Subtitle B—Regulations Relating to Housing and Urban Development
CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER A—FAIR HOUSING

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Authority: 42 U.S.C. 3635(d), 3600±3620.

Source: 54 FR 3283, Jan. 23, 1989, unless otherwise noted.

Subpart A—General

§ 100.1 Authority.

This regulation is issued under the authority of the Secretary of Housing and Urban Development to administer and enforce title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act).

§ 100.5 Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion,
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sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

(c) Nothing in this part relieves persons participating in a Federal or federally-assisted program or activity from other requirements applicable to buildings and dwellings.

§ 100.10 Exemptions.

(a) This part does not:

(1) Prohibit a religious organization, association, or society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, or national origin;

(2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, or national origin;

(3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or

(4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(b) Nothing in this part regarding discrimination based on familial status applies with respect to housing for older persons as defined in subpart E of this part.

(c) Nothing in this part, other than the prohibitions against discriminatory advertising, applies to:

(1) The sale or rental of any single family house by an owner, provided the following conditions are met:

(i) The owner does not own or have any interest in more than three single family houses at any one time.

(ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) of this section applies to only one such sale in any 24-month period.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

§ 100.20 Definitions.

The terms Department, Fair Housing Act, and Secretary are defined in 24 CFR part 5.

Aggrieved person includes any person who—

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Broker or Agent includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

Discriminatory housing practice means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.
Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with—
(a) A parent or another person having legal custody of such individual or individuals; or
(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Handicap is defined in § 100.201.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 U.S.C., receivers, and fiduciaries.

Person in the business of selling or renting dwellings means any person who:
(a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;
(b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
(c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

State means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

§ 100.50 Real estate practices prohibited.

(a) This subpart provides the Department’s interpretation of conduct that is unlawful housing discrimination under section 804 and section 806 of the Fair Housing Act. In general the prohibited actions are set forth under sections of this subpart which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under sections in the subpart. For example, the conduct described in § 100.60(b)(3) and (4) would constitute a violation of § 100.65(a) as well as § 100.60(a).

(b) It shall be unlawful to:
(1) Refuse to sell or rent a dwelling after a bona fide offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.
(2) Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, handicap, familial status, or national origin.
(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.
(4) Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.
(5) Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.
§ 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

(a) It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to:

1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.

2. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

3. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

4. Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

5. Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant’s guest.

§ 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

1. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

2. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

3. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

4. Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

5. Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.
§ 100.70 Other prohibited sale and rental conduct.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

(b) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

(c) Prohibited actions under paragraph (a) of this section, which are generally referred to as unlawful steering practices, include, but are not limited to:

(1) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

(2) Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Prohibited activities relating to dwellings under paragraph (b) of this section include, but are not limited to:

(1) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

(2) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

(3) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.75 Discriminatory advertisements, statements and notices.

(a) It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.
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(c) Discriminatory notices, statements and advertisements include, but are not limited to:

(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin of such persons.

(3) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

(d) 24 CFR part 109 provides information to assist persons to advertise dwellings in a nondiscriminatory manner and describes the matters the Department will review in evaluating compliance with the Fair Housing Act and in investigating complaints alleging discriminatory housing practices involving advertising.

§ 100.85 Blockbusting.

(a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

(c) Prohibited actions under this section include, but are not limited to:

(1) Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable
consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

§ 100.90 Discrimination in the provision of brokerage services.

(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to:

(1) Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

§ 100.110 Discriminatory practices in residential real estate-related transactions.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 805 of the Fair Housing Act.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.115 Residential real estate-related transactions.

The term residential real estate-related transactions means:

(a) The making or purchasing of loans or providing other financial assistance—

(1) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(2) Secured by residential real estate; or

(b) The selling, brokering or appraising of residential real property.

§ 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.
§ 100.125 Discrimination in the purchasing of loans.

(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities.

(2) Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(c) This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin.

§ 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally.
The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status or national origin.

§ 100.140 General rules.

(a) Voluntary self-testing and correction. The report or results of a self-test a lender voluntarily conducts or authorizes are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Data collection required by law or any governmental authority (federal, state, or local) is not voluntary.

(b) Other privileges. This subpart does not abrogate any evidentiary privilege otherwise provided by law.

§ 100.141 Definitions.

As used in this subpart:

Lender means a person who engages in a residential real estate-related lending transaction.

Residential real estate-related lending transaction means the making of a loan:

(1) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(2) Secured by residential real estate.

Self-test means any program, practice or study a lender voluntarily conducts or authorizes which is designed and used specifically to determine the extent or effectiveness of compliance with the Fair Housing Act. The self-test must create data or factual information that is not available and cannot be derived from loan files, application files, or other residential real estate-related lending transaction records. Self-testing includes, but is not limited to, using fictitious credit applicants (testers) or conducting surveys of applicants or customers, nor is it limited to the pre-application stage of loan processing.

§ 100.142 Types of information.

(a) The privilege under this subpart covers:

(1) The report or results of the self-test;

(2) Data or factual information created by the self-test;

(3) Workpapers, draft documents and final documents;

(4) Analyses, opinions, and conclusions if they directly result from the self-test report or results.

(b) The privilege does not cover:

(1) Information about whether a lender conducted a self-test, the methodology used or scope of the self-test, the time period covered by the self-test or the dates it was conducted;

(2) Loan files and application files, or other residential real estate-related lending transaction records (e.g., property appraisal reports, loan committee meeting minutes or other documents reflecting the basis for a decision to approve or deny a loan application, loan policies or procedures, underwriting standards, compensation records) and information or data derived from such files and records, even if such data has been aggregated, summarized or reorganized to facilitate analysis.

§ 100.143 Appropriate corrective action.

(a) The report or results of a self-test are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Appropriate corrective action is required when a self-test shows it is more likely than not that a violation occurred even though no violation was adjudicated formally.
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(b) A lender must take action reasonably likely to remedy the cause and effect of the likely violation and must:

(1) Identify the policies or practices that are the likely cause of the violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and

(2) Assess the extent and scope of any likely violation, by determining which areas of operation are likely to be affected by those policies and practices, such as stages of the loan application process, types of loans, or the particular branch where the likely violation has occurred. Generally, the scope of the self-test governs the scope of the appropriate corrective action.

(c) Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this subpart:

(1) A lender is not required to provide remedial relief to a tester in a self-test;

(2) A lender is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated;

(3) A lender is not required to provide remedial relief to a particular applicant identified by the self-test as one whose rights were more likely than not violated;

(d) Depending on the facts involved, appropriate corrective action may include, but is not limited to, one or more of the following:

(1) If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the applications were improperly denied; compensating such persons for any damages, both out-of-pocket and compensatory;

(2) Correcting any institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

(3) Identifying, and then training and/or disciplining the employees involved;

(4) Developing outreach programs, marketing strategies, or loan products to serve more effectively the segments of the lender's market that may have been affected by the likely violation; and

(5) Improving audit and oversight systems to avoid a recurrence of the likely violations.

(e) Determination of appropriate corrective action is fact-based. Not every corrective measure listed in paragraph (d) of this section need be taken for each likely violation.

(f) Taking appropriate corrective action is not an admission by a lender that a violation occurred.


§ 100.145 Loss of privilege.

(a) The self-test report or results are not privileged under this subpart if the lender or person with lawful access to the report or results:

(1) Voluntarily discloses any part of the report or results or any other information privileged under this subpart to any aggrieved person, complainant, department or agency in any:

(a) Proceeding or civil action in which a violation of the Fair Housing Act is alleged; or

(b) Examination or investigation relating to compliance with the Fair Housing Act.


§ 100.146 Limited use of privileged information.

Notwithstanding §100.145, the self-test report or results may be obtained...
§ 100.147 Adjudication.

An aggrieved person, complainant, department or agency that challenges a privilege asserted under § 100.144 may seek a determination of the existence and application of that privilege in:

(a) A court of competent jurisdiction; or

(b) An administrative law proceeding with appropriate jurisdiction.


§ 100.148 Effective date.

The privilege under this subpart applies to self-tests conducted both before and after January 30, 1998, except that a self-test conducted before January 30, 1998 is not privileged:

(a) If there was a court action or administrative proceeding before January 30, 1998, including the filing of a complaint alleging a violation of the Fair Housing Act with the Department or a substantially equivalent state or local agency; or

(b) If any part of the report or results were disclosed before January 30, 1998 to any aggrieved person, complainant, department or agency, or to the general public.


Subpart D—Prohibition Against Discrimination Because of Handicap

§ 100.200 Purpose.

The purpose of this subpart is to effectuate sections 6 (a) and (b) and 15 of the Fair Housing Amendments Act of 1988.

§ 100.201 Definitions.

As used in this subpart:

Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase readily accessible to and usable by is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is accessible within the meaning of this paragraph.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is an accessible route.

ANSI A117.1-1986 means the 1986 edition of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be inspected at the Department of Housing and Urban Development, 451 Seventh Street, SW., room 10276, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Building means a structure, facility or portion thereof that contains or serves one or more dwelling units.

Building entrance on an accessible route means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with
§ 100.201

ANSI A117.1-1986 or a comparable standard complies with the requirements of this paragraph. Common use areas means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

Controlled substance means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Covered multifamily dwellings means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units.

Dwelling unit means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toiletting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

Entrance means any access point to a building or portion of a building used by residents for the purpose of entering.

Exterior means all areas of the premises outside of an individual dwelling unit.

First occupancy means a building that has never before been used for any purpose.

Ground floor means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

Handicap means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
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(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

Interior means the spaces, parts, components or elements of an individual dwelling unit.

Modification means any change to the public or common use areas of a building or any change to a dwelling unit.

Premises means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

Public use areas mean interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

Site means a parcel of land bounded by a property line or a designated portion of a public right or way.

§ 100.202 General prohibitions against discrimination because of handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(3) Any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(1) Inquiry into an applicant’s ability to meet the requirements of ownership or tenancy;

(2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

(3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

(4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(d) Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

§ 100.203 Reasonable modifications of existing premises.

(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as
§ 100.204  Reasonable accommodations.

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants to live in a dwelling unit with a seeing eye dog. The building has a no pets policy. It is a violation of § 100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of § 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

§ 100.205  Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if the dwelling is occupied by that date, or if the last building permit or renewal thereof for the dwelling is issued by a
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State, County or local government on or before June 15, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(2) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c) of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the ground floor units are covered multifamily units. The ground floor is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) of this section and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1-1986 suffices to satisfy the requirements of paragraphs (a) and (c) of this section.

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) of this section satisfies the requirements of paragraphs (a) and (c) of this section.

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered
§ 100.300

Multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c) of this section.

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) of this section are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) of this section are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

§ 100.301 Exemption.

(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302, 100.303 or § 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

Subpart E—Housing for Older Persons

§ 100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

§ 100.301 Exemption.

(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302, 100.303 or § 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

§ 100.302 State and Federal elderly housing programs.

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

§ 100.303 62 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of paragraph (a) of this section:

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its “62 or over” exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the “55 or over” exemption in § 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the “62 or over” exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the “62 or over” exemption.

§ 100.304 Housing for persons who are 55 years of age or older.

(a) The provisions regarding familial status in this part shall not apply to
housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, housing facility or community means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

(1) A condominium association;
(2) A cooperative;
(3) A property governed by a homeowners' or resident association;
(4) A municipally zoned area;
(5) A leased property under common private ownership;
(6) A mobile home park; and
(7) A manufactured housing community.

(c) For purposes of this subpart, older person means a person 55 years of age or older.

64 FR 16329, Apr. 2, 1999

§ 100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as housing for older persons under §100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, occupied unit means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, occupied by at least one person 55 years of age or older means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by §100.204 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:
§ 100.306 Intent to operate as housing designed for persons who are 55 years of age or older.

(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

1. The manner in which the housing facility or community is described to prospective residents;
2. Any advertising designed to attract prospective residents;
3. Lease provisions;
4. Written rules, regulations, covenants, deed or other restrictions;
5. The maintenance and consistent application of relevant procedures;
6. Actual practices of the housing facility or community; and
7. Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) Phrases such as “adult living”, “adult community”, or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of §§ 100.305 and 100.306(a).

(Approved by the Office of Management and Budget under control number 2529-0046)

[64 FR 16330, Apr. 2, 1999]

§ 100.307 Verification of occupancy.

(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once...
every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:
   (1) Driver’s license;
   (2) Birth certificate;
   (3) Passport;
   (4) Immigration card;
   (5) Military identification;
   (6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or
   (7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:
   (1) Government records or documents, such as a local household census;
   (2) Prior forms or applications; or
   (3) A statement from an individual who has personal knowledge of the age of the occupants. The individual’s statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

(Approved by the Office of Management and Budget under control number 2529-0046)

§ 100.308 Good faith defense against civil money damages.

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this subpart.

(b)(1) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

(2) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.

(3) For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

(4) For purposes of this section, a person means a natural person.

(5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b)(1) of this section.
§ 100.400

Subpart F—Interference, Coercion or Intimidation

§ 100.400 Prohibited interference, coercion or intimidation.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful under section 818 of the Fair Housing Act.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

(c) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided to that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

(3) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.

(4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.

(5) Retaliating against any person because that person has made a complaint, testified, assisted, or partici-
§ 103.9 Definitions.

The terms Fair Housing Act, General Counsel, and HUD are defined in 24 CFR part 5.

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity in HUD.

Attorney General means the Attorney General of the United States.

Complainant means the person (including the Assistant Secretary) who files a complaint under this part.

Conciliation means the attempted resolution of issues raised by a complaint file under section 810 of the Fair Housing Act and is also prohibited from engaging in similar practices under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), Executive Order 11063 of November 20, 1962, on Equal Opportunity in Housing (27 F.R. 11527-11530, November 24, 1962), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act (42 U.S.C. 6101) or other applicable law, the person may also be subject to action by HUD or other Federal agencies under the rules, regulations, and procedures prescribed under title VI (24 CFR parts 1 and 2), section 109 (24 CFR 570.602), Executive Order 11063 (24 CFR part 107), section 504 (24 CFR part 8), or other applicable law.

§ 103.9 Definitions.

The terms Fair Housing Act, General Counsel, and HUD are defined in 24 CFR part 5.

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity in HUD.

Attorney General means the Attorney General of the United States.

Complainant means the person (including the Assistant Secretary) who files a complaint under this part.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent, and the Assistant Secretary.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Discriminatory housing practice means an act that is unlawful under section 804, 805, 806 or 818 of the Fair Housing Act, as described in part 100.

Dwelling means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is
offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustee in cases under title 11 U.S.C., receivers and fiduciaries.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Receipt of notice means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail.

Respondent means:
(a) The person or other entity accused in a complaint of a discriminatory housing practice; and
(b) Any other person or entity identified in the course of investigation and notified as required under §103.50.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Substantially equivalent State or local agency means a State or local agency certified by HUD under 24 CFR part 115 (including agencies certified for interim referrals).

To rent includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

§103.10 What can I do if I believe someone is discriminating against me in the sale, rental, finance, or advertisement of housing?

You can notify HUD if you believe there has been discrimination against you in any activity related to housing because of race, color, religion, national origin, sex, disability, or the presence of children under the age of 18 in a household.

§103.15 Can I file a claim if the discrimination has not yet occurred?

Yes, you may file a claim with HUD if you have knowledge that a discriminatory action is about to occur.

§103.20 Can someone help me with filing a claim?

HUD's Office of Fair Housing and Equal Opportunity can help you in filing a claim, if you contact them directly. You, or anyone who acts for you, may also ask any HUD office or an organization, individual, or attorney to help you.

§103.25 What information should I provide to HUD?

You should provide us with:
(a) Your name, address, and telephone numbers where you can be reached;
(b) The name and address of the persons, businesses, or organizations you believe discriminated against you;
(c) If there is a specific property involved, you should provide the property's address and physical description, such as apartment, condominium, house, or vacant lot; and
(d) A brief description of how you were discriminated against in an activity related to housing. You should include in this description the date when the discrimination happened and why you believe the discrimination occurred because of race, color, religion, national origin, sex, disability, or the presence of children under the age of 18 in a household.

§103.30 How should I bring a claim that I am the victim of discrimination?

(a) You can file a claim by mail or telephone with any of HUD's Offices of Fair Housing and Equal Opportunity or with any State or local agency that HUD has certified to receive complaints.
§ 103.110 Reactivation of referred complaints.

The Assistant Secretary may reactivate a complaint referred under §103.100 for processing by HUD if:

(a) The substantially equivalent State or local agency consents or requests the reactivation;

(b) The Assistant Secretary determines that, with respect to the alleged discriminatory housing practice, the agency no longer qualifies for certification as a substantially equivalent State or local agency and may not accept interim referrals; or

(c) The substantially equivalent State or local agency has failed to commence proceedings with respect to
§ 103.115

the complaint within 30 days of the date that it received the notification and referral of the complaint; or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness.


§ 103.115 Notification upon reactivation.

(a) Whenever a complaint referred to a State or local fair housing agency under §103.100 is reactivated under §103.110, the Assistant Secretary will notify the substantially equivalent State or local agency, the aggrieved person and the respondent of HUD’s reactivation. The notification will be made by certified mail or personal service.

(b) The notification to the respondent and the aggrieved person will:

(1) Advise the aggrieved person and the respondent of the time limits applicable to complaint processing and the procedural rights and obligations of the aggrieved person and the respondent under this part and part 180.

(2) State that HUD will process the complaint under the Fair Housing Act and that the State or local agency to which the complaint was referred may continue to process the complaint under State or local law.

(3) Advise the aggrieved person and the respondent of the aggrieved person’s right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or part 180 with respect to a complaint or charge based on the alleged discriminatory housing practice under part 180. The notices will also state that the time period includes the time during which an action arising from a breach of conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.


Subpart D—Investigation Procedures

§ 103.200 Investigations.

(a) Upon the filing of a complaint under §103.40, the Assistant Secretary will initiate an investigation. The purposes of an investigation are:

(1) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

(2) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(3) To develop factual data necessary for the General Counsel to make a determination under §103.400 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and for the Assistant Secretary to make a determination under §103.400 that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

(b) Upon the written direction of the Assistant Secretary, HUD may initiate an investigation of housing practices to determine whether a complaint should be filed under subpart B of this part. Such investigations will be conducted in accordance with the procedures described under this subpart.


§ 103.201 Service of notice on aggrieved person.

Upon the filing of a complaint, the Assistant Secretary will notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice will:

(a) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing.

(b) Include a copy of the complaint.
(c) Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under this part and part 180.

(d) Advise the aggrieved person of his or her right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period includes any time during which a proceeding is pending under this part or part 180 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(e) Advise the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under this part or an administrative proceeding under part 180, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.203 Answer to complaint.

(a) The respondent may file an answer not later than ten days after receipt of the notice described in §103.50. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state: “I declare under penalty of perjury that the foregoing is true and correct.”

