

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 111 and 115**

[Docket No. FR-3322-F-02]

RIN 2529-AA60

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Regulatory Reinvention; Certification and Funding of State and Local Fair Housing Enforcement Agencies

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: On February 28, 1996 (61 FR 7674), HUD published for public comment an interim rule streamlining its regulations governing the certification and funding of State and local fair housing enforcement agencies. Previously, the requirements for substantially equivalent certification and participation in the Fair Housing Assistance Program had been set forth in different parts of title 24. The February 28, 1996 interim rule consolidated these regulations, thus providing all necessary requirements in a single part and eliminating redundancy from title 24. This rule finalizes the policies and procedures set forth in the February 28, 1996 interim rule and takes into consideration the public comments received on the interim rule. Further, this rule removes from title 24 the unnecessarily codified preamble to the final rule implementing the Fair Housing Amendments Act of 1988.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Fair Housing Assistance Program Division, Office of Fair Housing and Equal Opportunity, Room 5216, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-0455. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**I. The February 28, 1996 Interim Rule**

The Fair Housing Act (42 U.S.C. 3601-3619) (the Act) provides that whenever a complaint alleges a discriminatory housing practice, arising in the jurisdiction of a State or local agency which has been certified by the Secretary under section 810(f) of the

Act, HUD shall refer the complaint to that State or local agency. HUD has implemented section 810(f) at 24 CFR part 115, which establishes the criteria the Secretary will utilize to certify State and local fair housing enforcement agencies.

Section 817 of the Act provides that the Secretary may reimburse State and local fair housing enforcement agencies which assist the Secretary in enforcing the Act. HUD has implemented section 817 at 24 CFR part 111, which sets forth the requirements for participation in the Fair Housing Assistance Program (FHAP). Through the FHAP, HUD provides assistance to certified State and local fair housing enforcement agencies. This assistance is designed to provide support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects.

On February 28, 1996 (61 FR 7674), HUD published for public comment an interim rule streamlining its regulations governing the certification and funding of State and local fair housing enforcement agencies. Specifically, the rule consolidated parts 111 and 115. This consolidation permitted HUD to provide all necessary requirements for "substantially equivalent" certification and FHAP participation in a single part. The February 28, 1996 interim rule described in detail the amendments made to 24 CFR parts 111 and 115.

II. This Final Rule

This rule finalizes the policies and procedures set forth in the February 28, 1996 interim rule and takes into consideration the public comments submitted on the interim rule. The public comment period on the interim rule expired on April 29, 1996. Two comments were received.

This final rule makes three changes to the interim rule in response to public comment. First, the final rule establishes a 180-day limit on suspensions based on changes in the law. Further, this final rule references the non-regulatory procedures which require that HUD provide an agency with notice and an opportunity to respond before suspension. The rule also clarifies the definition of "covered multifamily dwellings" set forth in the February 28, 1996 interim rule. Section III. of this preamble presents a summary of the significant issues raised by the public commenters on the February 28, 1996 interim rule, and HUD's responses to these comments.

In addition to the revisions made in response to public comment, HUD determined it was necessary to make several other changes to the interim

rule. First, this final rule clarifies that an enforcement agency may not receive Special Enforcement Effort (SEE) funds if it is currently on a Performance Improvement Plan (PIP), or if it has been suspended during the fiscal year in which SEE funds are sought. This rule also clarifies that HUD may partially reimburse reinstated agencies for cases processed during the suspension period. Further, the final rule makes two amendments which will benefit enforcement agencies by providing HUD with greater flexibility. Section IV. of the preamble details these changes to the February 28, 1996 interim rule.

Additionally, this rule removes the unnecessarily codified preamble to the January 23, 1989 final rule (54 FR 3232) implementing the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 *et seq.*). This preamble is codified in title 24 as appendix I to subchapter A of chapter I. The preamble, although it provides helpful information to readers, is readily available through other means and does not merit inclusion in the CFR. The removal of this codified preamble will assist in HUD's efforts to streamline the contents of title 24.

III. Discussion of the Public Comments on the February 28, 1996 Interim Rule**A. The Suspension and Withdrawal of Certification Provisions Should be Revised**

Comment. Section 115.211 provided that HUD would suspend an enforcement agency's certification if HUD had reason to believe that: (1) A change in law, regulation, or procedure had limited the effectiveness of the agency to enforce its fair housing law or ordinance; or (2) the enforcement agency's performance did not comply with 24 CFR part 115. If HUD's subsequent review demonstrated that the agency no longer complied with the requirements of part 115, HUD would withdraw the agency's certification. Section 115.212 set forth the procedures governing withdrawal of certification.

One of the commenters was strongly opposed to §§ 115.211 and 115.212. The commenter believed the conditions triggering suspension were vague and might lead to arbitrary suspensions. Further, the commenter suggested that § 115.211 be revised to require that HUD provide an agency with notice and an opportunity to respond before suspension. This commenter also recommended that HUD establish a time limit on suspensions based on changes in the law. The commenter noted that the interim rule imposed a 180-day limit on suspensions based on the agency's

performance. This commenter believed that HUD's administrative burden would increase due to its inability to refer complaints during the suspension period.

