases filed in any region that have been certified for Public Hearing after the 50-day post-finding of reasonable cause conciliation period.

Figure IV-2: CHRO Settlement Amounts by Unit (FYs 14-16).



Source: PRI staff analysis of CHRO data.

While PRI staff understands why CHRO publicizes its settlement amounts, the agency's public reporting should emphasize the number and percentage of cases settled more than the overall settlement amounts realized by complainants. This serves two key goals: first, complainants still will know how frequently complaints are recognized by respondents in a manner that is satisfactory to complainants; and second, respondents will see that the agency's primary goal is not to obtain high-dollar-value settlements, but to see the greatest number of cases possible resolved in a manner mutually agreeable to both parties. To that end, PRI staff recommends:

24. CHRO should focus its public reporting on the number of cases settled through mediation and the overall ratio of cases settled to total cases closed during a fiscal year, and not the total settlement amounts for settled cases. CHRO staff should also be made aware the agency's primary goal for settled cases is not on the overall monetary value of settlements but that cases are ultimately settled by both parties through mutually accepted agreements.

⁷² Parties may require settlement amounts remain confidential, even to CHRO. The totals used in the PRI staff analysis are only those known to CHRO.

Fairness to Parties

In processing discrimination complaints, CHRO performs an adjudicative function. CHRO commissioners, staff, and other stakeholders all agree that it is of the utmost importance that there be both the perception and reality that this adjudicative function is conducted in a manner that is fair to all parties.

CHRO, as an agency, maintains that its process is user friendly and does not require parties to be represented by counsel. Nevertheless, some CHRO staff and stakeholders expressed concerns that the discrimination complaint process yields different outcomes for persons who are represented by counsel than for persons who are not. PRI surveyed HROs and six out of 13 (54 percent) agreed with the statement: “The discrimination complaint process favors complainants who are represented by counsel.” Of 11 Legal Division attorneys responding to the same question, 3 (30 percent) also agreed with that statement. The concerns stakeholders expressed in this regard included: that unrepresented complainants (or respondents) may face increased pressure from HROs to settle their cases or that unrepresented complainants might be encouraged to obtain a Release of Jurisdiction but lack the ability to represent themselves in Superior Court.

The fact that such concerns exist is reason for CHRO to seek data to disprove or address them. PRI staff believes the only way to assuage concerns of differential treatment based on whether or not a party has an attorney is for CHRO to begin to track whether or not parties are represented by counsel and analyze case outcomes to see if they differ for parties who are and are not represented. PRI staff recommends:

- 25. CHRO staff should work with DAS-BEST to create new CTS fields to indicate whether each party to a case is represented by counsel, and one or more new CTS reports that compare outcomes for all cases filed and/or closed annually by both complainant and respondent representation status. CHRO should analyze these data, determine whether there are any significant disparities in outcomes, and report findings to the commissioners annually.**

Public Hearing

Due to time constraints, PRI staff did not fully review the Office of Public Hearings, including its backlog of cases. Committee staff did analyze OPH data to determine the office’s compliance with the statutory timeframe for holding a pre-hearing conference. As discussed in Chapter II, the Office of Public Hearings has 45 days from the date a case is certified for public hearing to hold a pre-hearing conference. The conference allows the parties to agree on timeframes for such events as the exchange of written summaries and deadlines for filing any pre-hearing motions. A settlement conference date may also be arranged by the parties at this time.

Table IV-15 shows OPH’s compliance with the 45 day standard for FYs 11-16. During the six year period, at least two-thirds of the pre-conference hearings were held beyond the statutory timeframe each fiscal year. Since FY 13, the percent of hearings held after 45 days

increased from 67 percent – the lowest percentage of the six-year period – to 98 percent in FY 16. At the same time, the average number of days between when a case was certified for public hearing and when the pre-conference hearing was held increased by 58 percent during the same timeframe, from 68 days in FY 13 (the lowest percentage for the six-year period) to 108 days in FY 16. The FY 16 average was the highest since FY 11. It should be noted the number of human rights referees decreased from five to three at the beginning of FY 12.

Table IV-15: Office of Public Hearings – Pre-Hearing Conferences (FYs 11-16).

Fiscal Year	Cases Certified for Public Hearing	Hearings Held After 45 Days	Average # Days Between Certification and Pre-Hearing Conference
FY 11	57	53 (93%)	37
FY 12	30	25 (83%)	73
FY 13	46	31 (67%)	68
FY 14	67	51 (76%)	64
FY 15	66	56 (85%)	70
FY 16	47	46 (98%)	108

Source: PRI staff analysis of OPH data.

PRI staff believes the current practice of filling only two of the three statutory human rights referee positions, which are gubernatorial appointments, cannot be sustained if the office is to meet its statutory requirement of holding pre-hearing conferences within 45 days of cases being certified for public hearing. Without a full complement of referees, the time to fully process cases at Public Hearing – which is currently up to or over two years in many instances – will most likely increase. Moreover, whenever one of only two hearing referees is out for vacation, medical, or other leave, there remains only one referee.⁷³ At least two referees are critical to cover both the settlement and adjudication duties required of referees, which cannot be handled by the same person. The fact that the human rights commission is not currently monitoring the length of time being taken for Public Hearings, or the reasons for the current backlog, may be a factor delaying remedy of this situation. PRI staff recommends:

- 26. All three statutorily required human rights referee positions in the Office of Public Hearings should be filled. The full Commission on Human Rights and Opportunities should also regularly monitor the overall performance of the Office of Public Hearings.**

⁷³ In fact, this is currently the case, with one of the two appointed referees currently being on an indefinite leave of absence.

Housing Discrimination: Complaint Processing, Workload, Accountability

Housing discrimination complaints are processed by CHRO in a manner that is distinct from the handling of all other types of discrimination complaints. As a result, the process, its implementation, and outcomes are described separately.

Key Findings

- *Although largely described in a single statute, the housing discrimination complaint process differs from the non-housing process in many ways.*
- *There is a statutory 100-day timeframe for completing investigation and issuing a finding in housing discrimination cases, yet CHRO only met this timeframe for 23 percent of cases filed in FY 15.*

Complaint Process

Housing discrimination is generally prohibited by C.G.S. Sec. 46a-64c and Sec. 46a-81e. The process for CHRO enforcement of these provisions is set forth alongside the process for enforcement of non-housing discrimination complaints in C.G.S. 46a-83, although there are many differences in the process. First, housing discrimination complaints, wherever in the state they originate, are not filed in the four regions but in a central Housing Discrimination Unit (HDU) located at CHRO's administrative headquarters in Hartford. In addition, housing discrimination complaints follow a streamlined process with shorter timeframes. For example, CHRO's investigation is expected to be completed, and a finding of reasonable cause or no reasonable cause issued, within 100 days of filing. Finally, following a finding of reasonable cause to believe that discrimination may have occurred, complainants in housing discrimination matters can request that their complaint be filed in Connecticut Superior Court rather than proceed before the Office of Public Hearings.

The housing discrimination complaint process can be broken into similar phases as the non-housing discrimination complaint process, with the exception that there is no Case Assessment Review and no Early Legal Intervention. As a result, the five phases of the housing discrimination complaint process are: Intake and Filing Complaint; Answer; Mandatory Mediation; Investigation; and Public Hearing

Intake

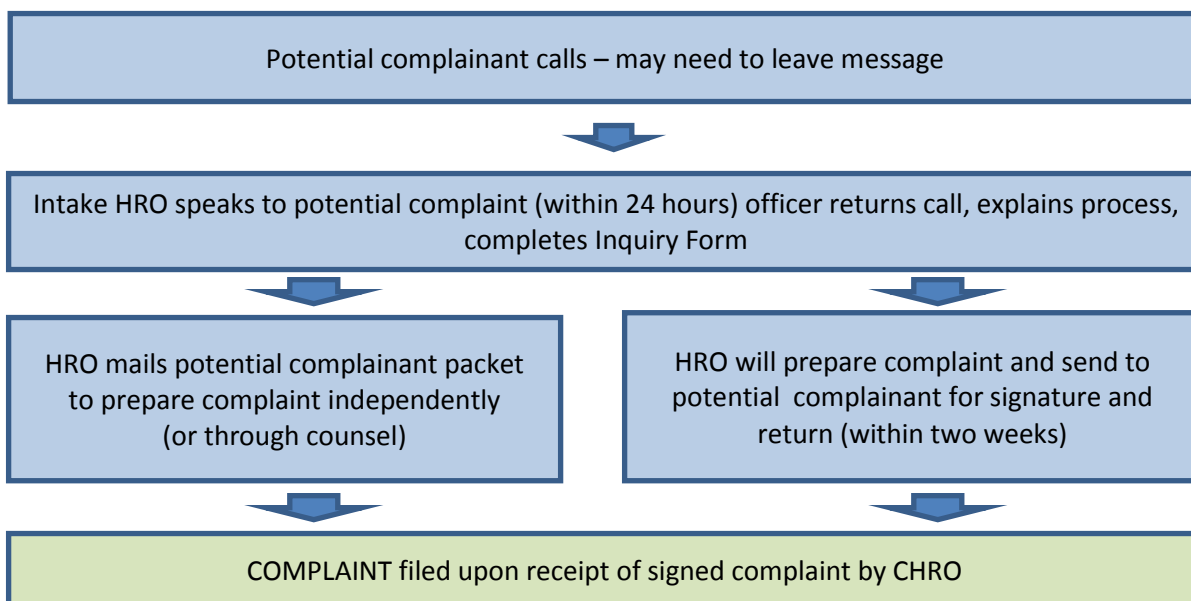
The intake process, depicted in Figure V-1, begins with a potential complaint calling the statewide housing unit and either speaking to the HDU's intake HRO or leaving a voice mail message.⁷⁴ The HDU currently has a designated "intake officer" who is the only HDU employee

⁷⁴ As of August 2016, the HDU inquiry phone line rings at the desk of the intake HRO so he or she can answer the phone if not otherwise occupied. Prior to this, potential complainants were required to leave a voice mail message.

responsible for returning phone calls from potential complainants. If the intake officer does not answer the phone, calls are generally returned within 24 hours.

