

### § 103.320

humiliation or embarrassment, and attorney fees;

(2) Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or

(3) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

(b) The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in paragraph (a) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

### § 103.320 Provisions sought for the public interest.

The following are types of provisions may be sought for the vindication of the public interest:

(a) Elimination of discriminatory housing practices.

(b) Prevention of future discriminatory housing practices.

(c) Remedial affirmative activities to overcome discriminatory housing practices.

(d) Reporting requirements.

(e) Monitoring and enforcement activities.

### § 103.325 Termination of conciliation efforts.

(a) HUD may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with HUD; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or HUD finds, for any reason, that voluntary agreement is not likely to result.

(b) Where the aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, HUD will terminate conciliation unless the court specifically requests assistance from the Assistant Secretary.

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### § 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

(a) Except as provided in paragraph (b) of this section and § 103.230(c), nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under part 180 or in civil actions under title VIII of the Fair Housing Act, without the written consent of the persons concerned.

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.

[54 FR 3292, Jan. 23, 1989, as amended at 61 FR 52218, Oct. 4, 1996]

### § 103.335 Review of compliance with conciliation agreements.

HUD may, from time to time, review compliance with the terms of any conciliation agreement. Whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, the Assistant Secretary shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under section 814(b)(2) of the Fair Housing Act for the enforcement of the terms of the conciliation agreement.

[54 FR 3292, Jan. 23, 1989, as amended at 59 FR 39956, Aug. 5, 1994]

### Subpart F—Issuance of Charge

### § 103.400 Reasonable cause determination.

(a) If a conciliation agreement under § 103.310 has not been executed by the complainant and the respondent and approved by the Assistant Secretary, the Assistant Secretary shall conduct a review of the factual circumstances revealed as part of HUD's investigation.

(1) If the Assistant Secretary for Fair Housing and Equal Opportunity determines that, based on the totality of factual circumstances known at the time of the Assistant Secretary's review, no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Assistant Secretary shall: Issue a short and plain written statement of the facts upon which the Assistant Secretary has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) by mail; and make public disclosure of the dismissal. The respondent may request that no public disclosure be made. Notwithstanding such a request, the fact of dismissal, including the names of the parties, shall be public information available on request. The Assistant Secretary's determination shall be based solely upon the facts concerning the alleged discriminatory housing practice provided by complainant and respondent and otherwise disclosed during the investigation. In making this determination, the Assistant Secretary shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in federal court.

(2) If, based on the totality of the factual circumstances known at the time of the decision, the Assistant Secretary believes that reasonable cause may exist to believe that a discriminatory housing practice has occurred or is about to occur, the Assistant Secretary shall determine that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, in all cases not involving the legality of local land use laws or ordinances (except as provided in paragraph (b) of this section). The Assistant Secretary's determination shall be based solely on the facts concerning the alleged discriminatory housing practices provided by complainants and respondents and otherwise identified during the investigation in making this determination. In making this determination, the Assistant Secretary shall consider whether the facts concerning the alleged discriminatory

housing practice are sufficient to warrant the initiation of a civil action in federal court.

(i) If the Assistant Secretary determines that reasonable cause exists, the Assistant Secretary, upon receipt of concurrence of the General Counsel, will issue such determination and direct the issuance of a charge under §103.405 on behalf of the aggrieved person, and shall notify the complainant and the respondent of this determination by certified mail or personal service.

(ii) If the Assistant Secretary determines that no reasonable cause exists, the Assistant Secretary shall: Issue a short and plain written statement of the facts upon which the Assistant Secretary has based the no reasonable cause determination; dismiss the complaint; notify the complainant and the respondent of the dismissal (including the written statement of facts) by mail; and make public disclosure of the dismissal. The complainant or respondent may request that no public disclosure be made. Notwithstanding such a request, the fact of dismissal, including the names of the parties, shall be public information available on request.

(3) If the Assistant Secretary determines that the matter involves the legality of local zoning or land use laws or ordinances, the Assistant Secretary, in lieu of making a determination regarding reasonable cause, shall refer the investigative material to the Attorney General for appropriate action under section 814(b)(1) of the Fair Housing Act, and shall notify the complainant and the respondent of this action by mail or personal service.

(b) The Assistant Secretary may not issue a charge under paragraph (a) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action under an Act of Congress or a state law seeking relief with respect to the alleged housing practice and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the Assistant Secretary shall so notify the complainant and the respondent by certified mail or personal service.

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(c)(1) A determination of reasonable cause or no reasonable cause by the Assistant Secretary shall be made within 100 days after filing of the complaint (or where the Assistant Secretary has reactivated a complaint, within 100 days after service of the notice of reactivation under §103.115), unless it is impracticable to do so.

(2) If the Assistant Secretary is unable to make the determination within the 100-day period specified in paragraph (c)(1) of this section, the Assistant Secretary will notify the complainant and the respondent by mail of the reasons for the delay.

[55 FR 53294, Dec. 28, 1990, as amended at 57 FR 18398, Apr. 30, 1992; 59 FR 39956, Aug. 5, 1994; 59 FR 46759, Sept. 12, 1994]

### § 103.405 Issuance of charge.

(a) A charge:

(1) Shall consist of a short and plain written statement of the facts upon which the Assistant Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint filed under subpart B of this part. If the charge is based on grounds that are not alleged in the complaint, HUD will not issue a charge with regard to the grounds unless the record of investigation demonstrates that the respondent has been given notice and an opportunity to respond to the allegation.

(b) Within three business days after the issuance of the charge, the General Counsel shall:

(1) Obtain a time and place for hearing from the Chief Docket Clerk of the Office of Administrative Law Judges;

(2) File the charge along with the notifications described in 24 CFR 180.410(b) with the Office of Administrative Law Judges;

(3) Serve the charge and notifications in accordance with 24 CFR 180.410(a); and

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(4) Notify the Assistant Secretary of the filing of the charge.

[54 FR 3292, Jan. 23, 1989, as amended at 56 FR 55078, Oct. 24, 1991; 59 FR 39956, Aug. 5, 1994; 59 FR 46759, Sept. 12, 1994; 60 FR 58452, Nov. 27, 1995; 62 FR 66433, Dec. 18, 1997]

### § 103.410 Election of civil action or provision of administrative proceeding.

(a) If a charge is issued under §103.405, a complainant (including the Assistant Secretary, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding under 24 CFR part 180, to have the claims asserted in the charge decided in a civil action under section 812(o) of the Fair Housing Act.

(b) The election must be made not later than 20 days after the receipt of service of the charge, or in the case of the Assistant Secretary, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in the Office of Administrative Law Judges and served on the General Counsel, the Assistant Secretary, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under 24 CFR part 180.

(c) If an election is not made under this section, the General Counsel will maintain an administrative proceeding based on the charge in accordance with the procedures under 24 CFR part 180.

(d) If an election is made under this section, the General Counsel shall immediately notify and authorize the Attorney General to commence and maintain a civil action seeking relief under section 812(o) of the Fair Housing Act on behalf of the aggrieved person in an appropriate United States District Court. Such notification and authorization shall include transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

(e) The General Counsel shall be available for consultation concerning any legal issues raised by the Attorney General as to how best to proceed in the event that a new court decision or