

contractual agents or other arrangements including contracts and consultants, subject a person to discrimination in the terms and conditions of employment. Terms and conditions of employment include advertising, interviewing, selection, promotion, demotion, transfer, recruitment and advertising, layoff or termination, pay or other compensation, including benefits, and selection for training.

(b) *Determination of compliance status.* The Assistant Secretary will follow the procedures set forth in this part and 29 CFR part 1691 and look to the substantive guidelines and policy of the Equal Employment Opportunity Commission when reviewing employment practices under Section 109.

§6.6 Records to be maintained.

(a) *General.* Recipients shall maintain records and data as required by 24 CFR 91.105, 91.115, 570.490, and 570.506.

(b) *Employment.* Recipients shall maintain records and data as required by the Equal Employment Opportunity Commission at 29 CFR part 1600.

(c) Recipients shall make available such records and any supporting documentation upon request of the Responsible Official.

(Approved by the Office of Management and Budget under control numbers 2506-0117 and 2506-0077)

Subpart B—Enforcement

§6.10 Compliance information.

(a) *Cooperation and assistance.* The Responsible Official and the Award Official will provide assistance and guidance to Recipients to help them comply voluntarily with this part.

(b) *Access to data and other sources of information.* Each Recipient shall permit access by authorized representatives of HUD to its facilities, books, records, accounts, minutes and audio tapes of meetings, personnel, computer disks and tapes, and other sources of information as may be pertinent to a determination of whether the Recipient is complying with this part. Where information required of a Recipient is in the exclusive possession of any other agency, institution, or person, and that agency, institution, or person fails or refuses to furnish this information, the

Recipient shall so certify in any requested report and shall set forth what efforts it has made to obtain the information. Failure or refusal to furnish pertinent information (whether maintained by the Recipient or some other agency, institution, or person) without a credible reason for the failure or refusal will be considered to be non-compliance under this part.

(c) *Compliance data.* Each Recipient shall keep records and submit to the Responsible Official, timely, complete, and accurate data at such times and in such form as the Responsible Official may determine to be necessary to ascertain whether the Recipient has complied or is complying with this part.

(d) *Notification to employees, beneficiaries, and participants.* Each Recipient shall make available to employees, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the program or activity under which the Recipient receives Federal financial assistance and make such information available to them in such manner as the Responsible Official finds necessary to apprise such persons of the protections against discrimination assured them by Section 109 and this part.

§6.11 Conduct of investigations.

(a) *Filing a complaint—(1) Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may file, or may have an authorized representative file on his or her behalf, a complaint with the Responsible Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the Responsible Official.

(2) *Confidentiality.* Generally, the Responsible Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise. However, an exception to maintaining confidentiality of the identity of the person may be required to carry out the purposes of this part, including

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the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the Responsible Official waives this time limit for good cause. For purposes of determining when a complaint is filed under this part, a complaint mailed to the Responsible Official via the U.S. Postal Service will be deemed filed on the date it is postmarked. A complaint delivered to the Responsible Official in any other manner will be deemed filed on the date it is received by the Responsible Official.

(4) *Where to file complaints.* Complaints must be in writing, signed, addressed to the Responsible Official, and filed with (mailed to or otherwise delivered to) the Office of Fair Housing and Equal Opportunity at any HUD Office.

(5) *Content of complaints.* Each complaint should contain the complainant's name, address, and phone number; a description or name, if available, of the Recipient alleged to have violated this part; an address where the violation occurred; and a description of the Recipient's alleged discriminatory action in sufficient detail to inform the Responsible Official of the nature and date of the alleged violation of this part.

(6) *Amendments to complaints.* Amendments to complaints, such as clarification and amplification of allegations in a complaint or the addition of other Recipients, may be made by the complainant or the complainant's authorized representative at any time while the complaint is being considered, and any amendment shall be deemed to be made as of the original filing date.

(7) *Notification.* To the extent practicable, the Responsible Official will notify the complainant and the Recipient of the Responsible Official's receipt of a complaint within 10 calendar days of receipt of a complete complaint. If the Responsible Official receives a complaint that is not complete, the Responsible Official will notify the complainant and specify the additional information that is needed to make the complaint complete. If the complainant fails to complete the complaint, the Responsible Official will close the

complaint without prejudice and notify the complainant. When a complete complaint has been received, the Responsible Official, or his or her designee, will assess the complaint for acceptance, rejection, or referral to an appropriate Federal agency within 20 calendar days.

(8) *Resolution of complaints.* After the acceptance of a complete complaint, the Responsible Official will investigate the complaint, attempt informal resolution, and, if resolution is not achieved, the Responsible Official will notify the Recipient and complainant, to the extent practicable within 180 days of the receipt of the complete complaint, of the results of the investigation in a letter of findings sent by certified mail, return receipt requested, containing the following:

(i) Findings of fact and a finding of compliance or noncompliance;

(ii) A description of an appropriate remedy for each violation believed to exist; and

(iii) A notice of the right of the Recipient and the complainant to request a review of the letter of findings by the Responsible Official. A copy of the final investigative report will be made available upon request.

(b) *Compliance reviews—(1) Periodic compliance reviews.* The Responsible Official may periodically review the practices of Recipients to determine whether they are complying with this part and may conduct on-site reviews. The Responsible Official will initiate an on-site review by sending to the Recipient a letter advising the Recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time before a final determination, to submit information that explains, validates, or otherwise addresses the practices under review. In addition, the Award Official will include, in normal program compliance reviews and monitoring procedures, appropriate actions to review and monitor compliance with general or specific program requirements designed to implement the requirements of this part.

