

§ 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 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 the 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-

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pated in any manner in a proceeding under the Fair Housing Act.

**PART 103—FAIR HOUSING—
COMPLAINT PROCESSING**

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AUTHORITY: 42 U.S.C. 3535(d), 3600–3619.

SOURCE: 54 FR 3292, Jan. 23, 1989, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 103.1 Purpose and applicability.

(a) This part contains the procedures established by the Department of Housing and Urban Development for the investigation and conciliation of complaints under section 810 of the Fair Housing Act, 42 U.S.C. 3610.

(b) This part applies to:

(1) Complaints alleging discriminatory housing practices because of race, color, religion, sex or national origin; and

(2) Complaints alleging discriminatory housing practices on account of handicap or familial status occurring on or after March 12, 1989.

(c) Part 180 of this chapter governs the administrative proceedings before an administrative law judge adjudicating charges issued under § 103.405.

(d) The Department will reasonably accommodate persons with disabilities who are participants in complaint processing.

[54 FR 3292, Jan. 23, 1989, as amended at 62 FR 66433, Dec. 18, 1997]

§ 103.5 Other civil rights authorities.

In addition to the Fair Housing Act, other civil rights authorities may be applicable in a particular case. Thus, where a person charged with a discriminatory housing practice in a com-

plaint filed under section 810 of the Fair Housing Act 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 FR 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

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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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 5205, Feb. 9, 1996]

Subpart B—Complaints

§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, na-

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tional origin, sex, disability, or the presence of children under the age of 18 in a household.

[64 FR 18540, Apr. 14, 1999]

§ 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.

[64 FR 18540, Apr. 14, 1999]

§ 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.

[64 FR 18540, Apr. 14, 1999]

§ 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.

[64 FR 18540, Apr. 14, 1999]

§ 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.

(b) You can call or go to any other HUD office for help in filing a claim. These offices will send your claim to HUD's Office of Fair Housing and Equal Opportunity, which will contact you about the filing of your complaint.

[64 FR 18540, Apr. 14, 1999]

§ 103.35 Is there a time limit on when I can file?

Yes, you must notify us within one year that you are a victim of discrimination. If you indicate that there is more than one act of discrimination, or that the discrimination is continuing, we must receive your information within one year of the last incident of discrimination.

[64 FR 18540, Apr. 14, 1999]

§ 103.40 Can I change my complaint after it is filed?

(a) Yes, you may change your fair housing complaint:

(1) At any time to add or remove people according to the law and the facts; or

(2) To correct other items, such as to add additional information found during the investigation of the complaint.

(b) You must approve any change to your complaint; we will consider the changes made as of the date of your original complaint.

[64 FR 18540, Apr. 14, 1999]

Subpart C—Referral of Complaints to State and Local Agencies

§ 103.100 Notification and referral to substantially equivalent State or local agencies.

(a) Whenever a complaint alleges a discriminatory housing practice that is within the jurisdiction of a substantially equivalent State or local agency and the agency is certified or may accept interim referrals under 24 CFR part 115 with regard to the alleged discriminatory housing practice, the Assistant Secretary will notify the agency of the filing of the complaint and refer the complaint to the agency for further processing before HUD takes any action with respect to the complaint. The Assistant Secretary will notify the State or local agency of the referral by certified mail.

(b) The Assistant Secretary will notify the aggrieved person and the respondent, by certified mail or personal service, of the notification and referral under paragraph (a) of this section. The notice will 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 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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 52218, Oct. 4, 1996]

§ 103.105 Cessation of action on referred complaints.

A referral under § 103.100 does not prohibit the Assistant Secretary from taking appropriate action to review or investigate matters in the complaint that raise issues cognizable under other civil rights authorities applicable to departmental programs (see § 103.5).

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 14379, Apr. 1, 1996]

§ 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

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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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 14379, Apr. 1, 1996]

§ 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

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section 814(b)(2) of the Fair Housing Act is pending.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 52218, Oct. 4, 1996]

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.

[54 FR 3292, Jan. 23, 1989, as amended at 55 FR 53293, Dec. 28, 1990, 57 FR 39116, Aug. 28, 1992]

§ 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 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. 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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 52218, Oct. 4, 1996. Redesignated at 64 FR 18540, Apr. 14, 1999]

§ 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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 52218, Oct. 4, 1996. Redesignated and amended at 64 FR 18540, 18541, Apr. 14, 1999]

§ 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.

[54 FR 3292, Jan. 23, 1989. Redesignated at 64 FR 18540, Apr. 14, 1999]

§ 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.

[64 FR 18541, Apr. 14, 1999]

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§ 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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 41482, Aug. 8, 1996; 61 FR 52218, Oct. 4, 1996; 62 FR 66433, Dec. 18, 1997]

§ 103.220 Cooperation of Federal, State and local agencies.

The Assistant Secretary, in processing Fair Housing Act complaints,

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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.

[61 FR 14380, Apr. 1, 1996]

§ 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.

[54 FR 3292, Jan. 23, 1989, as amended at 62 FR 66433, Dec. 18, 1997]

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.

[54 FR 3292, Jan. 23, 1989, as amended at 55 FR 53294, Dec. 28, 1990]

§ 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

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respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

§ 103.320 Provisions sought for the public interest.

The following are types of provisions 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 deter-

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mines 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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 52218, Oct. 4, 1996]

§ 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.

[54 FR 3292, Jan. 23, 1989, as amended at 59 FR 39956, Aug. 5, 1994]

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. The 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. 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 Sec-

retary 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.

[55 FR 53294, Dec. 28, 1990, as amended at 57 FR 18398, Apr. 30, 1992; 59 FR 39956, Aug. 5, 1994; 59 FR 46759, Sept. 12, 1994]

§ 103.405

§ 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.

[54 FR 3292, Jan. 23, 1989, as amended at 56 FR 55078, Oct. 24, 1991; 59 FR 39956, Aug. 5, 1994; 59 FR 46759, Sept. 12, 1994; 60 FR 58452, Nov. 27, 1995; 62 FR 66433, Dec. 18, 1997]

EDITORIAL NOTE: At 61 FR 52218, Oct. 4, 1996, §103.405 was amended by replacing all references to "Part 104" with "Part 180", however, no references to "Part 104" exist in the 1996 edition.

§ 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 is 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

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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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 52218, Oct. 4, 1996]

Subpart G—Prompt Judicial Action

§ 103.500 Prompt judicial action.

(a) If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes

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.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 52218, Oct. 4, 1996]

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 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

(5) The Age Discrimination Act, 42 U.S.C. 6101.

(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.

PART 105 [RESERVED]

PART 107—NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063

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AUTHORITY: 42 U.S.C. 3535(d); E.O. 11063, 27 FR 11527, 3 CFR, 1958-1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.