

U.S. Department of Housing and Urban Development  
FAIR HOUSING AND EQUAL OPPORTUNITY

Special Attention of: NOTICE FHEO 96-3  
All Secretary's Representatives  
All State/Area Coordinators Issued: July 23, 1996  
All CPD Directors  
All FHEO Enforcement Center Expires: July 23, 1997  
Directors  
All FHEO Program Operations and Cross References: Federal Register,  
Compliance Center Directors Vol. 60, Page 14294-95,  
All Housing Directors Dated March 16, 1995  
All PIH Directors "Delegation and Redefinition of  
Authority"

Subject: Administration of the Civil Rights -Related Program Requirements of  
the Department's Housing and Community Development Programs Under  
the March 16, 1995, Delegation and Redefinition of Authority

1. Purpose. This Notice provides guidance to Fair Housing and Equal Opportunity (FHEO) field staff regarding the redelegation of authority by the Assistant Secretary for FHEO to the Director, Program Operations and Compliance Center (POCC) in each HUD field office. Additionally, this Notice describes the responsibilities for FHEO field and Headquarters staff with the objective of helping to ensure compliance with the civil rights-related program requirements (CRRPRs) contained in the Department's housing and community development programs.
  2. The Delegation. On March 16, 1995, the Department published in the Federal Register a delegation of authority from the Secretary to the Assistant Secretary for FHEO to make decisions regarding CRRPRs. The delegation states the reasons for, and outlines significant changes in, the organizational relationships between FHEO field staff and their field counterparts in Housing, Public and Indian Housing (PIH) and Community Planning and Development (CPD); and between field and Headquarters FHEO and program staff. The principal points of the delegation are:
    - a. FHEO field office staff, in the past, played a largely advisory role regarding the impact of the CRRPRs. In reviewing a HUD program application, the FHEO field staff would simply advise the HUD program field staff whether an applicant was in compliance with the CRRPRs.
- E: Distribution: W-3-1  
In the event of a disagreement, the Regional Administrator or Area Manager for the particular office made the final decision to resolve the issue. However, since the field reorganization eliminated the positions of Regional Administrator and Area Manager, there was no one in the field offices to resolve disagreements concerning civil rights issues involving HUD programs. Consequently, there was the concern that compliance with the CRRPRs would not be adequately considered.
- b. The Secretary concluded that it is most important that HUD program funds and other benefits be given to HUD program applicants that comply with the Department's CRRPRs. He further concluded that the

best way to accomplish this objective is by giving additional specific authority to the Assistant Secretary for FHEO and to the field POCC Directors in determining the CRRPR status of applicants or recipients of Federal financial assistance or other benefits.

- c. The function of FHEO is to ensure compliance with civil rights requirements. This responsibility is accomplished not only by having FHEO administer and enforce civil rights statutes, but also through participation in the decision-making process regarding compliance with CRRPRs. Participation by FHEO in this decision-making process is designed solely to assure that serious FHEO issues are thoroughly considered before programmatic decisions are made. FHEO field staff will function as equal partners and their recommendations will be given the same consideration and weight as those made by program staff. It is intended that the POCCs work closely and cooperatively with program offices toward common Departmental goals relating to fair housing.
- d. In the event that the POCC and field office program directors are not able to agree on the CRRPR status of an applicant or participant, both parties shall consult with the Secretary's Representative/State/Area Coordinator who will propose a solution. If the solution proposed at the Field Office level is not satisfactory to both parties, the issue must be elevated to Headquarters where it will be jointly decided between the Assistant Secretaries for FHEO and the applicable program office. In the event the two Assistant Secretaries cannot agree, the matter will be resolved by the Secretary.

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3. Civil Rights-Related Program Requirements. CRRPRs are those requirements of HUD programs relating to equal opportunity that are:

- contained in regulations which interpret civil rights statutes, e.g., the Fair Housing Act regulations at 24 CFR 100; and
- incorporated into program regulations, Notices of Funding Availability (NOFAs), Mortgagee Letters and other agreements between the Assistant Secretary for Fair Housing and Equal Opportunity and another Assistant Secretary.

CRRPRs are administered through (1) reviews of documents submitted to Field Offices pursuant to processes described in program regulations and Handbooks; (2) off-site and onsite monitoring of the recipient's performance under the CRRPRs; (3) ongoing technical assistance to grantees/recipients and (4) appropriate sanctions established in program statutes, regulations, handbooks and notices. Examples of specific types of CRRPRs include but are not limited to the following:

- a. Certifications of Compliance with Civil Rights Laws and Executive Orders. (1) The recipient signs a certification form stating that it will comply with various civil rights laws (e.g., the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, the Americans with Disabilities Act, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973). A single certification for all of these civil rights laws is found in, for example, the Section 8 Rental Certificate and

Rental Voucher Program. (2) Other programs require the recipients to comply with these civil rights laws but do not require the recipient to submit a certification, or (3) require a certification to comply with some but not all of the civil rights laws listed above.