The commenter also questioned the adequacy of the reimbursement provisions at § 115.211. These provisions allowed HUD to reimburse formerly suspended agencies for cases processed during the suspension period. The commenter wrote that agencies should also be reimbursed for lost special grant funding and the costs of halted investigations.

HUD Response. HUD disagrees with several of the assertions made by the commenter. For example, the interim rule was sufficiently clear regarding the conditions which might lead to an agency's suspension. Further, the suspension provisions will not necessarily increase HUD's administrative burden. HUD also notes that agencies presently have a right to notice and an opportunity to respond prior to suspension. These rights are outlined in non-regulatory HUD guidance, which is currently being revised and updated. However, HUD agrees that this guidance should be referenced in 24 CFR part 115 and has revised the interim rule accordingly. HUD has adopted another of the commenter's suggestions by limiting suspensions based on changes in the law to 180 days.

The commenter's recommendations solely concerned the suspension and withdrawal of certification procedures at §§ 115.211 and 115.212. However, HUD has also revised § 115.208, which governs interim certification, to reference the non-regulatory guidance and to establish the 180-day limit. HUD believes the issues raised by the commenter are equally applicable to agencies with interim certification. Further, these revisions are necessary to create uniformity in the procedures for interim certification and certification.

B. Definition of "Covered Multifamily Dwellings" Was Confusing

Comment. Paragraph (a)(5)(i) of § 115.201 provided that "the term 'covered multifamily dwellings' means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units." One of the commenters complained about the awkward phrasing of this provision. As this commenter noted, the correct interpretation of the word "and" is unclear. The commenter correctly assumed that "and" was intended to be the conjunctive for the two independent

meanings of "covered multifamily dwellings." However, the word "and" could easily be misinterpreted to be the conjunctive for the phrase "if such buildings." The commenter suggested that HUD clarify the wording of this definition.

HUD Response. HUD agrees with the commenter. Section 804(f)(7) of the Act provides a clear definition of the term "covered multifamily dwellings." Paragraph (a)(5) of § 115.202 required that the agency's fair housing law or ordinance "[p]rovide the same protections as those afforded by section 804 * * * of the Act." This reference to section 804 encompassed the statutory definition of "covered multifamily dwellings." It is, therefore, unnecessary for the final rule to set forth a separate definition. Accordingly, this final rule simply removes 24 CFR 115.202(a)(5)(ii).

This final rule also removes § 115.202(a)(5)(iii). The language of this provision was also already encompassed in section 804 of the Act. Specifically, the provision repeated the language of section 804(f)(4), which concerns the American National Standard for facilities providing accessibility to persons with disabilities.

IV. Additional Changes to the February 28, 1996 Interim Rule

A. Limitation on SEE Fund Eligibility

Section 115.305 set forth the eligibility requirements for Special Enforcement Efforts (SEE) funds. SEE funds are awarded to enforcement agencies with proven experience and capability in administering their fair housing laws and ordinances. Accordingly, paragraphs (a)(1) through (a)(6) of § 115.305 established fairly strict eligibility criteria. For example, 24 CFR 115.305(a)(3) required that:

(3) At least ten percent of the agency's fair housing caseload resulted in written conciliation agreements providing monetary relief for the complainant as well as remedial action, monitoring, reporting and public interest relief provisions[.]

Another example was provided by the criterion set forth in paragraph (a)(5) of § 115.305:

(5) The agency's administration of its fair housing law or ordinance received meritorious mention for its complaint processing or other fair housing activities that were innovative[.]

As the above examples illustrate, HUD intends to limit SEE funding to those agencies which meet a high threshold of eligibility. Accordingly, agencies which are experiencing difficulties in administering their fair housing laws and ordinances are

ineligible for SEE funding. However, in order to prevent any possible confusion, this final rule amends § 115.305 to clarify that an enforcement agency may not receive SEE funds if it is currently on a Performance Improvement Plan (PIP), or if its interim certification or certification has been suspended during the fiscal year in which SEE funds are being sought. HUD wishes to note that agencies ineligible for SEE funding may still, if otherwise eligible, apply for Complaint Processing funds, and Administrative Cost funds.

B. Partial Reimbursement of Reinstated Agencies

As discussed in section III.A. of this preamble, the February 28, 1996 interim rule provided that HUD would reimburse an agency for cases processed during the agency's suspension period. HUD may be unable to fully reimburse reinstated agencies for these costs. Accordingly, this final rule clarifies that HUD will provide full or partial reimbursement for cases processed during the period of suspension.

