

FH&EO. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall be notified of all alleged violations of the regulations. A complaint is not a prerequisite for the initiation of compliance review.

(b) The purpose of a compliance review is to determine whether the respondent is in compliance with the Executive order and this part. Where allegations may also indicate a violation of the provisions of title VIII of the Civil Rights Act of 1968, HUD regulations issued thereunder and Affirmative Fair Housing Marketing requirements, a review may be undertaken to determine compliance with those requirements. The respondent shall be given at least five (5) days notice of the time set for any compliance review and the place for such review. The complainant shall also be notified of the compliance review.

**§ 107.51 Findings of noncompliance.**

(a) A finding of noncompliance shall be made when the facts disclosed during an investigation or compliance review, or other information, indicate a failure to comply with the provisions of E.O. 11063 or this part. In no event will a finding of noncompliance precede the completion of the compliance meeting procedures set forth in § 107.40.

(b) Determinations of noncompliance with E.O. 11063 shall be made in any case in which the facts establish the existence of a discriminatory practice under § 107.15(g)

(c) The existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons, because of race, color, religion (creed), sex or national origin, to apply for or receive the benefits of assistance shall be a basis for finding a discriminatory practice unless the respondent can establish that:

(1) The policy or practice is designed to serve a legitimate business necessity or governmental purpose of the respondent;

(2) The policy or practice effectively carries out the interest it is designed to serve; and

(3) No alternative course of action could be adopted that would enable respondent's interest to be served with a less discriminatory impact.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985]

**§ 107.55 Compliance report.**

(a) Following completion of efforts under this part, the Director of the Office of Regional FH&EO or a designee shall prepare a compliance report promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the respondent is in compliance, all persons concerned shall be notified of the finding. Where a finding of noncompliance is made, the report shall specify the violations found. The Director of the Office of Regional FH&EO shall send a copy of the report to the respondent by certified mail, return receipt requested, together with a Notice that the matter will be forwarded to the Assistant Secretary for FH&EO for a determination as to whether actions will be initiated for the imposition of sanctions. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO.

(b) The Notice will provide that the respondent shall have seven (7) days to respond to the violations found and resolve and remedy matters in the compliance report. At the expiration of the seven (7) day period the matter shall be referred to the Assistant Secretary for FH&EO.

(c) The complainant shall be sent a copy of the findings and compliance report and shall have seven (7) days to comment thereon.

**§ 107.60 Sanctions and penalties.**

(a) Failure or refusal to comply with E.O. 11063 or the requirements of this part shall be proper basis for applying sanctions. Violations of title VIII of the Civil Rights Act of 1968 or a state or local fair housing law, with respect to activities covered by the Executive order, or of the regulations and requirements under E.O. 11063 of other Federal Departments and agencies may

## § 107.65

also result in the imposition of sanctions by this Department.

(b) Such sanctions as are specified by E.O. 11063, the contract through which Federal assistance is provided, and such sanctions as are specified by the rules or regulations of the Department governing the program under which Federal assistance to the project is provided, shall be applied in accordance with the relevant regulations. Actions which may be taken include: cancellation or termination, in whole or in part of the contract or agreement; refusal to approve a lender or withdrawal of approval; a determination of ineligibility, suspension or debarment from any further assistance or contracts provided, however, that sanctions of debarment, suspension and ineligibility are subject to the Department's regulations under part 24 of this title; and provided further, that no sanction under section 302 (a), (b) and (c) of E.O. 11063 shall be applied by the Assistant Secretary for FH&EO without the concurrence of the Secretary.

(c) The Department shall use its good offices in order to promote the abandonment of discriminatory practices with regard to residential property and related facilities provided with assistance prior to the effective date of E.O. 11063 and take appropriate actions permitted by law including the institution of appropriate litigation to provide such equal housing opportunities.

(d) In any case involving the failure of a lender to comply with the requirements of the Executive order or this part, the Assistant Secretary for FH&EO shall notify the Federal financial regulatory agency having jurisdiction over the lender of the findings in the case.

### § 107.65 Referral to the Attorney General.

If the results of a complaint investigation or a compliance review demonstrate that any person, or specified class of persons, has violated E.O. 11063 or this part, and efforts to resolve the matter(s) by informal means have failed, the Assistant Secretary for FH&EO in appropriate cases shall recommend that the General Counsel refer the case to the Attorney General of the United States for appropriate civil or

## 24 CFR Subtitle B, Ch. I (4-1-04 Edition)

criminal action under section 303 of E.O. 11063.

### PART 108—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

Sec.

- 108.1 Purpose and application.
- 108.5 Authority.
- 108.15 Pre-occupancy conference.
- 108.20 Monitoring office responsibility for monitoring plans and reports.
- 108.21 Civil rights/compliance reviewing office compliance responsibility.
- 108.25 Compliance meeting.
- 108.35 Complaints.
- 108.40 Compliance reviews.
- 108.45 Compliance report.
- 108.50 Sanctions.

AUTHORITY: 42 U.S.C. 3608, 3535(d); E.O. 11063, 27 FR 11527, 3 CFR, 1958-1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

SOURCE: 44 FR 47013, Aug. 9, 1979, unless otherwise noted.

#### § 108.1 Purpose and application.

(a) The primary purpose of this regulation is to establish procedures for determining whether or not an applicant's actions are in compliance with its approved Affirmative Fair Housing Marketing (AFHM) plan, AFHM Regulation (24 CFR 200.600), and AFHM requirements in Departmental programs.

(b) These regulations apply to all applicants for participation in subsidized and unsubsidized housing programs administered by the Department of Housing and Urban Development and to all other persons subject to Affirmative Fair Housing Marketing requirements in Department programs.

(c) The term *applicant* includes:

(1) All persons whose applications are approved for development or rehabilitation of: Subdivisions; multifamily projects; manufactured home parks of five or more lots, units or spaces; or dwelling units, when the applicant's participation in FHA housing programs has exceeded, or would thereby exceed, development of five or more such dwelling units during the year preceding the application, except that there shall not be included in a determination of the number of dwelling units developed or rehabilitated by an