§ 6.13

failed, the Secretary will notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and will request that the Governor or the Chief Executive Officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or the Chief Executive Officer fails or refuses to secure compliance, the Secretary will:

1. Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;
2. Exercise the powers and functions provided by Title VI;
3. Terminate or reduce payments under Title I, or limit the availability of payments under Title I to programs or activities not affected by the failure to comply; or
4. Take such other actions as may be provided by law, including but not limited to, the initiation of proceedings under 24 CFR part 24 or any applicable proceeding under State or local law.

(b) Termination, reduction, or limitation of the availability of Title I payments. No order terminating, reducing, or limiting the availability of Title I payments under this part shall become effective until:

1. The Secretary has notified the Governor of the State or the Chief Executive Officer of the unit of general local government of the Recipient’s failure to comply in accordance with paragraph (a) of this section and of the termination, reduction or limitation of the availability of Title I payments to be taken;
2. The Secretary has determined that compliance cannot be secured by voluntary means;
3. The Recipient has been extended an opportunity for a hearing in accordance with §6.13(a); and
4. A final agency notice or decision has been rendered in accordance with paragraph (c) of this section or 24 CFR part 180.

(c) If a Recipient does not respond to the notice of opportunity for a hearing or does not elect to proceed with a hearing within 20 days of the issuance of the Secretary’s actions listed in paragraphs (b)(1), (2) and (3) of this section, then the Secretary’s approval of the termination, reduction or limitation of the availability of Title I payments is considered a final agency notice and the Recipient may seek judicial review in accordance with section 111(c) of the Act.

§ 6.13 Hearings and appeals.

(a) When a Recipient requests an opportunity for a hearing, in accordance with §6.12(b)(3), the General Counsel will follow the notification procedures set forth in 24 CFR 180.415. The hearing, and any petition for review, will be conducted in accordance with the procedures set forth in 24 CFR part 180.

(b) After a hearing is held and a final agency decision is rendered under 24 CFR part 180, the Recipient may seek judicial review in accordance with section 111(c) of the Act.

PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY AND PROCEDURES

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, National Origin, Age, or Disability

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Subpart B [Reserved]


Source: 61 FR 14228, Mar. 29, 1996, unless otherwise noted.

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, National Origin, Age, or Disability

GENERAL PROVISIONS

§ 7.1 Policy.

In conformity with the policy expressed in Executive Order 11478 (34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803) and with implementing regulations of the Equal Employment Opportunity Commission, codified under 29 CFR part 1614, it is the policy and the intent of the Department of Housing and Urban Development to provide equality of opportunity in employment in the Department for all persons; to prohibit discrimination because of race, color, religion, sex, national origin, age or disability in all aspects of its personnel policies, program, practices, and operations and in all its working conditions and relationships with employees and applicants for employment; and to promote the full realization of equal opportunity in employment through continuing programs of affirmative employment at every management level within the Department.

§ 7.2 Definitions.

For purposes of this subpart A—

AE means Affirmative Employment.


Organizational unit means the jurisdictional area of the Office of the Secretary, the Assistant to the Deputy Secretary for Field Management, each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the Chief Financial Officer, the Director of Lead-Based Paint Abatement and Poisoning Prevention, and the Office of Federal Housing Enterprise Oversight.

vvention, and the Office of Federal Housing Enterprise Oversight.

Person with a disability means the same as handicap under EEOC’s regulations at 29 CFR part 1614.

§ 7.3 Designations.

(a) Director of Equal Employment Opportunity. The Director of the Office of Departmental Equal Employment Opportunity is designated the Director of EEO, except that with respect to complaints naming the Director and/or Deputy Director of Departmental EEO as the alleged discriminating official(s) and complaints arising in the Office of Departmental EEO, the Chief of Staff shall be Director of EEO.

(b) Deputy Director of Equal Employment Opportunity. The Deputy Director of the Office of Departmental Equal Employment Opportunity is designated as the Deputy Director of Equal Employment Opportunity and acts for the Director of EEO.

