§ 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, and remedies 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,” provides substantive rights, procedures, and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act. The certification must include an affidavit signed by the appropriate state or local official, stating that the state or local law meets the substantive equivalent requirements of the Act.

(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.

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,” provides substantive rights, procedures, and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act. The certification must include an affidavit signed by the appropriate state or local official, stating that the state or local law meets the substantive equivalent requirements of the Act. The agency must also provide a detailed description of how the state or local law meets the substantive equivalent requirements of the Act.

(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.

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.
§ 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, 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:

(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