

§ 146.37

§ 146.37 Investigation.

(a) *Investigation and settlement following mediation.* (1) HUD shall investigate complaints that are unresolved after mediation or are reopened because of an alleged violation of a mediation agreement.

(2) In the investigation of complaints filed under this part, HUD will establish facts through such methods as discussion with the complainant and recipient and the review of documents in the possession of either party. HUD may also seek the assistance of any applicable State agency. Where possible, HUD will settle the complaint on terms that are mutually agreeable to the parties.

(3) Settlements shall be in writing and signed by the parties and by an authorized HUD official.

(4) A settlement shall not affect the initiation or continuation of any other enforcement effort of HUD, including compliance reviews or investigation of other complaints involving the recipient.

(5) A settlement reached under this paragraph (a) of this section is an agreement to resolve an alleged violation of the Act to the satisfaction of the parties involved, and does not constitute a finding of discrimination against the recipient.

(b) *Failure of settlement.* If HUD cannot resolve the complaint through settlement, it may make a formal determination that the Act or this part has been violated and begin enforcement procedures, as provided in §146.39. HUD shall inform the recipient and complainant in writing that the matter cannot be resolved through settlement.

§ 146.39 Enforcement procedures.

(a) HUD may enforce the Act this regulation by:

(1) Termination of a recipient's financial assistance from HUD under the program or activity involved, if the recipient has violated the Act or this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an Administrative Law Judge. If the financial assistance consists of a Community Development Block Grant, the requirements of section 109(b) of the

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Housing and Community Development Act of 1974, 42 U.S.C. 5309, must also be satisfied before the termination of financial assistance. Cases settled in mediation or before hearing will not involve termination of a recipient's Federal financial assistance from HUD.

(2) Any other means authorized by law, including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this part;

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or this part.

(b) Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301-5317, has failed to comply with requirements of the Age Discrimination Act or this part with respect to a program or activity funded in whole or in part with such assistance, he or she shall notify the Governor of such State or the chief executive officer of such unit of general local government of the non-compliance and shall request the Governor or chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to take the action specified in (a) of this section, exercise the powers and functions provided for in section 111(a) of the Housing and Community Act of 1974, 42 U.S.C. 5311(a), or take such other action as may be provided by law.

(c) HUD shall limit any termination under §146.35 to the particular recipient and particular program or activity HUD finds to be in violation of this part. HUD shall not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from HUD.

(d) HUD shall take no action under paragraph (a) of this section until:

(1) The Secretary has advised the recipient of its failure to comply with

the Act or this part and has determined that voluntary compliance cannot be achieved.

(2) Thirty days have elapsed after the Secretary has submitted a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(e)(1) The Secretary may defer the provision of new Federal financial assistance to a recipient when termination proceedings under this section are initiated.

(2) New financial assistance from HUD includes all assistance for which HUD requires an application, approval, or submissions under the Community Development Block Grant program including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New financial assistance from HUD does not include increases in funding as a result of changed computation for formula awards or assistance approved before the beginning of a hearing under this section.

(3) HUD shall not impose a deferral until the recipient has received a notice of an opportunity for a hearing under this section. HUD shall not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. HUD shall not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding that the recipient has violated that Act or this part.

§ 146.41 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by this part; or

(b) Cooperates in any mediation, investigation, hearing, or other part of HUD's investigation, settlement, and enforcement process.

§ 146.43 Hearings, decisions, post-termination proceedings.

The provisions of 24 CFR part 180 apply to HUD enforcement of this part.

[61 FR 52218, Oct. 4, 1996]

§ 146.45 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and HUD had made no finding with regard to the complaint; or

(2) HUD issues any finding in favor of the recipient.

(b) If HUD fails to make a finding within 180 days or issues a finding in favor of the recipient, HUD shall:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action, the complainant must give 30 days' notice by registered mail to the Secretary of HUD, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.