(c) Equal Employment Opportunity Officers. The Director of Equal Employment Opportunity shall designate appropriate HUD officials to be Equal Employment Opportunity Officers for their respective organizational units.

§ 7.4 Affirmative employment programs.

The Office of the Secretary, the Assistant to the Deputy Secretary for Field Management, each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the Chief Financial Officer, the Director of Lead-Based Paint Abatement and Poisoning Prevention, and the Director, Office of Federal Housing Enterprise Oversight shall establish, maintain and carry out a plan of affirmative employment to promote equal opportunity in every aspect of employment policy and practice. Each plan shall identify instances of under-representation of minorities, women and persons with disabilities, recognize situations or barriers that impede equality of opportunity, and include objectives and action items targeted to eliminate any employment, training, advancement, and retention issues which adversely affect minorities, women and persons with disabilities.
Each plan must be consistent with 29 CFR part 1614 and the governing Management Directive issued by the Equal Employment Opportunity Commission, and is subject to approval by the Director of Equal Employment Opportunity and shall be developed within the framework of Departmentwide guidelines published by the Director of EEO.

§ 7.10 Responsibilities of the Director and Deputy Director of EEO.

The Director and Deputy Director of EEO are assigned the functions of:

(a) Advising the Secretary with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the Government’s equal employment opportunity policy and the Department’s EEO/AE programs;

(b) In coordination with other officials, developing and maintaining plans, procedures, and regulations necessary to carry out the Department’s EEO programs, including a Departmentwide program of affirmative employment developed in coordination with other officials; approving programs of affirmative employment established throughout the Department;

(c) Evaluating from time to time the sufficiency of the Department’s EEO/AE programs and reporting thereon to the Secretary with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibility;

(d) Appraising the Department’s personnel operations at regular intervals to insure their conformity with the policy of the Government and the Department’s equal employment opportunity program;

(e) Making changes in programs and procedures designed to eliminate discriminatory practices and improve the Department’s EEO/AE programs;

(f) Selecting EEO Counselors;

(g) Providing for counseling by an EEO Counselor of an aggrieved employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age or disability and for attempting to resolve on an informal basis or through a formal alternative dispute resolution process, the matter raised by the employee or applicant before a complaint of discrimination may be filed under § 7.31;

(h) Providing for the prompt, fair and impartial processing of individual complaints involving issues of discrimination within the Department subject to 29 CFR part 1614;

(i) Making the final decision on discrimination complaints and ordering such corrective measures as may be necessary, including disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice; and

(j) Executing settlement agreements to resolve EEO complaints.

§ 7.11 Responsibilities of the EEO Officers.

Each EEO Officer shall:

(a) Advise the Director of EEO on all matters affecting the implementation of the Department’s EEO/AE policies and programs in the organizational unit;

(b) Develop and maintain a program of affirmative employment for the organizational unit and insure that it is carried out in an exemplary manner;

(c) Publicize to all employees of the organizational unit the name and address of the Director of EEO, the EEO Officer, and the EEO Counselor(s), the EEO Discrimination Complaint Manager, the Affirmative Employment Program (AEP) Manager, the Diversity Program Manager, and the EEO complaint procedures;

(d) Inform all supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselors and the EEO complaint process and the importance of cooperating with the Counselors to informally find solutions to problems brought to the officer’s attention by employees and applicants;

(e) Evaluate the performance by the managers and supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselors and the EEO complaint process and the importance of cooperating with the Counselors to informally find solutions to problems brought to the officer’s attention by employees and applicants;

(f) Evaluate the performance by the managers and supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselors and the EEO complaint process and the importance of cooperating with the Counselors to informally find solutions to problems brought to the officer’s attention by employees and applicants;

(g) Evaluate the performance by the managers and supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselors and the EEO complaint process and the importance of cooperating with the Counselors to informally find solutions to problems brought to the officer’s attention by employees and applicants;
organization brought to their attention;