The civil rights laws cited vary depending upon the nature of the HUD program. For example, the Community Development Block Grant (CDBG) Program includes a reference to Section 109 of the Housing and Community Development Act of 1974 because that civil rights requirement is unique to that program. Also, the Consolidated Plan Final Rule requires CDBG recipients to certify that their grants will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act and implemen-

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ting regulations. HUD insured housing programs do not contain a reference to Title VI or Section 504 because those civil rights laws are only applicable to HUD programs that receive federal financial assistance.

- b. Affirmatively Furthering Fair Housing Certification. The Consolidated Plan regulations for Community Planning and Development Programs (24 CFR 91) require all units of general local government, states and consortia that submit a Consolidated Plan to certify that they will affirmatively further fair housing. Compliance with this certification means completing an analysis of impediments to fair housing choice, taking steps to address the problems identified in the analysis and maintaining records showing that they are addressing the problems identified in the analysis. The recipient can update the analysis at any time during the five-year Consolidated Plan life cycle.
- c. Site and Neighborhood Standards. Applicants for low-income public housing new construction, Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities program funds must show how their proposed site will be consistent with the objectives of the Fair Housing Act and Title VI of the Civil Rights Act of 1964. The applicant's site can not be located within an area of minority concentration unless it passes either a "sufficient and comparable opportunities" test or an "overriding needs" test.
- d. Tenant Selection and Assignment Procedures in Public Housing. The Title VI Regulations, 24 CFR 1, require housing authorities to formulate and implement a tenant selection and assignment plan, under which the housing authority selects and assigns tenants and administers its waiting list in a manner that does not violate Title VI of the Civil Rights Act of 1964. Section 504 of the Rehabilitation Act of 1973 has requirements regarding tenant selection and assignment pertaining to persons with disabilities. Additionally, Section 504 contains requirements pertaining to reasonable accommodation. For example, if alterations are required to make a unit accessible to an applicant with a disability, the HUD recipient is obligated to make the necessary alterations unless doing so would cause undue financial and administrative burdens or result in a fundamental alteration of the program or activity.

- e. Section 8 Certificate/Voucher Conforming Rule - 24 CFR 982 - Administrative Plan Requirements. The Administrative Plan requirements include a number of civil rights related provisions.
- f. Affirmative Fair Housing Marketing requirements found in the Regulations at 24 CFR 200.600 and in the regulations of a number of insured and subsidized housing programs. These regulations require applicants for five or more units of multifamily and single-family insured and assisted housing to implement HUD-approved plans which describe (1) affirmative steps to attract all segments of the eligible populations to the housing; and (2) special outreach activities to those groups considered least likely to apply for the housing without such activities.
- g. Programmatic monitoring requirements pertaining to civil rights that are explicitly stated in program Regulations, e.g., the Equal Opportunity Performance Review Regulations of the Community Development Block Grant (CDBG) Entitlement Program at 24 CFR 570.904.
- h. Civil rights related reporting and recordkeeping requirements outlined in regulations, notices and handbooks, e.g., the Fair Housing and Equal Opportunity recordkeeping requirements for CDBG found at 24 CFR 570.506(g).
- i. Regulatory provisions relating to civil rights related programmatic sanctions, e.g., rejection of a program application if a charge has been issued against an applicant pursuant to Section 810(g)(2) of the Fair Housing Act. Such provisions are found in, among other places, the Regulations governing the Supportive Housing for the Elderly Program (24 CFR 889.300(c) (2)).

The requirements of Section 3 of the Housing and Urban Development Act of 1968, while not in the strict sense civil rights related, are also cited in many HUD program regulations, notably those relating to Public Housing Development and the Community Development programs.

#### 4. Applicability.

- a. Section B of the delegation redelegates the Assistant Secretary's authority to determine compliance with the CRRPRs to the POCC Directors. The procedures described in Section 5 below cover the involvement of FHEO POCC staff in (1) determining the status of applicants for, and participants in, HUD housing and community development programs under CRRPRs and (2) the resolution of disputes between FHEO and program divisions over these determinations. The methods used to make these determinations were previously described in Sections 2.c and 2.d of this Notice.
- b. The procedures described in Section 5 below do not apply to the rating by Field Office staff of applications or proposals solicited through a competitive NOFA. As stated in the March 16, 1995 delegation "FHEO staff usually rates [civil rights] criteria and provides the ratings to field program staff. Nothing in this

delegation would allow FHEO to challenge the award of such competitive assistance based on the program office's assessment of non-FHEO features."

5. Procedures.

a. Field Office Level.