CHRO does not post a template for a housing discrimination complaint on its web site, due to an assessment that it is usually more efficient to have an HRO draft the complaint so it meets legal criteria, rather than having a complainant prepare the affidavit without guidance or assistance. In some cases, however, the intake officer may mail a packet with instructions to enable a potential complainant to draft his or her own affidavit. This would occur only after the intake officer had spoken to the potential complainant by phone to explain the process and answer any questions. When a packet is mailed to a potential complainant, instead of the intake officer preparing the complaint affidavit, the intake officer typically makes at least one follow-up phone call to confirm receipt and to see if the potential complainant is still interested in proceeding.

Figure V-1: Housing Discrimination Intake Process.



Upon reaching the potential complainant by phone, the intake officer completes a housing discrimination specific Inquiry Form. This three page form includes: basic information about the potential complainant and any other person(s) aggrieved by the same action (family members or other co-tenants); summary information about the perceived discrimination; identity of the potential respondent(s); and what action the intake officer has taken in response to the call. Action taken can include that the intake officer: 1) has agreed to draft a complaint affidavit; 2) has referred the caller to another agency (if, for example, the issue is not discrimination but compliance with building codes or the need for defense in an eviction action); or 3) has determined that the potential complaint is untimely, the property is exempt under the fair housing laws, and/or there are no assertions of protected class status as a basis for discrimination. If the intake HRO believes the complaint is untimely, the property is exempt, or that there is no protected class status, the caller is told that he or she has the right to file a complaint nonetheless,

and a complaint packet will be mailed for the potential complainant to prepare his or her own complaint.

In cases where an affidavit is to be drafted by the housing unit intake officer this generally takes place within two weeks of the initial phone call. Upon completion of the complaint affidavit, the intake officer will email it to the complainant to be printed, signed,⁷⁵ and returned to CHRO, or may call the complainant to review the document verbally before mailing it via U.S. mail for review, signature, and return.

Represented complainants. The supervisor of the Housing Discrimination Unit estimates that about 25 percent of housing complainants have attorneys. Attorneys representing complainants in CHRO housing matters may be in private practice or affiliated with a non-profit advocacy organization, such as Connecticut Legal Services, the Connecticut Fair Housing Center, or the Connecticut Legal Rights Project. In cases where a complainant is represented by counsel, the first notice to CHRO that there is a potential complaint may well be receipt of a signed complaint affidavit that has been prepared by the attorney. Whether the complaint is prepared by the Housing Discrimination Unit intake officer or by complainant's counsel, it is upon receipt of the signed complaint affidavit that the case is considered "filed" and the timeframes for service upon the respondent, the respondent's answer, and completion of the additional statutory phases in the housing complaint process begin.

Answer

Process. The Answer phase is shown in Figure V-2. Before a housing complaint can be processed on the merits, the respondent must be provided an opportunity to answer the complaint and to provide any documents relevant to its defense. Once a complaint is received, it is required to be served upon the respondent within 15 days.⁷⁶ The complaint is sent to the respondent with a Schedule A: Request for Information, a certification of mailing form, and a notice of parties' rights and responsibilities.

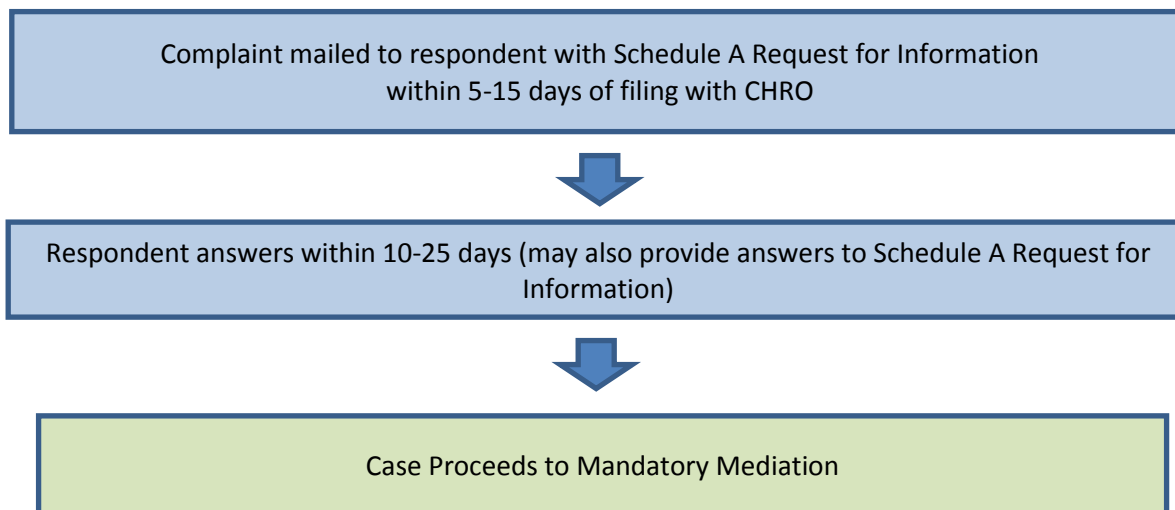
The Schedule A: Request for Information is intended to lead the respondent to provide CHRO with background data about policies and practices relevant to the specific discriminatory acts alleged in the complaint. The supervisor of the Housing Discrimination Unit normally reviews the complaint and prepares a Schedule A: Request for Information that is tailored to the respondent, the discriminatory acts complained of, and the alleged bases of discrimination.

The certification of mailing form is a template for the respondent to use to confirm service of his or her answer on the complainant at the same time as he or she files an answer with the HDU. The notice of parties' rights and responsibilities is specific to the housing discrimination complaint process.

⁷⁵ The housing complaint process differs from the process for other kinds of complaints in that housing complaints need only be signed by the complainant but not notarized. In other kinds of discrimination cases, the complainant's signature on the complaint affidavit must be notarized.

⁷⁶ Prior to October 1, 2015, the time period within which CHRO was to serve the complaint upon the respondent was 20 days. This timeframe was shorted to 15 days by P.A. 15-249.

Figure V-1: CHRO Housing Answer Phase.



Timeframe. CHRO is required by statute to serve the complaint upon the respondent within 15 days of filing.⁷⁷ In practice, however, the goal is for the HDU to serve the complaint and accompanying documents within a week (five business days) of the day the complaint was filed. The respondent is then required to file its answer and responses to the Schedule A Request within 10 days, although applicable law allows for one 15 day extension of time to answer.⁷⁸ Such requests for extension of time to answer are routinely made and granted by the supervisor of the Housing Discrimination Unit.

With the HDU’s goal of service upon the respondent within a week and a ten day answer period that is routinely extended to 25 days, a complaint will typically have been pending for 30 to 35 days by the time the necessary documents have been collected to proceed to Mandatory Mediation.

Schedule A Request for Information. There is no provision for Pre-Answer Conciliation in housing discrimination cases, but HDU attempts to accommodate respondents who indicate an interest in early settlement. In such cases, respondents will be instructed to file an answer to the complaint as soon as possible while being given an informal extension of time to file responses to the Schedule A: Request for Information. Mandatory Mediation will then be scheduled promptly upon receipt of the answer. If the case does not settle, the respondent will be expected to file responses to the Schedule A Request as early in the investigation as possible.

As was described in relation to the non-housing complaint process, CHRO will not seek to enforce compliance with the Schedule A Request. Instead, once the investigation begins

⁷⁷ C.G.S. Sec. 83(a).

⁷⁸ C.G.S. Sec. 46a-83(b). This statute explicitly provides only for a 15 day extension of the 30 day period for responding to a non-housing discrimination complaint, after which it provides that the answer to a housing discrimination complaint “shall be filed no later than ten days after the date of receipt of the complaint.” CHRO staff indicate, however, that in practice respondents to housing discrimination complaints are afforded the option of a 15 day extension of time to file an answer.

CHRO will seek the requested information through subpoena or other formal requests, which will then be enforced through legal process as necessary. PRI staff recommends:

27. CHRO should advise both parties that while it may make Mandatory Mediation more productive and streamline the Investigation process for respondents to comply with the Schedule A Request for Information, no enforcement action will be taken for failure to comply with a Schedule A Request until a complaint is assigned for Investigation.

