

**Charles D. Baker**  
Governor

**Karyn Polito**  
Lieutenant Governor



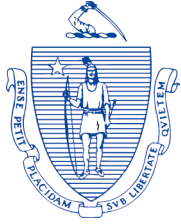
**Marylou Sudders**  
Secretary

**Linda S. Spears**  
Commissioner

# **Legislative Report on Fair Hearings in the Department of Children and Families**

**May 2016**





CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lieutenant Governor

*The Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Department of Children and Families*  
*600 Washington Street, 6<sup>th</sup> Floor*  
*Boston, MA 02111*

*Tel.: 617-748-2000 Fax: 617-261-7435*  
*www.mass.gov/dcf*

MARYLOU SUDDERS  
Secretary

LINDA S. SPEARS  
Commissioner

## **LEGISLATIVE REPORT ON FAIR HEARINGS IN THE MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES**

This document fulfills the requirements of line item 4800-0015 of Chapter 46 of the Acts of 2015 that requires the Department of Children and Families to report on:

...provided further, that the department shall report to the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities on December 31, 2015 and March 31, 2016 on: (i) the fair hearing requests filed in fiscal year 2016, stating for each hearing request using non-identifying information: (a) the subject matter of the appeal; (b) the number of days between the hearing request and the first day of the hearing; (c) the number of days between the first day of the hearing and the hearing officer's decision; (d) the number of days between the hearing officer's decision and the agency's final decision; (e) the number of days of continuance granted at the appellant's request; (f) the number of days of continuance granted at the request of the department of children and families or the hearing officer's request, specifying which party made the request; and (g) whether the departmental decision that was the subject of the appeal was affirmed or reversed; and (ii) the fair hearing requests filed before fiscal year 2016, which are pending for more than 180 days, stating the number of those cases, how many of those cases have been heard but not decided and how many have been decided by the hearing officer but not yet issued as a final agency decision; ...

---

Following an introduction to the Fair Hearing process is information responsive to the statutory request for information on particular statistics within the Fair Hearing Unit. Enclosed as an attachment following this report you will also find the FY2016 Docket to date as required by 4800-0015.

**Part I. Introduction to Fair Hearings**  
**Part II. Response to Legislative Request**  
**Attachment 1. FY2016 Fair Hearing Docket July 1, 2015 to March 15, 2016**

## **Part I. Introduction to Fair Hearings**

As with administrative hearings in other agencies, Fair Hearings at the Department of Children and Families provide an opportunity for consumers to appeal certain decisions made by the agency. The process is governed by M.G.L. c.30A, similar to administrative appeals within other state agencies, and also by 110 CMR 10.00 et. seq. of the Department's regulations.

Matters subject to Fair Hearing include:

- Appeal of a Supported Abuse and/or Neglect Finding
- Appeal of a Supported Abuse and/or Neglect Finding in an Institution
- Denial of Foster Parent Homestudy
- Case Closing
- Removal of Child from Foster Parent
- Appeal of a Supported Abuse and/or Neglect Finding by a Foster Parent
- Foster Care Review Goal Determination
- Adoption Subsidy Reduction or Termination
- Alleged Perpetrator Listing
- Removal of Child from Pre-Adoptive Home
- Denial of Adoptive Parent Homestudy
- Closing of Foster Home due to License Revocation
- Reduction of Services
- Daycare Denial
- Failure to Follow Regulations
- Any action or inaction involving the placement of children across state lines pursuant to the Interstate Compact on the Placement of Children (ICPC)
- Dispute as to the Sliding Fee for services calculated by the Department

Appellants are able to employ an attorney to assist them during this process if they would like, but it is not required as a function of a Fair Hearing and most individuals do not currently retain an attorney in the defense of their claim. These informal hearings do not follow the Massachusetts Rules of Evidence so the rules regarding what can/cannot be admitted are more flexible. The hearings are not as formal as a court proceeding.

Upon issuance of the Fair Hearing decision, the Appellants also have an additional right of appellate review to the Superior Court pursuant to M.G.L. c.30A.

