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§ 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.

SOURCE: 45 FR 59514, Sept. 9, 1980, unless otherwise noted.

§ 107.10 Purpose.

These regulations are to carry out the requirements of E.O. 11063 that all action necessary and appropriate be taken to prevent discrimination because of race, color, religion (creed), sex or national origin in the sale, rental, leasing or other disposition of residential property and related facilities or in the use or occupancy thereof where such property or facilities are owned or operated by the Federal Government, or provided with Federal as-

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sistance by the Department of Housing and Urban Development and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the Department. These regulations are intended to assure compliance with the established policy of the United States that the benefits under programs and activities of the Department which provide financial assistance, directly or indirectly, for the provision, rehabilitation, or operation of housing and related facilities are made available without discrimination based on race, color, religion (creed), sex or national origin. These regulations are also intended to assure compliance with the policy of this Department to administer its housing programs affirmatively, so as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion (creed), sex or national origin.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985]

§ 107.11 Relation to other authorities.

(a) Where allegations of discrimination on the grounds of race, color, or national origin are made in a program or activity of Federal financial assistance of the Department which does not involve a contract of insurance or guaranty, the provisions of title VI of the Civil Rights Act of 1964 and regulations implementing title VI, Non-discrimination in Federally Assisted Programs, under part 1 of this title shall apply. Any complaint alleging discrimination on the basis of race, color, religion (creed), sex or national origin in a program or activity of the Department involving a contract of insurance or guaranty will be received and processed according to this part.

(b) Where a complaint filed pursuant to this part alleges a discriminatory housing practice which is also covered by title VIII of the Civil Rights Act of 1968, the complainant shall be advised of the right to file a complaint pursuant to section 810 of that title and of

the availability of Department procedures regarding fair housing complaints under part 105 of this title. The complainant shall also be advised of the right to initiate a civil action in court pursuant to section 812 of the Civil Rights Act of 1968 without first filing a complaint with HUD.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985]

§ 107.15 Definitions.

(a) *Department* and *Secretary* are defined in 24 CFR part 5.

(b) *State* means each of the fifty states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Marianas, and the territories of the United States.

(c) *Assistance* includes (1) grants, loans, contributions, and advances of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the sale, lease, and rental of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, when such order granting permission accompanies the sale, lease, or rental of Federal properties; (4) loans in whole or in part insured, guaranteed, or otherwise secured by the credit of the Federal Government; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives or agents, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and public entities.

(e) *Public entity* means a government or governmental subdivision or agency.

(f) *Discriminatory practice* means: (1) Any discrimination on the basis of race, color, religion (creed), sex or national origin or the existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of de-

nying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, religion (creed), sex or national origin, in the sale, rental or other disposition of residential property or related facilities (including land to be developed for residential use), or in the use or occupancy thereof, where such property or related facilities are:

(i) Owned or operated by the Secretary;

(ii) Provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Department after November 20, 1962;

(iii) Provided in whole or in part by loans insured, guaranteed or otherwise secured by the credit of the Department after November 20, 1962; or

(iv) Provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency or unit of general purpose local government receiving Federal financial assistance from the Department under a loan or grant contract entered into after November 20, 1962.

(2) Any discrimination on the basis of race, color, religion (creed), sex or national origin or the existence or use of a policy, practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, religion (creed), sex or national origin in lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans, insured or guaranteed, by the Department after November 20, 1962. Examples of discriminatory practices under subsections (1) and (2) include but are not limited to the following when based on race, color, religion (creed), sex or national origin:

(i) Denial to a person of any housing accommodations, facilities, services, financial aid, financing or other benefit provided under a program or activity;

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(ii) Providing any housing accommodations, facilities, services, financial aid, financing or other benefits to a person which are different, or are provided in a different manner, from those provided to others in a program or activity;

(iii) Subjecting a person to segregation or separate treatment in any matter related to the receipt of housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity;

(iv) Restricting a person in any way in access to housing, accommodations, facilities, services, financial aid, financing or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under a program or activity;

(v) Treating persons differently in determining whether they satisfy any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity; and

(vi) Denying a person opportunity to participate in a program or activity through the provision of services or otherwise, or affording the person an opportunity to do so which is different from that afforded others in a program or activity.

(3) Noncompliance with relevant affirmative fair housing marketing requirements contained in Department programs and regulations.

(4) A formal finding of a violation of title VIII of the Civil Rights Act of 1968 or a state or local fair housing law with respect to activities also covered by E.O. 11063.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985; 61 FR 5205, Feb. 9, 1996]

§ 107.20 Prohibition against discriminatory practices.