Additional documents. HDU does not specifically inform a complainant of his or her right to file a rebuttal to the respondent's answer and responses to Schedule A, but if those documents are received, they are added to the file to be relied upon in planning the Investigation and drafting a finding of reasonable cause or no reasonable cause. Similarly, if a respondent was to file a sur-rebuttal (a response to the complainant's rebuttal) this would be placed in the file for future reference. In any event, it is receipt of the respondent's answer that triggers the start of the next phase of the housing complaint process, which is Mandatory Mediation.

Mandatory Mediation

The Mandatory Mediation process is depicted in Figure V-3.

Process. In contrast to the in-person mediation process used for employment and other complaints in the regional offices, Mandatory Mediation in housing discrimination cases is, in many instances, conducted by phone. This is due to recognition that, with the Housing Discrimination Unit covering the entire state, it could be a hardship for a complainant or respondent to travel to Hartford for Mandatory Mediation. HDU also has been moving in the direction of holding more in-person mediations when feasible, based upon growing evidence that in-person mediation is more effective than telephonic mediation. In cases in which an HRO determines that in-person mediation is feasible and/or desirable, he or she will often make arrangements to use a conference room at one of CHRO's regional offices so that the parties do not need to travel to Hartford.

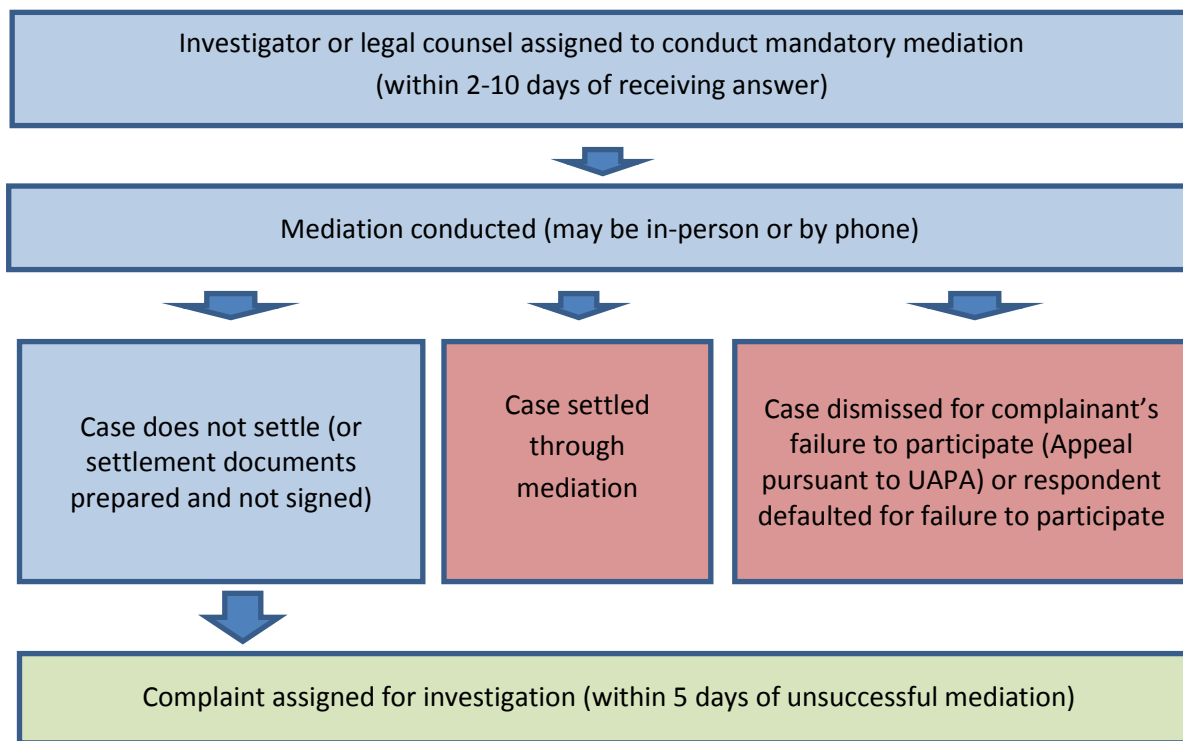
Once the assigned HRO has conducted the Mandatory Mediation, if there is an agreement to settle, the he or she will prepare a conciliation agreement. If the case does not settle through Mandatory Mediation it will be assigned for Investigation. If a case is reported settled, but a party does not sign settlement documents, the case will be assigned for Investigation and a fact-finding conference may be scheduled. This ensures that the process continues toward completion and may encourage a reluctant party to execute and comply with the mediated settlement agreement to avoid additional costs in relationship to CHRO processing the complaint.

Timeframe. Mandatory Mediation of housing discrimination complaints has been required since 2011.⁷⁹ The applicable statute requires that within 60 days after a complaint has been retained after a case assessment review the complaint be assigned for a Mandatory Mediation conference. Because case assessment review does not occur in housing discrimination complaints, this statute is applied in the context of housing to require that the Mandatory Mediation conference occur within 60 days following the HDU's receipt of the respondent's

⁷⁹ P.A. 11-237, now codified at C.G.S. Sec. 46a-83(d).

answer. Historically, HDU schedules Mandatory Mediation to occur within one week of receiving the respondent's answer. This reflects the fact that housing discrimination complaints are expected to be fully investigated and a finding of reasonable cause or no reasonable cause issued within 100 days of the filing of the complaint. Scheduling Mandatory Mediation to take place only within 60 days after receipt of the answer would delay investigation until the 90th or 95th day after filing, rendering compliance with the 100 day period completely unfeasible.

Figure V-2. Housing Complaint Mandatory Mediation Process.

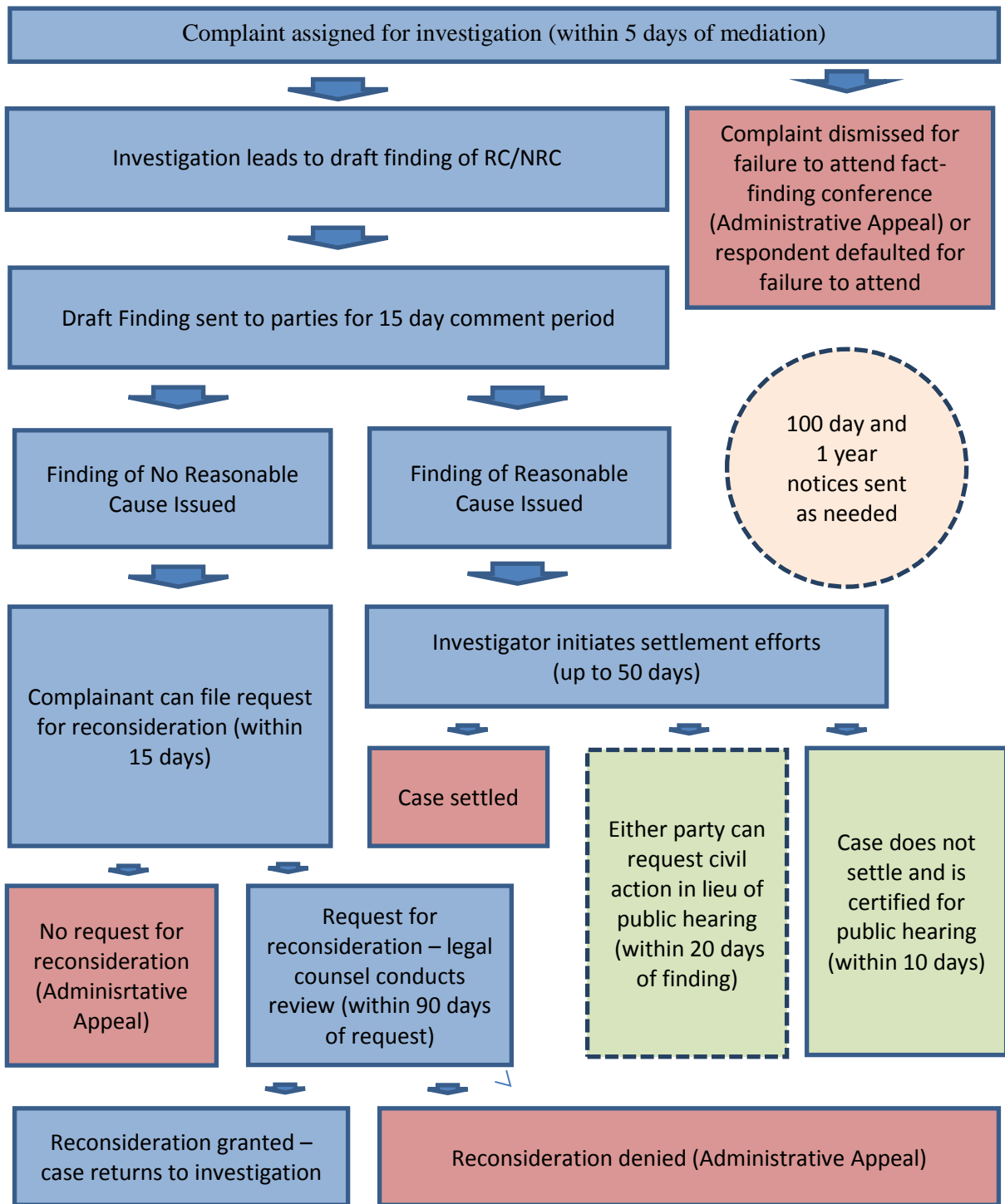


Investigation

If Mandatory Mediation is unsuccessful, a complaint will be assigned to an HRO or the supervisor of the Housing Discrimination Unit for investigation. Figure V-4 depicts the Investigation process for housing discrimination complaints. As with non-housing complaints, the assigned investigator cannot be the same person who conducted the Mandatory Mediation.⁸⁰ Although the statute provides a 15 day period in which to assign the case for investigation, the practice of the HDU is to do so within 5 days of an unsuccessful mediation conference, or after giving the parties a reasonable time to execute a settlement agreement.