It is important to note that often while the Fair Hearing process is occurring, there is a parallel but separate process occurring in the Juvenile or Probate and Family Court which relates to the custody of the child or children. While those same children may be the subject of the Fair Hearing, the two processes are separate and distinct. The Juvenile or Probate and Family Court Judge is the arbiter of all custody and placement decisions relative to a child, based upon a finding regarding the parental fitness of the child's parents, as well as a determination as to what is in the best interests of the child. The scope of a Fair Hearing decision is limited; it does not supersede the Court's authority in determining what placement is in the best interest of a child, whether that placement is at home with parents, or in a particular foster or adoptive home.

## **Part II. Response to Legislative Request**

The information that follows provides a detailed response to the statutory request.

### **(a) Subject matter of the appeal<sup>1</sup>**

Table 1 (below) shows that the vast majority of requests for Fair Hearings thus far in Fiscal Year 2016 are appeals of supported abuse and/or neglect findings (a combined 1276 requests out of 1310 Fair Hearing Requests that have gone to a hearing).<sup>2</sup>

These Fair Hearing requests on supported abuse and neglect findings represent a fraction of the total number of reports of abuse and/or neglect received over the course of a year. During the first two quarters of FY 2016, a time period covered by this report, Department average was 7,578 reports of abuse or neglect per month and 1,870 substantiated reports per month (charts 3a and 3b of the Caseload Report for Fiscal Year 2016 Quarter 2).

The next most common subject matter for appeal is case closing, (31 requests) followed by removal of a child from a foster home (30 requests). A full listing of the allowable grounds for appeal can be found in 110 CMR 10.06.

---

<sup>1</sup> For cases that have gone to hearing (as opposed to being settled/withdrawn/dismissed pre-hearing).

<sup>2</sup> This is the total of Supported Abuse/Neglect Findings for a caretaker, an institution and foster parents.

**Table 1. Subject of DCF Fair Hearings Requested  
(FY16 to date, 7/1/2016 – 3/15/2016)**

<b>Subject of Fair Hearing Requests</b>	<b>Definition of Subjects</b>	<b>Count of Fair Hearing Requests in FY2016</b>
Appeal of a Supported Abuse and/or Neglect Finding on a Caretaker	Count of Appellant / Reasons of 51A Caretaker	1209
Appeal of a Supported Abuse and/or Neglect Finding on a Foster Parent	Count of Appellant / Reasons of 51A Foster parent	19
Appeal of a Supported Abuse and/or Neglect Finding at an Institution	Count of Appellant / Reasons of Institutional Abuse	48
Denial of Adoptive Parent Homestudy	Count of Appellant / Reasons of Adoptive Parent Home Study Denial	2
Removal of Child from Pre-Adoptive Home	Count of Appellant / Reasons of Adoptive Parent Removal of Child	0
Alleged Perpetrator Listing	Count of Appellant / Reasons of Alleged Perpetrator	1
Case Closing	Count of Appellant / Reasons of Case Closing	10
Denial of Childcare Services	Count of Appellant / Reasons of Denial of Child Care Services	0
Adoption Subsidy	Count of Appellant / Reasons of Denial of Adoption Subsidy	6
Foster Care Review Goal Determination	Count of Appellant / Reasons of Foster Care Review Goal Determination	2
Failure by Department to Follow Regulations	Count of Appellant / Reasons of Failure by Dept to Follow Regulations	0
Denial of Foster Parent Homestudy	Count of Appellant / Reasons of Foster Parent Home Study Denial	20
Closing of Foster Home	Count of Appellant / Reasons of Foster Parent Removal of Child	3
Removal of Child from Foster Parent	Count of Appellant / Reasons of Interstate Compact	35
Interstate Compact Case	Count of Appellant / Reasons of Case Closing Young Adult	0
Reduction of Services	Count of Appellant / Reasons of License Revocation	7
Appeal of Sliding Fee	Count of Appellant / Reasons of 51A Caretaker	0
Case Closing Young Adult	Count of Appellant / Reasons of 51A Foster parent	21
License Revocation	Count of Appellant / Reasons of License Revocation	5

**(b) the number of days between the hearing request and the first day of the hearing**

The attached FY2016 Fair Hearing Docket July 1, 2015 to March 15, 2016 provides both the number of days between the Fair Hearing request and the first scheduled hearing (Column I, “#Days FH Req-1<sup>st</sup> Date Sch”) and the number of days between the hearing request and the date of the actual first hearing (column J, “#Days FH Req-1<sup>st</sup> Hear Date”).