(a) No person receiving assistance from or participating in any program or activity of the Department involving housing and related facilities shall engage in a discriminatory practice.

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(b) Where such person has been found by the Department or any other Federal Department, agency, or court to have previously discriminated against persons on the ground of race, color, religion (creed), sex or national origin, he or she must take affirmative action to overcome the effects of prior discrimination.

(c) Nothing in this part precludes such person from taking affirmative action to prevent discrimination in housing or related facilities where the purpose of such action is to overcome prior discriminatory practice or usage or to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, religion (creed), sex or national origin.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985]

§ 107.21 Prevention of discriminatory practices.

All persons receiving assistance from, or participating in any program or activity of the Department involving housing and related facilities shall take all action necessary and proper to prevent discrimination on the basis of race, color, religion (creed), sex or national origin.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985]

§ 107.25 Provisions in legal instruments.

(a) The following documents shall contain provisions or statements requiring compliance with E.O. 11063 and this part:

(1) Contracts, grants and agreements providing Departmental assistance for the provision of housing and related facilities,

(2) Contracts, grants and agreements regarding the sale, rental or management of properties owned by the Secretary,

(3) Corporate charters and regulatory agreements relating to multifamily and land development projects assisted by the Department,

(4) Approvals of financial institutions and other lenders as approved FHA mortgagees,

(5) Requests for subdivision reports under home mortgage procedures and

for preapplication analysis of multi-family and land development projects, and

(6) Contracts and agreements providing for Departmental insurance or guarantee of loans with respect to housing and related facilities.

(b) The provision or statement required pursuant to this section shall indicate that the failure or refusal to comply with the requirements of E.O. 11063 or this part shall be a proper basis for the imposition of sanctions provided in §107.60.

§ 107.30 Recordkeeping requirements.

(a) All persons receiving assistance through any program or activity of the Department involving the provision of housing and related activities subject to Executive Order 11063 shall maintain racial, religious, national origin and sex data required by the Department in connection with its programs and activities.

(b) All lenders participating in Departmental mortgage insurance programs, home improvement loan programs, GNMA mortgage purchase programs, or special mortgage assistance programs, shall maintain data regarding the race, religion, national origin and sex of each applicant and joint applicant for assistance with regard to residential property and related facilities. Racial data shall be noted in the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White, Hispanic. If an applicant or joint applicant refuses to voluntarily provide the information or any part of it, that fact shall be noted and the information shall be obtained, to the extent possible, through observation. Applications shall be retained for a period of at least twenty-five (25) months following the date the record was made.

(c) If an investigation or compliance review under this part reveals a failure to comply with any of the requirements of paragraph (a) or (b) of this section, the respondent shall have the burden of establishing its compliance with this part and with the equal housing opportunity requirements of the Executive order.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 52442, Dec. 24, 1985]

§ 107.35 Complaints.

(a) The Assistant Secretary for FH&EO, or designee, shall conduct such compliance reviews, investigations, inquiries, and informal meetings as may be necessary to effect compliance with this part.

(b) Complaints under this part may be filed by any person and must be filed within one year of date of the alleged act of discrimination unless the time for filing is extended by the Assistant Secretary for FH&EO. Complaints must be signed by the complainant and may be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, or any Regional or Area Office of the Department. All complaints shall be forwarded to the Director, Office of Regional Fair Housing and Equal Opportunity in the appropriate Regional Office which has jurisdiction in the area in which the property is located.

(c) Upon receipt of a timely complaint, the Director of the Office of Regional FH&EO shall determine whether the complaint indicates a possible violation of the Executive Order or this part. The Director of the Office of Regional FH&EO or a designee within a reasonable period of time shall conduct an investigation into the facts. The complainant shall be notified of the determination.

§ 107.40 Compliance meeting.

(a) Where preliminary analysis of a complaint, a compliance review initiated by the Assistant Secretary for FH&EO, or other information indicates a possible violation of E.O. 11063, or this part, the person allegedly in violation (*respondent*) shall be sent a Notice of Compliance Meeting and requested to attend a compliance meeting. The Notice shall advise the respondent of the matters to be addressed in the Compliance Meeting and the allegations contained in a complaint received pursuant to §107.35. The purpose of the compliance meeting is to provide the respondent with the opportunity to address matters raised and to remedy such possible violations speedily and informally, to identify possible remedies; and to effect a resolution as provided in § 107.45.