⁸⁰ C.G.S. Sec. 46a-83(d).

Figure V-4: CHRO Housing Investigation Process.



Methods. The HRO assigned to investigate:

. . . may process the complaint by any lawful means of finding facts, including, but not limited to, a fact-finding conference, individual witness interviews, requests for voluntary

disclosure of information, subpoenas of witnesses, or documents, requests for admission of facts, interrogatories, site visits, or any combination of these means⁸¹

When the case is assigned to an HRO for investigation, the supervisor of the Housing Discrimination Unit will typically review the case with the HRO and they will agree upon the general course that the investigation will take. This does not necessarily involve creating a written investigation plan, although some HROs may choose to do so. Instead, the HRO and the supervisor will agree to target dates for finishing certain investigatory activities.

If a fact-finding conference is scheduled, both parties are required to attend. However, fact-finding conferences are not always held. Instead, the HRO may interview parties and witnesses and require documents be sent to him or her. Whatever verbal information is collected by the HRO – whether through a fact-finding conference, a site visit, or an in-person or telephonic witness interview – is audio recorded and parties may request copies of all recorded interviews. Likewise, parties are entitled to copies of all documents collected by the HRO in the course of the investigation.

As noted at the beginning of this chapter, there is no formal Early Legal Intervention (ELI) process for housing discrimination cases. Housing cases are very rarely assigned to the Legal Division for either Mandatory Mediation or Investigation. The only housing discrimination cases that would normally be assigned to the Legal Division for Investigation are those that could be described as “pattern or practice” cases and involve multiple similar complaints against a single respondent, such as a housing authority or large private landlord.

Timeframes. By the time a case has been assigned to an HRO for investigation, it may have been pending for less than two months or as many as three months. Because complaints alleging housing discrimination must be investigated within 100 days of filing and final administrative disposition reached within one year of filing (i.e., through completion of public hearing and rendering of a final decision and award),⁸² it is possible that the target timeframe for completing the investigation may expire shortly after the investigation begins or while the investigation is on-going. When this happens, the supervisor of the Housing Discrimination Unit sends the parties a notice explaining the failure to comply with the statutory timeframe and the reason why this has occurred. This is referred to and shown in Figure V-4 as the 100-Day Notice.

Review of draft findings. When the assigned HRO has completed the Investigation, he or she will prepare a draft finding of facts and of reasonable cause or no reasonable cause. This draft is reviewed by the HDU supervisor, revised if necessary, and then sent to the parties for a 15 day comment period.⁸³ Parties are expected to comment on the proposed findings in writing, so that these comments can become a part of the case record. In rare circumstances an investigator may receive comments orally and document those comments in writing to place in the file. After receipt, parties’ comments on the draft findings are considered by the assigned HRO in consultation with the HDU supervisor, and the proposed findings document may be revised. The final finding of reasonable cause or no reasonable cause is issued to the parties as soon after the comment period ends as is practicable.

⁸¹ C.G.S. Sec. 46a-83(f).

⁸² C.G.S. Sec. 46a-64c((f).

⁸³ C.G.S. Sec. 46a-83(g)(1).

Finding of no reasonable cause. Upon the issuance of a finding of no reasonable cause, the case is concluded unless the complainant requests reconsideration. If the complainant does so, the case is forwarded to the Legal Division for review of that request. The Legal Division is required to act on the request for reconsideration within 90 days.⁸⁴ The Legal Division may deny reconsideration, in which case the complaint is officially closed. If the Legal Division grants reconsideration, it will return the file to the HRO for further proceedings and include in the document granting the request for reconsideration a specification of what additional evidence, facts, or arguments the HRO should consider before issuing a new draft finding of reasonable cause or no reasonable cause. The Legal Division does not direct the HRO to find cause or no reasonable cause; instead the attorney reviewing the case only points out what additional information or issues should be addressed upon reconsideration.

Finding of reasonable cause. If the HRO assigned to investigate issues a finding of reasonable cause to believe discrimination has occurred as alleged in the complaint, a 50 day conciliation period begins, during which the investigator approaches the parties to see if the case can be settled before being certified to a public hearing. Within the first 20 days of this 50 day period, either party can request that the case be filed in Superior Court rather than certified to public hearing.⁸⁵ If this occurs, there are no further efforts to settle the case and it is forwarded to the Legal Division so a complaint can be prepared and filed in Superior Court.

If a civil court proceeding is not requested and the case does not settle during the 50 day conciliation period, the investigator has 10 days to certify the case to public hearing.

Public Hearing

The public hearing process for housing discrimination complaints parallels the process for non-housing complaints. Within 45 days of certification a hearing referee will conduct a pre-hearing scheduling conference to set timeframes for: amending the complaint; filing an answer; exchanging requests for document production; and filing of pre-hearing motions. A public hearing date is set to follow the completion of the pre-hearing events.

Timeframe. Federal and state law requires that CHRO reach final administrative disposition of a housing discrimination complaint with one year of filing. As noted in relation to non-housing discrimination complaints, current staffing levels in OPH preclude any public hearings from being scheduled within a year of certification to public hearing, much less completed within one year of the complaint having been initially filed in HDU. Once a housing discrimination complaint has been pending for over one year, either the Housing Discrimination Unit (if the Investigation is still pending) or the Legal Division (if the case has been certified for public hearing) will send the parties a One-Year Letter indicating that the complaint has not been finally resolved within the statutory timeframe and explaining the reasons why.⁸⁶

Remedies available. Housing discrimination complaints also differ from non-housing complaints in the kinds of relief that can be ordered and thus the kinds of relief that may be negotiated by way of settlement. A complainant can be awarded not only monetary damages for

⁸⁴ C.G.S. Sec. 46a-83(h).

⁸⁵ C.G.S. Sec. 46a-83(g)(2).

⁸⁶ C.G.S. Sec. 46a-64c(f).

additional rent paid, moving expenses, storage expenses, attorneys' fees, and emotional distress, but also practical relief such as:

- the landlord being required to offer the complainant housing or to cease eviction proceedings;
- the landlord being required to let the complainant move into a specific unit (such as one on the first floor);
- a change in the landlord's rules or policies;
- an exception to the landlord's rules or policies for a person with a disability (a reasonable accommodation) such as:
 - Giving a complainant an assigned accessible parking space, or
 - Allowing an emotional support animal in a "no-pets" premises;
- if a federally funded development, that the landlord make structural accommodations (widening a doorway, installing hand rails, installing a ramp for a wheelchair);
- in non-federally funded housing that the complainant be allowed to make his or her own structural accommodations (ramp for wheelchair, grab bars in the bathroom); and
- modification to a landlord's forms, applications, or advertisements.

Workload

Complaints filed annually. Table V-1 shows the total number of housing discrimination complaints filed for each of FYs 11-16 and the percent change this represents over the prior year. Unlike non-housing discrimination complaints, more of which have been filed in every year since FY 12, the number of housing discrimination complaints filed from year to year seems to fluctuate, although in years where there has been an increase in the number of complaints filed, the increase is often of great magnitude. It is not clear whether increases have occurred in years where there is more staff in the Housing Discrimination Unit or whether they result from other internal or external forces. PRI staff recommends:

- 28. CHRO should continue to monitor the number of housing discrimination complaints filed yearly and attempt to identify internal and external factors that might correlate with increases and decreases in order to make appropriate adjustments to its processes if indicated.**

Table V-1: HDU Annual Complaints Filed (FYs 11-16).

	Number of Complaints Filed	Change Over Prior Year
FY 11	142	N/A
FY 12	125	-12.0%
FY 13	178	+42.4%
FY 14	160	-10.1%
FY 15	227	+41.9%
FY 16	220	-3.1%

Source: PRI staff analysis of CHRO monthly reports.

Inquiries. As noted in Chapter IV, CHRO collected and reported data on monthly inquiries for the first time in FY 16. Reviewing this data, it appears there is great variability in the monthly inquiries throughout the year, with the Housing Discrimination Unit having fielded two, three, and even four times as many inquiries in some month as compared to others. Monthly inquiries throughout FY 16 were as shown in Table V-2.

Table V-2: HDU Monthly Inquiries and Complaints Filed (FY 16).

