Issued in Washington, DC, on October 31, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-25709 Filed 11-4-88; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S-837]

Waterman Steamship Corp.; Application To Provide Trade Route 18/17 Service

Waterman Steamship Corporation (Waterman), by application dated October 20, 1988, as amended on November 3, 1988, has requested an amendment to Appendix B of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-115 for necessary approvals to provide Trade Route (TR) 18/17 (U.S. Atlantic and Gulf/Red Sea-Indonesia-Malaysia-Singapore) service with a C9-S81d LASH type vessel named *Green Valley* to be bareboat chartered from Central Gulf Lines, Inc. If granted, the vessel will be on berth mid to end December and will make a voyage to the full range of TR 18. Waterman proposes to operate the vessel for one subsidized voyage with options for up to six additional voyages.

Under the ODSA, Waterman is authorized to make a minimum/maximum of 30/40 sailings per year on TR 18/17.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 p.m. on November 21, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Subsidy Board.

Date: November 2, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-25701 Filed 11-4-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 1, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Opinion Survey on IRS Publication 2
Description: The data collected will be used to determine if Publication 2 is a viable alternative for Publication 17. The sample will be selected from all taxpayers who have requested Publication 17
Respondents: Individual or households, Businesses or other for-profit
Estimated Number of Respondents: 1,578
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,578 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-25695 Filed 11-4-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 2, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: New
Form Number: TD F 90-21.4
Type of Review: New collection
Title: Survey of Depreciation of Scientific Equipment
Description: The purpose of this study is to collect data that will allow the determination of the class life for scientific instruments. The study will affect businesses that use scientific instruments.
Respondents: Businesses and other for-profit
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 6 hours
Frequency of Response: Other (unless changes in technology required otherwise, reporting will be required only once.)
Estimated Total Reporting Burden: 2,160 hours
Clearance Officer: Dale A. Morgan (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue, NW., Washington, DC 20220
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-25696 Filed 11-4-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 43967, October 31, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: November 8, 1988.

CHANGE: Addition of the following item to the open meeting agenda:

"Officer Compensation"

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–25761 Filed 11–3–88; 11:16 am]

BILLING CODE 7710-12-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1410]

TIME AND DATE: 10 a.m. (c.s.t.), November 9, 1988.

PLACE: Fifth Floor Board Room, Memphis Light, Gas and Water Division, 220 South Main Street, Memphis, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on October 19, 1988.

Action Items

New Business

C—Power Items

C1. Revision to 5-Percent Interruptible Power Arrangements.

E—Real Property Transactions

E1. Acquisition of Approximately 0.45-Acres of Beech River Watershed Development Authority (BRWDA) Land in Henderson County, Tennessee.

E2. Reconveyance of a Public Access Tract From the State of Tennessee Affecting 7.1 Acres of Kentucky Reservoir Land in Decatur County, Tennessee.

E3. Grant of Easement to Alabama Department of Conservation and Natural Resources Affecting Approximately 13,000 Acres of Guntersville Reservoir Land in Jackson County, Alabama.

F—Unclassified

F1. Revised TVA Code II Accounting, Accounts Receivable.

F2. Contract No. TV–76563A with Walker College, Jasper, Alabama; and Contract No. TV–75668A with the Appalachian Regional Commission for the Establishment of an Industrial Incubation Center.

F3. Supplement 2 to Personal Services Contract No. TV–74314A with NUS Corporation.

F4. Supplement 11 to Personal Services Contract No. TV–53532A with Hartford Steam Boiler Inspection and Insurance Company.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: November 1, 1988.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 88–25742 Filed 11–3–88; 11:02 am]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Solicitation of Graduate Fellowships Grants Proposals

Correction

In notice document 88-24373 beginning on page 41391 in the issue of Friday, October 21, 1988, make the following corrections:

1. On page 41391, in the second column, in the third line from the bottom, "$48,00" should read "$48,000".

2. On the same page, in the third column, in the tenth line from the top, "$1,00" should read "$1,000".

BILLING CODE 1505-01-DS4734

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Pennsylvania State University et al.