Table 2 provides a summary view of this data requested in statute

**Table 2: Number of Days between Fair Hearing Request and Fair Hearing (FY16 to date, 7/1/2016 – 3/15/2016)**

	Average Number of Business Days	Business Days Allowed under Regulations
number of days between the Fair Hearing request and the first <i>scheduled</i> hearing	52	65*
number of days between the Fair Hearing request and the date of the <i>actual</i> first hearing	58	

\* While a hearing is required to be scheduled within 65 business days, DCF regulations allow for continuances from Appellant, Fair Hearing Officer and/or Area Office which could increase a case’s timeline.

In FY2016, the Department averaged 52 business days for a Fair Hearing to be scheduled, and 58 business days for a hearing to take place once an appeal is filed. This is an improvement of an additional 10 days since 2014. Department regulations stipulate that hearings should be scheduled within 65 working days of receipt of the request for hearing. In contrast to years past, in 2005 the unit was averaging 418 days between receiving the request and the actual date of a hearing.

In addition to the cases represented above, there are also 330 cases that have either withdrawn, settled or closed for other reason before a first hearing was held.

**(c) the number of days between the first day of the hearing and the hearing officer's decision and (d) the number of days between the hearing officer's decision and the agency's final decision;**

The attached FY2016 Fair Hearing Docket July 1, 2015 to March 15, 2016 provides both the number of days between the first day of the hearing (Column O, “#Days 1st Hear FH Off Dec “) and the hearing officer's decision and the number of days between the hearing officer's decision and the agency's final decision (Column Q, “#Days FHO Dec to Final Dec”). It also provides the

cumulative total of time between first day of the hearing and the agency’s final decision (Column P, #Days 1st Hear Final Dec)

Table 3 below provides a summary view of the average number of days between these different steps of the process to receiving a final decision on a fair hearing.

**Table 3: Number of Days between Hearing and Decisions  
(FY16 to date, 7/1/2016 – 3/15/2016)**

	<b>Average Number of Business Days*</b>	<b>Range of Business Days</b>	<b>Business Days Allowed under Regulations</b>
days between the first day of the hearing and the hearing officer's decision	48	0 to 112	NA
days between the hearing officer's decision and the agency's final decision	35	1 to 79	NA
days between the first day of the hearing and the agency's final decision	77	18 to 125	90

\*Average is based on those decisions submitted as of 3/15/2016

Of the cases where the hearing officer has submitted a decision for review, the average length of time between the first day of hearing and the hearing officer’s decision is 48 business days. This is within the Department’s regulatory timeframe, as DCF regulations set the amount of time for decisions at 90 days from the close of evidence.

The Department continues to work on the timely submission of hearing decisions. Two trainings have been provided to hearing officers this year that focus on the writing process, to assist the hearing officers in streamlining the writing of their decisions so that decisions are submitted for review in a timely manner. Additional trainings are in the process of being scheduled on a bi-monthly basis to continue the focus on the writing of decisions.

The average number of business days between when the hearing officer’s decision is submitted and the agency’s final decision is 35 business days. This is the first report where the Department has been able to produce data on the period of time between the hearing officer’s decision and the agency’s final decision.

In 2014, the OCA’s report found that for hearing requests in 2014, the Department was averaging 100 business days between the close of evidence and the date of the agency’s final decision. In 2005, the average was 393 days. This report shows an average of 77 days between the first day of the hearing to the agency’s final decision; incremental progress is being made.

- (e) the number of days of continuance granted at the appellant's request;
- (f) the number of days of continuance granted at the request of the department of children and families or the hearing officer's request, specifying which party made the request;

The attached FY2016 Fair Hearing Docket July 1, 2015 to March 15, 2016 provides the number of days of continuances granted for each request as required in the statute.

- the appellant's request (Column L, “#Days Cont at Appell Req”);
- the number of days of continuance granted at the request of the department of children and families (Column N, “#Days Cont at Area Req”); and
- the number of days of continuance granted at the request of the hearing officer (Column M, “#Days Cont at FH Off Req”).

Table 4 below provides a summary of the continuances granted on Fair Hearings that were requested thus far in FY 2016 based on who requested the continuances.