C. Increased HUD Flexibility

This final rule also makes two amendments, designed to benefit enforcement agencies, by providing HUD with greater flexibility. The February 28, 1996 interim rule mandated that HUD suspend an agency if the conditions set forth in §§ 115.208 or 115.211 were satisfied. HUD may, in certain circumstances, wish to postpone the suspension of such an agency. The interim rule denied this ability to HUD. This final rule provides HUD with the required flexibility by revising §§ 115.208 and 115.211 to state that HUD "may" suspend an agency if the suspension conditions are triggered.

The interim rule prohibited the reimbursement of an agency who was suspended due to its performance until HUD determined that the agency complied with the performance standards in § 115.203. However, in certain cases speedier reimbursement of such agencies may be justified. This final rule permits HUD to reimburse agencies prior to a determination that the requirements of § 115.203 are satisfied.

V. Other Matters

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. Findings of No

Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing Sections 810(f) and 817 of the Act. Those Findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule merely consolidates in a single part the requirements for "substantially equivalent" certification and participation in the FHAP. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with HUD programs.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule will not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. This final rule only affects State and local fair housing enforcement agencies which seek certification under section 810(f) of the Act and participation in the FHAP. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule finalizes the policies and procedures set forth in the February 28, 1996 interim rule. Specifically, it consolidates the

requirements of 24 CFR parts 111 and 115, which govern the certification and funding of State and local fair housing enforcement agencies. This consolidation will assist enforcement agencies by providing all the necessary requirements for certification and FHAP participation in a single part. This final rule does not affect or establish substantive policy, and will not have any economic impact on small entities.

List of Subjects 24 CFR Part 115

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Mortgages, Reporting and recordkeeping requirements.

Accordingly, the interim rule published on February 28, 1996 at 61 FR 7674, removing part 111 and revising part 115 of title 24 of the Code of Federal Regulations is confirmed as final with the following change:

Part 115 is revised to read as follows:

PART 115—CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES

Subpart A—General

Sec.

- 115.100 Definitions.
- 115.101 Program administration.
- 115.102 Public notices.

Subpart B—Certification of Substantially Equivalent Agencies

- 115.200 Purpose.
- 115.201 Basis of determination.
- 115.202 Criteria for adequacy of law.
- 115.203 Performance standards.
- 115.204 Consequences of certification.
- 115.205 Technical assistance.
- 115.206 Request for certification.
- 115.207 Procedure for interim certification.
- 115.208 Suspension of interim certification.
- 115.209 Denial of interim certification.
- 115.210 Procedure for certification.
- 115.211 Suspension of certification.
- 115.212 Withdrawal of certification.

Subpart C—Fair Housing Assistance Program (FHAP)

- 115.300 Purpose.
- 115.301 Agency eligibility criteria.
- 115.302 Capacity building funds.
- 115.303 Eligible activities for capacity building funds.
- 115.304 Agencies eligible for contributions funds.
- 115.305 Special enforcement effort (SEE) funds.
- 115.306 Training funds.
- 115.307 Additional requirements for participation in the FHAP.
- 115.308 Standards for FHAP program review.
- 115.309 Reporting and recordkeeping requirements.
- 115.310 Subcontracting under the FHAP.
- 115.311 Corrective and remedial action.

Authority: 42 U.S.C. 3601-19; 42 U.S.C. 3535(d)

Subpart A—General

§ 115.100 Definitions.

(a) The terms "*Fair Housing Act*" and "*HUD*", as used in this part, are defined in 24 CFR 5.100.

(b) The terms "*Aggrieved person*", "*Complainant*", "*Conciliation*", "*Conciliation agreement*", "*Discriminatory housing practice*", "*Dwelling*", "*Handicap*", "*Person*", "*Respondent*", "*Secretary*", and "*State*", as used in this part, are set forth in section 802 of the Fair Housing Act (42 U.S.C. 3600-3620).

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Fair Housing Act, as defined in 24 CFR 5.100.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Certified Agency is an agency to which the Assistant Secretary for Fair Housing and Equal Opportunity has granted interim certification or certification, in accordance with the requirements of this part.

Cooperative Agreement is the assistance instrument HUD will use to provide funds. The Cooperative Agreement will contain attachments and appendices establishing requirements relating to the operation or performance of the agency.

Cooperative Agreement Officer (CAO) is the administrator of the funds awarded pursuant to this part and is the Director of a Fair Housing Enforcement Center in the Office of Fair Housing and Equal Opportunity.

Director of FHEO means a Director of a Fair Housing Enforcement Center.

Dual-Filed Complaint means a housing discrimination complaint which has been filed with both the Fair Housing Enforcement Center and the certified agency.

FHAP means the Fair Housing Assistance Program.

FHEO means the Office of Fair Housing and Equal Opportunity.

§ 115.101 Program administration.

(a) *Authority and responsibility.* The Secretary has delegated the authority and responsibility for administering this part to the Assistant Secretary.

(b) *Delegation of Authority.* The Assistant Secretary delegates the authority and responsibility for administering this part to each Director of a Fair Housing Enforcement Center. However, with respect to the duties and responsibilities for administering subpart B of this part, the Assistant

Secretary retains the right to make final decisions concerning the granting and maintenance of substantial equivalency certification and interim certification.