Correction

In notice document 88-24876 beginning on page 43462 in the issue of Thursday, October 27, 1988, make the following corrections:

1. On page 43462, in the third column, in the seventh line, "*Commission*" should read "*Commissioner*".

2. On page 43463, in the first column, in the tenth line from the bottom, "Joel" should read "JEOL".

3. On the same page, in the third column, in the second paragraph, in the fourth line, "*Intended Use*" should read "*Instrument*" and in the seventh line, "*Instrument*" should read "*Intended Use*".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Dallas et al.

Correction

In notice document 88-24877 beginning on page 43464 in the issue of Thursday, October 27, 1988, make the following corrections:

1. On page 43464, in the third column, in the last paragraph, in the third line, "Instrument" should read "Institute".

2. On page 43465, in the first column, in the 15th line from the bottom, "*Commission*" should read "*Commissioner*".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 81017-8217]

Snapper-Grouper Fishery of the South Atlantic

Correction

In proposed rule document 88-24659 beginning on page 42985 in the issue of Tuesday, October 25, 1988, make the following corrections:

1. On page 42985, in the second column, in the 6th and 7th lines from the bottom, the date "August 3, 1983" should read "August 31, 1983".

§ 646.2 [Corrected]

2. On page 42988, in the third column, under § 646.2, in the eighth line, "work" should read "word".

§ 646.4 [Corrected]

3. On the same page, in the same column, under § 646.4, in the fourth line, "work" should read "word".

§ 646.22 [Corrected]

4. On page 42989, in the third column, under § 646.22(c)(1), the 10th line should read "fishery aboard is considered to be in a directed snapper-grouper fishery. It is a rebuttable presumption".

5. On the same page, in the same column, under § 646.22(c)(2)(ii), in the first line, "EES" should read "EEZ".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery

Correction

In proposed rule document 88-23402 beginning on page 39627 in the issue of Tuesday, October 11, 1988, make the following correction:

On page 39628, in the third column, in the first complete paragraph, in the fourth line, "years" should read "days".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights

Correction

In rule document 88-24416 beginning on page 43698 in the issue of Friday, October 28, 1988, make the following correction:

On page 43698, in the second column, under **DATES**, the second paragraph should read: *Comments:* Comments on the interim rule should be submitted to the address shown below no later than November 28, 1988.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Education Appeal Board

Correction

In notice document 88-19488 beginning on page 32643 in the issue of Friday, August 26, 1988, make the following corrections:

1. On page 32643, in the second column, under **FOR FURTHER INFORMATION CONTACT:**, in the fourth line, the ZIP code "20202" should read "20202-3724" and, in the fifth line, the

phone number "732-1754-3724" should read "732-1754".

2. On the same page, in the same column, in the tenth line from the bottom, "withholding" was misspelled.

3. On page 32644, in the first column, in the eighth line from the top, "Cancer" should read "Center".

4. On the same page, in same column, in the 18th line from the bottom, "programs" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3451-4]

Ocean Dumping; Site Designation for Georgetown Harbor et al.

Correction

In the issue of Wednesday, October 19, 1988, on page 41013-41023, in the first column, in the correction to rule document 88-21771, a portion of the text that appeared was inaccurate and is corrected as follows:

§ 228.12 [Corrected]

In paragraph one, in the sixth line, "18.3" should read "16.3".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL-UST-3; 3419-3]

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective

Correction

In rule document 88-24395 beginning on page 43322 in the issue of Wednesday, October 26, 1988, make the following correction:

On page 43330, in the second column, in the second complete paragraph, in the first and second line, "January 24, 1988" should read "January 24, 1989".

BILLING CODE 1505-01-D

RAILROAD RETIREMENT BOARD

20 CFR Part 365

Enforcement of Nondiscrimination on the Basis of Handicap in Railroad Retirement Board Programs

Correction

In rule document 88-24561 beginning on page 43429 in the issue of Thursday, October 27, 1988, make the following correction:

On page 43434, in the second column, in the 13th line from the bottom, in the authority citation for Part 365, "9 U.S.C. 794" should read "29 U.S.C. 794".

BILLING CODE 1505-01-D

federal register

Monday
November 7, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 14, 100, 103, 104, 105, 106, 109, 110, 115 and 121

Fair Housing; Implementation of the Fair Housing Amendments Act of 1988; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 14, 100, 103, 104, 105, 106, 109, 110, 115 and 121

[Docket No. R-88-1425; FR-2565]

Fair Housing; Implementation of the Fair Housing Amendments Act of 1988

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale, rental, or financing of dwellings based on race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988, which was enacted September 13, 1988 and will become effective on March 12, 1989, expands the coverage of Title VIII to prohibit discriminatory housing practices based on handicap and familial status, establishes an administrative enforcement mechanism for cases where discriminatory housing practices cannot be resolved informally, and provides for monetary penalties in cases where housing discrimination is found.

The Fair Housing Amendments Act also created design and construction requirements for certain new multifamily dwellings for first occupancy on or after March 13, 1991 (30 months after the enactment date of the law) and establishes an exemption from the prohibitions against discrimination on the basis of familial status for housing for older persons.

In addition, the Fair Housing Amendments Act authorizes the Secretary of Housing and Urban Development to issue regulations to carry out the Act. Section 13 of the Fair Housing Amendments Act states that "[I]n consultation with other appropriate Federal agencies, the Secretary shall, not later than 180th day after the date of enactment of this Act, issue rules to implement Title VIII as amended by this Act."

This proposed rule is intended to implement the responsibility of the Secretary of Housing and Urban Development to publish rules required in the Fair Housing Amendments Act. Several rulemaking actions are proposed:

The regulatory material previously contained in Part 100 is proposed to be redesignated, as revised, as a new Part 121. A new Part 100 is proposed to be added, describing the nature of conduct made unlawful with respect to the sale, rental or financing of dwellings or in the provision of services and facilities in connection therewith.

The Department further is proposing to add a new Part 103 establishing procedures relating to the investigation of complaints of discriminatory housing practices made unlawful under Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act (hereinafter referred to as the Fair Housing Act) and a new Part 104 establishing procedures for the conduct of formal administrative enforcement proceedings involving discriminatory housing practices.

As part of this rulemaking the Department is also proposing to revise other existing regulations issued under Title VIII to reflect the expanded coverage of the Fair Housing Act. Specifically, the Department is proposing technical revisions to the Fair Housing Poster regulation (24 CFR Part 110), and the Fair Housing Advertising regulation (24 CFR Part 109) as well as its Fair Housing Administrative Meetings under Title VIII of the Civil Rights Act of 1968 regulation (24 CFR Part 106). Revisions to the regulations providing for the recognition of state and local fair housing laws as providing rights and remedies which are substantially equivalent to those in Title VIII (24 CFR Part 115) are also being proposed. In addition, the Department is proposing to redesignate and revise the existing Racial, Sex, and Ethnic Data regulation (24 CFR Part 100) as a new Part 121.

DATE: Comments must be received by December 7, 1988.

ADDRESSES: Interested persons are invited to submit comments on the Proposed Rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For Part 100, Subparts D and E, David Enzel ((202) 755-6207); for Parts 103 and 104, Karen Osterloh ((202) 755-7084); for all other parts, Charles Farbstein ((202) 755-5570), Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-0500. (The above listed numbers are not toll-free numbers.) The toll-free TDD number is 1-800-543-8294. This proposed rule will be available on tape for persons with vision impairments in the Office of the Rules Docket Clerk, Room 10276, at the above address.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and competing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development , Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503..

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3619) made it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, or national origin. Under the provisions of Title VIII, persons who believed that they had been subjected to, or were about to be subjected to a discriminatory housing practice could file a complaint with the Secretary of Housing and Urban Development. Title VIII required the Department of Housing and Urban Development to investigate each complaint and, where the Department determined to resolve the matters raised in a complaint, to engage in informal efforts to conciliate the issues in the complaint.

However, where these informal efforts to conciliate a case were unsuccessful, Title VIII did not provide the Secretary with any administrative mechanism for redressing acts of discrimination against an individual. In addition, while the

Secretary could refer a case involving a pattern or practice of discrimination to the Attorney General for the initiation of a civil action, Federal courts did not award individual relief to the victims of discrimination in such cases.

The Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988) was enacted to strengthen the administrative enforcement provisions of Title VIII, to add prohibitions against discrimination in housing on the basis of handicap and familial status, and to provide for the award of monetary damages where discriminatory housing practices are found. The amended law will become effective on March 12, 1989.