(b) An answer may be reasonably and fairly amended at any time with the consent of the Assistant Secretary.

§ 103.204 HUD complaints and compliance reviews.

(a) The Assistant Secretary may conduct an investigation and file a complaint under this subpart based on information that one or more discriminatory housing practices has occurred, or is about to occur.

(b) HUD may also initiate compliance reviews under other appropriate civil rights authorities, such as E.O. 11063 on Equal Opportunity in Housing, title VI of the Civil Rights Act of 1964, section 109 of the Housing and Community Development Act of 1974, section 504 of the Rehabilitation Act of 1973 or the Age Discrimination Act of 1975.

(c) HUD may also make the information you provide available to other Federal, State, or local agencies having an interest in the matter. In making such information available, HUD will take steps to protect the confidentiality of any informant or complainant when desired by the informant or complainant.

§ 103.202 Notification of respondent; joinder of additional or substitute respondents.

(a) Within ten days of the filing of a complaint under §103.40 or the filing of an amended complaint under §103.42, the Assistant Secretary will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under subpart D of this part as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this section within ten days of the identification.

(b) The Assistant Secretary will also serve notice on any person who directs or controls, or who has the right to direct or control, the conduct of another person who is involved in a fair housing complaint.

§ 103.205 Systemic processing.

Where the Assistant Secretary determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the Assistant Secretary may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Fair Housing Act.

§ 103.215 Conduct of investigation.

(a) In conducting investigations under this part, the Assistant Secretary will seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(b) The Assistant Secretary may conduct and order discovery in aid of the investigation by the same methods and to the same extent that discovery may be ordered in an administrative proceeding under 24 CFR part 180, except that the Assistant Secretary shall have the power to issue subpoenas described in 24 CFR 180.545 in support of the investigation. Subpoenas issued by the Assistant Secretary must be approved by the General Counsel as to their legality before issuance.

§ 103.220 Cooperation of Federal, State and local agencies.

The Assistant Secretary, in processing Fair Housing Act complaints, may seek the cooperation and utilize the services of Federal, State or local agencies, including any agency having regulatory or supervisory authority over financial institutions.

§ 103.225 Completion of investigation.

The investigation will remain open until a determination is made under §103.400, or a conciliation agreement is executed and approved under §103.310. Unless it is impracticable to do so, the Assistant Secretary will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Assistant Secretary reactivates the complaint, within 100 days after service of the notice of reactivation under §103.115). If the Assistant Secretary is unable to complete the investigation within the 100-day period, HUD will notify the aggrieved person and the respondent, by mail, of the reasons for the delay.

§ 103.230 Final investigative report.

(a) At the end of each investigation under this part, the Assistant Secretary will prepare a final investigative report. The investigative report will contain:

(1) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. HUD, however, may be required to disclose the names of such witnesses in the course of an administrative hearing under part 180 of this chapter or a civil action under title VIII of the Fair Housing Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

(b) A final investigative report may be amended at any time, if additional evidence is discovered.

(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in §103.330, the Assistant Secretary will
make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of investigation, the Assistant Secretary shall notify the aggrieved person and the respondent that the final investigation report is complete and will be provided upon request.


Subpart E—Conciliation Procedures

§ 103.300 Conciliation.

(a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the General Counsel or the Assistant Secretary, the Assistant Secretary will, to the extent feasible, attempt to conciliate the complaint.

(b) In conciliating a complaint, HUD will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

(c) Generally, officers, employees, and agents of HUD engaged in the investigation of a complaint under this part will not participate or advise in the conciliation of the same complaint or in any factually related complaint. Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.


§ 103.310 Conciliation agreement.

(a) The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in §103.315. The provisions that may be sought for the vindication of the public interest are described in §103.320.

(b)(1) The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the Assistant Secretary, who will indicate approval by signing the agreement. The Assistant Secretary will approve an agreement and, if the Assistant Secretary is the complainant, will execute the agreement, only if:

(i) The complainant and the respondent agree to the relief accorded the aggrieved person;

(ii) The provisions of the agreement will adequately vindicate the public interest; and

(iii) If the Assistant Secretary is the complainant, all aggrieved persons named in the complaint are satisfied with the relief provided to protect their interests.

(2) The General Counsel may issue a charge under §103.405 if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

§ 103.315 Relief sought for aggrieved persons.

(a) The following types of relief may be sought for aggrieved persons in conciliation:

(1) Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney fees;

(2) Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or

(3) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

(b) The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in paragraph (a) of this section. The aggrieved person and the
§ 103.320 Provisions sought for the public interest.

The following are types of provisions that may be sought for the vindication of the public interest:

(a) Elimination of discriminatory housing practices.
(b) Prevention of future discriminatory housing practices.
(c) Remedial affirmative activities to overcome discriminatory housing practices.
(d) Reporting requirements.
(e) Monitoring and enforcement activities.

§ 103.325 Termination of conciliation efforts.

(a) HUD may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with HUD; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or HUD finds, for any reason, that voluntary agreement is not likely to result.

(b) Where the aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, HUD will terminate conciliation unless the court specifically requests assistance from the Assistant Secretary.

§ 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

(a) Except as provided in paragraph (b) of this section and §103.230(c), nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under part 180 or in civil actions under title VIII of the Fair Housing Act, without the written consent of the persons concerned.

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.


§ 103.335 Review of compliance with conciliation agreements.

HUD may, from time to time, review compliance with the terms of any conciliation agreement. Whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, the Assistant Secretary shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under section 814(b)(2) of the Fair Housing Act for the enforcement of the terms of the conciliation agreement.


Subpart F—Issuance of Charge

§ 103.400 Reasonable cause determination.

(a) If a conciliation agreement under §103.310 has not been executed by the complainant and the respondent and approved by the Assistant Secretary, the Assistant Secretary shall conduct a review of the factual circumstances revealed as part of HUD’s investigation.

(1) If the Assistant Secretary for Fair Housing and Equal Opportunity determines that, based on the totality of factual circumstances known at the time of the Assistant Secretary’s review, no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Assistant Secretary shall:

Issue a short and plain written statement of the facts upon which the Assistant Secretary has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) by mail; and make public disclosure of the dismissal (including the written statement of facts) by mail; and make public disclosure of the dismissal.
disclosure be made. Notwithstanding such a request, the fact of dismissal, including the names of the parties, shall be public information available on request. The Assistant Secretary's determination shall be based solely upon the facts concerning the alleged discriminatory housing practice provided by complainant and respondent and otherwise disclosed during the investigation. In making this determination, the Assistant Secretary shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in federal court.

(2) If, based on the totality of the factual circumstances known at the time of the decision, the Assistant Secretary believes that reasonable cause may exist to believe that a discriminatory housing practice has occurred or is about to occur, the Assistant Secretary shall determine that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, in all cases not involving the legality of local land use laws or ordinances (except as provided in paragraph (b) of this section). The Assistant Secretary's determination shall be based solely on the facts concerning the alleged discriminatory housing practices provided by complainants and respondents and otherwise identified during the investigation in making this determination. In making this determination, the Assistant Secretary shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in federal court.

(i) If the Assistant Secretary determines that reasonable cause exists, the Assistant Secretary, upon receipt of concurrence of the General Counsel, will issue such determination and direct the issuance of a charge under § 103.405 on behalf of the aggrieved person, and shall notify the complainant and the respondent of this determination by certified mail or personal service.

(ii) If the Assistant Secretary determines that no reasonable cause exists, the Assistant Secretary shall issue a short and plain written statement of the facts upon which the Assistant Secretary has based the no reasonable cause determination; dismiss the complaint; notify the complainant and the respondent of the dismissal (including the written statement of facts) by mail; and make public disclosure of the dismissal. The complainant or respondent may request that no public disclosure be made. Notwithstanding such a request, the fact of dismissal, including the names of the parties, shall be public information available on request.

(3) If the Assistant Secretary determines that the matter involves the legality of local zoning or land use laws or ordinances, the Assistant Secretary, in lieu of making a determination regarding reasonable cause, shall refer the investigative material to the Attorney General for appropriate action under section 814(b)(1) of the Fair Housing Act, and shall notify the complainant and the respondent of this action by mail or personal service.

(b) The Assistant Secretary may not issue a charge under paragraph (a) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action under an Act of Congress or a state law seeking relief with respect to the alleged housing practice and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the Assistant Secretary shall so notify the complainant and the respondent by certified mail or personal service.

(c)(1) A determination of reasonable cause or no reasonable cause by the Assistant Secretary shall be made within 100 days after filing of the complaint (or where the Assistant Secretary has reactivated a complaint, within 100 days after service of the notice of reactivation under § 103.115), unless it is impracticable to do so.

(2) If the Assistant Secretary is unable to make the determination within the 100-day period specified in paragraph (c)(1) of this section, the Assistant Secretary will notify the complainant and the respondent by mail of the reasons for the delay.

§ 103.405 Issuance of charge.

(a) A charge:
(1) Shall consist of a short and plain written statement of the facts upon which the Assistant Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
(2) Shall be based on the final investigative report; and
(3) Need not be limited to facts or grounds that are alleged in the complaint filed under subpart B of this part. If the charge is based on grounds that are not alleged in the complaint, HUD will not issue a charge with regard to the grounds unless the record of investigation demonstrates that the respondent has been given notice and an opportunity to respond to the allegation.

(b) Within three business days after the issuance of the charge, the General Counsel shall:
(1) Obtain a time and place for hearing from the Chief Docket Clerk of the Office of Administrative Law Judges;
(2) File the charge along with the notifications described in 24 CFR 180.410(b) with the Office of Administrative Law Judges;
(3) Serve the charge and notifications in accordance with 24 CFR 180.410(a); and
(4) Notify the Assistant Secretary of the filing of the charge.

§ 103.410 Election of civil action or provision of administrative proceeding.

(a) If a charge is issued under § 103.405, a complainant (including the Assistant Secretary, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint was filed may elect, in lieu of an administrative proceeding under 24 CFR part 180, to have the claims asserted in the charge decided in a civil action under section 812(o) of the Fair Housing Act.

(b) The election must be made not later than 20 days after the receipt of service of the charge, or in the case of the Assistant Secretary, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in the Office of Administrative Law Judges and served on the General Counsel, the Assistant Secretary, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under 24 CFR part 180.

(c) If an election is not made under this section, the General Counsel will maintain an administrative proceeding based on the charge in accordance with the procedures under 24 CFR part 180.

(d) If an election is made under this section, the General Counsel shall immediately notify and authorize the Attorney General to commence and maintain a civil action seeking relief under section 812(o) of the Fair Housing Act on behalf of the aggrieved person in an appropriate United States District Court. Such notification and authorization shall include transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

(e) The General Counsel shall be available for consultation concerning any legal issues raised by the Attorney General as to how best to proceed in the event that a new court decision or newly discovered evidence is regarded as relevant to the reasonable cause determination.

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of this part or 24 CFR part 180, the General Counsel may authorize the Attorney General to commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. To ensure the prompt initiation of the civil action, the General Counsel will consult with the Assistant Attorney General for the Civil Rights Division before making the determination that prompt judicial action is necessary. The commencement of a civil action by the Attorney General under this section will not affect the initiation or continuation of proceedings under this part or administrative proceedings under part 180.

(b) If the General Counsel has reason to believe that a basis exists for the commencement of proceedings against the respondent under section 814(a) of the Fair Housing Act (Pattern or Practice Cases), proceedings under section 814(c) of the Fair Housing Act (Enforcement of Subpoenas), or proceedings by any governmental licensing or supervisory authorities, the General Counsel shall transmit the information upon which that belief is based to the Attorney General and to other appropriate authorities.


Subpart H—Other Action

§ 103.510 Other action by HUD.

In addition to the actions described in §103.500, HUD may pursue one or more of the following courses of action:

(a) Refer the matter to the Attorney General for appropriate action (e.g., enforcement of criminal penalties under section 811(c) of the Act).

(b) Take appropriate steps to initiate proceedings leading to the debarment of the respondent under 24 CFR part 24, or initiate other actions leading to the imposition of administrative sanctions where HUD determines that such actions are necessary to the effective operation and administration of Federal programs or activities.

(c) Take appropriate steps to initiate proceedings under:

1. 24 CFR part 1, implementing title VI of the Civil Rights Act of 1964;
2. 24 CFR part 570.912, implementing section 109 of the Housing and Community Development Act of 1974;
3. 24 CFR part 8, implementing section 504 of the Rehabilitation Act of 1973;
4. 24 CFR part 107, implementing Executive Order 11063; or

(d) Inform any other Federal, State or local agency with an interest in the enforcement of respondent’s obligations with respect to nondiscrimination in housing.

§ 103.515 Action by other agencies.

In accordance with section 808 (d) and (e) of the Fair Housing Act and Executive Order No. 12259, other Federal agencies, including any agency having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing, and for cooperating with the Assistant Secretary in furthering the purposes of the Fair Housing Act.
§ 107.10 Purpose.

These regulations are to carry out the requirements of E.O. 11063 that all action necessary and appropriate be taken to prevent discrimination because of race, color, religion (creed), sex or national origin in the sale, rental, leasing or other disposition of residential property and related facilities or in the use or occupancy thereof where such property or facilities are owned or operated by the Federal Government, or provided with Federal assistance by the Department of Housing and Urban Development and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the Department. These regulations are intended to assure compliance with the established policy of the United States that the benefits under programs and activities of the Department which provide financial assistance, directly or indirectly, for the provision, rehabilitation, or operation of housing and related facilities are made available without discrimination based on race, color, religion (creed), sex or national origin. These regulations are also intended to assure compliance with the policy of this Department to administer its housing programs affirmatively, so as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion (creed), sex or national origin.


§ 107.11 Relation to other authorities.

(a) Where allegations of discrimination on the grounds of race, color, or national origin are made in a program or activity of Federal financial assistance of the Department which does not involve a contract of insurance or guaranty, the provisions of title VI of the Civil Rights Act of 1964 and regulations implementing title VI, Non-discrimination in Federally Assisted Programs, under part 1 of this title shall apply. Any complaint alleging discrimination on the basis of race, color, religion (creed), sex or national origin in a program or activity of the Department involving a contract of insurance or guaranty will be received and processed according to this part.

(b) Where a complaint filed pursuant to this part alleges a discriminatory housing practice which is also covered by title VIII of the Civil Rights Act of 1968, the complainant shall be advised of the right to file a complaint pursuant to section 810 of that title and of the availability of Department procedures regarding fair housing complaints under part 105 of this title. The complainant shall also be advised of the right to initiate a civil action in court pursuant to section 812 of the Civil Rights Act of 1968 without first filing a complaint with HUD.


§ 107.15 Definitions.

(a) Department and Secretary are defined in 24 CFR part 5.

(b) State means each of the fifty states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Marianas, and the territories of the United States.

(c) Assistance includes (1) grants, loans, contributions, and advances of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the sale, lease, and rental of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, when such order granting permission accompanies the sale, lease, or rental of Federal properties; (4) loans in whole or in part insured, guaranteed, or otherwise secured by the credit of the Federal Government; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.
(d) Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives or agents, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and public entities.

(e) Public entity means a government or governmental subdivision or agency.

(f) Discriminatory practice means: (1) Any discrimination on the basis of race, color, religion (creed), sex or national origin or the existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, religion (creed), sex or national origin, in the sale, rental or other disposition of residential property or related facilities (including land to be developed for residential use), or in the use or occupancy thereof, where such property or related facilities are:

(i) Owned or operated by the Secretary;

(ii) Provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Department after November 20, 1962;

(iii) Provided in whole or in part by loans insured, guaranteed or otherwise secured by the credit of the Department after November 20, 1962, or

(iv) Provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency or unit of general purpose local government receiving Federal financial assistance from the Department under a loan or grant contract entered into after November 20, 1962.

(2) Any discrimination on the basis of race, color, religion (creed), sex or national origin or the existence or use of a policy, practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, religion (creed), sex or national origin in lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans, insured or guaranteed, by the Department after November 20, 1962. Examples of discriminatory practices under subsections (1) and (2) include but are not limited to the following when based on race, color, religion (creed), sex or national origin:

(i) Denial to a person of any housing accommodations, facilities, services, financial aid, financing or other benefit provided under a program or activity;

(ii) Providing any housing accommodations, facilities, services, financial aid, financing or other benefits to a person which are different, or are provided in a different manner, from those provided to others in a program or activity;

(iii) Subjecting a person to segregation or separate treatment in any matter related to the receipt of housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity;

(iv) Restricting a person in any way in access to housing, accommodations, facilities, services, financial aid, financing or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under a program or activity;

(v) Treating persons differently in determining whether they satisfy any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity; and

(vi) Denying a person opportunity to participate in a program or activity through the provision of services or otherwise, or affording the person an opportunity to do so which is different from that afforded others in a program or activity.

(3) Noncompliance with relevant affirmative fair housing marketing requirements contained in Department programs and regulations.
§ 107.20 Prohibition against discriminatory practices.

(a) No person receiving assistance from or participating in any program or activity of the Department involving housing and related facilities shall engage in a discriminatory practice.

(b) Where such person has been found by the Department or any other Federal Department, agency, or court to have previously discriminated against persons on the ground of race, color, religion (creed), sex or national origin, he or she must take affirmative action to overcome the effects of prior discrimination.

(c) Nothing in this part precludes such person from taking affirmative action to prevent discrimination in housing or related facilities where the purpose of such action is to overcome prior discriminatory practice or usage or to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, religion (creed), sex or national origin.

§ 107.21 Prevention of discriminatory practices.

All persons receiving assistance from, or participating in any program or activity of the Department involving housing and related facilities shall take all action necessary and proper to prevent discrimination on the basis of race, color, religion (creed), sex or national origin.


(a) The following documents shall contain provisions or statements requiring compliance with E.O. 11063 and this part:

1. Contracts, grants and agreements providing Departmental assistance for the provision of housing and related facilities,
2. Contracts, grants and agreements regarding the sale, rental or management of properties owned by the Secretary,
3. Corporate charters and regulatory agreements relating to multifamily and land development projects assisted by the Department,
4. Approvals of financial institutions and other lenders as approved FHA mortgagees,
5. Requests for subdivision reports under home mortgage procedures and for preapplication analysis of multifamily and land development projects, and
6. Contracts and agreements providing for Departmental insurance or guarantee of loans with respect to housing and related facilities.

(b) The provision or statement required pursuant to this section shall indicate that the failure or refusal to comply with the requirements of E.O. 11063 or this part shall be a proper basis for the imposition of sanctions provided in §107.60.

§ 107.30 Recordkeeping requirements.

(a) All persons receiving assistance through any program or activity of the Department involving the provision of housing and related activities subject to Executive Order 11063 shall maintain racial, religious, national origin and sex data required by the Department in connection with its programs and activities.