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(b) The Notice of Compliance Meeting shall be sent to the last known address of the person allegedly in violation, by certified mail, or through personal service. The Notice will advise such person of the right to respond within seven (7) days to the matters and to submit information and relevant data evidencing compliance with E.O. 11063, the Affirmative Fair Housing Marketing Regulations, 24 CFR 200.600, the Fair Housing Poster Regulations, 24 CFR part 110, the Advertising Guidelines for Fair Housing, 37 FR 6700, April 1, 1972, other affirmative marketing requirements applicable to the program or activity and any revisions thereto. Further, the person will be offered an opportunity to be present at the meeting in order to submit any other evidence showing such compliance. The date, place, and time of the scheduled meeting will be included in the Notice.

(c) Whenever a compliance meeting is scheduled as a result of a complaint, the complainant shall be sent a copy of the Notice of Compliance Meeting and shall be provided an opportunity to attend the meeting.

(d) The Area Office having jurisdiction over the program will prepare a report concerning the status of the respondent's participation in Department programs to be presented to the respondent at the meeting. The Area Manager shall be notified of the meeting and may attend the meeting.

(e) At the Compliance Meeting the respondent and the complainant may be represented by counsel and shall have a fair opportunity to present any matters relevant to the complaint.

(f) During and pursuant to the Compliance Meeting, the Director of the Office of Regional FH&EO shall consider all evidence relating to the alleged violation, including any action taken by the person allegedly in violation to comply with E.O. 11063.

(g) If the evidence shows no violation of the Executive order or this part, the Director of the Office of Regional FH&EO shall so notify the person(s) involved within ten (10) days of the meeting. A copy of this notification shall be sent to the complainant, if any, and shall be submitted to the Assistant Secretary for FH&EO.

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(h) If the evidence indicates an apparent failure to comply with the Executive order or this part, and the matter cannot be resolved informally pursuant to §107.45, the Director of the Office of Regional FH&EO shall so notify the respondent and the complainant, if any, no later than ten (10) days after the date on which the compliance meeting is held, in writing by certified mail, return receipt requested, and shall advise the complainant, if any, and the respondent whether the Department will conduct a compliance review pursuant to §107.50 or, where appropriate, refer the matter to the Assistant Secretary for FH&EO for possible imposition of sanctions. A copy of this notification shall be submitted to the Assistant Secretary for FH&EO. The compliance review shall be conducted to determine whether the respondent has complied with the provisions of E.O. 11063, title VIII of the Civil Rights Act of 1968, Department regulations and the Department's Affirmative Fair Housing Marketing requirements.

(i) If the respondent fails to attend a compliance meeting scheduled pursuant to this section, the Director of the Office of Regional FH&EO shall notify the respondent no later than ten (10) days after the date of the scheduled meeting, in writing by certified mail, return receipt requested, as to whether the Department will conduct a compliance review or, where appropriate, refer the matter to the Assistant Secretary for FH&EO for possible imposition of sanctions. A copy of this notification shall be submitted to the Assistant Secretary for FH&EO and sent to the complainant, if any.

§ 107.45 Resolution of matters.

(a) Attempts to resolve and remedy matters found in a complaint investigation or a compliance review shall be made through the methods of conference, conciliation, and persuasion.

(b) Resolution of matters pursuant to this section and §107.40 need not be attempted where similar efforts by another Federal agency have been unsuccessful in ending and remedying the violation found with respect to the same respondent.

(c) Efforts to remedy matters shall be directed toward achieving a just resolution of the probable violation and obtaining assurance(s) that the respondent will satisfactorily remedy any violation of E.O. 11063 and will take actions to eliminate the discriminatory practices and prevent reoccurrences. Compensation to individuals from the respondent may also be considered.

(d) The terms of settlements shall be reduced to a written agreement, signed by the respondent and the Assistant Secretary for FH&EO or a designee. Such settlements shall seek to protect the interests of the complainant, if any, other persons similarly affected, and the public interest. A written notice of the disposition of matters pursuant to this section and of the terms of settlements shall be given to the Area Manager by the Assistant Secretary for FH&EO or a designee and to the complainant, if any. When the Assistant Secretary or a designee determines that there has been a violation of a settlement agreement, the Assistant Secretary immediately may take action to impose sanctions provided under this part, including the referral of the matter to the Attorney General for appropriate action.

§ 107.50 Compliance reviews.

(a) Compliance reviews shall be conducted by the Director of the Office of Regional FH&EO or a designee. Complaints alleging a violation(s) of this part or information ascertained in the absence of a complaint indicating apparent failure to comply with this part shall be referred immediately to the Director of the Office of Regional FH&EO. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall be notified of all alleged violations of the regulations. A complaint is not a prerequisite for the initiation of compliance review.