(g) Designate a high level Affirmative Employment Program (AEP) Manager in Headquarters responsible for the preparation of the AEP plan; the management of the plan; providing advice and guidance to managers and supervisors in removing barriers to EEO/AE and in implementing all their EEO/AE responsibilities; and reviewing all recruitment and personnel actions taken by managers and supervisors to ensure the achievement of AEP objectives;

(h) Designate a senior level EEO Discrimination Complaint Manager in Headquarters to manage and direct the organization’s EEO responsibilities; and

(i) Designate a senior level Diversity Program Manager in Headquarters to manage and direct the organization’s Diversity Program and provide resources for Diversity activities for its employees.

§ 7.12 Responsibilities of the EEO Counselors.

The EEO Counselors are responsible for counseling and attempting resolution of matters brought to the counselor’s attention pursuant to § 7.26 and 29 CFR part 1614 by any employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or disability.

§ 7.13 Responsibilities of the Assistant Secretary for Administration.

The Assistant Secretary for Administration shall:

(a) Provide leadership in developing and maintaining personnel management policies, programs, automated systems, and procedures on equal employment opportunity;

(b) Communicate the Department’s equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, disability or age and solicit their recruitment assistance on a continuing basis;

(c) As appropriate, provide personnel information to EEO counselors and others who are involved in the decision on a discrimination complaint;

(d) Evaluate hiring methods and practices to insure impartial consideration for all job applicants;

(e) Ensure that new employee orientation programs contain appropriate

§ 7.14 Responsibilities of Human Resources Officers.

In conformity with guidelines issued by the Assistant Secretary for Administration, Human Resources Officers shall:

(a) Appraise job structure and employment practices to insure genuine equality of opportunity for all employees to participate fully on the basis of merit in all occupations and levels of responsibility;

(b) Provide positive assistance and guidance to organizational units and personnel offices to insure the effective implementation of the personnel management policies, programs, automated
§ 7.15 Responsibilities of managers and supervisors.

All managers and supervisors of the Department are responsible for:
(a) Removing barriers to EEO and ensuring that Affirmative Employment objectives are accomplished in their areas of responsibility;
(b) Evaluating subordinate managers and supervisors on their performance of EEO/AE responsibilities;
(c) Encouraging and taking positive steps to ensure respect for and acceptance of minorities, women and persons with disabilities, veterans and others of diverse characteristics in the work force;
(d) Providing for the non-discriminatory treatment of all employees and for providing full and fair opportunity for all employees in obtaining employment and career advancement, including support for F.A.I.R., the Upward Mobility Program, the Mentoring Program and the Individual Development Plan;
(e) Encouraging and authorizing staff participation in the various Diversity Program observances;
(f) Being proactive in addressing EEO/AE issues, and for work environments that encourage and support complaint avoidance through sound management and personnel practices;
(g) Resolving complaints of discrimination early in the EEO process either independently, or through the use of alternate dispute resolution techniques, when it is the right thing to do and when it represents a sound business decision; and
(h) Making reasonable accommodation to the religious and disability needs of applicants and employees when those accommodations can be made without undue hardship on the business of the agency.

§ 7.16 Responsibilities of employees.

All employees of the Department are responsible for:
(a) Being informed as to the Department’s EEO/AE programs;
(b) Adopting an attitude of full acceptance of minority, female and disabled group associates, and support of F.A.I.R.;
(c) Providing equality of treatment of, and service to, all citizens with whom they come in contact in carrying out their job responsibilities; and
(d) Providing assistance to supervisors and managers in carrying out their responsibilities in the EEO/AE programs.

PRECOMPLAINT PROCESSING
§ 7.25 Precomplaint processing.
The regulations in 29 CFR 1614.105, concerning precomplaint processing shall apply.

