

§ 115.308

to, guidance on investigative techniques, case file preparation and organization, and implementation of data elements for complaint tracking.

(5) If an agency that participates in the FHAP enforces antidiscrimination laws other than a fair housing law (e.g., administration of a fair employment law), the agency must annually provide a certification to HUD stating that it spends at least 20 percent of its total annual budget on fair housing activities. The term "total annual budget," as used in this subsection, means the entire budget assigned by the jurisdiction to the agency for enforcing and administering antidiscrimination laws, but does not include FHAP funds.

(6) The agency may not co-mingle FHAP funds with other funds. FHAP funds must be segregated from the agency's and the state or local government's other funds and must be used for the purpose that HUD provided the funds.

(7) An agency may not unilaterally reduce the level of financial resources currently committed to fair housing activities (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).

(8) The agency must comply with the provisions, certifications, and assurances required in any and all written agreements executed by the agency and the Department related to participation in the FHAP, including, but not limited to, the cooperative agreement.

(9) The agency must draw down its funds in a timely manner.

(10) The agency must be audited and receive copies of the audit reports in accordance with applicable rules and regulations of the state and local government in which it is located.

(11) The agency must participate in all required training, as described in § 115.306(b).

(12) If the agency subcontracts any activity for which the subcontractor will receive FHAP funds, the agency must conform to the subcontracting requirements of § 115.309.

(13) If the agency receives a complaint that may implicate the First Amendment of the United States Con-

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stitution, then the agency must conform to the requirements of § 115.310.

(14) If the agency utilizes FHAP funds to conduct fair housing testing, then the agency must conform to the requirements of § 115.311.

(b) *Corrective and remedial action for failing to comply with requirements.* The agency's refusal to provide information, assist in implementation, or carry out the requirements of this section may result in the denial or interruption of its receipt of FHAP funds. Prior to denying or interrupting an agency's receipt of FHAP funds, HUD will put the agency on notice of its intent to deny or interrupt. HUD will identify its rationale for the denial or interruption and provide the agency with an opportunity to respond within a reasonable period of time. If, within the time period requested, the agency does not provide information or documentation indicating that the requirement(s) enumerated in this section is/are met, HUD may proceed with the denial or interruption of FHAP funds. If, at any time following the denial or interruption, HUD learns that the agency meets the requirements enumerated in this section, HUD may opt to reinstate the agency's receipt of FHAP funds.

§ 115.308 Reporting and recordkeeping requirements.

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

(1) Its financial administration of FHAP funds; and

(2) Its performance under the FHAP.

(b) The agency will provide to the FHEO regional director reports maintained pursuant to paragraph (a) of this section. The agency will provide reports to the FHEO regional director in accordance with the frequency and content requirements identified in the cooperative agreement. In addition, the agency will provide reports on the final status of complaints following reasonable cause findings, in accordance with Performance Standard 8 identified in § 115.206.

(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 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.