

## § 115.206

### § 115.206 Performance assessments; Performance standards.

(a) *Frequency of on-site performance assessment during interim certification.* The Assistant Secretary, through the appropriate FHEO regional office, may conduct an on-site performance assessment not later than six months after the execution of the interim agreement. An on-site performance assessment may also be conducted during the six months immediately prior to the expiration of the interim agreement. HUD has the discretion to conduct additional performance assessments during the period of interim certification, as it deems necessary.

(b) *Frequency of on-site performance assessment during certification.* During certification, the Assistant Secretary through the FHEO regional office, may conduct on-site performance assessments every 24 months. HUD has the discretion to conduct additional performance assessments during the period of certification, as it deems necessary.

(c) In conducting the performance assessment, the FHEO regional office shall determine whether the agency engages in timely, comprehensive, and thorough fair housing complaint investigation, conciliation, and enforcement activities. In the performance assessment report, the FHEO regional office may recommend to the Assistant Secretary whether the agency should continue to be interim certified or certified. In conducting the performance assessment, the FHEO regional office shall also determine whether the agency is in compliance with the requirements for participation in the FHAP enumerated in §§115.307, 115.308, 115.309, 115.310, and 115.311 of this part. In the performance assessment report, the FHEO regional office shall identify whether the agency meets the requirements of §§115.307, 115.308, 115.309, 115.310, and 115.311 of this part, and, therefore, should continue receiving funding under the FHAP.

(d) At a minimum, 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:

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(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, including administrative hearings and judicial proceedings.

(e) *Performance standards.* HUD shall utilize the following performance standards while conducting performance assessments. If an agency does not meet one or more performance standard(s), HUD shall utilize the performance deficiency procedures enumerated in §115.210.

(1) *Performance Standard 1.* Commence complaint proceedings, carry forward such proceedings, complete investigations, issue determinations, and make final administrative dispositions in a timely manner. 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 makes a determination of reasonable cause or no reasonable cause 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;

(iv) Whether the agency makes a final administrative disposition 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 reason(s) for the delay; and

(v) Whether the agency completed the investigation of the complaint and

prepared a complete, final investigative report.

(vi) When an agency is unable to complete investigative activities with respect to a complaint within 100 days, the agency must send written notification to the parties, indicating the reason(s) for the delay, within 110 days of the filing of the complaint.

(2) *Performance Standard 2.* Administrative closures are utilized only in limited and appropriate circumstances. Administrative closures should be distinguished from a closure on the merits and may not be used instead of making a recommendation or determination of reasonable or no reasonable cause. HUD will provide further guidance to interim and certified agencies on the appropriate circumstances for administrative closures.

(3) *Performance Standard 3.* During the period beginning with the filing of a complaint and ending with filing of a charge or dismissal, the agency will, to the extent feasible, attempt to conciliate the complaint. After a charge has been issued, the agency will, to the extent feasible, continue to attempt settlement until a hearing or a judicial proceeding has begun.

(4) *Performance Standard 4.* The agency conducts compliance reviews of settlements, conciliation agreements, and orders resolving discriminatory housing practices. The performance assessment shall include, but not be limited to:

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

(ii) Terms and conditions of agreements and orders issued.

(5) *Performance Standard 5.* The agency must consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of discriminatory practices. The performance assessment shall include, but not be limited to:

(i) An assessment of the agency's use of its authority to seek actual damages, as appropriate;

(ii) An assessment of the agency's use of its authority to seek and assess civil penalties or punitive damages, as appropriate;

(iii) An assessment of the types of relief sought by the agency with consid-

eration for the inclusion of affirmative provisions designed to protect the public interest;

(iv) A review of all types of relief obtained;

(v) A review of the adequacy of the relief sought and obtained in light of the issues raised by the complaint;

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

(vii) The number of complaints that proceed to administrative hearing and the result; and

(viii) The number of complaints that proceed to judicial proceedings and the result.

(6) *Performance Standard 6.* The agency must consistently and affirmatively seek to eliminate all prohibited practices under its fair housing law. An assessment under this standard will include, but not be limited to, an identification of the education and outreach efforts of the agency.

(7) *Performance Standard 7.* The agency must demonstrate that it receives and processes a reasonable number of complaints cognizable under both the federal Fair Housing Act and the agency's fair housing statute or ordinance. The reasonable number will be determined by HUD and based on all relevant circumstances including, but not limited to, the population of the jurisdiction that the agency serves, the length of time that the agency has participated in the FHAP, and the number of complaints that the agency has received and processed in the past. If an agency fails to receive and process a reasonable number of complaints during a year of FHAP participation, given education and outreach efforts conducted and receipts of complaints, then the FHEO regional director may offer the agency a Performance Improvement Plan (PIP), as described in § 115.210(a)(2). The PIP will set forth the number of complaints the agency must process during subsequent years of FHAP participation. After issuing the PIP, the FHEO regional office will provide the agency with technical assistance on ways to increase awareness of fair housing rights and responsibilities in the jurisdiction.

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(8) *Performance Standard 8.* The agency must report to HUD on the final status of all dual-filed complaints where a determination of reasonable cause was made. The report must identify, at a minimum, how complaints were resolved (e.g., settlement, judicial proceedings, or administrative hearing), when they were resolved, the forum in which they were resolved, and types and amounts of relief obtained.

(9) *Performance Standard 9.* The agency must conform its performance to the provisions of any written agreements executed by the agency and the Department related to substantial equivalency certification, including, but not limited to, the interim agreement or MOU.

### **§ 115.207 Consequences of interim certification and certification.**

(a) Whenever a complaint received by the Assistant Secretary alleges violations of a fair housing law administered by an agency that has been interim certified or 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. HUD shall make referrals to interim certified and certified local agencies in accordance with this section even when the local agency is located in a state with an interim certified or certified state agency.

(b) If HUD determines that a complaint has not been processed in a timely manner in accordance with the performance standards set forth in § 115.206, 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

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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.

### **§ 115.208 Procedures for renewal of certification.**

(a) 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 of certification, the Assistant Secretary may renew the certification of the agency.

(b) In determining whether to renew the certification of an agency, the Assistant Secretary's review may include, but is not limited to:

(1) Performance assessments of the agency conducted by the Department during the five years of certification;

(2) The agency's own certification that the state or local fair housing law continues to be substantially equivalent both "on its face" and "in operation;" (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); and

(3) Any and all public comments regarding the relevant state and local laws and the performance of the agency in enforcing the law.

(c) If the Assistant Secretary decides to renew an agency's certification, the Assistant Secretary will offer the agency either a new MOU or an Addendum to the Memorandum of Understanding (addendum). The new MOU or addendum will extend and update the MOU between HUD and the agency.

(d) The new MOU or addendum, when signed by all appropriate signatories, will result in the agency's certification being renewed for five years from the date on which the previous MOU was to expire. Appropriate signatories include the Assistant Secretary, the FHEO regional director, and the authorized employee(s) of the agency.

(e) The provisions of this section may be applied to an agency that has an expired MOU or an expired addendum.