§ 115.102 Public notices.

(a) Periodically, the Assistant Secretary will publish the following public notices in the Federal Register:

(1) A list of all agencies which have interim certification or certification; and
(2) A list of agencies to which a notice of denial of interim certification has been issued or for which withdrawal of certification is being proposed.

(b) The Assistant Secretary will publish in the Federal Register a notice soliciting public comment before granting certification to a State or local agency. The notice will invite the public to comment on the relevant State and local laws, as well as on the performance of the agency in enforcing its law. All comments will be considered before a final decision on certification is made.

Subpart B—Certification of Substantially Equivalent Agencies

§ 115.200 Purpose.

This subpart implements section 810(f) of the Fair Housing Act. The purpose of this subpart is to set forth:

- (a) The basis for agency interim certification and certification;
- (b) The procedure by which a determination to certify is made by the Assistant Secretary;
- (c) The basis and procedures for denial of interim certification;
- (d) The basis and procedures for withdrawal of certification;
- (e) The consequences of certification;
- (f) The basis and procedures for suspension of interim certification or certification; and
- (g) The funding criteria for interim certified and certified agencies.

§ 115.201 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

- (a) Whether the law, administered by the agency, on its face, satisfies the criteria set forth in section 810(f)(3)(A) of the Act; and
- (b) Whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.202 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

- (1) Provide for an administrative enforcement body to receive and process complaints and provide that:
 - (i) Complaints must be in writing;
 - (ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;
 - (iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;
 - (iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaints, and require that:

- (i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;
- (ii) The agency investigate the allegations of the complaint and complete the investigation within the time-frame established by section 810(a)(1)(B)(iv) of the Act or comply with the notification requirements of section 810(a)(1)(C) of the Act;
- (iii) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so it shall notify the parties, in writing, of the reasons for not doing so;

(iv) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent, the complainant, and the agency and shall require the approval of the agency;

(v) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might

discourage the filing of complaints, such as:

- (i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;
- (ii) Anti-testing provisions;
- (iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act.

(5) Provide the same protections as those afforded by sections 804, 805, 806, and 818 of the Act, consistent with HUD's implementing regulations found at 24 CFR part 100.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

- (i) Grant or seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if such action is necessary to carry out the purposes of the law or ordinance;
- (ii) Issue and seek enforceable subpoenas;

(iii) Grant actual damages in an administrative proceeding or provide adjudication in court at agency expense to allow the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction;

(v) Provide an administrative proceeding in which a civil penalty may be assessed or provide an adjudication in court at agency expense, allowing the assessment of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to:

(i) Grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper;

(ii) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(iii) Enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the state or local law prohibit discrimination on the basis of familial status does not require

that the state or local law limit the applicability of any reasonable local, state or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The state or local law may assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in 24 CFR part 100, subpart E.

(e) A determination of the adequacy of a state or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account all relevant matters of state or local law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the fair housing law by competent authorities will be considered in making this determination.

(f) A law will be found inadequate "on its face" if it permits any of the agency's decision-making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, "decision-making authority" shall include:

- (1) Acceptance of the complaint;
- (2) Approval of the conciliation agreement;
- (3) Dismissal of a complaint;
- (4) Any action specified in §§ 115.202(a)(2)(iii) or 115.202(b)(1); and

(5) Any decision-making regarding whether the matter will or will not be pursued.

(g) The state or local law must provide for civil enforcement of the law or ordinance 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.

§ 115.203 Performance standards.

A state or local fair housing enforcement agency must meet all of the performance standards listed in this section in order to obtain or maintain certification.

(a) Engage in timely, comprehensive and thorough fair housing complaint

investigation, conciliation and enforcement activities. 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.

(b)(1) Commence proceedings with respect to a complaint:

- (i) Before the end of the 30th day after receipt;
- (ii) Carry forward such proceedings with reasonable promptness;
- (iii) Make final administrative disposition within one year; and
- (iv) Within 100 days of receipt of the complaint complete the identified proceedings.

(2) 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 administratively disposes 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 reasons for the delay; and
- (iv) Whether the agency completed the investigation of the complaint and prepared a complete final investigative report.

(3) The performance assessment will also consider documented conciliation attempts and activities and a review of the bases for administrative disposition of complaints.

(c) Conduct compliance reviews of settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices. The performance assessment will include, but not be limited to:

- (1) An assessment of the agency's procedures for conducting compliance reviews;

(2) Terms and conditions of agreements and orders issued;

(3) Application of its authority to seek actual damages, as appropriate; and

(4) Application of its authority to seek and assess civil penalties or punitive damages.