(b) All lenders participating in Departmental mortgage insurance programs, home improvement loan programs, GNMA mortgage purchase programs, or special mortgage assistance programs, shall maintain data regarding the race, religion, national origin and sex of each applicant and joint applicant for assistance with regard to residential property and related facilities. Racial data shall be noted in the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White, Hispanic. If an applicant or joint applicant refuses to volun-

verdate 11-May-2000
the information shall be obtained, to the extent possible, through observation. Applications shall be retained for a period of at least twenty-five (25) months following the date the record was made.

(c) If an investigation or compliance review under this part reveals a failure to comply with any of the requirements of paragraph (a) or (b) of this section, the respondent shall have the burden of establishing its compliance with this part and with the equal housing opportunity requirements of the Executive order.

§ 107.35 Complaints.

(a) The Assistant Secretary for FH&EO, or designee, shall conduct such compliance reviews, investigations, inquiries, and informal meetings as may be necessary to effect compliance with this part.

(b) Complaints under this part may be filed by any person and must be filed within one year of date of the alleged act of discrimination unless the time for filing is extended by the Assistant Secretary for FH&EO. Complaints must be signed by the complainant and may be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, or any Regional or Area Office of the Department. All complaints shall be forwarded to the Director, Office of Regional Fair Housing and Equal Opportunity in the appropriate Regional Office which has jurisdiction in the area in which the property is located.

(c) Upon receipt of a timely complaint, the Director of the Office of Regional FH&EO shall determine whether the complaint indicates a possible violation of the Executive Order or this part. The Director of the Office of Regional FH&EO or a designee within a reasonable period of time shall conduct an investigation into the facts. The complainant shall be notified of the determination.

§ 107.40 Compliance meeting.

(a) Where preliminary analysis of a complaint, a compliance review initiated by the Assistant Secretary for FH&EO, or other information indicates a possible violation of E.O. 11063, or this part, the person allegedly in violation (respondent) shall be sent a Notice of Compliance Meeting and requested to attend a compliance meeting. The Notice shall advise the respondent of the matters to be addressed in the Compliance Meeting and the allegations contained in a complaint received pursuant to §107.35. The purpose of the compliance meeting is to provide the respondent with the opportunity to address matters raised and to remedy such possible violations speedily and informally, to identify possible remedies; and to effect a resolution as provided in §107.45.

(b) The Notice of Compliance Meeting shall be sent to the last known address of the person allegedly in violation, by certified mail, or through personal service. The Notice will advise such person of the right to respond within seven (7) days to the matters and to submit information and relevant data evidencing compliance with E.O. 11063, the Affirmative Fair Housing Marketing Regulations, 24 CFR 200.600, the Fair Housing Poster Regulations, 24 CFR part 110, the Advertising Guidelines for Fair Housing, 37 FR 6700, April 1, 1972, other affirmative marketing requirements applicable to the program or activity and any revisions thereto. Further, the person will be offered an opportunity to be present at the meeting in order to submit any other evidence showing such compliance. The date, place, and time of the scheduled meeting will be included in the Notice.

(c) Whenever a compliance meeting is scheduled as a result of a complaint, the complainant shall be sent a copy of the Notice of Compliance Meeting and shall be provided an opportunity to attend the meeting.

(d) The Area Office having jurisdiction over the program will prepare a report concerning the status of the respondent’s participation in Department programs to be presented to the respondent at the meeting. The Area Manager shall be notified of the meeting and may attend the meeting.

(e) At the Compliance Meeting the respondent and the complainant may be represented by counsel and shall
§ 107.45 Resolution of matters.

(a) Attempts to resolve and remedy matters found in a complaint investigation or a compliance review shall be made through the methods of conference, conciliation, and persuasion.

(b) Resolution of matters pursuant to this section and §107.40 need not be attempted where similar efforts by another Federal agency have been unsuccessful in ending and remedying the violation found with respect to the same respondent.

(c) Efforts to remedy matters shall be directed toward achieving a just resolution of the probable violation and obtaining assurance(s) that the respondent will satisfactorily remedy any violation of E.O. 11063 and will take actions to eliminate the discriminatory practices and prevent reoccurrences. Compensation to individuals from the respondent may also be considered.

(d) The terms of settlements shall be reduced to a written agreement, signed by the respondent and the Assistant Secretary for F & E for a designee. Such settlements shall seek to protect the interests of the complainant, if any, other persons similarly affected, and the public interest. A written notice of the disposition of matters pursuant to this section and of the terms of settlements shall be given to the Area Manager by the Assistant Secretary or a designee and to the complainant, if any. When the Assistant Secretary or a designee determines that there has been a violation of a settlement agreement, the Assistant Secretary immediately may take action to impose sanctions provided under this part, including the referral of the matter to the Attorney General for appropriate action.

§ 107.50 Compliance reviews.

(a) Compliance reviews shall be conducted by the Director of the Office of Regional F H & E or a designee. Complaints alleging a violation(s) of this part or information ascertained in the absence of a complaint indicating apparent failure to comply with this part shall be referred immediately to the Director of the Office of Regional F H & E.
FH&EO. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall be notified of all alleged violations of the regulations. A complaint is not a prerequisite for the initiation of compliance review.

(b) The purpose of a compliance review is to determine whether the respondent is in compliance with the Executive order and this part. Where allegations may also indicate a violation of the provisions of title VIII of the Civil Rights Act of 1968, HUD regulations issued thereunder and Affirmative Action Housing, a review may be undertaken to determine compliance with those requirements. The respondent shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. The complainant shall also be notified of the compliance review.

§ 107.51 Findings of noncompliance.
(a) A finding of noncompliance shall be made when the facts disclosed during an investigation or compliance review, or other information, indicate a failure to comply with the provisions of E.O. 11063 or this part. In no event will a finding of noncompliance precede the completion of the compliance meeting procedures set forth in § 107.40.

(b) Determinations of noncompliance with E.O. 11063 shall be made in any case in which the facts establish the existence of a discriminatory practice under § 107.15(g).

(c) The existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons, because of race, color, religion (creed), sex, or national origin, to enjoy the benefits of assistance shall be a basis for finding a discriminatory practice unless the respondent can establish that:

1. The policy or practice is designed to serve a legitimate business necessity or governmental purpose of the respondent;

2. The policy or practice effectively carries out the interest it is designed to serve; and

3. No alternative course of action could be adopted that would enable respondent’s interest to be served with a less discriminatory impact.


§ 107.55 Compliance report.
(a) Following completion of efforts under this part, the Director of the Office of Regional FH&EO or a designee shall prepare a compliance report promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the respondent is in compliance, all persons concerned shall be notified of the finding. Where a finding of noncompliance is made, the report shall specify the violations found. The Director of the Office of Regional FH&EO shall send a copy of the report to the respondent by certified mail, return receipt requested, together with a Notice that the matter will be forwarded to the Assistant Secretary for FH&EO for a determination as to whether actions will be initiated for the imposition of sanctions. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO.

(b) The Notice will provide that the respondent shall have seven (7) days to respond to the violations found and resolve and remedy matters in the compliance report. At the expiration of the seven (7) day period the matter shall be referred to the Assistant Secretary for FH&EO.

(c) The complainant shall be sent a copy of the findings and compliance report and shall have seven (7) days to comment thereon.

§ 107.60 Sanctions and penalties.
(a) Failure or refusal to comply with E.O. 11063 or the requirements of this part shall be proper basis for applying sanctions. Violations of title VIII of the Civil Rights Act of 1968 or a state or local fair housing law, with respect to activities covered by the Executive order, or of the regulations and requirements under E.O. 11063 of other Federal Departments and agencies may
§ 107.65 Referral to the Attorney General.

If the results of a complaint investigation or a compliance review demonstrate that any person, or specified class of persons, has violated 24 CFR 200.600 or this part, and efforts to resolve the matter(s) by informal means have failed, the Assistant Secretary for FH&EO in appropriate cases shall recommend that the General Counsel refer the case to the Attorney General of the United States for appropriate civil or criminal action under section 303 of E.O. 11063.

PART 108—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

§ 108.1 Purpose and application.

(a) The primary purpose of this regulation is to establish procedures for determining whether or not an applicant’s actions are in compliance with its approved Affirmative Fair Housing Marketing (AFHM) plan, AFHM Regulation (24 CFR 200.600), and AFHM requirements in Departmental programs.

(b) These regulations apply to all applicants for participation in subsidized and unsubsidized housing programs administered by the Department of Housing and Urban Development and to all other persons subject to Affirmative Fair Housing Marketing requirements in Departmental programs.

(c) The term applicant includes:

(1) All persons whose applications are approved for development or rehabilitation of: Subdivisions; multifamily projects; manufactured home parks of five or more lots, units or spaces; or dwelling units, when the applicant’s participation in FHA housing programs has exceeded, or would thereby exceed, development of five or more such dwelling units during the year preceding the application, except that there shall not be included in a determination of the number of dwelling units developed or rehabilitated by an
§ 108.20 Monitoring office responsibility for monitoring plans and reports.

(a) Submission of documentation. Pursuant to initiation of marketing, the applicant shall submit to the monitoring office reports documenting the implementation of the AFHM plan, including sales or rental reports, as required by the Department. Copies of such documentation shall be forwarded to the civil rights/compliance reviewing office by the monitoring office as requested.

(b) Monitoring of AFHM plan. The monitoring office is responsible for monitoring AFHM plans and providing technical assistance to the applicant in preparation or modification of such plans during the period of development and initial implementation.

(c) Review of applicant’s reports. Each sales or rental report shall be reviewed by the monitoring office as it is received. When sales or rental reports show that 20% of the units covered by the AFHM plan have been sold or rented, or whenever it appears that the plan may not accomplish its intended objective, the monitoring office shall
§ 108.21 Civil rights/compliance reviewing office compliance responsibility.

The civil rights/compliance reviewing office shall be responsible for determining whether an applicant’s actions are in apparent compliance with its approved AFHM plan, the AFHM regulations, and this part and for determining changes or modifications necessary in the plan after initiation of marketing.

[64 FR 44096, Aug. 12, 1999]

§ 108.25 Compliance meeting.

(a) Scheduling meeting. If an applicant fails to comply with requirements under §108.15 or §108.20 or it appears that the goals of the AFHM plan may not be achieved, or that the implementation of the Plan should be modified, the civil rights/compliance reviewing office shall schedule a meeting with the applicant. The meeting shall be held at least ten days before the next sales or rental report is due. The purpose of the compliance meeting is to review the applicant’s compliance with AFHM requirements and the implementation of the AFHM Plan and to indicate any changes or modifications which may be required in the Plan.

(b) Notice of Compliance Meeting. A Notice of Compliance Meeting shall be sent to the last known address of the applicant, by certified mail or through personal service. The Notice will advise the applicant of the right to respond within seven (7) days to the matters identified as subjects of the meeting and to submit information and relevant data evidencing compliance with the AFHM regulations, the AFHM Plan, Executive Order 11063 and title VIII of the Civil Rights Act of 1968, when appropriate. If the applicant is a small entity, as defined by the regulations of the Small Business Administration, the Notice shall include notification that the entity may submit comment on HUD’s actions to the Small Business and Agriculture Regulatory Enforcement Ombudsman, and shall include the appropriate contact information.

(c) Applicant data required. The applicant will be requested in writing to provide, prior to or at the compliance meeting, specific documents, records, and other information relevant to compliance, including but not limited to:

(1) Copies or scripts of all advertising in the Standard Metropolitan Statistical Area (SMSA) or housing market area, as appropriate, including newspaper, radio and television advertising, and a photograph of any sale or rental sign at the site of construction;

(2) Copies of brochures and other printed material used in connection with sales or rentals;

(3) Evidence of outreach to community organizations;

(4) Any other evidence of affirmative outreach to groups which are not likely to apply for the subject housing;

(5) Evidence of instructions to employees with respect to company policy of nondiscrimination in housing;

(6) Description of training conducted with sales/rental staff;

(7) Evidence of nondiscriminatory hiring and recruiting policies for staff engaged in the sale or rental of properties, and data by race and sex of the composition of the staff;

(8) Copies of applications and waiting lists of prospective buyers or renters maintained by applicant;

(9) Copies of Sign-in Lists maintained on site for prospective buyers and renters who are shown the facility;

(10) Copies of the selection and screening criteria;

(11) Copies of relevant lease or sales agreements;

(12) Any other information which documents efforts to comply with an approved plan.

[64 FR 44096, Aug. 12, 1999]
(d) Preparation for the compliance meeting. The monitoring office will provide information concerning the status of the project or housing involved to be presented to the applicant at the meeting. The monitoring office shall be notified of the meeting and may send representatives to the meeting.

(e) Resolution of matters. Where matters raised in the compliance meetings are resolved through revision to the plan or its implementation, the terms of the resolution shall be reduced to writing and submitted to the civil rights/compliance reviewing office within 10 days of the date of the compliance meeting.

(f) Determination of compliance. If the evidence shows no violation of the AFHM regulations and that the applicant is complying with its approved AFHM plan and this part, the civil rights/compliance reviewing office shall so notify the applicant within 10 days of the meeting.

(g) Determination of possible non-compliance. If the evidence indicates an apparent failure to comply with the AFHM plan or the AFHM regulation, or if the matters raised cannot be resolved, the civil rights/compliance reviewing office shall so notify the applicant no later than ten (10) days after the date the compliance meeting is held, in writing by certified mail, return receipt requested, and shall advise the applicant as to whether the civil rights/compliance reviewing office will conduct a comprehensive compliance review or refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for consideration of action including the imposition of sanctions.

[44 FR 47013, Aug. 9, 1979, as amended at 64 FR 44096, Aug. 12, 1999]

§ 108.35 Complaints.

Individuals and private and public entities may file complaints alleging violations of the AFHM regulations or an approved AFHM plan with any monitoring office, civil rights/compliance reviewing office, or with the Assistant Secretary for FH&EO. Complaints will be referred to the civil rights/compliance reviewing office. Where there is an allegation of a violation of title VIII the complaint also will be processed under part 105.

[44 FR 47013, Aug. 9, 1979, as amended at 64 FR 44096, Aug. 12, 1999]

§ 108.40 Compliance reviews.

(a) General. All compliance reviews shall be conducted by the civil rights/compliance reviewing office. Complaints alleging a violation(s) of the AFHM regulations, or information ascertained in the absence of a complaint indicating an applicant’s failure to comply with an AFHM plan, shall be referred immediately to the civil rights/compliance reviewing office. The monitoring office shall be notified as appropriate of all alleged violations of the AFHM regulations or alleged failure to comply with an AFHM plan.

(b) Initiation of compliance reviews. Even in the absence of a complaint or other information indicating non-compliance pursuant to paragraph (a), the civil rights/compliance reviewing office may conduct periodic compliance reviews throughout the life of the mortgage in the case of multi-family projects and throughout the duration of the Housing Assistance Payments Contract with the Department in the case of housing assisted under section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437.

(c) Nature of compliance reviews. The purpose of a compliance review is to
§ 108.45 Compliance report.

Following a compliance review, a report shall be prepared promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the applicant is in compliance, all parties concerned shall be notified of the findings. Whenever a finding of noncompliance is made pursuant to this part, the report shall list specifically the violations found. The applicant shall be sent a copy of the report by certified mail, return receipt requested, together with a notice that, if the matter cannot be resolved within ten days of receipt of the Notice, the matter will be referred to the Assistant Secretary for FH&EO to make a determination as to whether actions will be initiated for the imposition of sanctions.

[44 FR 47013, Aug. 9, 1979, as amended at 64 FR 44097, Aug. 12, 1999]

§ 108.50 Sanctions.

Applicants failing to comply with the requirements of these regulations, the AFHM regulations, or an AFHM plan will make themselves liable to sanctions authorized by law, regulations, agreements, rules, or policies governing the program pursuant to which the application was made, including, but not limited to, denial of further participation in Departmental programs and referral to the Department of Justice for suit by the United States for injunctive or other appropriate relief.

PART 110—FAIR HOUSING POSTER

Subpart A—Purpose and Definitions

Sec.
110.1 Purpose.
110.5 Definitions.

Subpart B—Requirements for Display of Posters

110.10 Persons subject.
110.15 Location of posters.
110.20 Availability of posters.
110.25 Description of posters.

Subpart C—Enforcement

110.30 Effect of failure to display poster.

Authority: 42 U.S.C. 3635(d), 3600-3620.


Subpart A—Purpose and Definitions

§ 110.1 Purpose.

The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of
§ 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing and Other Prohibited Practices, shall post and maintain a fair housing poster as follows:

(1) With respect to a single-family dwelling (not being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.

(2) With respect to all other dwellings covered by the Act:

(i) A fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and

(ii) A fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings instead of at each of the individual dwellings.

(b) This part shall not require posting and maintaining a fair housing poster:

(1) On vacant land, or

(2) At any single-family dwelling, unless such dwelling

(i) Is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in paragraph (a)(2)(ii) of this section, or

(ii) Is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in paragraph (a)(1) of this section, or

(c) All persons subject to section 805 of the Act, Discrimination in Residential Real Estate-Related Transactions shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

(d) All persons subject to section 806 of the Act, Discrimination in the Provision of Brokerage Services, shall post
§ 110.15

and maintain a fair housing poster at all their places of business.


§ 110.15 Location of posters.

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services as contemplated by sections 804 through 806 of the Act.

[54 FR 3311, Jan. 23, 1989]

§ 110.20 Availability of posters.

All persons subject to this part may obtain fair housing posters from the Department’s regional and area offices. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department.

[37 FR 3429, Feb. 16, 1972]

§ 110.25 Description of posters.

(a) The fair housing poster shall be 11 inches by 14 inches and shall bear the following legend:

EQUAL HOUSING OPPORTUNITY

We do Business in Accordance With the
Fair Housing Act

(The Civil Rights Act of 1968, as amended by
the Fair Housing Amendments Act of 1988)

IT IS ILLEGAL TO DISCRIMINATE AGAINST
ANY PERSON BECAUSE OF RACE, COLOR,
RELIGION, SEX, HANDICAP, FAMILIAL STATUS (HAVING ONE OR MORE CHILDREN), OR NATIONAL ORIGIN

• In the sale or rental of housing or residential lots.
• In advertising the sale or rental of housing.
• In the financing of housing.
• In the appraisal of housing.
• In the provision of real estate brokerage services.
• Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development, Assistant Secretary for Fair Housing and Equal Opportunity, Washington, DC 20410

or

HUD Region or [Area Office stamp]

(b) The Assistant Secretary for Equal Opportunity may grant a waiver permitting the substitution of a poster prescribed by a Federal financial regulatory agency for the fair housing poster described in paragraph (a) of this section. While such waiver remains in effect, compliance with the posting requirements of such regulatory agency shall be deemed compliance with the posting requirements of this part. Such waiver shall not affect the applicability of all other provisions of this part.

Subpart C—Enforcement

§ 110.30 Effect of failure to display poster.

Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the Secretary pursuant to part 105 of this chapter. A failure to display the fair housing poster as required by this part shall be deemed prima facie evidence of a discriminatory housing practice.

[37 FR 3429, Feb. 16, 1972]

PART 115—CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES

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AUTHORITY: 42 U.S.C. 3601–19; 42 U.S.C. 3535(d)

SOURCE: 61 FR 41284, Aug. 7, 1996, unless otherwise noted.
§ 115.101 Program administration.

(a) Authority and responsibility. The Secretary has delegated the authority and responsibility for administering this part to the Assistant Secretary.

(b) Delegation of Authority. The Assistant Secretary delegates the authority and responsibility for administering this part to each Director of a Fair Housing Enforcement Center. However, with respect to the duties and responsibilities for administering subpart B of this part, the Assistant Secretary retains the right to make final decisions concerning the granting and maintenance of substantial equivalency certification and interim certification.

§ 115.102 Public notices.

(a) Periodically, the Assistant Secretary will publish the following public notices in the FEDERAL REGISTER:

(1) A list of all agencies which have interim certification or certification; and

(2) A list of agencies to which a notice of denial of interim certification has been issued or for which withdrawal of certification is being proposed.

(b) The Assistant Secretary will publish in the FEDERAL REGISTER a notice soliciting public comment before granting certification to a State or local agency. The notice will invite the public to comment on the relevant State and local laws, as well as on the performance of the agency in enforcing its law. All comments will be considered before a final decision on certification is made.

Subpart B—Certification of Substantially Equivalent Agencies

§ 115.200 Purpose.

This subpart implements section 810(f) of the Fair Housing Act. The purpose of this subpart is to set forth:

(a) The basis for agency interim certification and certification; 

(b) The procedure by which a determination to certify is made by the Assistant Secretary; 

(c) The basis and procedures for denial of interim certification; 

(d) The basis and procedures for withdrawal of certification; 

(e) The consequences of certification; 

(f) The basis and procedures for suspension of interim certification or certification; and 

(g) The funding criteria for interim certified and certified agencies.

§ 115.201 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, satisfies the criteria set forth in section 810(f)(3)(A) of the Act; and

(b) Whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.202 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(i) Provide for an administrative enforcement body to receive and process complaints and provide that:

(ii) Complainants must be in writing; 

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint; and

(iv) A respondent may file an answer to a complaint.
(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaints, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation within the timeframe established by section 810(a)(1)(B)(iv) of the Act or comply with the notification requirements of section 810(a)(1)(C) of the Act;

(iii) The agency make final administrative disposition of a complaint unless it is impracticable to do so. If the agency is unable to do so it shall notify the parties, in writing, of the reasons for not doing so;

(iv) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent, the complainant, and the agency and shall require the approval of the agency;

(v) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act.

(5) Provide the same protections as those afforded by sections 804, 805, 806, and 818 of the Act, consistent with HUD’s implementing regulations found at 24 CFR part 100.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Grant or seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue and seek enforceable subpoenas;

(iii) Grant actual damages in an administrative proceeding or provide adjudication in court at agency expense to allow the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction;

(v) Provide an administrative proceeding in which a civil penalty may be assessed or provide an adjudication in court at agency expense, allowing the assessment of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to:

(i) Grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper;

(ii) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(iii) Enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the state or local law prohibit discrimination on the basis of familial status does not require that the state or local law limit the applicability of any reasonable local, state or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.
§ 115.203  Performance standards.

A state or local fair housing enforcement agency must meet all of the performance standards listed in this section in order to obtain or maintain certification.

(a) Engage in timely, comprehensive and thorough fair housing complaint investigation, conciliation and enforcement activities. The performance assessment will consider the following to determine the effectiveness of an agency’s fair housing complaint processing, consistent with such guidance as may be issued by HUD:

(1) The agency’s case processing procedures;

(2) The thoroughness of the agency’s case processing;

(3) A review of cause and no cause determinations for quality of investigations and consistency with appropriate standards;

(4) A review of conciliation agreements and other settlements;

(5) A review of the agency’s administrative closures; and

(6) A review of the agency’s enforcement procedures.

(b)(1) Commence proceedings with respect to a complaint:

(i) Before the end of the 30th day after receipt;

(ii) Carry forward such proceedings with reasonable promptness;

(iii) Make final administrative disposition within one year; and

(iv) Within 100 days of receipt of the complaint complete the identified proceedings.

(2) To meet this standard, the performance assessment will consider the timeliness of the agency’s actions with respect to its complaint processing, including, but not limited to:

(i) Whether the agency began its processing of fair housing complaints within 30 days of receipt;

(ii) Whether the agency completes the investigative activities with respect to a complaint within 100 days from the date of receipt or, if it is impracticable to do so, notifies the parties in writing of the reason(s) for the delay;

(iii) Whether the agency administratively disposes of a complaint within one year from the date of receipt or, if it is impracticable to do so, notifies the parties in writing of the reasons for the delay; and

(iv) Whether the agency completes the investigation of the complaint and

(d) The state or local law may assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in 24 CFR part 100, subpart E.

(e) A determination of the adequacy of a state or local fair housing law “on its face” is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account all relevant matters of state or local law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the fair housing law by competent authorities will be considered in making this determination.

(f) A law will be found inadequate “on its face” if it permits any of the agency’s decision-making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, “decision-making authority” shall include:

(1) Acceptance of the complaint;

(2) Approval of the conciliation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in §§ 115.202(a)(2)(i) or 115.202(b)(1); and

(5) Any decision-making regarding whether the matter will or will not be pursued.

(g) The state or local law must provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an action in an appropriate court at least one year after the occurrence or termination of an alleged discriminatory housing practice. The court must be empowered to:

(1) Award the plaintiff actual and punitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order; and

(3) Allow reasonable attorney’s fees and costs.
prepared a complete final investigative report.

(3) The performance assessment will also consider documented conciliation attempts and activities and a review of the bases for administrative disposition of complaints.

(c) Conduct compliance reviews of settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices. The performance assessment will include, but not be limited to:

(1) An assessment of the agency's procedures for conducting compliance reviews;

(2) Terms and conditions of agreements and orders issued;

(3) Application of its authority to seek actual damages, as appropriate; and

(4) Application of its authority to seek and assess civil penalties or punitive damages.

(d) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices. The performance assessment will include, but not be limited to:

(1) An assessment of the types of relief sought and obtained by the agency with consideration of the inclusion of affirmative provisions designed to protect the public interest;

(2) The adequacy of the disposition of the complaint;

(3) The relief sought and awarded;

(4) The number of complaints closed with relief and the number closed without relief; and

(5) Whether all the issues and bases were investigated adequately and appropriately disposed of.

(e) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law. An assessment under this standard will include, but not be limited to:

(1) A discussion and confirmation of the law or ordinance administered by the agency;

(2) The identification of any amendments, court decisions or other rulings or documentation that may affect the agency's ability to carry out provisions of its fair housing law or ordinance;

(3) Identification of the education and outreach efforts of the agency; and

(4) Identification and discussion of any special requirements of the fair housing law or ordinance.

§ 115.204 Consequences of certification.

(a) Whenever a complaint received by the Assistant Secretary alleges violations of a state or local fair housing law or ordinance administered by an agency that has been certified as substantially equivalent, the complaint will be referred to the agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint except as provided for by the Act, this part, 24 CFR part 103, subpart C, and any written agreements executed by the Agency and the Assistant Secretary.

(b) If HUD determines that a complaint has not been processed in a timely manner in accordance with the performance standards set forth in §115.203, HUD may reactivate the complaint, conduct its own investigation and conciliation efforts, and make a determination consistent with 24 CFR part 103.

(c) Notwithstanding paragraph (a) of this section, whenever the Assistant Secretary has reason to believe that a complaint demonstrates a basis for the commencement of proceedings against any respondent under section 814(a) of the Act or for proceedings by any governmental licensing or supervisory authorities, the Assistant Secretary shall transmit the information upon which such belief is based to the Attorney General, Federal financial regulatory agencies, other Federal agencies, or other appropriate governmental licensing or supervisory authorities.

§ 115.205 Technical assistance.

(a) The Assistant Secretary, through its FHEO Field Office, may provide technical assistance to the agencies. The agency may request such technical assistance or the FHEO Field Office may determine the necessity for technical assistance and require the agency's cooperation and participation.

(b) The Assistant Secretary, through FHEO Headquarters or Field staff, will require that the agency participate in training conferences and seminars that will enhance the agency's ability to
process complaints alleging discriminatory housing practices.

§ 115.206 Request for certification.

(a) A request for certification under this subpart shall be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organizational information of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) If available, data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.203.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at:

(1) The office of the Assistant Secretary;

(2) The HUD Field Office in whose jurisdiction the State or local jurisdiction seeking recognition is located; and

(3) The office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.207 Procedure for interim certification.

(a) Upon receipt of a request for certification filed under § 115.206, the Assistant Secretary may request further information necessary for a determination to be made under this section. The Assistant Secretary may consider the relative priority given to fair housing administration, as compared to the agency's other duties and responsibilities, as well as the compatibility or potential conflict of fair housing objectives with these other duties and responsibilities.

(b) Interim certification. If the Assistant Secretary determines, after application of the criteria set forth in § 115.202 that the State or local law or ordinance, on its face, provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may offer to enter into an Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement). The interim agreement will outline the procedures and authorities upon which the interim certification is based.

(c) Such interim agreement, after it is signed by all appropriate signatories, will result in the agency receiving interim certification.

(d)(1) Interim agreements shall be for a term of no more than three years. The Assistant Secretary, through the FHEO Field Office, will conduct one or more on-site assessments to determine whether the agency administers its fair housing law or ordinance in a manner that is substantially equivalent to the Act.

(2) Performance Improvement Plan. If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(3) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the
agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

§ 115.208 Suspension of interim certification.

(a) Suspension based on changes in the law. (1) The Assistant Secretary may suspend the agency’s interim certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency’s implementation of the fair housing law or ordinance by:
   (i) Amending the fair housing law or ordinance;
   (ii) Adopting rules or procedures concerning the fair housing law or ordinance;
   (iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends interim certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent to the Act on its face or in its operations. Such suspension shall not exceed 180 days.

(3) If the Assistant Secretary determines that, notwithstanding the actions taken by the State or locality as described in paragraph (a)(1), the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency’s interim certification and/or recommend the agency for certification. HUD will provide full or partial reimbursement for cases processed during the period of the suspension.

(4) Suspension under paragraph (b) of this section renders the agency ineligible to receive Fair Housing Assistance Program Funds under subpart C of this part, pending correction of the deficiencies by the agency.

(5) Before the end of the suspension, a final performance assessment will be provided to the Assistant Secretary upon which a determination will be made as to the adequacy of the agency’s performance.

(c) HUD will provide an agency with notice of the specific reasons for the suspension of its interim certification and an opportunity to respond, in accordance with the procedures set forth in HUD issued guidance.

§ 115.209 Denial of interim certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in this part that the State and local law or ordinance, on its face or in its operation, does not provide substantive rights, procedures, remedies, and availability of judicial review for alleged discriminatory housing practices which are substantially equivalent to those provided in the Fair Housing Act, the Assistant Secretary shall inform the State or local official in writing of the reasons for that determination.

(b) The agency, within 20 days from the date of the receipt of this notice, may submit, in writing, any opposition to the planned denial of interim certification to the Assistant Secretary. The Assistant Secretary will evaluate all
§ 115.210 Procedure for certification.

(a) Certification. (1) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.202, 115.203 and this section, that the State or local law or ordinance, both "on its face" and "in operation," provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may enter into a Memorandum of Understanding (MOU) with the agency.

(2) The MOU is a written agreement providing for the referral of complaints to the agency and for communication procedures between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's continuing substantial equivalency certification.

(3) A MOU, after it is signed by all appropriate signatories, may authorize an agency to be a certified agency for a period of not more than five years.

(b) Performance Improvement Plan. (1) If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(2) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

(c) Annual assessments. The Assistant Secretary shall annually assess the performance of an agency to determine whether it continues to qualify for certification under this part. If the Assistant Secretary affirmatively concludes that the agency's law and performance have complied with the requirements of this part in each of the five years, the Assistant Secretary may offer the agency an updated Memorandum of Understanding.

(d) Interim certification required prior to certification. An agency shall receive interim certification prior to receiving certification.

§ 115.211 Suspension of certification.

(a) Suspension based on changes in the law. (1) The Assistant Secretary may suspend the agency's certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent on its face and in its operation to the Act. Such suspension shall not exceed 180 days.

(3) If the Assistant Secretary determines that the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification.
§ 115.301 Agency eligibility criteria.

Any agency with certification or interim certification under subpart A of this part, and which has entered into a MOU or interim agreement, is eligible to participate in the FHAP.
§ 115.302 Capacity building funds.

(a) Capacity building (CB) funds are funds that HUD may provide to an agency with interim certification during the agency’s first three years of participation in the FHAP. Agencies receiving CB funds are not eligible to receive contributions funds under § 115.304.

(b) CB funds will be provided in a fixed annual amount to be utilized for the eligible activities established pursuant to §115.303. However, in the second and third year of the agency’s participation in the FHAP, HUD has the option to permit the agency to receive CB funding on a per case basis, rather than in a single annual amount.

(c) In order to receive CB funding, agencies will be required to submit a statement of work which identifies:

(1) The objectives and activities to be carried out with the CB funds received;

(2) A plan for training all of the agency’s employees involved in the administration of the agency’s fair housing law or ordinance;

(3) A statement of the agency’s intention to participate in HUD-sponsored training in accordance with the training requirements set out in the cooperative agreement;

(4) A description of the agency’s complaint processing data and information system or, alternatively, whether the agency plans to use CB funds to purchase and install a data system; and

(5) A description of any other fair housing activities that the agency will undertake with its CB funds. All such activities must address matters affecting fair housing which are cognizable under the Fair Housing Act. Any activities which do not address the implementation of the agency’s fair housing law or ordinance, and which are therefore not cognizable under the Fair Housing Act, will be disapproved.

§ 115.303 Eligible activities for capacity building funds.

The primary purposes of capacity building funding is to provide for complaint activities and to support activities that produce increased awareness of fair housing rights and remedies. All such activities must support the agency’s administration of its fair housing law or ordinance and address matters affecting fair housing which are cognizable under the Fair Housing Act. HUD will periodically publish a list of eligible activities in the Federal Register.

§ 115.304 Agencies eligible for contributions funds.

(a) An agency that has received CB funds for three consecutive years is eligible for contributions funding. Contributions funding consists of three categories:

(1) Complaint Processing (CP) funds;

(2) Administrative Costs (AC) funds; and

(3) Special Enforcement Efforts (SEE) funds (§115.305 sets forth the requirements for SEE funding).

(b) CP funds. (1) Agencies receiving CP funds will receive such support based solely on the number of complaints processed by the agency and accepted for payment by the Director of FHEO during a consecutive, specifically identified, 12-month period. Normally this period will be the previous year’s funding cycle.

(2) Funding for agencies in their fourth year of participation in the FHAP will be based on the number of complaints acceptably processed by the agency during the agency’s third year of participation in the FHAP.

(c) Administrative Cost (AC) funds. (1) Agencies which acceptably process 100 or more cases will receive no less than 10 percent of the agency’s annual FHAP payment amount for the preceding year, in addition to case processing funds, contingent on fiscal year appropriations. Agencies that acceptably process fewer than 100 cases will receive a flat rate contingent on fiscal year appropriations.

(2) Agencies will be required to provide HUD with a statement of how they intend to use the AC funds. HUD may require that some or all AC funding be directed to activities designed to create, modify, or improve local, regional, or national information systems concerning fair housing matters (including the purchase of state of the art computer systems and getting on line or internet access, etc.).
§ 115.305 Special enforcement effort (SEE) funds.

(a) SEE funds are funds that HUD will provide to an agency to enhance enforcement activities of the agency's fair housing law or ordinance. SEE funds will be a maximum of 20% of the agency's total FHAP cooperative agreement for the previous contract year, based on approval of eligible activity or activities, and based on the appropriation of funds. All agencies receiving contributions funds are eligible to receive SEE funds if they meet three of the six criteria set out in paragraphs (a)(1) through (6):

(1) The agency has taken action to enforce a subpoena or make use of its prompt judicial action authority within the past year.

(2) The agency has held at least one administrative hearing or has had at least one case on a court's docket for civil proceedings during the past year.

(3) At least ten percent of the agency's fair housing caseload resulted in written conciliation agreements providing monetary relief for the complainant as well as remedial action, monitoring, reporting and public interest relief provisions.

(4) The agency has had in the most recent three years, or is currently handling, at least one major fair housing systemic investigation requiring an exceptional amount of expenditure of funds.

(5) The agency's administration of its fair housing law or ordinance received meritorious mention for its complaint processing or other fair housing activities that were innovative.

(6) The agency must have fully investigated 10 fair housing complaints during the previous funding year.

(b) Notwithstanding the eligibility criteria set forth in paragraph (a) of this section, an agency is ineligible for SEE funds if:

(1) Twenty percent or more of an agency's fair housing complaints result in administrative closures; or

(2) The agency is currently on a PIP, or if its interim certification or certification has been suspended during the fiscal year in which SEE funds are sought.

(c) SEE funding amounts are subject to the FHAP appropriation by Congress and will be described in writing in the cooperative agreements annually. HUD will periodically publish a list of activities eligible for SEE funding in the Federal Register.

§ 115.306 Training funds.

(a) All agencies are eligible to receive training funds. Training funds are fixed amounts based on the number of agency employees to be trained and shall be allocated based on the FHAP appropriation. Training funds may be used only for HUD-approved or HUD-sponsored training. Agency-initiated training or other formalized training may be included in this category. However, such training must first be approved by the Cooperative Agreement Officer (CAO) and the Government Technical Representative (GTR). Specifics on the amount of training funds that an agency will receive and, if applicable, amounts that may be deducted, will be set out in the cooperative agreement each year.

(b) All staff of the agency responsible for the administration of the fair housing law or ordinance must participate in mandatory FHAP training sponsored by HUD at the national and field office levels. If the agency does not participate in the mandatory national and field office HUD-sponsored training, training funds will be deducted from their overall training amount.

§ 115.307 Additional requirements for participation in the FHAP.

(a) Agencies which participate in the FHAP must:

(1) Conform to reporting and record maintenance requirements determined by the Assistant Secretary;

(2) Agree to on-site technical assistance and guidance and implementation of corrective actions set out by the Department in response to deficiencies found during the technical assistance or performance assessment evaluations of the agency's operations;

(3) Agree to implement and adhere to policies and procedures (as their laws and ordinances will allow) provided to the agencies by the Assistant Secretary, including but not limited to guidance on investigative techniques, case file preparation and organization,
§ 115.308 Implementation of data elements for complaint tracking, etc.;

(4) Spend at least twenty (20) percent of its total annual budget on fair housing activities; and

(5) Not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing (budget and staff reductions or other actions outside the control of the agency will not, alone, result in a negative determination for the agency's participation in the FHAP).