(2) *Time period of the review.* (i) For the Entitlement program, compliance reviews will cover the three years before the date of the review.

(ii) For the Urban Development Action Grant (UDAG) program, the compliance review is applicable only to UDAG loan repayments or other payments or revenues classified as program income. UDAG repayments or other payments or revenues classified as miscellaneous revenue are not subject to compliance review under this part. (See 24 CFR 570.500(a).) The compliance review will cover the time period that program income is being repaid.

(iii) For the State and HUD-Administered Small Cities programs, the compliance review will cover the four years before the date of the review.

(iv) For all other programs, the time period covered by the review will be four years before the date of the review.

(v) On a case-by-case basis, at the discretion of the Responsible Official, the above time frames for review can be expanded where facts or allegations warrant further investigation.

(3) *Early compliance resolution.* On the last day of the on-site visit, after the compliance review, the Recipient will be given an opportunity to supplement the record. Additionally, a prefinding conference may be held and a summary of the proposed findings may be presented to the Recipient. In those instances where the issue(s) cannot be resolved at a prefinding conference or with the supplemental information, a meeting will be scheduled to attempt a voluntary settlement.

(4) *Notification of findings.* (i) The Assistant Secretary will notify the Recipient of Federal financial assistance of the results of the compliance review in a letter of findings sent by certified mail, return receipt requested.

(ii) *Letter of findings.* The letter of findings will include the findings of fact and the conclusions of law; a description of a remedy for each violation found; and a notice that a copy of HUD's final report concerning its compliance review will be made available, upon request, to the Recipient.

(c) *Right to a review of the letter of findings.* (1) Within 30 days of receipt of the letter of findings, any party may request that a review be made of the letter of findings, by mailing or delivering to the Responsible Official, Room

5100, Office of Fair Housing and Equal Opportunity, HUD, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified.

(2) The Responsible Official will send by certified mail, return receipt requested, a copy of the request for review to all parties. Parties other than the party requesting review and HUD shall have 20 days from receipt to respond to the request for review.

(3) The Responsible Official will either sustain or modify the letter of findings or require that further investigation be conducted, within 60 days of the request for review. The Responsible Official's decision shall constitute the formal determination of compliance or noncompliance.

(4) If no party requests that the letter of findings be reviewed, the Responsible Official, within 14 calendar days of the expiration of the time period in paragraph (a)(9)(i) of this section, will send a formal written determination of compliance or noncompliance to all parties.

(d) *Voluntary compliance time limits.* The Recipient will have 10 calendar days from receipt of the letter of findings of noncompliance, or such other reasonable time as specified in the letter, within which to agree, in writing, to come into voluntary compliance or to contact the Responsible Official for settlement discussions. If the Recipient fails to meet this deadline, HUD will proceed in accordance with §§6.12 and 6.13.

(e) *Informal resolution/voluntary compliance—(1) General.* It is the policy of HUD to encourage the informal resolution of matters. A complaint or a compliance review may be resolved by informal means at any time. If a letter of findings is issued, and the letter makes a finding of noncompliance, the Responsible Official will attempt to resolve the matter through a voluntary compliance agreement.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the Responsible Official will attempt to achieve a just resolution of the matter and to obtain assurances, where appropriate, that the Recipient will satisfactorily remedy any violations of the rights of any

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complainant, and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. If a finding of noncompliance has been made, the terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the Recipient and the Responsible Official, and be made part of the file. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public.

(3) *Right to file a private civil action.* At any time in the process, the complainant has the right to file a private civil action. If the complainant does so, the Responsible Official has the discretion to administratively close the investigation or continue the investigation, if he or she decides that it is in the best interests of the Department to do so. If the Responsible Official makes a finding of noncompliance and an agreement to voluntarily comply is not obtained from the Recipient, the procedures at §§ 6.12 and 6.13 for effecting compliance shall be followed.

(f) *Intimidatory or retaliatory acts prohibited.* No Recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, compliance review, proceeding, or hearing under this part.

§ 6.12 Procedure for effecting compliance.

(a) Whenever the Assistant Secretary determines that a Recipient of Federal financial assistance has failed to comply with Section 109(a) or this part and voluntary compliance efforts have failed, the Secretary will notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and will request that the Governor or the Chief Executive Officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or the Chief

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Executive Officer fails or refuses to secure compliance, the Secretary will:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by Title VI;

(3) Terminate or reduce payments under Title I, or limit the availability of payments under Title I to programs or activities not affected by the failure to comply; or

(4) Take such other actions as may be provided by law, including but not limited to, the initiation of proceedings under 24 CFR part 24 or any applicable proceeding under State or local law.

(b) *Termination, reduction, or limitation of the availability of Title I payments.* No order terminating, reducing, or limiting the availability of Title I payments under this part shall become effective until:

(1) The Secretary has notified the Governor of the State or the Chief Executive Officer of the unit of general local government of the Recipient's failure to comply in accordance with paragraph (a) of this section and of the termination, reduction or limitation of the availability of Title I payments to be taken;

(2) The Secretary has determined that compliance cannot be secured by voluntary means;

(3) The Recipient has been extended an opportunity for a hearing in accordance with § 6.13(a); and

(4) A final agency notice or decision has been rendered in accordance with paragraph (c) of this section or 24 CFR part 180.

(c) If a Recipient does not respond to the notice of opportunity for a hearing or does not elect to proceed with a hearing within 20 days of the issuance of the Secretary's actions listed in paragraphs (b)(1), (2) and (3) of this section, then the Secretary's approval of the termination, reduction or limitation of the availability of Title I payments is considered a final agency notice and the Recipient may seek judicial review in accordance with section 111(c) of the Act.