

(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.

(d) The state or local law may assure that no prohibition of discrimination because of familial status applies to housing for older persons, 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. 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” includes but is not limited to:

- (1) Acceptance of a complaint;
- (2) Approval of a conciliation agreement;
- (3) Dismissal of a complaint;
- (4) Any action specified in § 115.204(a)(2)(iii) or (b)(1); and
- (5) Any decision-making regarding whether a particular matter will or will not be pursued.

(g) The state or local law must provide for civil enforcement of the law 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.

(h) If a state or local law is different than the Act in a way that does not diminish coverage of the Act, including, but not limited to, the protection of additional prohibited bases, then the state or local law may still be found substantially equivalent.

§ 115.205 Certification procedures.

(a) *Certification.* (1) If the Assistant Secretary determines, after application of criteria set forth in §§ 115.204, 115.206, and this section, that the state or local law, 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) The 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. Appropriate signatories include the Assistant Secretary, the FHEO regional director, and the authorized employee(s) of the agency.

(b) In order to receive certification, during the 60 days prior to the expiration of the agency’s interim agreement, the agency must certify to the Assistant Secretary that the state or local fair housing law, “on its face,” continues to be substantially equivalent to the Act (i.e., there have been no amendments to the state or local fair housing law, adoption of rules or procedures concerning the fair housing law, or judicial or other authoritative interpretations of the fair housing law that limit the effectiveness of the agency’s fair housing law).