	Inquiries Fielded	Complaints Filed
July '15	120	29
Aug '15	90	35
Sept '15	71	24
Oct '15	66	9
Nov '15	77	15
Dec '15	50	19
Jan '16	82	6
Feb '16	149	20
Mar '16	297	19
Apr '16	243	13
May '16	283	15
Jun '16	174	15
Total	1,702	219
Monthly Average	142	18

Source: PRI staff analysis of CHRO monthly reports.

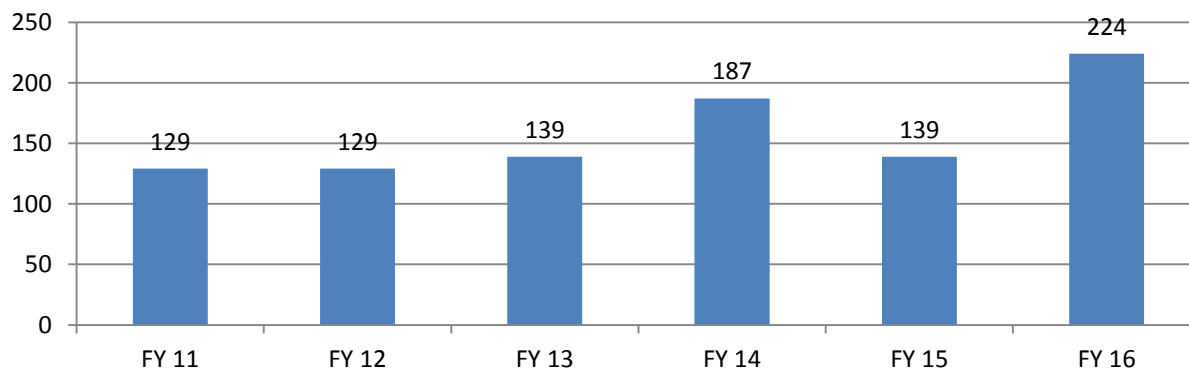
Some of this variation, may be seasonal (December, for example, having fewer business days to field complaints), but some may be explained by changing staffing levels. In January 2016 an HRO was transferred to HDU and assigned exclusively to intake duties – returning inquiry calls and drafting housing discrimination complaints. Although the average monthly number of inquiries across FY 16 was 142, it is apparent that this is because many fewer inquiries were fielded earlier in the fiscal year than later in the fiscal year. In the first seven months an average of 79 inquiries a month were documented, while in the final five months (starting in February the first full month for the intake HRO) the average number of monthly inquiries was 229. This suggests that, with a designated intake HRO, HDU either had more capacity to field inquiry calls or became more consistent in ensuring forms were completed to document every inquiry. In any event, the increase in inquiries did not correspond with an increase in the number of complaints drafted or received. PRI staff recommends:

29. CHRO should continue to monitor the number of monthly inquiries received by the Housing Discrimination Unit along with the number of complaints filed and attempt to identify internal and external factors that might correlate with increases and decreases in order to make appropriate adjustments to its processes if indicated.

The HDU supervisor estimates that an inquiry phone call can take 15 to 40 minutes, and drafting a complaint takes two hours. He also estimates that about 25 percent of complainants are represented, and thus do not seek assistance in preparing a complaint. Based on these estimated, fielding 229 inquiries a month takes a minimum of 57 hours (but likely more) and drafting an average of 13 complaints requires 26 hours a month. This 83 hours of work is the equivalent of slightly more than .5 FTE. As of early summer, the housing unit supervisor was intending to assign the intake HRO administrative duties to be performed in addition to his inquiry and drafting responsibilities.

Dispositions. Figure V-5 shows, for FYs 11-16, the total number of cases closed by HDU. Two years – FY 14 and FY 16, stand out as having had particularly high numbers of closures. The FHU supervisor reported that assignment of an HRO exclusively to intake duties in January 2016 was a factor that contributed to the other four HROs being able to process and close more cases.

Figure V-5: FHU Annual Closures (FYs 11-16).



Source: PRI staff analysis of CHRO CTS data.

As was the case in relation to non-housing complaints, rather than considering types of closures each year without regard for the fiscal year of filing, PRI staff used the DAS BEST developed Lifespan Report to track types of dispositions for cases filed in the same fiscal year. Table V-3 shows the data on type of closure data for cases filed in FYs 11 through 15.

Table V-3:

	FY 11	FY 12	FY 13	FY 14	FY 15
Administrative Dismissal	2 (1.4%)	5 (4.0%)	9 (5.1%)	7 (4.4%)	10 (4.4%)
Finding of No Reasonable Cause	32 (22.5%)	46 (36.8%)	52 (29.2%)	32 (20%)	67 (29.5%)
Finding of Reasonable Cause	9 (6.3%)	15 (12.0%)	13 (7.3%)	21 (13.1%)	29 (12.8%)
Still Pending	0	0	0	4 (2.5%)	11 (4.8%)
Settled	82 (57.7%)	49 (39.2%)	97 (54.5%)	84 (52.5%)	90 (39.6%)
Withdrawn	17 (12%)	10 (8.0%)	5 (2.8%)	12 (7.5%)	19 (8.4%)
Unknown	0	0	2 (1.1%)	0	1 (0.4%)

Source: PRI staff analysis of CHRO CTA data.

There are no strong or consistent trends in this data, but it is interesting to note that increased percentages of complaints are resulting in findings of reasonable cause or no reasonable cause and a decreased percentage are being settled. This is somewhat inconsistent with representations of respondent stakeholder groups indicating an increased pressure to settle cases as a result of Mandatory Mediation and a perceived pro-complainant bias.

Statutory Timeframes

Although the process for handling discrimination complaints – both housing and non-housing – is largely described in a single statute,⁸⁷ there are significant differences in the way housing complaints and non-housing complaints are processed. Table V-4 highlights some of these differences.

As indicated in the second column of Table V-4, housing discrimination complaints are implicitly, rather than explicitly, included or excluded from many of the statutory complaint processing steps. This can cause confusion for parties and attorneys who are newly learning about the housing discrimination complaint process.

⁸⁷ C.G.S. Sec. 46a-83. See also Regs. Connecticut State Agencies Sec. 46a-54-33a *et seq.*

Table V-4: Applicability of C.G.S. Sec. 46a-83 Timeframes in Housing Matters

Non-Housing Process	Housing Process
Must be filed within 180 days of acts complained of	Same
Service on respondent within 15 days	Same in statute – in practice seek to file within <u>one week</u> due to compressed investigation period
Answer due by 45 th day after respondent's receipt	Statute provides answer due by <u>10th day</u> after respondent's receipt – in practice 15 day extension allowed
Pre-Answer Conciliation can extend time for filing answer	No pre-answer conciliation
Case Assessment Review within 60 days of Answer	No Case Assessment Review
Mandatory Mediation within 60 days of CAR	Statute does not specifically include or exclude housing complaints – in practice mediation is attempted but in shorter timeframe and often by phone
Early Legal Intervention	Statute does not specifically include or exclude housing complaints – in practice it does not occur
Investigation and Issuance of Written Findings within 190 days of CAR	Investigation and Issuance of Written Findings within <u>100 days</u> of filing of complaint per C.G.S. Secs. 46a-64c(f) and 46a-81e(e) – with no CAR, statute silent on when investigator must be assigned
Complainant can request (or receive) ROJ at certain times in order to pursue complaint in Superior Court	There is no requirement that complainant request or receive an ROJ in order to file a housing complaint in Superior Court action After a finding of reasonable cause complainant can also request that CHRO pursue an action in Superior Court on his or her behalf
No statutory timeframe for completion of public hearing	Final administrative action (i.e., decision following public hearing) to be taken within one year of date complaint was filed

Source: PRI staff analysis of Connecticut General Statutes.

Moreover, as noted in describing the housing discrimination complaint process, there is also a separate timeframe applicable to Investigation of housing discrimination complaints, set forth in two different and largely non-procedural statutes – C.G.S. Secs. 46a-64c and 46a-81e. In fact, these two statutes differ only in that Sec. 46a-64c prohibits discrimination in housing based on: race, creed, color, national origin, sex, gender identity or expression, marital status, age, lawful source or income, or familial status, while Sec. 46a-81e prohibits discrimination on the

basis of sexual orientation or civil union status. In order to clarify the housing discrimination complaint process, and protected characteristics, PRI staff recommends:

30. Technical revisions should be made to the General Statutes and state regulations applicable to CHRO complaint processing in order to separate the housing complaint process from the non-housing process, thus making it clear how the timeframes differ and what steps do and do not apply. At the same time, all protected characteristics should be consolidated in a single statute.

Compliance with timeframes for service and answer. As noted in Chapter IV, CHRO's case tracking system (CTS) does not currently generate any reports with the date of service of a complaint or the date of receipt of a respondent's answer. Thus, there are no data available for analysis as to the compliance with these statutory timeframes. It should be noted, however, that according to HDU staff, CHRO is typically in full compliance with the existing timeframes for service and receipt of respondent's answer. Additionally, in discussions with counsel for both housing complainants and respondents, PRI staff heard no complaints about CHRO's failure to adhere to these timeframes or about respondents being routinely unable to file a timely answer.

