

§ 115.209

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 Memo-

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randum 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: