

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**
24 CFR Parts 6, 180, 570
[Docket No. FR 4092-P-01]
RIN 2501-AC28
**Nondiscrimination in Programs and
Activities Receiving Assistance Under
Title I of the Housing and Community
Development Act of 1974**
AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures to file a complaint for a claim of discrimination under HUD's community planning and development programs modeled on the Department's regulations implementing the prohibition against discrimination on the basis of disability and the regulations implementing the prohibition against discrimination on the basis of race, color, or national origin in Federal programs. The rule also would provide that hearings on complaints be conducted in accordance with HUD's consolidated hearing procedures for civil rights claims. This rule is needed to inform members of the public how to file complaints and how HUD will act on their complaints.

DATES: *Comments due date:* July 10, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT:

Betsy Ryan, Director, Program Compliance Division, Office of Program Compliance and Disability Rights, Office of Fair Housing and Equal Opportunity, Room 5240, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410-5000, telephone (202) 708-0404. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:
I. Background

Section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321) (Title I) provides as follows:

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

The original language in section 109 of Title I (hereafter "Section 109") was modeled on the language in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) (Title VI). Title VI prohibits discrimination on the bases of race, color, and national origin in any program or activity for which federal financial assistance is authorized under a law administered by the Department. However, Section 109 also includes protection against discrimination on the basis of sex. Additionally, unlike Title VI, which excludes employment practices except where employment is a primary purpose of the program, Section 109 includes employment discrimination within its coverage.

The Housing and Community Development Act of 1981 (Pub. L. 97-335, approved August 13, 1981; 95 Stat. 392) amended Section 109 to reference the prohibitions against age and disability discrimination in Title I programs under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). The purpose of this amendment was to clarify that although Section 109 does not directly prohibit discrimination on the bases of age and disability, it directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs.

Section 912 of the National Affordable Housing Act of 1990 (Pub. L. 101-625, approved November 28, 1991; 104 Stat. 4079) also amended Section 109 to add protection against discrimination on the basis of religion. Age or disability discrimination actions in Title I programs may be brought under either the Age Discrimination Act or Section 504, as appropriate. Causes of action for race, color, and national origin

discrimination may be brought under Title VI and/or Section 109. Causes of action for discrimination based on sex and religion may be brought under Section 109.

The Department's regulations governing the Community Development Block Grant Programs are set forth in 24 CFR part 570. Section 570.602 of these regulations incorporates the nondiscrimination provisions of Section 109, defining specific types of discrimination, and setting forth performance standards by which the Department judges whether a Recipient is complying with Section 109.

To date, Section 109 has been enforced by utilizing the provisions of § 570.602 and the procedures set forth in the Department's regulations at 24 CFR part 8, which implement Section 504 for HUD-assisted programs and activities. The purpose of this rule is to set forth, in a new 24 CFR part 6, the policies and procedures necessary to enforce Section 109.

In addition to proposing a new part 6, the Department also proposes to conform 24 CFR 570.602 to reflect the addition of the new part 6 to the Department's regulations. Specifically, the Department proposes to amend 24 CFR 570.602 to state the applicability of Section 109 to the Title I programs and to refer the reader to the new part 6 for the regulations governing Section 109. Additionally, the Department proposes to amend 24 CFR part 180 (Consolidated HUD Hearing Procedures for Civil Rights Matters) to include Section 109. The Department promulgated part 180 in an effort to promote uniformity and reduce confusion for HUD program participants who in the past were faced with separate hearing procedures for each civil rights statutory authority enforced by the Department. Part 180 consolidates HUD's hearing procedures for nondiscrimination and equal opportunity matters under the Fair Housing Act (42 U.S.C. 3601-3619), Title VI, the Age Discrimination Act, and Section 504. Amending part 180 to include Section 109 will further the Department's goals of promoting uniformity, avoiding redundancy, and reducing confusion for HUD program participants. The use of part 180 hearing procedures for Section 109 hearings in no way affects the applicability of the hearing procedures provided for at 24 CFR 570.496 and 570.913, which govern non-civil rights matters under Title I. Section 570.913 is proposed to be amended in this rule to cross reference the procedures in parts 6 and 180 with respect to discrimination prohibited under Section 109, as described in § 570.602.