**Table 4: Number of Continuances Granted  
(FY16 to date, 7/1/2016 – 3/15/2016)**

	<b>Number of Continuances Granted in FY2015</b>	<b>Average Length of Continuance (business days)</b>
Days Granted at Appellant’s Request	136	50
Days Granted at Fair Hearing Officer’s Request	25	23
Days Granted at Area Office’s Request	17	26
<b>Total continuances granted</b>	<b>177</b>	<b>44</b>

In general, when a continuance is allowed the matter is then scheduled on the next available date. Currently, due to the higher volume of cases, combined with the logistics regarding available hearing space in each area office, the next available date is often 60 to 90 calendar days later.

- (g) whether the departmental decision that was the subject of the appeal was affirmed or reversed;

The attached FY2016 Fair Hearing Docket July 1, 2015 to March 15, 2016 provides data on decisions of appeals; both those that are resolved prior to a Fair Hearing taking place (column R, “Reas for Dismiss(Prior to Hear)”) and after a Fair Hearing has occurred (columns S thru V).

This data is summarized in tables 5 and 6 (below). Table 5 details the 334 Fair Hearings that resolved before a hearing took place. Table 6 shows the results of those Fair Hearings that moved to a hearing and have had a decision submitted for review by a hearing officer.



**Table 5: Pre-Hearing Outcomes as of 3/15/16 for Fair Hearings Requested (FY16 to date, 7/1/2016 – 3/15/2016)**

<b>Pre-Hearing Outcomes</b>	
Settled Cases where the underlying decision on appeal is overturned prior to hearing, after an administrative review by an area office manager	44
Withdrawal Withdrawn by the Appellant as documented in the Fair Hearing file via a written request by the Appellant	39
Closed for Other Reason Including but not limited to appellant failed to appear at the hearing, Fair Hearing request as filed was not a proper subject for appeal and therefore was dismissed at the outset, or that the Fair Hearing request as filed was well beyond the regulatory 30 day timeframe in which to file an appeal and therefore was dismissed	251
<b>Total resolved prior to hearing</b>	<b>334</b>

**Table 6: Post-Hearing Outcomes as of 3/15/16 for Fair Hearings Requested (FY16 to date, 7/1/2016 – 3/15/2016)**

<b>Post-Hearing Outcomes</b>	
Recommended Affirm	70
Recommended Reversal	77
Final Affirm	7
Final Reversal – No action by Commissioner	4
<b>Total resolved post hearing</b>	<b>144</b>

The chart above reflects that as of March 15, 2016, 144 cases had been submitted for review by a hearing officer, along with their recommended outcome. In addition, 7 decisions affirming the Department’s underlying decision have been issued, and 4 decisions reversing the Department’s underlying decision have been issued as a result of the Commissioner taking no action on those decisions submitted to her office for review.<sup>3</sup>

<sup>3</sup> As the Department has committed to eradicating the backlog of cases within the Department as detailed in the next section, the majority of the FY 2016 cases, which do not fall into the definition of “backlog,” have not been issued as final decisions.

**(ii) the fair hearing requests filed prior to fiscal year 2016, which are pending for more than 180 days, stating the number of such cases, how many of such cases have been heard but not decided and how many have been decided by the hearing officer but not yet issued as a final agency decision.**