The provisions in the Fair Housing Act describing the nature of conduct which constitutes a discriminatory housing practice have been revised to extend the protections of the Fair Housing Act to persons with handicaps and families with children. In this respect sections 804, 805, and 806 of the Fair Housing Act prohibit discrimination in any aspect relating to the sale or rental of dwellings, in the availability of residential real estate-related transactions or in the provision of services and facilities in connection therewith because of race, color, religion, sex, handicap, familial status, or national origin.

In addition to prohibiting discrimination against persons with handicaps, the Fair Housing Act makes it unlawful to refuse to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises (section 804(f)(3)(A)). With respect to rental housing, the Fair Housing Act provides that a landlord may, where reasonable, condition permission for a modification on the renter's agreeing, on vacating the unit, to restore the interior or the premises to the condition that existed before the modification, reasonable wear and tear excepted. The Act also makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services to afford a handicapped person equal opportunity to use and enjoy a dwelling.

Further, the Fair Housing Act makes it unlawful to design and construct certain multifamily dwellings, for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with handicaps. All premises within such dwelling also are specifically required to contain several features of adaptive design so that dwellings are readily accessible to and usable by persons with handicaps.

With respect to familial status the Fair Housing Act provides an exemption from the prohibitions against discrimination because of familial status for housing for older persons.

Section 805 of the Fair Housing Act as revised prohibits discrimination related to "residential real estate-related transactions" rather than merely referring to "financing". In addition, the definition of the term residential real estate-related transaction specifically indicates that the Fair Housing Act applies to the selling, brokering and appraising of dwellings and secondary mortgage market activities with respect to securities affected or supported by dwellings as well as the making and purchasing of loans and other financial assistance for dwellings. The Act, however, does not prohibit a person engaged in the business of furnishing appraisals from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Section 810 of the Fair Housing Act provides that any person who believes that he or she has been, or will be, subjected to a discriminatory housing practice because of race, color, religion, sex, handicap, familial status, or national origin may file a complaint with the Secretary of Housing and Urban Development. This section also authorizes the Secretary of Housing and Urban Development to file complaints on the Secretary's own initiative and to investigate housing practices in order to determine whether a complaint should be filed. Complaints must be filed not later than one year after an alleged discriminatory housing practice has occurred or terminated.

Upon the filing of a complaint the Secretary is required to notify any respondent named in the complaint of the acceptance of the complaint and the discriminatory housing practices alleged in the complaint. The respondent may file not later than 10 days after receipt of the notice of a complaint, an answer to the complaint. The Secretary is required to make an investigation of the alleged discriminatory housing practice and to complete the investigation within 100 days after the filing of the complaint, unless it is impracticable to do so.

At the end of each investigation the Secretary is required to prepare a final investigation report. Under section 810(d) the final investigation report will be available to an aggrieved person or a respondent, upon request, at any time after the investigation is complete.

Section 810(b) of the Act directs the Secretary, to the extent feasible, to engage in efforts to conciliate the matters raised in the complaint at any time after the filing of the complaint.

Section 810(e) of the Act empowers the Secretary to authorize the Attorney General to file a civil action seeking appropriate preliminary or temporary relief pending final disposition of a complaint if, at any time after the filing of such complaint, the Secretary concludes that such action is necessary to carry out the purposes of the Act.

Whenever a complaint alleges a discriminatory housing practice within a State or locality which has a Fair Housing law or ordinance which has been certified by the Secretary as being substantially equivalent to the Fair Housing Act, the Secretary must refer the complaint to the agency administering such law or ordinance before taking any action with respect to the complaint. Except with the consent of a certified agency, or in other limited situations such as where a complaint is not being processed in a timely fashion or the State or local law or ordinance is found to no longer be substantially equivalent, the Secretary may not take any further action with respect to complaints referred to such agencies.

Section 810(f) of the Act permits the Secretary to certify an agency only where the Secretary determines the rights protected by the agency, the procedures followed by the agency, the remedies available to the agency, and the availability of judicial review of the agency's actions are substantially equivalent to those created in the Fair Housing Act.

This section also provides that agencies which the Secretary has determined administer State and local fair housing laws which provided rights and remedies for discriminatory housing practices that were substantially equivalent to those contained in Title VIII of the Civil Rights Act of 1968 or which had been recognized for interim referral of complaints under Title VIII would be considered certified for a period not to exceed 48 months for the purpose of referring complaints under the Fair Housing Act with respect to matters for which they had been certified on the day before the date of enactment of the Fair Housing Act (*i.e.*, September 12, 1988).