The proposed new part 6 provides specific time frames and procedures for the acceptance and investigation of complaints, improving response time and benefit to both complainants and Recipients. The proposed new part 6 is divided into two subparts. Subpart A (General Provisions) outlines the purpose and applicability of part 6, defines the important terms that are used in the regulation, and states in general terms the discriminatory acts that are prohibited by Section 109. Subpart B (Enforcement) sets forth the administrative enforcement provisions and refers the reader to 24 CFR part 180 for the administrative hearing procedures.

II. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in § 6.6 of this proposed rule are already imposed on Recipients of Title I assistance under existing regulations at 24 CFR 91.105, 91.115, 570.491, and 570.506. These information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2506–0117 and 2506–0077. This rule incorporates these recordkeeping requirements, but does not require duplication of this information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Coordination

The Department of Justice has reviewed and approved this proposed rule under Executive Order 12250. The Equal Employment Opportunity Commission has reviewed and approved this proposed rule under Executive Order 12067.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this rule set out nondiscrimination standards and, therefore, are categorically excluded

from the requirements of the National Environmental Policy Act under 24 CFR 50.19(c)(3).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and by approving it certifies that this proposed rule would not have a significant economic impact on small entities. The purpose of this rule is to provide for the enforcement of Section 109 of the Housing and Community Development Act of 1974, as amended, as it applies to recipients of Federal financial assistance from the Department of Housing and Urban Development. The rule is needed to inform members of the public on how to file complaints on the basis of discrimination under Section 109 and how HUD will act on their complaints. The rule sets out the process so that all parties involved in complaints will have certainty as to what procedures will govern. The proposed rule would not have a significant economic impact on a substantial number of small entities. The Department is sensitive, however, to the fact that uniform application of requirements on entities of differing sizes often places a disproportionate burden on small business. Therefore, the Department is soliciting alternatives for compliance from small entities that might be less burdensome to them.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this proposed rule are directed to Title I programs and activities, and do not impinge upon the relationship between the Federal government and State and local governments. Accordingly, the proposed rule is not subject to review under the Order.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.406.

List of Subjects

24 CFR Part 6

Administrative practice and procedure, Civil rights, Community

development block grants, Equal employment opportunity, Grant programs—housing and community development, Investigations, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, subtitle A and chapters I and V of title 24 of the Code of Federal Regulations are proposed to be amended as follows:

1. A new part 6 is added, to read as follows:

PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Subpart A—General Provisions

Sec.

- 6.1 Purpose.
- 6.2 Applicability.
- 6.3 Definitions.
- 6.4 Discrimination prohibited.
- 6.5 Discrimination prohibited—employment.
- 6.6 Records to be maintained.

Subpart B—Enforcement

- 6.10 Compliance information.
- 6.11 Conduct of investigations.
- 6.12 Procedure for effecting compliance.
- 6.13 Hearings and appeals.

Authority: 42 U.S.C. 3535(d), 5309.

Subpart A—General Provisions

§ 6.1 Purpose.

The purpose of this part is to implement the provisions of Section 109 of Title I of the Housing and Community Development Act of 1974 (Title I) (42

U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. Section 109 does not directly prohibit discrimination on the bases of age or disability, and the regulations set forth in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, Section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

§ 6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under Title I of the Housing and Community Development Act of 1974, including Community Development Block Grants—Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.

(b) The provisions of this part and sections 104(b)(2) and 109 of Title I which relate to discrimination on the basis of race shall not apply to the provision of Federal financial assistance by grantees under this title to the Hawaiian Homelands (42 U.S.C. 5309).

§ 6.3 Definitions.

The terms *Department*, *HUD*, and *Secretary* are defined in 24 CFR part 5. Other terms used in this part 6 are defined as follows:

Act means the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5320).

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Award Official means the HUD official who has been delegated the Secretary's authority to implement a

Title I funded program and to make grants thereunder.