(d) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices. The performance assessment will include, but not be limited to:

- (1) An assessment of the types of relief sought and obtained by the agency with consideration of the inclusion of affirmative provisions designed to protect the public interest;
- (2) The adequacy of the disposition of the complaint;
- (3) The relief sought and awarded;
- (4) The number of complaints closed with relief and the number closed without relief; and

(5) Whether all the issues and bases were investigated adequately and appropriately disposed of.

(e) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law. An assessment under this standard will include, but not be limited to:

- (1) A discussion and confirmation of the law or ordinance administered by the agency;
- (2) The identification of any amendments, court decisions or other rulings or documentation that may affect the agency's ability to carry out provisions of its fair housing law or ordinance;
- (3) Identification of the education and outreach efforts of the agency; and
- (4) Identification and discussion of any special requirements of the fair housing law or ordinance.

§ 115.204 Consequences of certification.

(a) Whenever a complaint received by the Assistant Secretary alleges violations of a state or local fair housing law or ordinance administered by an agency that has been 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.

(b) If HUD determines that a complaint has not been processed in a timely manner in accordance with the performance standards set forth in § 115.203, 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 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.

§ 115.205 Technical assistance.

(a) The Assistant Secretary, through its FHEO Field Office, may provide technical assistance to the agencies. The agency may request such technical assistance or the FHEO Field Office may determine the necessity for technical assistance and require the agency's cooperation and participation.

(b) The Assistant Secretary, through FHEO Headquarters or Field staff, will require that the agency participate in training conferences and seminars that will enhance the agency's ability to process complaints alleging discriminatory housing practices.

§ 115.206 Request for certification.

(a) A request for certification under this subpart shall be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organizational information of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) If available, data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.203.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at:

(1) The office of the Assistant Secretary;

(2) The HUD Field Office in whose jurisdiction the State or local jurisdiction seeking recognition is located; and

(3) The office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.207 Procedure for interim certification.

(a) Upon receipt of a request for certification filed under § 115.206, the Assistant Secretary may request further information necessary for a determination to be made under this section. The Assistant Secretary may consider the relative priority given to fair housing administration, as compared to the agency's other duties and responsibilities, as well as the compatibility or potential conflict of fair housing objectives with these other duties and responsibilities.

(b) *Interim certification.* If the Assistant Secretary determines, after application of the criteria set forth in § 115.202 that the State or local law or ordinance, on its face, 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 offer to enter into an Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement). The interim agreement will outline the procedures and authorities upon which the interim certification is based.

(c) Such interim agreement, after it is signed by all appropriate signatories, will result in the agency receiving interim certification.

(d)(1) Interim agreements shall be for a term of no more than three years. The Assistant Secretary, through the FHEO Field Office, will conduct one or more on-site assessments to determine whether the agency administers its fair housing law or ordinance in a manner that is substantially equivalent to the Act.

(2) *Performance Improvement Plan.* If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant

Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(3) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

§ 115.208 Suspension of interim certification.

(a) *Suspension based on changes in the law.* (1) The Assistant Secretary may suspend the agency's interim certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends interim certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent to the Act on its face or in its operations. Such suspension shall not exceed 180 days.

(3) If the Assistant Secretary determines that, notwithstanding the actions taken by the State or locality as described in paragraph (a)(1), the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification. HUD will provide full or partial reimbursement for cases processed during the period of the suspension.

(4) If the Assistant Secretary determines that the actions taken by the State or locality do limit the agency's effectiveness interim certification will be denied pursuant to § 115.209.

(b) *Suspension based on agency performance.* (1) The Assistant Secretary may suspend the interim certification of an agency charged with the administration of a fair housing law or ordinance if the Assistant Secretary

has reason to believe that the agency's performance does not comply with the criteria set forth by this part. Such suspension shall not exceed 180 days.

(2) If the agency is suspended pursuant to paragraph (b) of this section, the FHEO Field Office may elect not to provide payment for complaints processed within that period of time unless and until the Assistant Secretary determines that the agency is fully in compliance with § 115.203. The FHEO Field Office will provide technical assistance to the agency during this period of time.

(3) During the period of a suspension the Assistant Secretary shall not refer complaints to the agency.

(4) Suspension under paragraph (b) of this section renders the agency ineligible to receive Fair Housing Assistance Program Funds under subpart C of this part, pending correction of the deficiencies by the agency.

(5) Before the end of the suspension, a final performance assessment will be provided to the Assistant Secretary upon which a determination will be made as to the adequacy of the agency's performance.

(c) HUD will provide an agency with notice of the specific reasons for the suspension of its interim certification and an opportunity to respond, in accordance with the procedures set forth in HUD issued guidance.

§ 115.209 Denial of interim certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in this part that the State and local law or ordinance, on its face or in its operation, does not provide substantive rights, procedures, remedies, and availability of judicial review for alleged discriminatory housing practices which are substantially equivalent to those provided in the Fair Housing Act, the Assistant Secretary shall inform the State or local official in writing of the reasons for that determination.