(b) The agency's refusal to provide information, assist in implementation, or carry out the requirements of paragraph (a) of this section may result in the denial or interruption of its receipt of FHAP funds.

§ 115.308 Standards for FHAP program review.

HUD will conduct reviews of the agency's cooperative agreement implementation. This review will also identify:

(a) How the agency used the FHAP funds received;

(b) Whether its draw-down of funds was timely;

(c) Whether the agency has been audited and received copies of the audit reports in accordance with applicable rules and regulations for State and local governmental entities; and

(d) If the agency complied with all certifications and assurances required by HUD in the cooperative agreement.

§ 115.309 Reporting and recordkeeping requirements.

(a) The agency shall establish and maintain records demonstrating:

(1) Its financial administration of the FHAP funds; and

(2) Its performance under the FHAP.

(b) In accordance with the cooperative agreement in effect between the agency and HUD, the agency will provide to HUD the agency reports maintained pursuant to paragraph (a) of this section. The agency will provide reports to HUD in accordance with the cooperative agreement in effect between the agency and HUD for frequency and content, regarding complaint processing, training, data and information systems, enforcement and

other activities explaining how FHAP funds were expended and used.

(c) The agency will permit reasonable public access to its records, consistent with the jurisdiction's requirements for release of information. Documents relevant to the agency's participation in FHAP must be made available at the agency's office during normal working hours (except that documents with respect to ongoing fair housing complaint investigations are exempt from public review consistent with Federal and/or State law).

(d) The Secretary, the Inspector General of HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts, and transcripts as they relate to the agency's participation in FHAP.

(e) All files will be kept in such fashion as to permit audits under applicable procurement regulations and guidelines and the Single Audit requirements for State and local agencies.

(f) The FHAP financial records and files will be kept at least three years on-site after any cooperative agreement has terminated.

§ 115.310 Subcontracting under the FHAP.

If an agency subcontracts to a public or private agency any activity for which the subcontractor will receive FHAP funds, the agency must ensure and certify in writing that the subcontractor is:

(a) Using services and facilities that are accessible in accordance with the Americans with Disability Act (ADA) (42 U.S.C. 12101) and Section 504 of the 1973 Rehabilitation Act (29 U.S.C. 701);

(b) Complying with the standards of Section 3 of the Housing and Urban Development Act of 1968 (42 U.S.C. 1441); and

(c) Furthering fair housing.

§ 115.311 Corrective and remedial action.

(a) If HUD makes a preliminary determination that an agency has not complied with §115.309, the agency will
be given written notice of this determination and an opportunity to show, through demonstrable facts and data, that it has done so within a time prescribed by HUD.

(b) If an agency fails to demonstrate to HUD's satisfaction that it has met program review standards, HUD will request the agency to submit and comply with proposals for action to correct, mitigate, or prevent performance deficiencies, including, but not limited to:

(1) Preparing and/or following a schedule of actions for carrying out the affected fair housing activities;

(2) Establishing and/or following a management plan that assigns responsibilities for carrying out the actions required;

(3) Canceling or revising activities likely to be affected by a performance deficiency before expending FHAP funds for the activities; and

(4) Redistributing or suspending disbursement of FHAP funds that have not yet been disbursed.

(c) HUD may condition the use of FHAP award amounts with respect to an agency's succeeding fiscal year's allocation on the satisfactory completion by the agency of appropriate corrective actions. When the use of funds is so conditioned, HUD will specify the deficiency(ies), the required corrective action(s), and the time allowed for taking these actions. Failure of the agency to complete the actions as specified will result in a reduction or withdrawal of the FHAP allocation in an amount not to exceed the amount conditionally granted.

PART 121—COLLECTION OF DATA

§ 121.1 Purpose.

The purpose of this part is to enable the Secretary of Housing and Urban Development to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, dated November 20, 1962, title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department of Housing and Urban Development, and they direct the Secretary to administer the Department's housing and urban development programs and activities in a manner affirmatively to further these policies and to collect certain data to assess the extent of compliance with these policies.

§ 121.2 Furnishing of data by program participants.

Participants in the programs administered by the Department shall furnish to the Department such data concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, those programs as the Secretary may determine to be necessary or appropriate to enable him or her to carry out his or her responsibilities under the authorities referred to in §121.1.

PART 125—FAIR HOUSING INITIATIVES PROGRAM

Sec.
125.103 Definitions.
125.104 Program administration.
125.105 Application requirements.
125.106 Waivers.
125.107 Testers.
125.201 Administrative Enforcement Initiative.
125.301 Education and Outreach Initiative.
125.401 Private Enforcement Initiative.
125.501 Fair Housing Organizations Initiative.

Authority: 42 U.S.C. 3635(d), 3616 note.

Source: 60 FR 59452, Nov. 27, 1995, unless otherwise noted.
§ 125.103 Definitions.

In addition to the definitions that appear in section 802 of title VIII (42 U.S.C. 3602), the following definitions apply to this part:

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

Expert witness means a person who testifies, or who would have testified but for a resolution of the case before a verdict is entered, and who qualifies as an expert witness under the rules of the court where the litigation funded by this part is brought.

Fair housing enforcement organization (FHO) means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

For the purpose of meeting the 2-year qualification period for the activities included in paragraph (2) of this definition, it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 2 years. It is also not necessary for the activities to have been conducted for 2 consecutive or continuous years. An organization may aggregate its experience in each activity over the 3 year period preceding its application to meet the 2-year qualification period requirement.

The Department may request an organization to submit documentation to support its claimed status as a QFHO.

FHIP means the Fair Housing Initiatives Program authorized by section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note).

Meritorious claims means enforcement activities by an organization that resulted in lawsuits, consent decrees, legal settlements, HUD and/or substantially equivalent agency (under 24 CFR 115.6) conciliations and organization initiated settlements with the outcome of monetary awards for compensatory and/or punitive damages to plaintiffs or complaining parties, or other affirmative relief, including the provision of housing.

Qualified fair housing enforcement organization (QFHO) means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

The purpose of the 2-year qualification period for the activities included in paragraph (2) of this definition, it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 2 years. It is also not necessary for the activities to have been conducted for 2 consecutive or continuous years. An organization may aggregate its experience in each activity over the 3 year period preceding its application to meet the 2-year qualification period requirement.

The Department may request an organization to submit documentation to support its claimed status as a QFHO.


§ 125.104 Program administration.

(a) FHIP is administered by the Assistant Secretary.

(b) FHIP funding is made available under the following initiatives:

(1) The Administrative Enforcement Initiative;

(2) The Education and Outreach Initiative;

(3) The Private Enforcement Initiative; and

(4) The Fair Housing Organizations Initiative.

(c) FHIP funding is made available in accordance with the requirements of the authorizing statute (42 U.S.C. 3616 note), the regulation in this part, and Notices of Funding Availability (NOFAs), and is awarded through a grant or other funding instrument.

(d) Notices of Funding Availability under this program will be published...
§ 125.107 Testers.

The following requirements apply to testing activities funded under the FHIP:

(a) Testers must not have prior felony convictions or convictions of crimes involving fraud or perjury.

(b) Testers must receive training or be experienced in testing procedures and techniques.

(c) Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(1) Have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury;

(2) Be a relative of any party in a case;

(3) Have had any employment or other affiliation, within one year, with the person or organization to be tested; or

(4) Be a licensed competitor of the person or organization to be tested in

(d) An estimate of public or private resources that may be available to assist the proposed activities.

(e) A description of the procedures to be used for monitoring conduct and assessing results of the proposed activities.

(f) A description of the benefits that successful completion of the project will produce to enhance fair housing, and the indicators by which these benefits are to be measured.

(g) A description of the expected long term viability of project results.

(h) Any additional information that may be required by a Notice of Funding Availability published in the Federal Register.

(Approved by the Office of Management and Budget under control number 2529-0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.)

§ 125.105 Application requirements.

Each application for funding under the FHIP must contain the following information, which will be assessed against the specific selection criteria set forth in a Notice of Funding Availability.

(a) A description of the practice (or practices) that has affected adversely the achievement of the goal of fair housing, and that will be addressed by the applicant's proposed activities.

(b) A description of the specific activities proposed to be conducted with FHIP funds including the final product(s) and/or any reports to be produced; the cost of each activity proposed; and a schedule for completion of the proposed activities.

(c) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

§ 125.106 Waivers.

Upon determination of good cause, the Assistant Secretary may waive, in a published Notice of Funding Availability or other Federal Register notice, any requirement in this part that is not required by statute.

§ 125.107 Testers.

The following requirements apply to testing activities funded under the FHIP:

(a) Testers must not have prior felony convictions or convictions of crimes involving fraud or perjury.

(b) Testers must receive training or be experienced in testing procedures and techniques.

(c) Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(1) Have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury;

(2) Be a relative of any party in a case;

(3) Have had any employment or other affiliation, within one year, with the person or organization to be tested; or

(4) Be a licensed competitor of the person or organization to be tested in

(d) An estimate of public or private resources that may be available to assist the proposed activities.

(e) A description of the procedures to be used for monitoring conduct and assessing results of the proposed activities.

(f) A description of the benefits that successful completion of the project will produce to enhance fair housing, and the indicators by which these benefits are to be measured.

(g) A description of the expected long term viability of project results.

(h) Any additional information that may be required by a Notice of Funding Availability published in the Federal Register.

(Approved by the Office of Management and Budget under control number 2529-0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.)
§ 125.201
the listing, rental, sale, or financing of
real estate.

§ 125.201 Administrative Enforcement
Initiative.

The Administrative Enforcement Initiative provides funding to State and local fair housing agencies admin-
istering fair housing laws recognized by the Assistant Secretary under §115.6 of this subchapter as providing rights and remedies which are substantially equivalent to those provided in title VIII.

§ 125.301 Education and Outreach Ini-
tiative.

(a) The Education and Outreach Initiative provides funding for the purpose of developing, implementing, carrying out, or coordinating education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of fair housing laws.

(b) Notices of Funding Availability published for the FHIP may divide Education and Outreach Initiative funding into separate competitions for each of the separate types of programs (i.e., national, regional and/or local, community-based) eligible under this Initiative.

(c) National program applications, including those for Fair Housing Month funding, may be eligible to receive, as provided for in Notices of Funding Availability published in the FEDERAL REGISTER, a preference consisting of additional points if they:

(1) Demonstrate cooperation with real estate industry organizations; and/or

(2) Provide for the dissemination of educational informational, technical or vocational assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988.

(d) Activities that are regional are activities that are implemented in adjoining States or two or more units of general local government within a State. Activities that are local are activities whose implementation is limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivi-
sion of a State. Activities that are community-based in scope are those which are primarily focused on a particular neighborhood area within a unit of general local government.

(e) Each non-governmental recipient of regional, local, or community-based funding for activities located within the jurisdiction of a State or local enforcement agency or agencies administering a substantially equivalent (under part 115 of this subchapter) fair housing law must consult with the agency or agencies to coordinate activities funded under FHIP.

§ 125.401 Private Enforcement Initiative.

(a) The Private Enforcement Initiative provides funding on a single-year or multi-year basis, to investigate vi-

(b) Organizations that are eligible to receive assistance under the Private Enforcement Initiative are:

(1) Qualified fair housing enforcement organizations.

(2) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meri-
torious claims. For the purpose of meeting this 1 year qualification pe-

(d) Activities that are regional are activities that are implemented in adjoining States or two or more units of general local government within a State. Activities that are local are activities whose implementation is limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivi-

§ 125.501 Fair Housing Organizations Ini-
tiative.

(a) The Fair Housing Organizations Initiative of the FHIP provides funding
to develop or expand the ability of existing eligible organizations to provide fair housing enforcement, and to establish, on a single-year or multi-year basis contingent upon annual performance reviews and annual appropriations, new fair housing enforcement organizations.

(b) Continued development of existing organizations—(1) Eligible applicants. Eligible for funding under this component of the Fair Housing Organizations Initiative are:
   (i) Qualified fair housing enforcement organizations;
   (ii) Fair housing enforcement organizations; and
   (iii) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(2) Operating budget limitation. (i) Funding under this component of the Fair Housing Organizations Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year.

(ii) For purposes of the limitation in this paragraph, operating budget means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(c) Establishing new organizations—(1) Eligible applicants. Eligible for funding under this component of the Fair Housing Organizations Initiative are:
   (i) Qualified fair housing enforcement organizations;
   (ii) Fair housing enforcement organizations; and
   (iii) Organizations with at least three years of experience in complaint intake, complaint investigation, and enforcement of meritorious claims involving the use of testing evidence.

(2) Targeted areas. FHIP Notices of Funding Availability may identify target areas of the country that may receive priority for funding under this component of the Fair Housing Organizations Initiative. An applicant may also seek funding to establish a new organization in a locality not identified as a target area, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations or as containing large concentrations of protected classes.
SUBCHAPTER B—EMPLOYMENT AND BUSINESS OPPORTUNITY

PART 135—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

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Subpart D—Complaint and Compliance Review

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135.90 Reporting.
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APPENDIX TO PART 135

SOURCE: 59 FR 33880, June 30, 1994, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 33880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 25525, May 31, 1995, the effective period was extended until the final rule implementing changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992 is published and becomes effective.

Subpart A—General Provisions

§ 135.1 Purpose.
(a) Section 3. The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
(b) Part 135. The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

§ 135.2 Effective date of regulation.
The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28326, May 31, 1995]

§ 135.3 Applicability.
(a) Section 3 covered assistance. Section 3 applies to the following HUD assistance (section 3 covered assistance):

(i) Public and Indian housing assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance:

(ii) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);

(ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and
(iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

(2) Housing and community development assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction;

(iii) Other public construction.

(3) Thresholds—(i) No thresholds for section 3 covered public and Indian housing assistance. The requirements of this part apply to section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by section 3, regardless of the amount of the contract or subcontract.

(ii) Thresholds for section 3 covered housing and community development assistance—(A) Recipient thresholds. The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds $200,000.

(B) Contractor and subcontractor thresholds. The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds $200,000, and the contract or subcontract exceeds $100,000.

(C) Threshold met for recipients, but not contractors or subcontractors. If a recipient receives section 3 covered housing or community development assistance in excess of $200,000, but no contract exceeds $100,000, the section 3 preference requirements only apply to the recipient.

(b) Applicability of section 3 to entire project or activity funded with section 3 assistance. The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) Applicability to Indian housing authorities and Indian tribes. Indian housing authorities and tribes that receive HUD assistance described in paragraph (a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) Other HUD assistance and other Federal assistance. Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

§135.5 Definitions.

The terms Department, HUD, Indian housing authority (IHA), Public housing agency (PHA), and Secretary are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the
§ 135.5

ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of “section 3 business concern” in this section.

Contract. See the definition of “section 3 covered contract” in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in §135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with section 3 covered projects (as described in §135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing authority (HA) means, collectively, public housing agency and Indian housing authority.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

Housing development means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD’s public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian tribes shall have the meaning given this term in 24 CFR part 571.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of “section 3 resident” in this section.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:
§ 135.5

(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204(c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area.

Other HUD programs means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for "section 3 covered projects," as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963.

Recipient means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.


Section 3 business concern means a business concern, as defined in this section—

(1) That is 51 percent or more owned by section 3 residents; or

(2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or

(3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

Section 3 clause means the contract provisions set forth in §135.38.

Section 3 covered activity means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means: (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act; (2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act; (3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act; (4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement); (ii) Housing construction; or (iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. “Section 3 covered contracts” do not include contracts awarded under HUD’s procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). “Section 3 covered contracts” also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the
purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 joint venture. See §135.40.

Section 3 resident means: (1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of unusually high or low family incomes.

(3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 assistance means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

Service area means the geographical area in which the persons benefiting from the section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD’s Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe’s sovereign power, is limited to the area of tribal jurisdiction.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor’s obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income person. See the definition of “section 3 resident” in this section.

Youthbuild programs. See the definition of “HUD Youthbuild programs” in this section.

§135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; provided however, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.
§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) Certification of compliance with part 135. All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA. Additionally, the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant’s certification unless there is evidence substantially challenging the certification.

(b) Statement of purpose in NOFAs. (1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment, or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed $200,000, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(c) Section 3 as NOFA evaluation criteria. Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

§ 135.11 Other laws governing training, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) Procurement standards for States and local governments (24 CFR 85.36)—(1) General. Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) Flexible Subsidy Program. Multifamily project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) Procurement standards for other recipients (OMB Circular No. A-110). Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A-110, section 3 is a
§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.

(a) General. (1) Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

(b) Training and employment. The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) Numerical goals for section 3 covered public and Indian housing programs. Recipients of section 3 covered public and Indian housing assistance (as described in § 135.5) and their contractors and subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:
(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;
(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;
(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.
(2) Numerical goals for other HUD programs covered by section 3. (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;
(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:
(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;
(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;
(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.
(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:
(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;
(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and
(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.
(c) Contracts. Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:
(1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.
(d) Safe harbor and compliance determinations. (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.
(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in §135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.
§ 135.32 Responsibilities of the recipient.
Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the
§ 135.34 Preference for section 3 residents in training and employment opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

(ii) Residents of other developments managed by the HA that is expending the section 3 covered project (category 2 residents);

(iii) Participants in HUD Youthbuild programs (category 3 residents);

(iv) Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority;
(iv) Other section 3 residents.
(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) Eligibility for preference. A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as defined in §135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) Eligibility for employment. Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

§ 135.36 Preference for section 3 business concerns in contracting opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses); or

(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns.

(b) Eligibility for preference. A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in §135.5.

(c) Ability to complete contract. A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to
§ 135.38 | Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

§ 135.40 | Providing other economic opportunities.

(a) General. In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) Other training and employment related opportunities. Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of “upward mobility”, “bridge” and trainee positions to fill vacancies; hiring section 3 residents in...
management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) Other business related economic opportunities. (1) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A section 3 joint venture means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

Subpart C [Reserved]

Subpart D—Complaint and Compliance Review

§ 135.70 General.

(a) Purpose. The purpose of this subpart is to establish the procedures for handling complaints alleging non-compliance with the regulations of this part, and the procedures governing the Assistant Secretary’s review of a recipient’s or contractor’s compliance with the regulations in this part.

(b) Definitions. For purposes of this subpart:

(1) Complaint means an allegation of noncompliance with regulations of this part made in the form described in § 135.76(d).

(2) Complainant means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) Noncompliance with section 3 means failure by a recipient or contractor to comply with the requirements of this section.

(4) Respondent means the recipient or contractor against which a complaint of noncompliance has been filed. The term “recipient” shall have the meaning set forth in §135.7, which includes PHA and IHA.