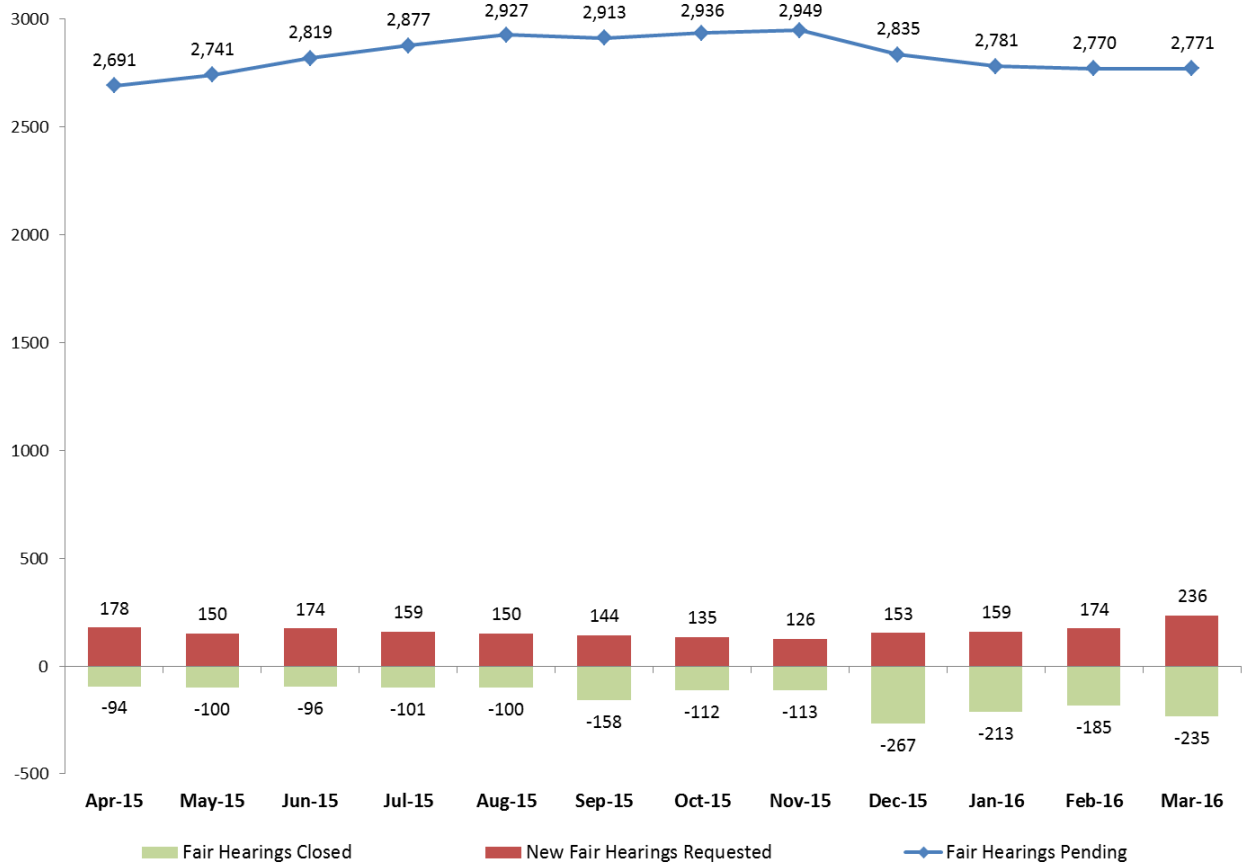
Resolving cases open for more than 180 days (“backlog”) continues to be a high priority for the Department. As of March 6, 2016, there were 1827 Fair Hearing requests filed prior to FY2016 which are pending for more than 180 days without a final agency decision. It is not possible in our database to provide a number for how many have been decided by the hearing officer and not yet issued as a final agency decision for cases in backlog, because that data point was only recently developed in the ifamily net system.

As detailed in prior reports, there are two components to the backlog: 1) cases where hearings have occurred, but decisions have yet to be written and; 2) cases where decisions are written that are awaiting supervisory review. To address the cases which have yet to be written, the Unit continues to utilize law student interns as well as a 120 day position to write decisions. In addition, four temporary paralegals were hired during the month of November and trained thereafter to focus solely on writing decisions. Also, 5 permanent paralegals were hired during the months of January and February, 2016 and trained thereafter to also assist in writing decisions as well as to support the work of the unit. As for the cases awaiting supervisory review, the Department hired an additional supervisor who started August 10, 2015, to review written decisions which are pending. In addition, two additional temporary part-time supervisors started on November 30, 2015. Finally, an additional temporary clerical staff person was hired to assist in data entry and processing the paperwork associated with the large volume of cases being written and reviewed

Over the first 8 months of this fiscal year 2016 (through February 29, 2016), 1206 Fair Hearing requests have been filed. Over the same time period, 1283 cases in total have been closed by the Fair Hearing unit. Compared to fiscal year 2015 over the same time period (the first 8 months of FY 2015) 1182 Fair Hearing requests had been filed, but only 775 cases had been closed. This represents an increase of an additional 508 cases closed this fiscal year, thanks to the increase in staffing that occurred in the latter half of the reporting period.

Charts at the end of this section provide additional information as to the progress made on this issue, which include closing out all Fair Hearing cases from calendar years 2002, 2003, 2004, 2005 and 2006 thus far during FY2016, with the unit on target to close out the 2007 cases within the month of March 2016.