(b) The agency, within 20 days from the date of the receipt of this notice, may submit, in writing, any opposition to the planned denial of interim certification to the Assistant Secretary. The Assistant Secretary will evaluate all pertinent written comments, information, and documentation. If, after reviewing all materials submitted by the agency, the Assistant Secretary is still of the opinion that interim certification should be denied, the Assistant Secretary will inform the agency in writing of that determination.

(c) If the agency does not, within 20 days of receipt of the Assistant

Secretary's notice of denial of interim certification, make a request of the Assistant Secretary under paragraph (b) of this section to submit additional data, views, or comments, no further action shall be required of the Assistant Secretary and denial of interim certification shall occur.

§ 115.210 Procedure for certification.

(a) *Certification.* (1) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.202, 115.203 and this section, that the State or local law or ordinance, 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) A 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.

(b) *Performance Improvement Plan.* (1) If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(2) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

(c) *Annual assessments.* The Assistant Secretary shall annually assess the performance of an agency to determine whether it continues to qualify for certification under this part. 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, the Assistant Secretary may offer the agency an updated Memorandum of Understanding.

(d) *Interim certification required prior to certification.* An agency shall receive

interim certification prior to receiving certification.

§ 115.211 Suspension of certification.

(a) *Suspension based on changes in the law.* (1) The Assistant Secretary may suspend the agency's certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent on its face and in its operation to the Act. Such suspension shall not exceed 180 days.

(3) If the Assistant Secretary determines that the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification. HUD will provide full or partial reimbursement for cases processed during the period of the suspension.

(4) If the Assistant Secretary determines that the actions taken by the State or locality do limit the agency's effectiveness, certification will be withdrawn pursuant to § 115.212.

(b) *Suspension based on agency performance.* (1) The Assistant Secretary may suspend the certification of an agency charged with the administration of a fair housing law or ordinance, if the Assistant Secretary has reason to believe that the agency's performance does not comply with the criteria set forth by this part. Such suspension shall not exceed 180 days.

(2) If the agency is suspended pursuant to paragraph (b) of this section, the FHEO Field Office may elect not to provide payment for complaints processed within that period of time unless and until the Assistant Secretary determines that the agency is fully in compliance with § 115.203. The FHEO Field Office will provide technical assistance to the agency during this period of time.

(3) During the period of a suspension the Assistant Secretary shall not refer complaints to the agency.

(4) Suspension under this paragraph also renders the agency ineligible to receive Fair Housing Assistance Program Funds under subpart C of this part, pending correction of the deficiencies by the agency.

(5) Before the end of the suspension, a final performance assessment will be provided to the Assistant Secretary upon which a determination will be made as to the adequacy of the agency's performance.

(c) HUD will provide an agency with notice of the specific reasons for the suspension of its certification and an opportunity to respond, in accordance with the procedures set forth in HUD issued guidance.

§ 115.212 Withdrawal of certification.

(a) If the Assistant Secretary finds, as a result of a review undertaken in accordance with this part, that the agency's fair housing law or ordinance no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(b) The Assistant Secretary will propose withdrawal of certification under paragraph (a) of this section unless further review and information or documentation establishes that the current law and/or the agency's administration of the law meets the criteria set out in this part.

(c) If the Assistant Secretary determines, after application of the criteria set forth in this part, that the state or local law or ordinance, in operation, does not provide substantive rights, procedures, remedies, and availability of judicial review for alleged discriminatory housing practices which are substantially equivalent to those provided in the Fair Housing Act, the Assistant Secretary shall inform the State or local official in writing of the reasons for that determination.

Subpart C—Fair Housing Assistance Program (FHAP)

§ 115.300 Purpose.

The purpose of the Fair Housing Assistance Program (FHAP) is to provide assistance to State and local fair housing enforcement agencies. The intent of this funding program is to build a coordinated intergovernmental enforcement effort to further fair housing and to encourage the agencies to assume a greater share of the responsibility for the administration and enforcement of their fair housing laws and ordinances. This financial

assistance is designed to provide support for:

- (a) The processing of dual-filed complaints;
- (b) Training under the Fair Housing Act and the agencies' fair housing law;
- (c) The provision of technical assistance;
- (d) The creation and maintenance of data and information systems; and
- (e) The development and enhancement of other fair housing enforcement projects.

§ 115.301 Agency eligibility criteria.

Any agency with certification or interim certification under subpart A of this part, and which has entered into a MOU or interim agreement, is eligible to participate in the FHAP.

§ 115.302 Capacity building funds.

(a) Capacity building (CB) funds are funds that HUD may provide to an agency with interim certification during the agency's first three years of participation in the FHAP. Agencies receiving CB funds are not eligible to receive contributions funds under § 115.304.

(b) CB funds will be provided in a fixed annual amount to be utilized for the eligible activities established pursuant to § 115.303. However, in the second and third year of the agency's participation in the FHAP, HUD has the option to permit the agency to receive CB funding on a per case basis, rather than in a single annual amount.