§ 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under §135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of
§ 135.74 Section 3 compliance review procedures.

(a) Compliance reviews by Assistant Secretary. The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) Form of compliance review. A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) Where compliance review reveals noncompliance with section 3 by recipient or contractor. Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) Continuing noncompliance by recipient or contractor. A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor.

(e) Conducting compliance review before the award of assistance. Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) Consideration of complaints during compliance review. Complaints alleging noncompliance with section 3, as provided in §135.76, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

§ 135.76 Filing and processing complaints.

(a) Who may file a complaint. The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(b) Where to file a complaint. A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

(c) Time of filing. A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based.
based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges noncompliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the request, the complaint may be closed.

(d) Contents of complaint—(1) Written complaints. Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant’s name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) Amendment of complaint. Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) Resolution of complaint by recipient. (1) Within ten (10) days of timely filing of a complaint that contains complete information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient’s contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) Informal resolution of complaint by Assistant Secretary—(1) Dismissal of complaint. Upon receipt of the recipient’s written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the complaint fails to present a valid allegation of noncompliance with section 3,
§ 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the program providing the section 3 covered assistance requires submission of an annual performance report, the section 3 report will be submitted with that annual performance report. If the program providing the section 3 covered assistance does not require an annual performance report, the section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

(Approved by the Office of Management and Budget under control number 2529-0043)

§ 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.
APPENDIX TO PART 135

I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

(1) Entering into “first source” hiring agreements with organizations representing Section 3 residents.

(2) Sponsoring a HUD-certified “Step-Up” employment and training program for Section 3 residents.

(3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other Section 3 residents in the building trades.

(4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where Category 1 or Category 2 persons reside. (These terms are defined in §135.34.)

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HA’s, post such advertising in the housing development or developments where Category 1 or Category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the Section 3 covered project.

(6) Contacting resident councils, resident management organizations, or other resident organizations, where they exist, in the housing development or developments where Category 1 or Category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where Category 1 or Category 2 persons reside or in the neighborhood or service area of the Section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where Category 1 or Category 2 persons reside and in the neighborhood or service area in which a Section 3 project is located.

(9) Arranging for a location in the housing development or developments where Category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where Category 1 or Category 2 persons reside, or at a location within the neighborhood or service area of the Section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA’s or contractor’s training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or J-OBs, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA’s or contractor’s training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the Section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified Section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing Section 3 residents directly on either a permanent or a temporary basis to perform work generated by Section 3 assistance. (This type of employment is referred to as “force account labor” in HUD’s Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

(16) Where there are more qualified Section 3 residents than there are positions to be filled, maintaining a file of eligible qualified Section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other Section 3 residents to be trained or employed on the Section 3 covered assistance.
(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 965 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying section 3 businesses in determining the responsibility of potential contractors.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the ‘‘contracting party’’) for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) Small Purchase Procedures. For section 3 covered contracts aggregating no more than $25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.
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(i) Solicitation. (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed:—
— the section 3 covered contract to be awarded with sufficient specificity;
— the time within which quotations must be submitted; and
— the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) Award. (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the highest priority ranking (whether or not the section 3 business concern meets the requirements of paragraph (i)(A)).

(B) Award. (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the highest priority ranking (whether or not the section 3 business concern meets the requirements of paragraph (i)(A)). The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) Procurement under the competitive proposals method of procurement (RFP). (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR § 5.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for

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<td>When the lowest responsive bid is:</td>
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<td>At least $100,000, but less than $200,000</td>
<td>9% of that bid, or $16,000.</td>
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<td>8% of that bid, or $21,000.</td>
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<td>7% of that bid, or $24,000.</td>
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<td>5% of that bid, or $40,000.</td>
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<td>4% of that bid, or $60,000.</td>
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<td>3% of that bid, or $80,000.</td>
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<td>At least $4 million, but less than $7 million</td>
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a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor’s section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor’s responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

§ 146.1 Purpose of the Age Discrimination Act of 1975.

The Age Discrimination Act of 1975 (the Act) prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act, however, permits federally assisted programs and activities and recipients of Federal funds to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and this part.

§ 146.3 Purpose of HUD’s age discrimination regulation.

The purpose of this part is to state HUD’s policies and procedures under the Age Discrimination Act of 1975, consistent with the government-wide age discrimination regulation contained at 45 CFR part 90.

§ 146.5 Applicability of part.

This part applies to each program or activity that receives Federal financial assistance provided by HUD.

§ 146.7 Definitions.

The terms HUD and Secretary are defined in 24 CFR part 5.


Action means any act, activity, policy, rule, standard, or method of administration or the use of any policy, rule, standard, or method of administration.

Age means how old a person is, or the number of elapsed years from the date of a person’s birth.

Age distinction means any action using age or an age-related term.
Age-related term means a word or words which necessarily imply a particular age or range of ages (for example, children, adult, older persons, but not student).

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which HUD provides or otherwise makes available assistance in the form of:

(a) Funds;
(b) Service of Federal personnel; or
(c) Real or personal property or any interest in or use of property, including:
   (1) Transfers or leases of property for less than fair market value or for reduced consideration; and
   (2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal government.

Recipient means any State or its political subdivisions; any instrumentality of a State or its political subdivisions; any public or private agency; any Indian tribe or Alaskan Native Village, institution, organization, or other entity; or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but does not include the ultimate beneficiary of the assistance.

Subrecipient means any of the entities in the definition of recipient to which a recipient extends or passes on Federal financial assistance. A subrecipient is regarded as a recipient of Federal financial assistance and has all the duties of a recipient set out in this part.

United States means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

§ 146.11 Scope of subpart.

This subpart contains the standards that HUD will use to determine whether an age distinction, or a factor other than age that may have a disproportionate effect on persons of different ages, is prohibited.

§ 146.13 Rules against age discrimination.

(a) The rules stated in this paragraph are limited by the exceptions contained in paragraphs (b) and (c) of this section.

(1) General rule. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(2) Specific rules. A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contracting, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of:
   (i) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or
   (ii) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (a)(2) of this section do not necessarily constitute a complete list.

(b) Exceptions for normal operation or statutory objective of any program or activity. A recipient is permitted to take an action otherwise prohibited by paragraph (a) of this section if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:
§ 146.21 General responsibilities.

Each recipient has primary responsibility to ensure that its programs and activities that receive Federal financial assistance from HUD comply with the provisions of the Act, the government-wide regulation, and this part, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford HUD access to its records to the extent HUD finds necessary to determine whether a program or activity receiving Federal financial assistance from HUD is in compliance with the Act and this part.

(Approved by the Office of Management and Budget under control number 2529-0030)


§ 146.23 Notice of subrecipients.

Whenever a recipient passes Federal financial assistance from HUD to subrecipients, the recipient shall provide the subrecipient with written notice of its obligations under this part and the recipient will remain responsible for the subrecipient’s compliance with respect to programs and activities receiving Federal financial assistance from HUD.

§ 146.25 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HUD shall sign a written assurance as specified by HUD that it will comply with the Act and this part with respect to programs and activities receiving Federal financial assistance from HUD.

(b) As part of a compliance review under §146.31 or an investigation under §146.37, HUD may require a recipient employing the equivalent of 15 or more employees to complete, in a manner...
specified by the Secretary or Secretary’s designee, a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from HUD, so that HUD may have to assess the recipient’s compliance with the Act. Whenever an assessment indicates a violation of the Act or this part, the recipient shall take corrective action to remedy the violation.

(Approved by the Office of Management and Budget under control number 2529-0030)

§ 146.27 Information requirements.

In order to make it possible for HUD to determine whether recipients are in compliance with the Act and this part, each recipient shall:
(a) Keep records in a form and containing information that HUD determines is necessary;
(b) Make information available to HUD upon request;
(c) Permit reasonable access by HUD to the books, records, accounts and other recipient facilities and sources of information.

(Approved by the Office of Management and Budget under control number 2529-0030)

§ 146.31 Compliance reviews.

(a) HUD may conduct pre-award reviews to determine whether programs or activities submitted for HUD assistance are consistent with the age distinctions set forth at §146.13(b).
(b) If a pre-award review indicates that the proposed programs or activities are not consistent with the age distinctions set forth at §146.13(b), the application will be returned to the applicant for additional information or clarification or for correction consistent with this part.
(c) HUD may conduct compliance reviews of recipients that will enable it to investigate and correct violations of this part. HUD may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary for HUD to determine whether a violation has occurred.
(d) If a compliance review indicates a violation, HUD will attempt to achieve voluntary compliance. If voluntary compliance cannot be achieved, HUD may begin enforcement procedures as provided in §146.39.

§ 146.33 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with HUD alleging discrimination prohibited by the Act. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause, HUD may extend this time limit. The filing date for a complaint will be the date upon which the complaint is deemed sufficient to be processed.
(b) HUD shall facilitate the filing of complaints and shall take the following measures:
(1) Accept as a sufficient complaint any written legible statement which is signed by the complainant and which identifies the parties involved, the date the complainant first had knowledge of the alleged violation, and describes generally the alleged prohibited action or practice;
(2) Freely permit a complainant to add information to the complaint to meet the requirements of a sufficient complaint;
(3) Widely disseminate information regarding the obligations of recipients under the Act and this part;
(4) Notify the complainant and the recipient of their rights under the complaint process, including the right to have a representative at all stages of the complaint process; and
(5) Notify the complainant and the recipient of their right to contact HUD for information and assistance regarding the complaint resolution process.
(c) HUD will return to the complainant any complaint determined to be outside the coverage of this part, and
shall state the reasons why it is outside the coverage.

(Approved by the Office of Management and Budget under control number 2529-0030)

§ 146.35 Mediation.

(a) HUD shall refer to the Federal Mediation and Conciliation Service, a mediation agency designated by the Secretary of Health and Human Services, all complaints that:

(1) Fall within the coverage of this part, unless the age distinction complained of is clearly with an exception; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informal judgment that an agreement is not possible. There should be at least one meeting by each party with the mediator during the mediation process. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to HUD. HUD will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without the prior approval of the head of the mediation agency.

(e) HUD shall use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time HUD receives the complaint; or

(2) Before the end of the 60-day period, an agreement is reached; or

(3) Before the end of the 60-day period, the mediator determines that an agreement cannot be reached. This 60-day period may be extended by the mediator, with the concurrence of HUD, for not more than an additional 30 days if the mediator determines that it is likely that an agreement will be reached during such extended period.

§ 146.37 Investigation.

(a) Investigation and settlement following mediation. (1) HUD shall investigate complaints that are unresolved after mediation or are reopened because of an alleged violation of a mediation agreement.

(2) In the investigation of complaints filed under this part, HUD will establish facts through such methods as discussion with the complainant and recipient and the review of documents in the possession of either party. HUD may also seek the assistance of any applicable State agency. Where possible, HUD will settle the complaint on terms that are mutually agreeable to the parties.

(3) Settlements shall be in writing and signed by the parties and by an authorized HUD official.

(4) A settlement shall not affect the initiation or continuation of any other enforcement effort of HUD, including compliance reviews or investigation of other complaints involving the recipient.

(5) A settlement reached under this paragraph (a) of this section is an agreement to resolve an alleged violation of the Act to the satisfaction of the parties involved, and does not constitute a finding of discrimination against the recipient.

(b) Failure of settlement. If HUD cannot resolve the complaint through settlement, it may make a formal determination that the Act or this part has been violated and begin enforcement procedures, as provided in §146.39. HUD shall inform the recipient and complainant in writing that the matter cannot be resolved through settlement.

§ 146.39 Enforcement procedures.

(a) HUD may enforce the Act this regulation by:

(1) Termination of a recipient’s financial assistance from HUD under the
program or activity involved, if the recipient has violated the Act or this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an Administrative Law Judge. If the financial assistance consists of a Community Development Block Grant, the requirements of section 109(b) of the Housing and Community Development Act of 1974, 42 U.S.C. 5309, must also be satisfied before the termination of financial assistance. Cases settled in mediation or before hearing will not involve termination of a recipient's Federal financial assistance from HUD.

(2) Any other means authorized by law, including, but not limited to:
(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this part;
(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or this part.

(b) Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301-5317, has failed to comply with requirements of the Age Discrimination Act or this part with respect to a program or activity funded in whole or in part with such assistance, he or she shall notify the Governor of such State or the chief executive officer of such unit of general local government of the noncompliance and shall request the Governor or chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to take the action specified in (a) of this section, exercise the powers and functions provided for in section 111(a) of the Housing and Community Act of 1974, 42 U.S.C. 5311(a), or take such other action as may be provided by law.

(c) HUD shall limit any termination under §146.35 to the particular recipient and particular program or activity HUD finds to be in violation of this part. HUD shall not base any part of a determination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from HUD.

(d) HUD shall take no action under paragraph (a) of this section until:
(1) The Secretary has advised the recipient of its failure to comply with the Act or this part and has determined that voluntary compliance cannot be achieved.

(2) Thirty days have elapsed after the Secretary has submitted a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(e)(1) The Secretary may defer the provision of new Federal financial assistance to a recipient when termination proceedings under this section are initiated.

(2) New financial assistance from HUD includes all assistance for which HUD requires an application, approval, or submissions under the Community Development Block Grant program including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New financial assistance from HUD does not include increases in funding as a result of changed computation for formula awards or assistance approved before the beginning of a hearing under this section.

(3) HUD shall not impose a deferral until the recipient has received a notice of an opportunity for a hearing under this section. HUD shall not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. HUD shall not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding that the recipient has violated that Act or this part.
§ 146.41 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:
(a) Attempts to assert a right protected by this part; or
(b) Cooperates in any mediation, investigation, hearing, or other part of HUD's investigation, settlement, and enforcement process.

§ 146.43 Hearings, decisions, post-termination proceedings.

The provisions of 24 CFR part 180 apply to HUD enforcement of this part.

[61 FR 52218, Oct. 4, 1996]

§ 146.45 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:
(1) 180 days have elapsed since the complainant filed the complaint and HUD had made no finding with regard to the complaint; or
(2) HUD issues any finding in favor of the recipient.
(b) If HUD fails to make a finding within 180 days or issues a finding in favor of the recipient, HUD shall:
(1) Promptly advise the complainant of this fact;
(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and
(3) Inform the complainant:
(i) That he or she may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;
(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;
(iii) That before commencing the action, the complainant must give 30 days' notice by registered mail to the Secretary of HUD, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;
(iv) That the notice must state: the alleged violation of the Act, the relief requested, the court in which the complaint is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and
(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 146.47 Remedial and affirmative action by recipients.

(a) Where the Secretary finds that a recipient has unlawfully discriminated on the basis of age, the recipient shall take any action that the Secretary may require to overcome the effects of the discrimination. If another recipient exercises control over a subrecipient that has unlawfully discriminated, the Secretary may require both recipients to take remedial action.
(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.
(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages provides special benefits to the elderly or children, the provision of those benefits shall be presumed to be voluntary affirmative action, provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 146.49 Alternate funds disbursement procedure.

(a) Except as otherwise provided in this paragraph and to the extent authorized by law, the Secretary may recompense funds withheld or terminated under this part directly to an alternate recipient, including any public or non-profit private organization or agency, State or political subdivision of the State. Under title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301, funds withheld because of a reduction or withdrawal of a recipient's Community Development Block Grant must be reallocated in the succeeding fiscal year, in accordance with the applicable regulations governing that program.
(b) The Secretary shall require the alternate recipient to demonstrate:
(1) The ability to comply with the regulations; and
(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

Subpart A—General Information

Sec. 180.100 Definitions. 180.105 Scope of rules.

Subpart B—Administrative Law Judge


Subpart C—Parties


Subpart D—Proceedings Prior to Hearing


Subpart E—Discovery

§ 180.105  Charge means the statement of facts issued under 24 CFR 103.405 upon which HUD has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.  

Chief Docket Clerk is the docket clerk for HUD’s Office of ALJs, 409 Third Street, SW, Suite 320, Washington, DC 20024. Telephone numbers are (202) 708-5004 and FAX (202) 708-5014.  

Complaint means a complaint filed under the statutes covered by this part.  

Complainant means the person (including the Assistant Secretary) who filed a complaint under the statutes covered by this part.  

Fair Housing Act matters refers to proceedings under this part pursuant to the Fair Housing Act and the implementing regulations at 24 CFR parts 100 and 103.  

Federal financial assistance has the meaning provided in 24 CFR 1.2, 6.3, or 146.7, as applicable.  

Hearing means a trial-type proceeding that involves the submission of evidence, either by oral presentation or written submission, and briefs and oral arguments on the evidence and applicable law.  

Intervenor is a person entitled by law or permitted by the ALJ to participate as a party.  

Non-Fair Housing Act matters refers to proceedings under this part pursuant to:  

(1) Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000d-1) and the implementing regulations at 24 CFR part 1;  

(2) Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;  

(3) The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6103) and the implementing regulations at 24 CFR part 146; or  


Notice of Proposed Adverse Action is the statement of facts issued pursuant to a non-Fair Housing Act matter upon which HUD has found reason to terminate or refuse to grant or continue Federal financial assistance.  

Party is a person who has full participation rights in a proceeding under this part.  

Prevailing party has the same meaning as the term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).  

Recipient has the meaning provided in 24 CFR 1.2, 6.3, or 146.7, as applicable.  

Respondent means the person accused of violating one of the statutes covered by this part, including a recipient.  

Secretary means the Secretary of HUD, or to the extent of any delegation of authority by the Secretary to act under any of the statutory authorities listed in § 180.105(a), any other HUD official to whom the Secretary may hereafter delegate such authority.  

§ 180.105 Scope of rules.  

(a) This part contains the rules of practice and procedure applicable to administrative proceedings before an ALJ under the following authorities:  

(1) The Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations at 24 CFR parts 100 and 103, where no election to proceed in federal district court has been made;  

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), and the implementing regulations at 24 CFR part 1;  

(3) The Age Discrimination Act of 1975 (42 U.S.C. 6103) and the implementing regulations at 24 CFR part 146; and  

(4) The Age Discrimination Act of 1975 (42 U.S.C. 6103), and the implementing regulations at 24 CFR part 146; and  

(b) In the absence of a specific provision, the Federal Rules of Civil Procedure shall serve as a general guide.  

(c) Hearings under this part shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.
§ 180.215  Ex parte communications.

(a) An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the presiding ALJ, and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, or requesting information on the status of cases.

(b) Ex parte communications are prohibited.

(c) If the ALJ receives an ex parte communication that the ALJ knows or has reason to believe is prohibited, the ALJ shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be subject to sanctions including, but not limited to, exclusion from the proceeding and an adverse ruling on the issue that is the subject of the prohibited communication.
§ 180.220 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in that proceeding or any factually related proceeding under this part, participate or advise in the decision of the ALJ, except as a witness or counsel during the proceedings or in its appellate review.