PRI staff did hear concerns about two aspects of the pre-mediation housing discrimination complaint process. First, counsel for respondents and other stakeholders indicated that it is fundamentally inequitable that complainants are not required to submit notarized complaints, thus not being required to attest to or affirm the veracity of the complaint, but that respondents are required to do so. CHRO staff acknowledged that the complaint and answer are not treated as testimony and that all testimony obtained during investigation will be obtained under oath, including, if necessary, a statement as to the veracity of either the complaint or the answer. Therefore, they agreed that it is not necessary to continue requiring an answer under oath when the complaint is not filed under oath. PRI staff recommends:

31. CHRO amend its policies and procedures in housing discrimination matters to eliminate the requirement that a respondent submit his or her answer under oath.

Counsel for respondents and other stakeholders also indicated that while preparation and filing of an answer within the statutory timeframe was not burdensome,⁸⁸ gathering information in response to the Schedule A Request for Information often was. As noted above, CHRO has long adhered to the policy of not seeking to enforce Schedule A Requests, and will only compel production of information requested pursuant to subpoena or other formal commission issued requests for production. PRI staff reiterates the prior recommendation regarding notification to both parties that no enforcement action will be taken for failure to comply with a Schedule A Request until a complaint is assigned for investigation.

Completion of housing discrimination complaint investigation within 100 days. The timeframe for completion of investigation into housing discrimination complaints is 100 days

⁸⁸ It is not clear if counsel for respondents were referring to the 10 day answer period provided by statute or to the 25 day answer period that is allowed in practice if a 15 day extension of time is requested.

from filing.⁸⁹ This 100 day period, while contained in state law, is required by HUD as a condition of CHRO being a Fair Housing Enforcement Agency.

Using the CTS Case Lifespan Report developed by BEST, PRI staff determined what percentage of housing discrimination complaints filed in FYs 11-15 were closed within 100 days, 130 days and 200 days. Table V-6 shows this data.

Table V-6: HDU Timeframes to Complete Investigation (FYs 11-15).

	FY 11	FY 12	FY 13	FY 14	FY 15
Disposition within 100 Days	46 (32.4%)	27 (21.6%)	46 (25.8%)	59 (36.9%)	53 (23.3%)
Disposition within 130 Days	23 (16.2%)	31 (24.8%)	21 (11.8%)	13 (8.1%)	18 (7.9%)
Disposition within 200 Days	42 (29.6%)	28 (22.4%)	53 (29.8%)	39 (24.4%)	40 (17.6%)
Disposition after 200 Days	31 (21.8%)	39 (31.2%)	58 (32.6%)	45 (28.1%)	105 (46.3%)
Still Pending	0	0	0	4 (2.5%)	11 (4.8%)

Source: PRI staff analysis of CHRO CTS data.

It is of some concern that the only category of time until disposition that is consistently growing is for those cases taking longer than 200 days, which is twice the statutory time period provided for completing an investigation and finding reasonable cause or no reasonable cause. In FY 11, 32 percent of housing cases were closed within the statutory 100-day Investigation timeframe, but in FY only 23 percent. This is a decrease of 28 percent.

CTS data are not currently being used to track the length of time elapsing between the filing or service of housing discrimination complaints and receipt of answers, or to track the time elapsing between answer and Mandatory Mediation. This data could be helpful in determining whether CHRO could increase the number of housing cases with investigation completed within 100-days by discontinuing the practice of extending the answer period or by shortening any permissible extension of time.

CHRO staff report, however, that Connecticut is not unique in regard to completing most investigations outside the 100 day timeframe, and that HUD has recently changed its reimbursement policies so that there is no financial penalty for completing a housing discrimination investigation more than 100 days after filing.⁹⁰ The reason for this change in policy is reported to be HUD's determination that quality of investigation and disposition should be treated as more important than the 100-day timeframe. Nevertheless, HUD could change its

⁸⁹ C.G.S. Sec. 46a-64c(f).

⁹⁰ In the past, HUD would reimburse CHRO and other FHEAs at a lower rate if an investigation was not completed within 100 days.

current practice of non-enforcement, and there remain a state statutory requirement for completion of investigation within 100 days. CHRO should remain aware of whether this timeframe is being complied with and be in a position to recommend to the legislature and governor what additional resources or policy changes would be necessary for CHRO to fully comply with this requirement. PRI staff recommends:

- 32. CHRO should work with DAS-BEST to generate one or more CTS reports that track, for all complaints filed during each fiscal year or quarter, the dates of: complaint filing; service on the respondent; receipt of answer; Mandatory Mediation; assignment for Investigation; and issuance of finding of reasonable cause or no reasonable cause, for purposes of determining whether adjustments to current timeframes could improve compliance with the statutory 100-day Investigation timeframe.**

CHRO/OPH compliance with one year rule. The 100 day period for completion of an investigation into a complaint of housing discrimination requires a determination, for each complaint, whether or not there is reasonable cause to believe discrimination occurred as alleged in the complaint. If there is in fact such a finding, the case proceeds to hearing, either before CHRO's Office of Public Hearings or in Superior Court. Federal law, which is incorporated into Connecticut law,⁹¹ requires that final agency action be taken within one year of the filing of the complaint. This means that any public hearing should be completed and a final decision and order issued within one calendar year.

Time did not permit PRI staff to conduct any analysis of the time OPH is taking to resolve cases, but, as discussed in Chapter IV, there is a significant backlog and there does not appear to be any system for expediting housing discrimination cases at Public Hearing. PRI staff repeats the recommendation regarding the commission monitoring the work of OPH and the reasons for any inability to close cases in a timely manner.

Accountability

Reporting. As a stand-alone unit, the Housing Discrimination Unit's case processing data and workload cannot be fairly compared to those of the regions or Legal Division. Currently, the HRU reports monthly to the executive director on: inquiries fielded; cases filed, pending, and closed; and, for cases closed, what disposition was reached and whether Investigation was completed within 100 days. This information is provided to the executive director, and she reports it to the full commission, as an adjunct to information provided by the four regions, without analysis of year-over-year trends. PRI staff recommends:

- 33. CHRO report on the performance of the Housing Discrimination Unit separately from the four regions, include analysis of year-over-year trends in inquiries, complaints filed, pending workload, and closures.**

The Housing Discrimination Unit is required to comply not with the 190-day Investigation timeframe contained in C.G.S. Sec. 46a-83(g)(1) but with a 100-day timeframe contained in C.G.S. Secs. 46a-64c(f) and 46a-81e(e). Thus, the requirement of reporting

⁹¹ C.G.S. Secs. 46a-64c(f) and 46a-81e(e)

compliance with this time frame to the judiciary committee and governor pursuant to C.G.S. Sec. 46a-82e(b) does not apply to the HDU. Nevertheless, in the interests of transparency and accountability, PRI staff recommends:

34. CHRO include reporting on the Housing Discrimination Unit's compliance with the statutory 100-day Investigation timeframe in annual reports to the judiciary committee and governor pursuant to C.G.S. Sec. 46a-82e(b).

Fairness to parties. On the housing discrimination complaint side, many stakeholders, but particularly organizations representing the interests of housing discrimination respondents expressed concerns that the housing discrimination process is weighted heavily in favor of complainants. Some of these stakeholders reported, in meetings with PRI staff and at the committee's public hearing, that:

- 1) Respondents are unaware of many aspects of housing discrimination law and its applicability to even small landlords who do not intend to discriminate until facing a housing discrimination complaint; and
- 2) Respondents incur great cost and inconvenience when responding to housing discrimination complaints and are pressured to settle by the threat of on-going legal expenses and large monetary awards to complainants.

In relation to a lack of awareness of applicable housing discrimination law, P.A. 16-16 now requires that upon the purchase of any multi-family dwelling, the purchased be provided with a disclosure form that outlines, in plain language, that discrimination in housing is prohibited and provides examples of actions that constitute discrimination. In addition, CHRO staff has already offered to partner with organizations that represent the interests of rental property owners in order to offer training on housing discrimination. PRI staff recommends:

35. CHRO education and outreach activities in relation to the elimination of housing discrimination include partnering with property owners whenever possible in order to deliver training in multiple formats (i.e., written materials, in-person presentations, recorded and/or live on-line or other digital media).

In relation to the issue of the cost and inconvenience of responding to housing discrimination complaints, PRI staff has made recommendations: 1) that CHRO notify parties that responses to Schedule A Requests are not required to be filed at the same time as the answer, although the requested materials will eventually need to be produced if the complaint does not settle; and 2) that respondents in housing discrimination matters not have any obligation to submit documents under oath when the complainant does not need to do so.

Committee staff notes that much of the expense respondent stakeholders reported related to attorney fees. As noted in conjunction with the non-housing discrimination complaint process, attorneys representing complainants and respondents, CHRO staff, and other stakeholders have expressed concerns that the discrimination complaint process plays out differently and affords different outcomes based on whether or not a complainant or respondent is represented by counsel. In order to assist respondents in assessing the benefits to incurring the expense of retaining counsel, PRI staff reiterates its recommendation that CHRO work with DAS-BEST to

add data fields in CTS to identify whether or not each party is represented by counsel for CHRO can begin to monitor and report on whether there is any disparity in complaint outcomes that correlate with whether or not parties are represented.