(b) The purpose of a compliance review is to determine whether the respondent is in compliance with the Executive order and this part. Where allegations may also indicate a violation of the provisions of title VIII of the Civil Rights Act of 1968, HUD regulations issued thereunder and Affirmative Fair Housing Marketing require-

ments, a review may be undertaken to determine compliance with those requirements. The respondent shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. The complainant shall also be notified of the compliance review.

§ 107.51 Findings of noncompliance.

(a) A finding of noncompliance shall be made when the facts disclosed during an investigation or compliance review, or other information, indicate a failure to comply with the provisions of E.O. 11063 or this part. In no event will a finding of noncompliance precede the completion of the compliance meeting procedures set forth in § 107.40.

(b) Determinations of noncompliance with E.O. 11063 shall be made in any case in which the facts establish the existence of a discriminatory practice under § 107.15(g).

(c) The existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons, because of race, color, religion (creed), sex or national origin, to apply for or receive the benefits of assistance shall be a basis for finding a discriminatory practice unless the respondent can establish that:

(1) The policy or practice is designed to serve a legitimate business necessity or governmental purpose of the respondent;

(2) The policy or practice effectively carries out the interest it is designed to serve; and

(3) No alternative course of action could be adopted that would enable respondent's interest to be served with a less discriminatory impact.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985]

§ 107.55 Compliance report.

(a) Following completion of efforts under this part, the Director of the Office of Regional FH&EO or a designee shall prepare a compliance report promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is

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found that the respondent is in compliance, all persons concerned shall be notified of the finding. Where a finding of noncompliance is made, the report shall specify the violations found. The Director of the Office of Regional FH&EO shall send a copy of the report to the respondent by certified mail, return receipt requested, together with a Notice that the matter will be forwarded to the Assistant Secretary for FH&EO for a determination as to whether actions will be initiated for the imposition of sanctions. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO.

(b) The Notice will provide that the respondent shall have seven (7) days to respond to the violations found and resolve and remedy matters in the compliance report. At the expiration of the seven (7) day period the matter shall be referred to the Assistant Secretary for FH&EO.

(c) The complainant shall be sent a copy of the findings and compliance report and shall have seven (7) days to comment thereon.

§ 107.60 Sanctions and penalties.

(a) Failure or refusal to comply with E.O. 11063 or the requirements of this part shall be proper basis for applying sanctions. Violations of title VIII of the Civil Rights Act of 1968 or a state or local fair housing law, with respect to activities covered by the Executive order, or of the regulations and requirements under E.O. 11063 of other Federal Departments and agencies may also result in the imposition of sanctions by this Department.

(b) Such sanctions as are specified by E.O. 11063, the contract through which federal assistance is provided, and such sanctions as are specified by the rules or regulations of the Department governing the program under which federal assistance to the project is provided shall be applied in accordance with the relevant regulations. Actions that may be taken include: cancellation or termination, in whole or in part, of the contract or agreement; refusal to approve a lender or withdrawal

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of approval; or a determination of ineligibility, suspension, or debarment from any further assistance or contracts; provided, however, that sanctions of debarment, suspension, and ineligibility are subject to the Department's regulations under 2 CFR part 2424, and, further, that no sanction under section 302 (a), (b), and (c) of Executive Order 11063 shall be applied by the Assistant Secretary for Fair Housing and Equal Opportunity without the concurrence of the Secretary.

(c) The Department shall use its good offices in order to promote the abandonment of discriminatory practices with regard to residential property and related facilities provided with assistance prior to the effective date of E.O. 11063 and take appropriate actions permitted by law including the institution of appropriate litigation to provide such equal housing opportunities.

(d) In any case involving the failure of a lender to comply with the requirements of the Executive order or this part, the Assistant Secretary for FH&EO shall notify the Federal financial regulatory agency having jurisdiction over the lender of the findings in the case.

[45 FR 59514, Sept. 9, 1980, as amended at 72 FR 73493, Dec. 27, 2007]

§ 107.65 Referral to the Attorney General.

If the results of a complaint investigation or a compliance review demonstrate that any person, or specified class of persons, has violated E.O. 11063 or this part, and efforts to resolve the matter(s) by informal means have failed, the Assistant Secretary for FH&EO in appropriate cases shall recommend that the General Counsel refer the case to the Attorney General of the United States for appropriate civil or criminal action under section 303 of E.O. 11063.

PART 108—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

Sec.

108.1 Purpose and application.

108.5 Authority.

108.15 Pre-occupancy conference.