§ 180.300 Rights of parties.

Each party may appear in person, be represented by counsel, examine or cross-examine witnesses, introduce documentary or other relevant evidence into the record and, in Fair Housing Act matters, request the issuance of subpoenas.

§ 180.305 Representation.

(a) HUD is represented by the General Counsel.

(b) Any party may appear on his/her/its own behalf or by an attorney. Each party or attorney shall file a notice of appearance. The notice must identify the matter before the ALJ, the party on whose behalf the appearance is made, and the mailing address and telephone number of the person appearing. Similar notice shall also be given for any withdrawal of appearance.

(c) An attorney must be admitted to practice before a Federal Court or the highest court in any State. The attorney’s representation that he/she is in good standing before any of these courts is sufficient evidence of the attorney’s qualifications under this section, unless otherwise ordered by the ALJ.

§ 180.310 Parties.

(a) Parties to proceedings under this part are HUD, the respondent(s), and any intervenors. Respondents include persons named as such in a charge issued under 24 CFR part 103 and Recipients/applicants named as respondents in hearing notices issued under 24 CFR parts 1, 6, 8 or 146 and notices of proposed adverse action under this part.

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(b) An aggrieved person is not a party but may file a motion to intervene. Requests for intervention shall be filed within 50 days after the filing of the charge; however, the ALJ may allow intervention beyond that time. An intervenor’s right to participate as a party may be restricted by order of the ALJ pursuant to statute, the rules in this part or other applicable law. Intervention shall be permitted if the person requesting intervention is

1) The aggrieved person on whose behalf the charge is issued; or

2) An aggrieved person who claims an interest in the property or transaction that is the subject of the charge and the disposition of the charge may, as a practical matter, impair or impede this person’s ability to protect that interest, unless the aggrieved person is adequately represented by the existing parties.

(c) A complainant in a non-Fair Housing Act matter is not a party but may file a motion to become an amicus curiae.

(d) Any person may file a petition to participate in a proceeding under this part as an amicus curiae. An amicus curiae is not a party to the proceeding and may not introduce evidence at the hearing.

1) A petition to participate as amicus curiae shall be filed before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The petition may be granted if the ALJ finds that the petitioner has a legitimate interest in the proceedings, and that such participation will not unduly delay the outcome and may contribute materially to the proper disposition thereof.

2) The amicus curiae may submit briefs within time limits set by the ALJ or by the Secretary in the event of an appeal to the Secretary.

3) When all parties have completed their initial examination of a witness, the amicus curiae may request the ALJ to propound specific questions to the witness. Any such request may be granted if the ALJ believes the proposed additional testimony may assist
materially in elucidating factual matters at issue between the parties and will not expand the issues.


§ 180.315 Standards of conduct.

(a) All persons appearing in proceedings under this part shall act with integrity and in an ethical manner.

(b) The ALJ may exclude parties or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violations of the prohibitions against ex parte communications. If an ALJ suspends or bars an attorney from participating in a proceeding, the ALJ shall include in the record the reasons for such action. An attorney who is suspended or barred from participation may appeal to the Chief ALJ. The proceeding will not be delayed or suspended pending disposition on the appeal, except that the ALJ shall suspend the proceeding for a reasonable time to enable the party to obtain another attorney.

Subpart D—Proceedings Prior to Hearing

§ 180.400 Service and filing.

(a) Service—(1) Service by the Office of ALJs. The Office of ALJs shall serve all notices, orders, decisions and other such documents by mail to each party and amicus curiae at the last known address.

(2) Service by others. A copy of each filed document shall be served on each party and each amicus curiae. Service shall be made upon counsel if a party is represented by counsel. Service on counsel shall constitute service on the party. Service may be made to the last known address by first-class mail or other more expeditious means, such as:

(i) Hand delivery to the person to be served or a person of suitable age and discretion at the place of business, residence, or usual place of abode of the person to be served;

(ii) Overnight delivery; or

(iii) Facsimile transmission or electronic means. The ALJ may place appropriate limits on service by facsimile transmission or electronic means.

(b) Filing—(1) Method. All documents shall be filed with the Chief Docket Clerk. Filing may be by first class mail, delivery, facsimile transmission, or electronic means; however, the ALJ may place appropriate limits on filing by facsimile transmission or electronic means.

(2) Form. Every pleading, motion, brief, or other document shall contain a caption setting forth the title of the proceeding, the docket number assigned by the Office of ALJs, and the designation of the type of document (e.g., charge, motion).

(3) Signature. Every document filed by a party shall be signed by the party or the party's attorney and must include the signer's address and telephone number. The signature constitutes a certification that: the signer has read the document; to the best of the signer's knowledge, information and belief, the statements made therein are true; and the document is not interposed for delay.

§ 180.405 Time computations.

(a) In computing time under this part, the time period begins the day following the act, event, or default and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which case the time period includes the next business day.

(b) Modification of time periods. Except for time periods required by statute, the ALJ may enlarge or reduce any time period required under this part where necessary to avoid prejudicing the public interest or the rights of the parties. Requests for extension of time should set forth the reasons for the request.

(c) Entry of orders. In computing any time period involving the date of the ALJ's issuance of an order or decision,
§ 180.410

the date of issuance is the date of service by the Chief Docket Clerk.

(d) Computation of time for delivery by mail. When documents are filed by mail, three days shall be added to the prescribed time period for filing any responsive pleading. Documents are not filed until received by the Chief Docket Clerk.

(e) Untimely filing. The ALJ may refuse to consider any motion or other document that is not filed in a timely fashion.

§ 180.410 Charges under the Fair Housing Act.

(a) Filing and service. Within three days after the issuance of a charge, the General Counsel shall file the charge with the Chief Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and aggrieved persons.

(b) Contents. The charge shall consist of a short and plain written statement of the facts upon which reasonable cause has been found to believe that a discriminatory housing practice has occurred or is about to occur. A notification shall be served with the charge containing the following information:

(1) Any complainant, respondent, or aggrieved person may elect to have the claims asserted in the charge decided in a civil action under 42 U.S.C. 3612(o), in lieu of an administrative proceeding under this part.

(2) Such election must be made not later than 20 days after receipt of service of the charge by serving written notice of such on the Chief Docket Clerk, each respondent, each aggrieved person on whose behalf the charge was issued, the Assistant Secretary, and the General Counsel.

(3) If no person timely elects to have the claims asserted in the charge decided in a civil action under 42 U.S.C. 3612(o), an administrative proceeding will be conducted under this part.

(4) If an administrative hearing is conducted:

(i) The hearing will be held at a date and place specified.

(ii) The respondent will have an opportunity to file an answer to the charge within 30 days after service of the charge.

(iv) All discovery must be concluded 15 days before the date set for hearing.

(v) The rules in this part will govern the proceeding.

(5) If, at any time following service of the charge on the respondent, the respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of the charge, the respondent must provide a copy of the charge to such person before the respondent and the person enter into the contract, sale, encumbrance or lease.

(c) Election of judicial determination. If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under 42 U.S.C. 3612(o), the Chief ALJ shall dismiss the administrative proceeding.

(d) Effect of a civil action on administrative proceeding. An ALJ may not continue an administrative proceeding under the Fair Housing Act after the beginning of the trial of a civil action commenced by the aggrieved person under an act of Congress or a State law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the ALJ shall dismiss the administrative proceeding. The commencement and maintenance of a civil action for appropriate temporary or preliminary relief under 42 U.S.C. 3610(e) or 42 U.S.C. 3613 does not affect administrative proceedings under this part.

§ 180.415 Notice of proposed adverse action regarding Federal financial assistance in non-Fair Housing Act matters.

(a) Filing and service. Within 10 days after a Recipient/applicant has requested a hearing, as provided for in 24 CFR parts 1, 6, 8, or 146, the General Counsel shall file a notice of proposed adverse action with the Chief Docket Clerk and serve copies (with the additional information required under
paragraph (b) of this section) on all respondents and complainants.
(b) Contents. The notice of proposed adverse action shall consist of a short and plain written statement of the facts and legal authority upon which the proposed action is based. A notification shall be served with the notice containing the following information:
- That an administrative hearing will be held at a date and place specified.
- That the respondent will have an opportunity to file an answer to the notice of adverse action within 30 days after its service.
- That the complainant may participate as an amicus curiae by filing a timely request to do so.
- That discovery must be concluded by a date specified.
- That the rules specified in this part shall govern the proceeding.

(c) Consolidation. The ALJ may provide for non-Fair Housing Act proceedings at HUD to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequent to service of the notice of proposed adverse action shall be promptly served with notice of such consolidation.

§ 180.420 Answer.
(a) Within 30 days after service of the charge or notice of proposed adverse action, a respondent may file an answer. The answer shall include:
- A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.
- A statement of each affirmative defense and a statement of facts supporting each affirmative defense.
- Failure to file an answer within the 30-day period following service of the charge or notice of proposed adverse action shall be deemed an admission of all matters of fact recited therein and may result in the entry of a default decision.

§ 180.425 Amendments to pleadings.
(a) By right. HUD may amend the charge or notice of proposed adverse action once as a matter of right prior to the filing of the answer.
(b) By leave. Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the ALJ may allow amendments to pleadings upon a motion of a party.
(c) Conformance to the evidence. When issues not raised by the pleadings are reasonably within the scope of the original charge or notice of proposed adverse action and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings, and amendments may be made as necessary to make the pleading conform to evidence.

(d) Supplemental pleadings. The ALJ may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

§ 180.430 Motions.
(a) Motions. Any application for an order or other request shall be made by a motion which, unless made during an appearance before the ALJ, shall be in writing and shall state the specific relief requested and the basis therefor. Motions made during an appearance before the ALJ shall be stated orally and made a part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.
(b) Responses to written motions. Within seven calendar days after a written motion is served, any party to the proceeding may file a response in support of, or in opposition to, the motion. Unless otherwise ordered by the ALJ, no further responsive documents may be filed. Failure to file a response within the response period constitutes a waiver of any objection to the granting of the motion.
§ 180.435 Prehearing statements.

(a) Before the commencement of the proceeding, the ALJ may direct the parties to file prehearing statements.

(b) The prehearing statement must state the name of the party presenting the statement and, unless otherwise directed by the ALJ, briefly set forth the following:

(1) The issues involved in the proceeding;
(2) The facts stipulated by the parties and a statement that the parties have made a good faith effort to stipulate to the greatest extent possible;
(3) The facts in dispute;
(4) The witnesses (together with a summary of the testimony expected) and exhibits to be presented at the hearing;
(5) A brief statement of applicable law;
(6) Conclusions to be drawn;
(7) Estimated time required for presentation of the party’s case; and
(8) Such other information as may assist in the disposition of the proceeding.

§ 180.440 Prehearing conferences.

(a) Before the commencement of or during the course of the hearing, the ALJ may direct the parties to participate in a conference to expedite the hearing. Failure to attend a conference may constitute a waiver of all objections to the agreements reached at the conference and to any order with respect thereto.

(b) During the conference, the ALJ may dispose of any procedural matters on which he/she is authorized to rule. At the conference, the following matters may be considered:

(1) Pre-trial motions;
(2) Identification, simplification and clarification of the issues;
(3) Necessary amendments to the pleadings;
(4) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents;
(5) Limitations on the number of witnesses;
(6) Negotiation, compromise, or settlement of issues;

§ 180.445 Settlement negotiations before a settlement judge.

(a) Appointment of settlement judge. The ALJ, upon the motion of a party or upon his or her own motion, may request the Chief ALJ to appoint another ALJ to conduct settlement negotiations. The order appointing the settlement judge may confine the scope of settlement negotiations to specified issues. The order shall direct the settlement judge to report to the Chief ALJ within specified time periods.

(b) Duties of settlement judge. (1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement.

(2) The settlement judge shall report to the Chief ALJ describing the status of the settlement negotiations, evaluating settlement prospects, and recommending the termination or continuation of the settlement negotiations.

(c) Termination of settlement negotiations. Settlement negotiations shall terminate upon the order of the chief ALJ issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly
§ 180.450 Resolution of charge or notice of proposed adverse action.

At any time before a final decision is issued, the parties may submit to the ALJ an agreement resolving the charge or notice of proposed adverse action. A charge under the Fair Housing Act can only be resolved with the agreement of the aggrieved person on whose behalf the charge was issued. If the agreement is in the public interest, the ALJ shall accept it by issuing an initial decision and consent order based on the agreement.

Subpart E—Discovery

§ 180.500 Discovery.

(a) In general. This subpart governs discovery in aid of administrative proceedings under this part. Discovery in Fair Housing Act matters shall be completed 15 days before the date scheduled for hearing or at such time as the ALJ shall direct. Discovery in non-Fair Housing Act matters shall be completed as the ALJ directs.

(b) Scope. The parties are encouraged to engage in voluntary discovery procedures. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the needs of all parties to obtain relevant evidence. Unless otherwise ordered by the ALJ, the parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of documents or persons having knowledge of any discoverable matter. It is not grounds for objection that information sought will be inadmissible if the information appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Methods. Parties may obtain discovery by one or more of the following methods:

(1) Deposition upon oral examination or written questions.

(2) Written interrogatories.

(3) Requests for the production of documents or other evidence for inspection and other purposes.

(4) Requests for admissions.

(5) Upon motion of a party, the presiding ALJ may issue an order requiring a physical or mental examination of a party or of a person in the custody or under the legal control of a party.

(d) Frequency and sequence. Unless otherwise ordered by the ALJ or restricted by this subpart, the frequency or sequence of these methods is not limited.

(e) Non-intervening aggrieved person. For purposes of obtaining discovery from a non-intervening aggrieved person, the term party as used in this subpart includes the aggrieved person.

§ 180.505 Supplementation of responses.

A party is under a duty, in a timely fashion, to:

(a) Supplement a response with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) The identity of each person expected to be called as an expert witness, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

(b) Amend a response if the party later obtains information upon which the response was incorrect when made, or if the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(c) Supplement other responses, as imposed by order of the ALJ or by agreement of the parties.

§ 180.510 Interrogatories.

(a) Any party may serve on any other party written interrogatories to be answered by the party served. If the party served is a public or private corporation, a partnership, an association, or a governmental agency, the interrogatories may be answered by any authorized officer or agent who shall furnish such information as may be available to the party. A party may serve
§ 180.515 Depositions.

(a) Notice. Upon written notice to the witness and to all other parties, a party may take the testimony of a witness by deposition and may request the production of specified documents or materials by the witness at the deposition. Notice of the taking of a deposition shall be given not less than five days before the deposition is scheduled. The notice shall state:

(1) The purpose and general scope of the deposition;

(2) The time and place of the deposition;

(3) The name and address of the person before whom the deposition is to be taken;

(4) The name and address of the witness; and

(5) A specification of the documents and materials that the witness is requested to produce.

(b) Deposition of an organization. If the deposition of a public or private corporation, partnership, association, or governmental agency is sought, the organization so named shall designate one or more officers, directors or agents to testify on its behalf, and may set forth, for each person designated, the matters on which he/she will testify.

(c) Procedure at deposition. Depositions may be taken before any disinterested person having power to administer oaths in the location where the deposition is to be taken. Each deponent shall be placed under oath or affirmation, and the other parties will have the right to cross-examine. The deponent may have counsel present during the deposition. The questions propounded and all answers and objections thereto shall be reduced to writing, read by or to and subscribed by the witness, and certified by the person before whom the deposition was taken. Non-intervening aggrieved persons may be present at depositions in which they are not the deponent.

(d) Motion to terminate or limit examination. During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be adjourned. The objecting party or witness must immediately move the ALJ for a ruling on the objection. The ALJ may then limit the scope or manner of taking the deposition.

(e) Waiver of depositing officer's disqualification. Objection to taking a deposition because of the disqualification of the officer before whom it is taken is waived unless made before the taking of the deposition begins or as soon
§ 180.520 Use of deposition at hearings.

(a) In general. At the hearing, any part or all of a deposition, so far as admissible under the Federal Rules of Evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice of the taking of the deposition, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of an expert witness may be used by any party for any purpose, unless the ALJ rules that such use is unfair or in violation of due process.

(3) The deposition of a party, or of anyone who at the time of the taking of the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association that is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the ALJ finds:
   (i) That the witness is dead;
   (ii) That the witness is out of the United States or more than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition;
   (iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;
   (iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
   (v) Whenever exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If a part of a deposition is offered in evidence by a party, any other party may require the party to introduce all of the deposition that is relevant to the part introduced. Any party may introduce any other part of the deposition.

(6) Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the latter proceeding.

(b) Objections to admissibility. Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part of a deposition for any reason that would require the exclusion of the evidence if the witness were present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the basis of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection is made at the taking of the deposition.

§ 180.525 Requests for production of documents or things for inspection or other purposes, including physical and mental examinations.

(a) Any party may serve on any other party a request to:

(1) Produce and/or permit the party, or a person acting on the party's behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things that contain or may lead to relevant information and that are in the possession, custody, or control of the party upon whom the request is served.  
§ 180.530 Requests for admissions.

(a) Any party may serve on any other party a written request for the admission of the truth of any matters relevant to the adjudication set forth in the request that relate to statements or opinions of fact or of application of law to fact, including the genuineness and authenticity of any documents described in or attached to the request.

(b) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request, or within such time as the ALJ allows, the party to whom the request is directed serves on the requesting party a sworn written answer which:

(1) Specifically denies, in whole or in part, the matter for which an admission is requested;

(2) Sets forth in detail why the party cannot truthfully admit or deny the matter; or

(3) States an objection that the matter is privileged, irrelevant or otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless he/she/it states that he/she/it has made a reasonable inquiry and that the information known to, or readily obtainable by, him/her/it is insufficient to enable the party to admit or deny.

(d) The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the ALJ determines that an objection is justified, the ALJ shall order that an answer be served. If the ALJ determines that an answer does not comply with the requirements of this section, the ALJ may order either that the matter is admitted or that an amended answer be served.

(e) Any matter admitted under this section is conclusively established unless, upon the motion of a party, the ALJ permits the withdrawal or amendment of the admission. Any admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purpose, and may not be used against the party in any other proceeding.

§ 180.535 Protective orders.

(a) Upon motion of a party or a person from whom discovery is sought or in accordance with §180.540(c), and for good cause shown, the ALJ may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

(1) The discovery may not be had;

(2) The discovery may be had only on specified terms and conditions, including at a designated time and place;
(3) The discovery may be had by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters may not be the subject of discovery, or the scope of discovery may be limited to certain matters;

(5) Discovery may be conducted with no one present other than persons designated by the ALJ;

(6) A trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way; or

(7) The party or other person from whom discovery is sought may file specified documents or information under seal to be opened as directed by the ALJ.