(c) In order to receive CB funding, agencies will be required to submit a statement of work which identifies:

- (1) The objectives and activities to be carried out with the CB funds received;
- (2) A plan for training all of the agency's employees involved in the administration of the agency's fair housing law or ordinance;
- (3) A statement of the agency's intention to participate in HUD-sponsored training in accordance with the training requirements set out in the cooperative agreement;

(4) A description of the agency's complaint processing data and information system or, alternatively, whether the agency plans to use CB funds to purchase and install a data system; and

(5) A description of any other fair housing activities that the agency will undertake with its CB funds. All such activities must address matters affecting fair housing enforcement which are cognizable under the Fair Housing Act. Any activities which do not address the implementation of the agency's fair housing law or ordinance, and which are therefore not cognizable under the Fair Housing Act, will be disapproved.

§ 115.303 Eligible activities For capacity building funds.

The primary purposes of capacity building funding is to provide for complaint activities and to support activities that produce increased awareness of fair housing rights and remedies. All such activities must support the agency's administration of its fair housing law or ordinance and address matters affecting fair housing which are cognizable under the Fair Housing Act. HUD will periodically publish a list of eligible activities in the Federal Register.

§ 115.304 Agencies eligible for contributions funds.

(a) An agency that has received CB funds for three consecutive years is eligible for contributions funding. Contributions funding consists of three categories:

- (1) Complaint Processing (CP) funds;
- (2) Administrative Costs (AC) funds; and
- (3) Special Enforcement Efforts (SEE) funds (§ 115.305 sets forth the requirements for SEE funding).

(b) *CP funds.* (1) Agencies receiving CP funds will receive such support based solely on the number of complaints processed by the agency and accepted for payment by the Director of FHEO during a consecutive, specifically identified, 12-month period. Normally this period will be the previous year's funding cycle.

(2) Funding for agencies in their fourth year of participation in the FHAP will be based on the number of complaints acceptably processed by the agency during the agency's third year of participation in the FHAP.

(c) *Administrative Cost (AC) funds.* (1) Agencies which acceptably process 100 or more cases will receive no less than 10 percent of the agency's annual FHAP payment amount for the preceding year, in addition to case processing funds, contingent on fiscal year appropriations. Agencies that acceptably process fewer than 100 cases will receive a flat rate contingent on fiscal year appropriations.

(2) Agencies will be required to provide HUD with a statement of how they intend to use the AC funds. HUD may require that some or all AC funding be directed to activities designed to create, modify, or improve local, regional, or national information systems concerning fair housing matters (including the purchase of state of the art computer systems and getting on line or internet access, etc.).

§ 115.305 Special enforcement effort (SEE) funds.

(a) SEE funds are funds that HUD will provide to an agency to enhance

enforcement activities of the agency's fair housing law or ordinance. SEE funds will be a maximum of 20% of the agency's total FHAP cooperative agreement for the previous contract year, based on approval of eligible activity or activities, and based on the appropriation of funds. All agencies receiving contributions funds are eligible to receive SEE funds if they meet three of the six criteria set out in paragraphs (a)(1) through (6):

(1) The agency has taken action to enforce a subpoena or make use of its prompt judicial action authority within the past year.

(2) The agency has held at least one administrative hearing or has had at least one case on a court's docket for civil proceedings during the past year.

(3) At least ten percent of the agency's fair housing caseload resulted in written conciliation agreements providing monetary relief for the complainant as well as remedial action, monitoring, reporting and public interest relief provisions.

(4) The agency has had in the most recent three years, or is currently handling, at least one major fair housing systemic investigation requiring an exceptional amount of expenditure of funds.

(5) The agency's administration of its fair housing law or ordinance received meritorious mention for its complaint processing or other fair housing activities that were innovative.

(6) The agency must have fully investigated 10 fair housing complaints during the previous funding year.

(b) Notwithstanding the eligibility criteria set forth in paragraph (a) of this section, an agency is ineligible for SEE funds if:

(1) Twenty percent or more of an agency's fair housing complaints result in administrative closures; or

(2) The agency is currently on a PIP, or if its interim certification or certification has been suspended during the fiscal year in which SEE funds are sought.

(c) SEE funding amounts are subject to the FHAP appropriation by Congress and will be described in writing in the cooperative agreements annually. HUD will periodically publish a list of activities eligible for SEE funding in the Federal Register.

§ 115.306 Training funds.

(a) All agencies are eligible to receive training funds. Training funds are fixed amounts based on the number of agency employees to be trained and shall be allocated based on the FHAP appropriation. Training funds may be used only for HUD-approved or HUD-

sponsored training. Agency initiated training or other formalized training may be included in this category. However, such training must first be approved by the Cooperative Agreement Officer (CAO) and the Government Technical Representative (GTR). Specifics on the amount of training funds that an agency will receive and, if applicable, amounts that may be deducted, will be set out in the cooperative agreement each year.