APPENDICES

Legislative Program Review and Investigations Committee

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STUDY SCOPE

Commission on Human Rights and Opportunities: Discrimination Complaint Processing

Focus

This study will examine the Commission on Human Rights and Opportunities' (CHRO) discriminatory practice complaint process as it relates to employment, housing, credit, and public accommodations, with an emphasis on changes made to the process by Public Act 11-237.¹

Background

Connecticut's Commission on Human Rights and Opportunities was one of the first "human rights agencies" in the United States. In addition to enforcing various anti-discrimination laws, CHRO is required to provide education and outreach to "establish equal opportunity and justice," support and oversee the development and implementation of state agency affirmative action plans, and monitor state contracting for compliance with small contractor set-aside provisions.

Discriminatory practice complaint processing is the commission's most visible function and the one commanding the majority of its resources. CHRO receives and investigates complaints involving discrimination in employment, housing, credit practices, and public accommodations. The commission reported 2,486 complaints were filed in FY 15, of which over 80 percent pertained to employment discrimination. The total number of complaints filed that year reflected a 25 percent increase over the 1,971 complaints filed in FY 10. The number of cases closed by CHRO in FY 15 was 2,334, which was over 30 percent more than the 1,761 cases closed in FY 10.

Current state law establishes timeframes for CHRO discrimination complaint processing. With the exception of housing complaints, which are processed on an expedited schedule,

¹ Public Act 11-237 was legislation intended to decrease a growing backlog of complaints within CHRO and reduce the commission's complaint processing timeframes, while continuing to ensure the fairness and impartiality of the complaint process for both complainants and respondents.

requirements include that a case assessment review be completed within 60 days² of receipt of an employer's or other respondent's answer to a complaint, and that a finding of reasonable cause or no reasonable cause be issued within 190 days of case assessment completion.³ The commission is also required by law to report annually to the legislature and the governor on how quickly it has been processing discrimination complaints.

In FY 15, CHRO had 79 authorized positions and budget expenditures of \$6.1 million. The commission generates General Fund revenues through payments for cases processed on behalf of the federal Equal Employment Opportunity Commission (EEOC) and Department of Housing and Urban Development (HUD). In FY 15, these payments totaled \$1.27 million from EEOC and \$316,000 from HUD.

Areas of Analysis

1. Describe how CHRO's discriminatory practice complaint function is organized and how the commission processes discrimination complaints pertaining to employment, housing, credit, and public accommodations.
2. Determine the commission's discrimination complaint workload and highlight any recent trends in the number and types of complaints received and resolved.
3. Identify any barriers, constraints, or challenges to the performance of CHRO's discrimination complaint process.
4. Analyze the impact of P.A. 11-237 on CHRO's discrimination complaint function, focusing on the commission's overall timeliness in processing complaints.
5. Assess the commission's efforts in identifying, recommending, and implementing opportunities for improvement.

Areas Not Under Review

This study will not examine CHRO's responsibilities and processes relating to outreach and advocacy, state agency affirmative action plans, or contract compliance. Neither will it evaluate or review the merits of any discrimination complaint before the commission or previously decided by the commission.

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² A case assessment review is the process whereby CHRO examines information pertaining to a complaint to determine whether a complaint should be retained for a full investigation or dismissed. Prior to the passage of Public Act 15-249, this was called a merit assessment review and was required to be completed in 90 days of receipt of a respondent's answer to a discriminatory practice complaint.

³ The law also provides for up to two 90-day extensions of time for the commission to make its findings of reasonable cause or no reasonable cause. Overall, the statutory scheme contemplates that discriminatory practice complaints should be resolved or referred for public hearing within 370 days of the conclusion of the case assessment.

Background

The Connecticut Commission on Human Rights and Opportunities (CHRO) had its genesis in the Inter-Racial Commission, created by statute in 1943.¹ The Inter-racial Commission is reported to have been the first official civil rights agency in the nation.² The first legislative charge to the Inter-racial Commission was to investigate “the possibilities of affording equal opportunity and profitable employment to all persons, with particular reference to job training and placement.”³ The commission was to compile facts concerning discrimination in employment and violations of civil liberties and report to the governor biennially “the result of its investigations, with its recommendations for the removal of such injustices as it may find to exist.” Like the current CHRO, the Inter-racial Commission was a volunteer commission.

The Inter-racial Commission was first authorized to retain paid staff in 1947, which is when the duties of the commission were expanded to include receiving, investigating, and attempting to resolve complaints of discrimination in employment pursuant to Connecticut’s first Fair Employment Practices Act.⁴ This marked the beginning of the CHRO existing as both a board of commissioners and an executive branch agency.

Since at least 2009, CHRO has consistently described its statutory duties as to:

- eliminate illegal discrimination in employment, housing, public accommodations and credit transactions through education and law enforcement;
- monitor contract compliance laws and small contractor set-aside provisions by state agencies, contractors and subcontractors;
- review and monitor state agency affirmative action plans and compliance with laws requiring affirmative action and equal opportunity in state government; and
- establish equal opportunity and justice for all persons in Connecticut through education and outreach.⁵

¹ 1943 Public Act 381 (House Bill No. 1361).

² Connecticut was one of a handful of northern states that, during the 1940s, adopted fair employment laws and created commissions to advance racial justice. This occurred on the heels of Franklin D. Roosevelt’s 1941 Executive Order 8802. That Executive Order, issued at a time when African Americans faced inequitable access to the employment opportunities emerging during the nation’s build up to World War II, prohibited discrimination in employment by defense firms that had contracts with the federal government and established a federal Fair Employment Practice Committee to accept complaints of job discrimination, work with industry on changing employment practices, and educate the broader public about the importance of these goals.

³ Public Act 43-381 (House Bill 1361).

⁴ Public Act 47-171.

⁵ This enumeration can be found at the outset of the CHRO’s annual Administrative Digest Reports to the Governor and does not appear to have changed for since at least 2010. The most recent CHRO Administrative Digest Report

Generally speaking, CHRO as a board of commissioners sets policy which is implemented by the commission staff under the leadership of an executive director, who is accountable to the board of commissioners. Nevertheless, the board of CHRO commissioners has some authority and responsibility vis-à-vis each of these statutory functions.

Commission Structure

Although its composition has changed over the past 60 years, as currently described in statute,⁶ the CHRO commission consists of nine members, five appointed by the governor and one each appointed by the president pro tempore of the Senate, the minority leader of the Senate, the speaker of the House of Representatives, and the minority leader of the House of Representatives. All members are appointed with the advice and consent of both houses of the General Assembly. The governor selects one person to serve as chairperson each year. The current membership of the CHRO commission, including appointing authority and length of service can be found in Appendix C.

The commission is responsible for the appointment, supervision, and evaluation of an executive director. The executive director serves at the pleasure of the commission. The commission has no responsibilities or authority in relation to any other agency staff, with the exception that if the executive director appoints deputy directors pursuant to C.G.S. Sec. 46a-52(d), the deputy directors can only be removed from their positions with the approval of a majority of the members of the commission.

The Commission on Human Rights and opportunities is required by statute to meet at last six times a year and at least once every two months.⁷ Most of the commission's powers and duties are specifically exercised through its executive director, who typically reports on all agency activities to the commission at monthly commission meetings. A review of the commission's meeting agendas and minutes over the past few years, and observation of multiple commission meetings by PRI staff, reveals that the functional duties exercised by the commission are primarily approving state agency affirmative action plans and requests for exemption from requirements to set-aside a certain percentage of contracts for minority owned businesses. The commission's activity with regard to discrimination complaint processing is confined to ruling on requests to reopen complaints that have been dismissed by the agency. The commission also authorizes the initiation of civil actions relating to complaints of discrimination.

Staff. The commission's specific powers are enumerated in C.G.S. Sec. 46a-54 and its specific duties in C.G.S. Sec. 46a-56. These powers and duties include:

- establishing and organizing offices;
- employing lawyers and other staff;
- receiving, initiating, investigating and mediating discrimination complaints;

available on line is for 2013-14. It can be accessed at: http://www.ct.gov/chro/lib/chro/Admin_Digest_2013-2014%28final%29.pdf.

⁶ C.G.S. Sec. 46a-52(a).

⁷ C.G.S. Sec. 46a-52(a).

- adopting regulations and establishing rules of practice for parties involved in complaint proceedings;
- recommending policies to both state and local governments and agencies thereof;
- utilizing voluntary and uncompensated services to study the problems of discrimination and foster good will among diverse groups within the state; and
- imposing various requirements for training of state agency staff and for the posting by employers of notices regarding employee rights to be free from workplace discrimination.

As authorized by C.G.S. Sec. 46a-54, CHRO both maintains offices and employs legal counsel and other staff in order to exercise its powers and carry out its duties. CHRO is housed within the Connecticut Department of Labor (DOL) for administrative purposes only, as discussed in Chapter I.