COMPLAINTS
§ 7.30 Presentation of complaint.
At any stage in the presentation of a complaint, including the counseling stage, the Complainant shall be free
from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of the Complainant's own choosing, except as limited by 29 CFR 1614.605. If the Complainant is an employee of the Department, the employee shall have a reasonable amount of official time to present the complaint if the employee is otherwise in an active duty status. If the Complainant is an employee of the Department and designates another employee of the Department as Complainant’s representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time, if the representative is otherwise in an active duty status, to present the complaint.

§ 7.31 Who may file a complaint, with whom filed, and time limits.

Any aggrieved person (hereafter referred to as the Complainant) who has observed the provisions of § 7.25 may file a complaint if the matter of discrimination was not resolved to the complainant’s satisfaction. The complaint must be filed with the Director of EEO within fifteen (15) days of receipt of the Notice of Right to File a Complaint issued by the EEO Counselor. The Department may accept a complaint only if the Complainant has met the appropriate requirements contained in 29 CFR 1614.605.

§ 7.32 Contents.

(a) The complaint filed should include the following information:

1. The specific action or personnel matter which is alleged to be discriminatory;
2. The date the act or matter occurred;
3. The protected basis or bases on which the alleged discrimination occurred;
4. Facts and other pertinent information to support the allegation of discrimination; and
5. The relief desired.

(b) To expedite the processing of complaints of discrimination, the Complainant should use HUD EEO-1 form to file the complaint.

§ 7.33 Acceptability.

The Director of EEO shall determine whether the complaint comes within the purview of the EEO regulations at 29 CFR part 1614 and shall advise the Complainant and Complainant’s representative in writing of the acceptance or dismissal of the allegation(s) of the complaint. Should the Director of EEO dismiss the complaint or any allegations contained in the complaint, the written decision to the Complainant shall inform Complainant of the complainant’s right to appeal the decision and of the time limit applicable to the right of appeal, if Complainant believes the dismissal improper.

§ 7.34 Processing.

(a) The Director of EEO will process complaints filed under 29 CFR part 1614 for the Department. The Director or the Director’s designee has jurisdiction of any case.

(b) The Director of EEO shall provide for the development of a complete and impartial record on which to decide the merits of the allegations accepted for investigation.

1. The person assigned to develop the factual record for the complaint shall occupy a position in the Department which is not, directly or indirectly, under the jurisdiction of the head of the part of the Department in which the complaint arose, or the person shall develop the record under a contract with the Department.

2. The Department will develop a complete and impartial factual record, subject to the requirements of 29 CFR part 1614, upon which to make findings on the matters raised in the complaint and accepted for processing.

3. The Director of EEO will provide the Complainant and the EEO Officer a copy of the record developed.

§ 7.35 Hearing.

(a) The Director of EEO will notify the Complainant of the Complainant’s right to request an administrative hearing before the Equal Employment Opportunity Commission or a Final Agency Decision from the Department and the timeframes for executing the right to request an administrative hearing.
§ 7.36 Decision by Director of EEO.

Following consultation with the General Counsel and the Assistant Secretary for Administration, the Director of EEO shall make the final agency decision for the Department based on the record developed through the processing of the complaint. The decision shall require the remedial and corrective action necessary to ensure that the Department is in compliance with the EEO statutes and to promote the Department’s policy of equal employment opportunity.

§ 7.37 Rights of appeal.

The provisions of 29 CFR part 1614, subpart D, shall govern rights of appeal.

§ 7.38 Relationship to other HUD appellate procedures.

(a) An aggrieved individual covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance procedure can file a complaint under these procedures or a negotiated grievance, but not both. An election to proceed under this part is indicated only by filing of a written complaint. An election to proceed under a negotiated grievance procedure is indicated by the filing of a timely grievance.

(b) An aggrieved individual alleging discrimination on the basis of race, color, religion, sex, national origin, age or disability related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB) can file a complaint under these procedures, or an appeal with the MSPB, but not both. Whichever is filed first, the complaint or the appeal, is considered an election to proceed in that forum.