(b) All staff of the agency responsible for the administration of the fair housing law or ordinance must participate in mandatory FHAP training sponsored by HUD at the national and field office levels. If the agency does not participate in the mandatory national and field office HUD-sponsored training, training funds will be deducted from their overall training amount.

§ 115.307 Additional requirements for participation in the FHAP.

(a) Agencies which participate in the FHAP must:

(1) Conform to reporting and record maintenance requirements determined by the Assistant Secretary;

(2) Agree to on-site technical assistance and guidance and implementation of corrective actions set out by the Department in response to deficiencies found during the technical assistance or performance assessment evaluations of the agency's operations;

(3) Agree to implement and adhere to policies and procedures (as their laws and ordinances will allow) provided to the agencies by the Assistant Secretary, including but not limited to guidance on investigative techniques, case file preparation and organization, implementation of data elements for complaint tracking, etc.;

(4) Spend at least twenty (20) percent of its total annual budget on fair housing activities; and

(5) Not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing (budget and staff reductions or other actions outside the control of the agency will not, alone, result in a negative determination for the agency's participation in the FHAP).

(b) The agency's refusal to provide information, assist in implementation, or carry out the requirements of paragraph (a) of this section may result in the denial or interruption of its receipt of FHAP funds.

§ 115.308 Standards for FHAP program review.

HUD will conduct reviews of the agency's cooperative agreement implementation. This review will also identify:

(a) How the agency used the FHAP funds received;

(b) Whether its draw-down of funds was timely;

(c) Whether the agency has been audited and received copies of the audit reports in accordance with applicable rules and regulations for State and local governmental entities; and

(d) If the agency complied with all certifications and assurances required by HUD in the cooperative agreement.

§ 115.309 Reporting and recordkeeping requirements.

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

(1) Its financial administration of the FHAP funds; and

(2) Its performance under the FHAP.

(b) In accordance with the cooperative agreement in effect between the agency and HUD, the agency will provide to HUD the agency reports maintained pursuant to paragraph (a) of this section. The agency will provide reports to HUD in accordance with the cooperative agreement in effect between the agency and HUD for frequency and content, regarding complaint processing, training, data and information systems, enforcement and other activities explaining how FHAP funds were expended and used.

(c) The agency will permit reasonable public access to its records, consistent with the jurisdiction's requirements for release of information. Documents relevant to the agency's participation in FHAP must be made available at the agency's office during normal working hours (except that documents with respect to ongoing fair housing complaint investigations are exempt from public review consistent with Federal and/or State law).

(d) The Secretary, the Inspector General of HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts, and transcripts as they relate to the agency's participation in FHAP.

(e) All files will be kept in such fashion as to permit audits under applicable procurement regulations and guidelines and the Single Audit requirements for State and local agencies.

(f) The FHAP financial records and files will be kept at least three years on-site after any cooperative agreement has terminated.

§ 115.310 Subcontracting under the FHAP.

If an agency subcontracts to a public or private agency any activity for which

the subcontractor will receive FHAP funds, the agency must ensure and certify in writing that the subcontractor is:

- (a) Using services and facilities that are accessible in accordance with the Americans with Disability Act (ADA) (42 U.S.C. 12101) and Section 504 of the 1973 Rehabilitation Act (29 U.S.C. 701);
- (b) Complying with the standards of Section 3 of the Housing and Urban Development Act of 1968 (42 U.S.C. 1441); and
- (c) Furthering fair housing.

§ 115.311 Corrective and remedial action.

(a) If HUD makes a preliminary determination that an agency has not complied with § 115.309, the agency will be given written notice of this determination and an opportunity to show, through demonstrable facts and data, that it has done so within a time prescribed by HUD.

(b) If an agency fails to demonstrate to HUD's satisfaction that it has met program review standards, HUD will request the agency to submit and comply with proposals for action to correct, mitigate, or prevent performance deficiencies, including, but not limited to:

- (1) Preparing and/or following a schedule of actions for carrying out the affected fair housing activities;
 - (2) Establishing and/or following a management plan that assigns responsibilities for carrying out the actions required;
 - (3) Canceling or revising activities likely to be affected by a performance deficiency before expending FHAP funds for the activities; and
 - (4) Redistributing or suspending disbursement of FHAP funds that have not yet been disbursed.
- (c) HUD may condition the use of FHAP award amounts with respect to an agency's succeeding fiscal year's

allocation on the satisfactory completion by the agency of appropriate corrective actions. When the use of funds is so conditioned, HUD will specify the deficiency(ies), the required corrective action(s), and the time allowed for taking these actions. Failure of the agency to complete the actions as specified will result in a reduction or withdrawal of the FHAP allocation in an amount not to exceed the amount conditionally granted.

Appendix I [Removed]

3. Appendix I to subchapter A of chapter I of title 24 of the Code of Federal Regulations is removed.

Date: July 29, 1996.
 Elizabeth K. Julian,
Assistant Secretary for Fair Housing and Equal Opportunity.
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