

§ 115.203

(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 sec-

24 CFR Subtitle B, Ch. I (4–1–03 Edition)

tion 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