Complete complaint means a written statement that contains the complainant's name and address, identifies the Recipient against which the complaint is made, and describes the Recipient's alleged discriminatory action in sufficient detail to inform HUD of the nature and date of the alleged violation of section 109. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Federal financial assistance means:

- (1) Any assistance made available under Title I of the Housing and Community Development Act of 1974, as amended, and includes income generated from such assistance, and any grant, loan, contract, or any other arrangement, in the form of:

- (i) Funds;
- (ii) Services of Federal personnel; or
- (iii) Real or personal property or any interest in or use of such property, including:

(A) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(B) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

(2) Federal financial assistance includes assistance in the form of proceeds from loans guaranteed under section 108 of the Act, but does not include assistance made available through direct Federal procurement contracts or any other contract of insurance or guaranty.

Program or activity (funded in whole or in part) means all of the operations of —

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of such State or local government that distributes such assistance, and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other post-secondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraphs (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another Recipient, for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

Responsible Official means the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

Section 109 means Section 109 of the Housing and Community Development Act of 1974, as amended.

Title I means Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321).

§ 6.4 Discrimination prohibited.

(a) Section 109 requires that no person in the United States shall, on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

(1) A Recipient under any program or activity to which this part applies may not, directly or through contractual, licensing, or other arrangements, on the grounds of race, color, national origin, religion, or sex:

(i) Deny any individual any facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any facilities, services, financial aid, or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity;

(iii) Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to the receipt of any service or benefit under the program or activity;

(iv) Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions which the individual must meet in order to be provided any facilities, services, or other benefit provided under the program or activity;

(vi) Deny an individual an opportunity to participate in a program or activity as an employee;

(vii) Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;

(viii) Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;

(ix) Use criteria or methods of administration which have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or

(x) Deny a person the opportunity to participate as a member of planning or advisory boards.

(2) In determining the site or location of housing, accommodations, or facilities, a Recipient may not make selections of such site or location which have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, religion, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Section 109 and of this part 6.

(3)(i) In administering a program or activity in which the Recipient has

discriminated on the grounds of race, color, national origin, religion or sex, the Recipient must take any necessary steps to overcome the effects of prior discrimination.

(ii) In the absence of discrimination, a Recipient, in administering a program or activity, may take any steps necessary to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, national origin, religion, or sex.

(iii) After a finding of noncompliance, or after a Recipient has reasonable cause to believe that discrimination has occurred, a Recipient shall not be prohibited by this section from taking any action eligible under 24 CFR part 570, subpart C, to ameliorate an imbalance in benefits, services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy discriminatory practices or usage.

(iv)(A) Notwithstanding anything to the contrary in this part, nothing contained in this section shall be construed to prohibit any Recipient from maintaining or constructing separate living facilities or restroom facilities for the different sexes in order to protect personal privacy or modesty concerns. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can, in the interest of personal privacy or modesty, only be performed by a member of the same sex as those receiving the services.

(B) Section 109 of the Act does not directly prohibit discrimination on the basis of age or disability, but directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs and activities. Accordingly, for programs or activities receiving Federal financial assistance, the regulations set forth in this part 6 apply to discrimination on the bases of race, color, national origin, religion, or sex; the regulations at 24 CFR part 8 apply to discrimination on the basis of disability; and the regulations at 24 CFR part 146 apply to discrimination on the basis of age.

§ 6.5 Discrimination prohibited—employment.

(a) *General.* A Recipient may not, under any program or activity funded in whole or in part with Federal financial assistance, directly or through contractual agents or other arrangements including contracts and consultants, subject a person to discrimination in the

terms and conditions of employment, including 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, in obtaining compliance with this part, 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 this 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 noncompliance 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.* The Responsible Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, except to the extent necessary to carry out the purposes of this part, including 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 during the pendency of the complaint 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 review 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.

(9) *Right to a review of the letter of findings.* (i) Within 30 days of receipt of

the letter of findings, a complainant or Recipient 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.

(ii) The Responsible Official will send by certified mail, return receipt requested, a copy of the request for review to the other party. Such other party shall have 20 days from receipt to respond to the request for review.

(iii) 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.

(iv) If neither 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 the complainant, the Recipient, and the Award Official.

(10) *Voluntary compliance time limits.* The Recipient will have 10 calendar days, or such other reasonable amount of time specified in the letter transmitting the findings of noncompliance, from receipt of a formal determination of noncompliance 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.