- (1) POCC staff shall follow procedures outlined in program regulations, handbooks or notices issued by FHEO or the program office. They shall also complete all reviews within the statutory or regulatory deadlines of the program or as established by the Field Office. In most instances, the Field Office will approve the document without raising major issues or will assist the applicant in addressing any minor technical issues. POCC staff shall also conduct monitoring activities connected with civil rights in accordance with current monitoring procedures, e.g., HUD Handbook 8004.1, Consolidated Civil Rights Monitoring Requirements, Public Housing Agency Section 8 Existing and Lower-Income Public Housing Programs. As a result of these monitoring activities, POCC staff identify their findings and concerns and recommend corrective action. Depending on the seriousness of the finding or

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concern, the POCC or Program Operations Division also has the option of recommending further review by the POCC Compliance Divisions.

- (2) If issues arise regarding the status of an applicant or participant with respect to a CRRPR, the POCC Director and/or staff should immediately consult with the Program Director and/or staff to allow additional information/actions to be generated and reviewed without exceeding the statutory or other deadlines. If the information/action is sufficient to resolve the issue, no other steps are necessary. Issues should be resolved locally whenever possible.
- (3) If there is a disagreement between FHEO and program staff based on the interpretation of a statutory or regulatory provision pertaining to CRRPRs, or if some kind of sanction is deemed warranted, the POCC Director and the Program Director shall meet to determine the appropriate course of action, e.g., sending a letter of warning to the recipient, imposing no sanctions, securing a Special Assurance, imposing conditions on the contract, etc. Where appropriate, the POCC Director should consult with his or her Program Coordinator in the Office of Program Standards and Evaluation (OPSE) to receive technical assistance in determining appropriate courses of action or make him/her aware that a problem exists.
- (4) If an impasse is reached between the POCC and the Housing, CPD or PIH Program Directors, both parties shall consult with the Secretary's Representative/State/Area Coordinator who will propose a solution.

b. Headquarters Level.

- (1) If the solution proposed at the Field Office level is not satisfactory to both parties, the issue must be elevated to Headquarters. At this juncture, the assigned Field Monitoring and Management Planning Division Desk Officer and the OPSE Program Coordinator become aware of the situation and shall participate in any discussions at Headquarters relative to the issue, especially if the issue is a sensitive or precedent setting one. Examples of situations that may be elevated

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include sensitive issues such as tenant selection and assignment plans or practices that may affect the funding status of PHAs; site and neighborhood standards disputes involving the selection of sites located within areas of minority concentration; matters involving Section 504 or the Fair Housing Act's accessibility provisions when such provisions are CRRPRs; or matters involving a community's refusal to grant zoning approval for Federally-assisted or non-Federally-assisted facilities that treat persons with disabilities such as AIDS.

- (2) Within 24 hours of being informed about the problem, FHEO shall alert the appropriate program staff. The Headquarters FHEO Program Coordinator and Desk Officer shall as soon as possible meet with appropriate senior staff from FHEO and the Program Office to resolve the issue. Every effort shall be made to resolve the dispute prior to the expiration of any established review and approval timeframe. The POCC Director and the appropriate Field Office program director shall have the right to participate through conference calls or other means in any meeting of Headquarters staff below DAS level. By so doing the POCC Director can play a key role in formulating the solution before it is approved by the Assistant Secretary for FHEO. If the issue is not resolved, the Assistant Secretaries for FHEO and the affected program shall attempt to resolve the problem.
- (3) In the event the two Assistant Secretaries are unable to agree, the matter shall be resolved by the Secretary.

#### 6. Role of Headquarters Staff.

- a. Under the restructured organization of HUD, each program office has a unit that handles day-to-day support of and assistance to its own field organizations.
  - (1) In FHEO, the Office of Program Standards and Evaluation (OPSE) has the lead in overseeing the daily programmatic component of operations of the small and large POCCs. OPSE also informs

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the field regarding the policies and procedures required to implement the CRRPRs, trains and evaluates POCC Directors and, where appropriate, POCC staff.

- (2) The Field Monitoring and Management Planning Division in the

Office of Management and Field Coordination works in coordination with OPSE on the resolution of field issues.

- b. Under this delegation, OPSE's primary role is to render technical assistance and advice to Field Office FHEO and program staff on civil rights-related matters that are in dispute. If a policy dispute involving a field office program decision is referred to Headquarters, OPSE and the Desk Officer work cooperatively with Headquarters and Field Office program staff to resolve the situation through negotiations. If FHEO and its program office counterparts agree on a solution, then FHEO and the program office will communicate the Headquarters position to the Field Office immediately, with the Field Office having the right to comment on the proposed solution.
- c. In the event that FHEO and program staff can not work out a solution, OPSE and the Field Monitoring and Management Planning Division shall prepare the case for the Assistant Secretary to resolve with his/her program counterparts. If the Assistant Secretaries come to a consensus on the solution, then their decision shall be final; if no decision is reached, the dispute is to be elevated to the Secretary.

Please address all comments and questions to your Program Coordinator or William D. Gregorie, Acting Director, Office of Program Standards and Evaluation, (202) 708-2288, extension 266.

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