The Connecticut Fair Employment Practices Act and Federal Civil Rights Act

In 1947, Connecticut adopted its Fair Employment Practices Act⁸ making it illegal for Connecticut employers of five or more individuals to discriminate in employment on the basis of race, color, religion, national origin, or ancestry, and gave the Inter-racial Commission the authority to receive and investigate employment discrimination complaints. The commission as an entity was empowered to hold hearings on such complaints or to do so through hearing examiners, with commissioners or hearing examiners being paid \$25 a day for doing so. In this way, the 1947 act established investigating and processing discrimination complaints as the Commission's most visible and resource-consuming function.

Almost two decades later, in 1964, the U.S. Congress adopted the federal Civil Rights Act, establishing the right of all individuals to be free from discrimination on the basis of race, color, religion, sex, or national origin in voting, employment, public accommodations, and access to government programs and services. Title VII of the Civil Rights Act also created the Equal Employment Opportunity Commission (EEOC) to enforce the provisions of the Civil Rights Act regarding the prohibition on discrimination in employment. As of 1964, however, more than half the states already had some form of fair employment practices law being enforced through state fair employment practices agencies (FEPAs). In recognition of this, Title VII authorized EEOC "to cooperate with and, with their consent, utilize regional, state, local, and other agencies, both public and private, and individuals;"⁹ and established the expectation that EEOC would allow a state FEPA to initially process and attempt to resolve complaints that fell under both state and federal fair employment practice laws.¹⁰

⁸ 1947 Public Act 171.

⁹ Title VII of the Civil Rights Act of 1964, Section 705(g)(1).

¹⁰ Title VII of the Civil Rights Act of 1964, Section 706.

Commission’s Relationship with EEOC

Charges filed with both the EEOC and a state FEPA are referred to as “dual filed.” The state and local FEPAs that are recognized as having the initial responsibility for processing dual filed complaints are known as “deferral agencies.” Connecticut’s Commission on Human Rights and Opportunities was established as an EEOC deferral agency in 1965 and remains one to this day. The contours of the relationship between CHRO and EEOC are set forth in annual Worksharing Agreements that require the CHRO to comply with criteria contained in EEOC’s State and Local Handbook and Contracting Principles. These documents outline the substantive and procedural requirements that the State of Connecticut and CHRO must conform to in order for action taken by CHRO to be accepted by EEOC in relation to the parallel federal claim.

State and Federal Fair Housing Protections

Connecticut first legislated equal housing opportunity in 1949 when public housing developments were included in the state’s public accommodations law. CHRO was empowered to investigate and resolve complaints of housing discrimination in 1955. Protections against discrimination in the sale or rental of private housing were adopted in 1959. By the time the U.S. Congress enacted the Fair Housing Act as Section VIII of the Civil Rights Act of 1968, Connecticut’s CHRO had been processing housing discrimination cases against both public and private entities for almost a decade.

As was the case with employment discrimination, Connecticut was not the only state with an administrative mechanism to receive and process complaints of housing discrimination prior to the adoption of the Fair Housing Act.¹¹ That act, in a manner similar to Title VII of the Civil Rights Act of 1964, called for the Department of Housing and Urban Development (HUD) to refrain from processing complaints that arose in jurisdictions in which an agency was already enforcing fair housing laws that were “substantially equivalent” to the Fair Housing Act.¹² In those jurisdictions, HUD, like EEOC, will defer to the proceeding of the state or local agency. HUD regulations refer to state and local agencies that process housing discrimination complaints in a manner substantially equivalent to HUD as fair housing enforcement agencies (FHEAs). CHRO has been certified by HUD as a FHEA since at least the 1980s. When CHRO completes its processing of a housing discrimination complaint that also alleges a violation of the federal Fair Housing Act, HUD makes a per-case payment depending on when in the process the case is closed (as provided in Chapter I).¹³

Connecticut’s fair housing laws predate and have always been substantively equivalent to the federal Fair Housing Act. In fact, Connecticut’s laws currently provide more protections than federal law, most notably prohibiting discrimination in housing based on sexual orientation. Procedurally, HUD requires:

- complaints be in writing (but they are not required to be under oath);

¹¹ Title VIII of the Civil Rights Act of 1968, codified at 42 U.S.C. 3601-3619.

¹² 42 U.S.C. 3616 as implemented through 24 C.F.R. Part 115. Maintaining status as a FHEA agency requires that Connecticut’s fair housing laws are substantially equivalent to the Fair Housing Act in regard to: substantive rights afforded; procedures; remedies; and availability of judicial review.

¹³ HUD payments, like those received from the EEOC, are paid directly into the General Fund.

- service of various notices upon both the complainant and the respondent;
- a deferral agency begin processing a complaint within 30 days of filing;
- complaints be finally disposed of within 100 days unless impracticable¹⁴;
- parties be notified within 10 days of the expiration of the 100-day period of the specific reasons it was impracticable to conclude proceedings within that timeframe;
- settlements of complaints be agreements between the complainant, the respondent, and the agency, with the agency having to approve the settlement;
- settlements be matters of public record unless a specific finding is made that disclosure is not necessary to further the purposes of the Fair Housing Act; and
- no undue burden be placed upon the right to file a complaint, meaning:
 - there is a period of at least 180 days for filing the complaint;
 - no law or regulation prohibits the use of “testers,”¹⁵ and
 - no costs, criminal penalties, or fees are imposed in connection with filing a complaint.¹⁶

In terms of remedies, HUD requires the deferral agency be authorized to award or seek on complainants’ behalf: actual out-of-pocket damages, civil penalties or punitive damages, and injunctive or equitable relief. In terms of judicial relief, a complainant must have the right to pursue a court action: in lieu of pursuing a complaint with the deferral agency; upon an agency determination of reasonable cause as an alternative to administrative hearing; or to obtain review of any final agency order.

HUD regulations include performance standards for deferral agencies, such as: criteria for timely processing including final administrative disposition within one year of filing; a limited use of administrative closures whereby a complaint is dismissed without a finding on the merits; a commitment to assisting parties in voluntary conciliation of housing discrimination complaints; utilization of compliance review procedures to ensure the terms of settlement agreements and orders are carried out; and a commitment to awarding or achieving through settlement the kinds of relief that will prevent recurrences of discrimination.

To maintain certification as HUD deferral agency, a state housing complaint processing agency must receive and process “a reasonable number” of complaints that raise issues under the federal Fair Housing Act and comply with record-keeping, reporting, and other policies and procedural requirements established by HUD. In addition, a HUD deferral agency that processes

¹⁴ Until the last few fiscal years, CHRO’s failure to comply with the 100 days requirement would result in HUD reimbursement being reduced proportionally to the time the complaint remained pending after the 100-day period ended. HUD has retained the 100 day requirement as a benchmark, but has ended the practice of reducing the amount of payments in order to ensure that deferral agencies like CHRO are investigating cases thoroughly and making legally appropriate decisions without the pressure of closing cases within 100 days.

¹⁵ Testers are individuals, normally in the employ of a private entity, who seek housing or housing financing for the purpose of determining whether a particular landlord, real estate practice, or a mortgage company is engaging in discriminatory practices vis-à-vis individuals with protected characteristics.

¹⁶ 24 CFR Sec. 115.204.

other kinds of discrimination complaints must demonstrate it devotes at least 20 percent of its total annual budget to fair housing activities and cannot unilaterally reduce the level of financial resources committed to fair housing activities.

Through the 1980s, complaints of housing discrimination were received and processed by the four regional CHRO offices that accept and investigate complaints relating to discrimination in employment, public accommodation, and credit practices. In the early 1990s, CHRO created a separate centralized Housing Discrimination Unit that is responsible for receiving and investigating all housing discrimination complaints, wherever in the state they originate.

Appendix C

CHRO Commissioners (as of November 1, 2016)

Commissioner Name	Current Appointment Date (Original Appointment Date)	Length of Term ^a	Appointing Authority
Cherron Payne, Chairperson^b	January 2016 (same)	5 years	Governor
Edward Mambruno, Secretary	July 2014 (June 2002)	3 years	Senate Minority Leader
Lisa B. Gilberto	March 2015 (same)	5 years	Governor
Dawn Niles	July 2013 (May 2010)	3 years	Senate President Pro Tempore
Andrew M. Norton	January 2012 (August 1999)	3 years	House Minority Leader
Edith Pestina	April 2014 (November 2009)	5 years	Governor
Joseph M. Suggs, Jr.	March 2015 (same)	5 years	Governor
Shauna K. Tucker	March 2015 (same)	5 years	Governor
Vacancy	---	3 years	Speaker of the House

^a Pursuant to C.G.S. Sec. 46a-52: “. . . the Governor shall appoint either two or three member, as appropriate, to serve for terms of five years” and “the president pro tempore of the Senate, the minority leader of the Senate, the speaker of the House of Representative, and the minority leader of the House of Representatives shall each appoint one member to serve for a term of three years.” Further, “[i]f any vacancy occurs, the appointing authority making the original appointment shall appoint a person to serve for the remainder of the unexpired term.”

^b C.G.S. Sec. 46a-52. “The Governor shall select one of the members of the commission to serve as chairperson for a term of one year.”

Source: Information provided to PRI staff by CHRO