(11) *Informal resolution/voluntary compliance.* (i) *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.

(ii) *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 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 interest.

(iii) *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.

(12) *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.

(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 prior to receipt of 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 effectuate the requirements of this part.

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

(iv) For all other programs, the time period covered by the review will be four years prior to 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 investigation of the complaint allegations will be made available, upon request, to the Recipient.

(iii) *Response to the letter of findings of noncompliance.* Within a reasonable period of time not to exceed 30 days after receipt of the letter of findings, the Recipient may request the commencement of discussions to resolve the findings of noncompliance voluntarily.

§ 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 shall notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and shall 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 Executive Officer fails or refuses to secure compliance, the Secretary shall:

(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; and

(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.

§ 6.13 Hearings and appeals.

(a) When a Recipient requests an opportunity for a hearing, in accordance with § 6.12(b)(3), the General Counsel shall follow the notification procedures set forth in 24 CFR 180.415. The hearing, and any petition for review, will be conducted in accordance with

the procedures set forth in 24 CFR part 180.

(b) After a hearing is held and a final agency decision is rendered under 24 CFR part 180, the Recipient may seek judicial review in accordance with section 111(c) of the Act.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

2. The heading of part 180 is revised to read as set forth above.

2a. The authority citation for 24 CFR part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601-3619, 5301-5320, and 6103.

3. In § 180.100, the paragraph (c) designation is removed and a new paragraph (c) is added immediately above the definition for Agency; and the definitions of “*Federal financial assistance*,” “*Non-Fair Housing Act Matters*,” and “*Recipient*” are revised to read as follows:

§ 180.100 Definitions.

* * * * *

(c) Other terms used in this part are defined as follows:

* * * * *

Federal financial assistance has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

* * * * *

Non-Fair Housing Act Matters refers to proceedings under this part pursuant to:

(1) Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000d-1) and the implementing regulations at 24 CFR part 1;

(2) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(3) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6103), and the implementing regulations at 24 CFR part 146; or

(4) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5321), and the implementing regulations at 24 CFR part 6.

* * * * *

Recipient has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

* * * * *

4. Section 180.105 is amended by removing “and” at the end of paragraph (a)(3), by removing the period at the end of paragraph (a)(4) and adding “; and” in its place, and by adding a new paragraph (a)(5), to read as follows:

§ 180.105 Scope of rules.

(a) * * *

(5) Section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321) and implementing regulations at 24 CFR part 6.

* * * * *

5. In § 180.310, paragraph (a) is revised to read as follows:

§ 180.310 Parties.

(a) Parties to proceedings under this part are HUD, the respondent(s), and any intervenors. Respondents include persons named as such in a charge issued under 24 CFR part 103 and Recipients/applicants named as respondents in hearing notices issued under 24 CFR parts 1, 6, 8 or 146 and notices of proposed adverse action under this part.

* * * * *

6. In § 180.415, the section heading and paragraph (a) are revised to read as follows:

§ 180.415 Notice of proposed adverse action regarding Federal financial assistance in non-Fair Housing Act matters.

(a) *Filing and service.* Within 10 days after a Recipient/applicant has requested a hearing, as provided for in 24 CFR parts 1, 6, 8, or 146, the General Counsel shall file a notice of proposed adverse action with the Chief Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and complainants.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

7. The authority for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301-5320.

8. Section 570.602 is revised to read as follows:

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of Section 109 are codified in 24 CFR part 6.

9. In § 570.913, a heading is added to paragraph (a) and the introductory text of paragraph (a) is revised to read as follows:

§ 570.913 Other remedies for noncompliance.

(a) *Action to enforce compliance.* When the Secretary acts to enforce the civil rights provisions of Section 109, as described in § 570.602 and 24 CFR part 6, the procedures described in 24 CFR parts 6 and 180 apply. If the Secretary finds, after reasonable notice and opportunity for hearing, that a recipient has failed to comply substantially with any other provisions of this part, the provisions of this section apply. The Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

* * * * *

Dated: March 27, 1998.

Andrew Cuomo,
Secretary.

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