(b) The ALJ may permit a party or other person from whom discovery is sought, who is seeking a protective order, to make all or part of the showing of good cause in camera. If such a showing is made, upon motion of the party or other person from whom discovery is sought, an in camera record of the proceedings may be made. If the ALJ enters a protective order, any in camera record of such showing shall be sealed and preserved and made available to the ALJ or, in the event of appeal, to the Secretary or a court.

§ 180.540 Motion to compel discovery.

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request has been made fails to respond adequately, objects to a request, or fails to produce documents or other inspection as requested, the discovering party may move the ALJ for an order compelling discovery in accordance with the request. The motion shall:

(1) State the nature of the request;

(2) Set forth the response or objection of the deponent or party upon whom the request was served;

(3) Present arguments supporting the motion; and

(4) Attach copies of all relevant discovery requests and responses.

(b) For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(c) In ruling on a motion under this section, the ALJ may enter an order compelling a response in accordance with the request, may issue sanctions under paragraph (d) of this section, or may enter a protective order under §180.535.

(d) Sanctions. If a party fails to provide or permit discovery, the ALJ may take such action as is just, including but not limited to the following:

(1) Inferring that the admission, testimony, document, or other evidence would have been adverse to the party;

(2) Ordering that, for purposes of the adjudication, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

(3) Prohibiting the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, documents or other evidence withheld;

(4) Ordering that the party withholding discovery not introduce into evidence, or otherwise use in the hearing, information obtained in discovery;

(5) Permitting the requesting party to introduce secondary evidence concerning the information sought;

(6) Striking any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(7) Taking such other action as may be appropriate.

§ 180.545 Subpoenas.

(a) This section governs the issuance of subpoenas in administrative proceedings under the Fair Housing Act. Except for time periods stated in the rules in this section, to the extent that this section conflicts with procedures for the issuance of subpoenas in civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) Issuance of subpoena. Upon the written request of a party, the Chief ALJ or the presiding ALJ may issue a subpoena requiring the attendance of a witness for the purpose of giving testimony at a deposition or hearing and requiring the production of relevant
§ 180.600

books, papers, documents or tangible things.

(c) Time of request. Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the date scheduled for the hearing. If a request for subpoenas of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the Chief ALJ or the presiding ALJ, as appropriate.

(d) Service. A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service on a person shall be made by delivering a copy of the subpoena to the person and by tendering witness fees and mileage to that person. When the subpoena is issued on behalf of HUD, witness fees and mileage need not be tendered with the subpoena.

(e) Amount of witness fees and mileage. A witness summoned by a subpoena issued under this part is entitled to the same witness and mileage fees as a witness in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena shall be paid by the party requesting the issuance of the subpoena, or where the ALJ determines that a party is unable to pay the fees, the fees shall be paid by HUD.

(f) Motion to quash or limit subpoena. Upon a motion by the person served with a subpoena or by a party, made within five days after service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the ALJ may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

(2) Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers or documents. Where circumstances require, the ALJ may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

(g) Failure to comply with subpoena. If a person fails to comply with a subpoena issued under this section, the party requesting the subpoena may refer the matter to the Attorney General for enforcement in appropriate proceedings under 42 U.S.C. 3614(c).

Subpart F—Procedures at Hearing

§ 180.600 Date and place of hearing.

(a) For Fair Housing Act Cases—(1) Time. The hearing shall commence not later than 120 days after the issuance of the charge, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the ALJ shall notify in writing all parties, aggrieved persons, amici, and the Assistant Secretary of the reasons for the delay.

(2) Place. The hearing will be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(b) For Non-Fair Housing Matters. Hearings shall be held in Washington, DC, unless the ALJ determines that the convenience of the respondent or HUD requires that another place be selected.

(c) The ALJ may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown.

§ 180.605 Conduct of hearings.

The hearing shall be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551-559).

§ 180.610 Waiver of right to appear.

If all parties waive their right to appear before the ALJ, the ALJ need not conduct an oral hearing. Such waivers shall be in writing and filed with the ALJ. The ALJ shall make a record of the pleadings and relevant written evidence submitted by the parties. These documents may constitute the evidence in the proceeding, and the decision may be based upon this evidence.

§ 180.615 Failure of party to appear.

A default decision may be entered against a party failing to appear at a hearing unless such party shows good cause for such failure.
§ 180.620 Evidence.

The Federal Rules of Evidence apply to the presentation of evidence in hearings under this part.

§ 180.625 Record of hearing.

(a) All oral hearings shall be recorded and transcribed by a reporter designated and supervised by the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. All exhibits introduced as evidence shall be incorporated into the record. The parties and the public may obtain transcripts from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter.

(b) Corrections to the official transcript will be permitted upon motion of a party. Motions for correction must be submitted within five days after receipt of the transcript. Corrections of the official transcript will be permitted only where errors of substance are involved and upon the ALJ's approval.

§ 180.630 Stipulations.

The parties may stipulate to any pertinent facts by oral agreement at the hearing or by written agreement at any time. Stipulations may be submitted into evidence at any time before the end of the hearing. Once received into evidence, a stipulation is binding on the parties.

§ 180.635 Written testimony.

The ALJ may accept and enter into the record direct testimony of witnesses made by verified written statement rather than by oral presentation at the hearing. Unless the ALJ fixes other time periods, affidavits shall be filed and served on the parties not later than 14 days prior to the hearing. Witnesses whose testimony is presented by affidavit shall be available for cross-examination as may be required.

§ 180.640 In camera and protective orders.

The ALJ may limit discovery or the introduction of evidence, or may issue such protective or other orders necessary to protect privileged communications. If the ALJ determines that privileged matters should be made available to a party, the ALJ may order the preparation of a summary or extract of the nonprivileged matter contained in the original.

§ 180.645 Exhibits.

(a) Identification. All exhibits offered into evidence shall be numbered sequentially and marked with a designation identifying the sponsor. The original of each exhibit offered in evidence or marked for identification shall be filed and retained in the docket of the proceeding, unless the ALJ permits the substitution of a copy for the original.

(b) Exchange of exhibits. One copy of each exhibit offered into evidence must be furnished to each of the parties and to the ALJ. If the ALJ does not fix a time for the exchange of exhibits, the parties shall exchange copies of proposed exhibits at the earliest practicable time before the commencement of the hearing. Exhibits submitted as rebuttal evidence are not required to be exchanged before the commencement of the hearing if the submission of such evidence could not reasonably be anticipated at that time.

(c) Authenticity. The authenticity of all documents submitted or exchanged as proposed exhibits prior to the hearing shall be admitted unless written objection is filed before the commencement of the hearing, or unless good cause is shown for failing to file such a written objection.

(d) The parties are encouraged to stipulate as to the admissibility of exhibits.

§ 180.650 Public document items.

Whenever a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies is offered (in whole or in part), and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but...
may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

§ 180.655 Witnesses.
(a) Witnesses shall testify under oath or affirmation.
(b) If a witness fails or refuses to testify, the failure or refusal to answer any question found by the ALJ to be proper may be grounds for striking all or part of the testimony that may have been given by the witness, or for any other action deemed appropriate by the ALJ.

§ 180.660 Closing of record.
(a) Oral hearings. Where there is an oral hearing, the hearing ends on the day of the adjournment of the oral hearing or, where written briefs are permitted, on the date that the written briefs are due.
(b) Hearing on written record. Where the parties have waived an oral hearing, the hearing ends on the date set by the ALJ as the final date for the receipt of submissions by the parties.
(c) Receipt of evidence following hearing. Following the end of the hearing, no additional evidence may be accepted into the record, except with the permission of the ALJ. The ALJ may receive additional evidence upon a determination that new and material evidence was not readily available before the end of the hearing, the evidence has been timely submitted, and its acceptance will not unduly prejudice the rights of the parties.

§ 180.665 Arguments and briefs.
(a) Following the submission of evidence at an oral hearing, the parties may file a brief, proposed findings of fact and conclusions of law, or both, or, in the ALJ's discretion, make oral arguments.
(b) Unless otherwise ordered by the ALJ, briefs and proposed findings of fact and conclusions of law shall be filed simultaneously by all parties. In Fair Housing Act cases, such filings shall be due not later than 45 days after the adjournment of the oral hearing. In other cases, they shall be due as the ALJ orders.

§ 180.670 Initial decision of ALJ.
(a) The ALJ shall issue an initial decision including findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The initial decision of the ALJ shall be based on the whole record of the proceeding. A copy of the initial decision shall be served upon all parties, aggrieved persons, the Assistant Secretary, the Secretary, and amici, if any.
(b) Initial decision in Fair Housing Act cases. (1) The ALJ shall issue an initial decision within 60 days after the end of the hearing, unless it is impracticable to do so. If the ALJ is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the ALJ shall notify in writing all parties, the aggrieved person on whose behalf the charge was filed, and the Assistant Secretary, of the reasons for the delay.
(2) The initial decision shall state that it will become the final agency decision 30 days after the date of issuance of the initial decision.
(3) Findings against respondents. If the ALJ finds that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the ALJ shall issue an initial decision against the respondent and order such relief as may be appropriate. Relief may include, but is not limited to:
(i) Ordering the respondent to pay damages to the aggrieved person (including damages caused by humiliation and embarrassment).
(ii) Ordering injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge.
(iii) Assessing a civil penalty against any respondent to vindicate the public interest in accordance with § 180.671.
(A) The amount of the civil penalty may not exceed:
(1) $11,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil

24 CFR Subtitle B, Ch. I (4–1–00 Edition)
§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) Amounts. The ALJ may assess a civil penalty against any respondent under §180.670(b)(3) for each separate and distinct discriminatory housing practice (as defined in paragraph (b) of this section) that the respondent committed, each civil penalty in an amount not to exceed:

(1) $11,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed a discriminatory housing practice.

(2) $27,500, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act, or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) $55,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudications were made during the seven-year period preceding the date of filing of the charge.

(B) If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods set forth in paragraphs (b)(3)(iii)(A)(2) and (3) of this section do not apply.

(C) In a proceeding involving two or more respondents, the ALJ may assess a civil penalty as provided under paragraph (b) of this section against each respondent that the ALJ determines has been engaged or is about to engage in a discriminatory housing practice.

(4) Findings in favor of respondents. If the ALJ finds that a respondent has not failed to comply substantially with the statutory and regulatory requirements that gave rise to the notice of proposed adverse action, the ALJ shall make an initial decision dismissing the notice of proposed adverse action. The initial decision shall state that it will become the final agency decision 30 days after the date of issuance.

by a Federal, State or local governmental agency, to have committed any prior discriminatory housing practice.

(2) $27,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) $55,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

(b) Definition of separate and distinct discriminatory housing practice. A separate and distinct discriminatory housing practice is a single, continuous uninterrupted transaction or occurrence that violates section 804, 805, 806 or 818 of the Fair Housing Act. Even if such a transaction or occurrence violates more than one provision of the Fair Housing Act, violates a provision more than once, or violates the fair housing rights of more than one person, it constitutes only one separate and distinct discriminatory housing practice.

(c) Factors for consideration by ALJ. (1) In determining the amount of the civil penalty to be assessed against any respondent for each separate and distinct discriminatory housing practice the respondent committed, the ALJ shall consider the following six (6) factors:

(i) Whether that respondent has previously been adjudged to have committed unlawful housing discrimination;

(ii) That respondent’s financial resources;

(iii) The nature and circumstances of the violation;

(iv) The degree of that respondent’s culpability;

(v) The goal of deterrence; and

(vi) Other matters as justice may require.

(2)(i) Where the ALJ finds any respondent to have committed a housing-related hate act, the ALJ shall take this fact into account in favor of imposing a maximum civil penalty under the factors listed in paragraphs (c)(1)(iii), (iv), (v), and (vi) of this section.

(ii) For purposes of this section, the term housing-related hate act means any act that constitutes a discriminatory housing practice under section 818 of the Fair Housing Act and which constitutes or is accompanied or characterized by actual violence, assault, bodily harm, and/or harm to property; intimidation or coercion that has such elements; or the threat or commission of any action intended to assist or be a part of any such act.

(iii) Nothing in this paragraph shall be construed to require an ALJ to assess any amount less than a maximum civil penalty in a non-hate act case, where the ALJ finds that the factors listed in paragraphs (c)(1)(i) through (vi) of this section warrant the assessment of a maximum civil penalty.

(d) Persons previously adjudged to have committed a discriminatory housing practice. If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods in paragraphs (a) (2) and (3) of this section do not apply.

(e) Multiple discriminatory housing practices committed by the same respondent; multiple respondents. (1) In a proceeding where a respondent has been determined to have engaged in, or is about to engage in, more than one separate and distinct discriminatory housing practice, a separate civil penalty may be assessed against the respondent for each separate and distinct discriminatory housing practice.

(2) In a proceeding involving two or more respondents who have been determined to have engaged in, or are about to engage in, one or more discriminatory housing practices, one or more civil penalties, as provided under this
§ 180.675 Petitions for review.

(a) The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings.

(b) Any party adversely affected by the ALJ’s initial decision may file a motion with the Secretary explaining how and why the initial decision should be modified, set aside, in whole or in part, or remanded for further proceedings. Such petition shall be based only on the following grounds:

1. A finding of material fact is not supported by substantial evidence;
2. A necessary legal conclusion is erroneous;
3. The decision is contrary to law, duly promulgated rules of HUD, or legal precedent;
4. A prejudicial error of procedure was committed.

(c) Each issue shall be plainly and concisely stated and shall be supported by citations to the record when assignments of error are based on the record, statutes, regulations, cases, or other authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law not presented to the ALJ.

(d) Such petitions must be received by the Secretary within 15 days after issuance of the initial decision.

(e) A statement in opposition to the petition for review may be filed. Such opposition must be received by the Secretary within 22 days after issuance of the initial decision.

(f) A petition not granted within 30 days after the issuance of the initial decision is deemed denied.

(g) If the Secretary remands the decision for further proceedings, the ALJ shall issue an initial decision on remand within 60 days after the date of issuance of the Secretary’s decision, unless it is impracticable to do so. If the ALJ is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the ALJ shall notify in writing the parties, the aggrieved person on whose behalf the charge was filed, any amicus curiae and the Assistant Secretary, of the reasons for the delay.

§ 180.680 Final decisions.

(a) Public disclosure. HUD shall make public disclosure of each final decision.

(b) Where initial decision does not provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance—(1) Issuance of final decision by Secretary. The Secretary may review any finding of fact, conclusion of law, or order contained in the initial decision of the ALJ and issue a final decision in the proceeding. The Secretary shall serve the final decision on all parties no later than 30 days after the date of issuance of the initial decision.

(2) No final decision by Secretary. If the Secretary does not serve a final decision within the time period described in paragraph (b)(1) of this section, the initial decision of the ALJ will become the final agency decision. For the purposes of this part, such a final decision will be considered to have been issued 30 days after the date of issuance of the initial decision.

(c) Where initial decision provides for suspension or termination of, or refusal to grant or continue, Federal financial assistance. When the initial decision provides for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance, or the imposition of any other sanction, such decision shall not constitute an order or final agency action until approved by the Secretary. Further, in the case of proceedings under title VI of the Civil Rights Act of 1964, no order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until the requirements of 24 CFR 1.8(c) have been met.

Subpart G—Post-Final Decision in Fair Housing Cases

§ 180.700 Action upon issuance of a final decision in Fair Housing Act cases.

(a) Licensed or regulated businesses. (1) If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory
§ 180.705  Housing practice in the course of a business that is subject to licensing or regulation by a Federal, State or local governmental agency, the Assistant Secretary will notify the governmental agency of the decision by:

(i) Sending copies of the findings of fact, conclusions of law and final decision to the governmental agency by certified mail; and

(ii) Recommending appropriate disciplinary action to the governmental agency, including, where appropriate, the suspension or revocation of the respondent’s license.

(2) The Assistant Secretary will notify the appropriate governmental agencies within 30 days after the date of issuance of the final decision, unless a petition for judicial review of the final decision as described in §180.710 of this part has been filed before the issuance of the notification of the agency. If such a petition has been filed, the Assistant Secretary will provide the notification to the governmental agency within 30 days after the date that the final decision is affirmed upon review. If a petition for judicial review is timely filed following the notification of the governmental agency, the Assistant Secretary will promptly notify the governmental agency of the petition and withdraw his or her recommendation.

(b) Notification to the Attorney General. If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice and another final decision including such a finding was issued under this part within the five years preceding the date of issuance of the final decision, the General Counsel will notify the Attorney General of the decisions by sending a copy of each final decision.

§ 180.710  Judicial review of final decision.

(a) Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision under 42 U.S.C. 3612(i). The petition must be filed within 30 days after the date of issuance of the final decision.

(b) If no petition for review is filed under paragraph (a) of this section within 45 days after the date of issuance of the final decision, the findings of facts and final decision shall be conclusive in connection with any petition for enforcement.

§ 180.715  Enforcement of final decision.

(a) Enforcement by HUD. Following the issuance of a final decision, the General Counsel may petition the appropriate United States Court of Appeals for the enforcement of the final decision and for appropriate temporary relief or restraining order in accordance with 42 U.S.C. 3612(j).

(b) Enforcement by others. If no petition for review has been filed within 60 days after the date of issuance, and the General Counsel has not sought enforcement of the final decision as described in paragraph (a) of this section, any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals for enforcement.

§ 180.705  Attorney’s fees and costs.

Following the issuance of the final decision, any prevailing party, except HUD, may apply for attorney’s fees and costs. The ALJ will issue an initial decision awarding or denying such fees and costs. The initial decision will become HUD’s final decision unless the Secretary reviews the initial decision and issues a final decision on fees and costs within 30 days. The recovery of reasonable attorney’s fees and costs will be permitted as follows:

(a) If the respondent is the prevailing party, HUD will be liable for reasonable attorney’s fees and costs to the extent provided under the Equal Access to Justice Act (5 U.S.C. 504) and HUD’s regulations at 24 CFR part 14, and an intervenor will be liable for reasonable attorney’s fees and costs only to the extent that the intervenor’s participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(b) To the extent that an intervenor is a prevailing party, the respondent will be liable for reasonable attorney’s fees unless special circumstances make the recovery of such fees and costs unjust.
§ 180.800 Post-termination proceedings.

(a) A respondent adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the Secretary for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall:
   (1) Be in writing;
   (2) Affirmatively show that, since entry of the order, the respondent has brought its program or activity into compliance with statutory and regulatory requirements; and
   (3) Set forth specifically, and in detail, the steps taken to achieve such compliance.

(b) If the Secretary denies such request, the respondent may request an expeditious hearing. The request for such a hearing shall be addressed to the Secretary within 30 days after the respondent is informed that the Secretary has refused to authorize payment or permit resumption of Federal financial assistance and shall specify why the Secretary erred in denying the request.

(c) The procedures established by this part shall be applicable to any hearing.

§ 180.805 Judicial review of final decision.

A termination of or refusal to grant or to continue Federal financial assistance is subject to judicial review as provided in the applicable statute.