**Graph 1: Pending Fair Hearings and Closings**



**Definitions**

**Fair Hearings Closed:** Count of Fair Hearings closed (e.g., decision issued, hearing request withdrawn, hearing no-show) during the target month.

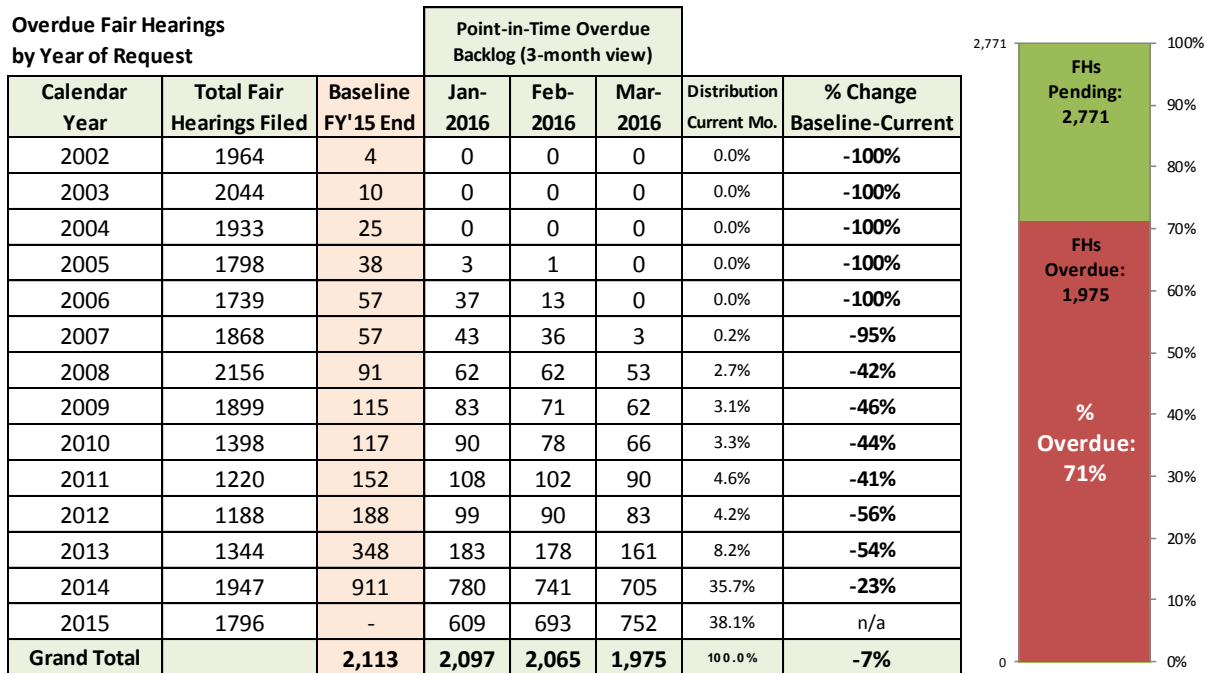
**New Fair Hearings Requested:** Count of new Fair Hearings requested during the target month.

**Fair Hearings Pending:** Count of Fair Hearings remaining open at the end of the target month.

Graph 1 above shows the currently pending Fair Hearings. With the y axis showing number of Fair Hearings, the blue line shows the total number of Fair Hearings pending. The bars at the bottom show how many cases were opened during the previous month (in red) and the how many cases were closed (in green).

Chart 7 below shows a monthly breakdown of the overdue Fair Hearing decisions based on the calendar year in which the Fair Hearing was requested. The column of data shaded in light red shows how many decisions from a particular calendar year were pending at the close of FY15. As of the end of March, all cases up until 2006 have been closed with substantial progress made in other years. To contextualize these findings, also shown are the total number of Fair Hearings filed in each year and a chart at the bottom which shows percent of overdue Fair Hearings from 2005 and 2006.

**Chart 7: Overdue Fair Hearings by Year of Request**



NOTE: Overdue counts only include hearings requested > 180 days prior to report run date.

Historical Perspective			
Feb-2005 FHs Pending:	4,794	Sep-2006 FHs Pending:	4,830
Feb-2005 FHs Overdue:	4,220	Sep-2006 FHs Overdue:	4,544
% Overdue:	88.0%	% Overdue:	94.1%