

in the 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, 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 Office of Management and Budget circulars, procurement regulations and guidelines, and the Single Audit requirements for state and local agencies.

§ 115.309 Subcontracting under the FHAP.

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

(a) Using services, facilities, and electronic information technologies that are accessible in accordance with the Americans with Disability Act (ADA) (42 U.S.C. 12101), Section 504 of the 1973 Rehabilitation Act (29 U.S.C. 701), and Section 508(a)(1) of the Rehabilitation Act amendments of 1998;

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

(c) Affirmatively furthering fair housing in the provision of housing and housing-related services; and

(d) Not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal debarment or agency.

§ 115.310 FHAP and the First Amendment.

None of the funding made available under the FHAP may be used to investigate or prosecute any activity engaged in by one or more persons, in-

cluding the filing or maintaining of a non-frivolous legal action, that may be protected by the First Amendment of the United States Constitution. HUD guidance is available that sets forth the procedures HUD will follow when it is asked to accept and dual-file a case that may implicate the First Amendment of the United States Constitution.

§ 115.311 Testing.

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

(a) The testing must be done in accordance with a HUD-approved testing methodology;

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

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

(d) 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 or acquaintance of any party in a case;

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

(4) Be a competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

PART 121—COLLECTION OF DATA

Sec.

121.1 Purpose.

121.2 Furnishing of data by program participation.

AUTHORITY: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600-3620); E.O. 11063, 27 FR 11527; sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d-1); sec. 562, Housing and Community Development Act of 1987 (42 U.S.C. 3608a); sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

SOURCE: 54 FR 3317, Jan. 23, 1989, unless otherwise noted.