Section 810(g) of the Act requires the Secretary, in cases where the matters raised in a complaint cannot be resolved by conciliation, to determine, based upon the facts, whether reasonable cause exists to believe a discriminatory housing practice has occurred or is

about to occur. Such a finding must be made by the Secretary within 100 days after the filing of a complaint or within 100 days after the Secretary has commenced action on a complaint which had been referred to a certified agency, unless it is impracticable to do so. Where the Secretary makes a determination that reasonable cause exists the Secretary immediately issues a charge on behalf of the aggrieved person commencing a formal administrative proceeding before an administrative law judge.

Section 812(a) of the Act provides a complainant, an aggrieved person, and the respondent with an opportunity to elect not to proceed before an administrative law judge but to move the case to an appropriate Federal district court. Such an election must be made within 20 days after the receipt of the service upon such person of the charge filed by the Secretary. Upon notification that a person has elected to proceed to Federal district court the Secretary is directed to authorize the Attorney General to file a civil action on behalf of the aggrieved person or complainant. Such civil actions authorized by the Secretary must be brought within 30 days after the election is made.

Where no election is made, the case will be heard by the administrative law judge. Under section 812(c) of the Act the Federal Rules of Evidence will apply to the presentation of evidence in the same manner that they apply to evidence presented in a civil action in Federal district court. Section 812(g) requires the administrative law judge to issue findings of fact and conclusions of law within 60 days after the end of a hearing.

Where the administrative law judge finds that a respondent has engaged in a discriminatory housing practice the Fair Housing Act provides for the issuance of an order for such relief as is appropriate, which may include actual damages and injunctive or other equitable relief. In order to vindicate the public interest the order of an administrative law judge may assess a civil penalty against the respondent.

The decision of the administrative law judge can be reviewed by the Secretary. However, this review must be completed within 30 days after the decision is issued. Any final agency decision on the issue of discrimination is subject to review on appeal by the United States Courts of Appeal.

The Fair Housing Amendments Act directs the Secretary of Housing and Urban Development to issue regulations implementing the Fair Housing Act. Section 13 of the Fair Housing Amendments Act provides that "[I]n consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the enactment of this Act, issue rules to implement Title VIII as amended by this Act." That section also requires the Secretary to give notice and opportunity for comment with respect to such rules.

This Notice of Proposed Rulemaking provides the interpretation of the Secretary of Housing and Urban Development on the scope of the coverage provided and the nature of activities made unlawful by the Fair Housing Act. The Notice of Proposed Rulemaking also contains the procedures which will be applicable to the receipt and processing of complaints and the initiation and conduct of formal enforcement proceedings.

Specifically, the Department is proposing to add three new Parts to Subtitle B of Title 24 of the Code of Federal Regulations. A new Part 100 would describe the conduct made unlawful under the Fair Housing Act. A new Part 103 would set forth the procedures for the receipt, investigation and conciliation of complaints and for the issuance of charges commencing formal administrative proceedings. A new Part 104 would establish rules for the conduct of administrative hearings before administrative law judges and would provide rules of discovery in connection with such administrative proceedings.

The existing departmental regulations authorizing the Secretary to collect racial, sex and ethnic data in departmental programs, currently located at 24 CFR Part 100, would be redesignated as 24 CFR Part 121. This regulation would be revised to reflect the additional data requirements for HUD programs to meet the Department's responsibility to provide reports to Congress and to make available to the public data on persons eligible to participate and who are participating in HUD programs.

This Notice of Proposed Rulemaking also would make revisions in four existing departmental regulations implementing the Fair Housing Act to reflect the expansion of the coverage of the law to include provisions regarding handicap and familial status. Regulations affected by these changes are: Fair Housing Administrative Meetings under Title VIII of the Civil Rights Act of 1968 (24 CFR Part 106), Fair Housing Advertising (24 CFR Part 108), Fair Housing Poster (24 CFR Part 110) and for the Recognition of Substantially Equivalent Fair Housing Laws (24 CFR Part 115).

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Part 100 would be retitled "Unlawful Housing Practices Under The Fair Housing Act" and revised.

The new Part 100 would:

—Indicate the conduct which is made unlawful under the Fair Housing Act;

—Include guidance as to the responsibility of persons to permit reasonable modifications to dwellings and to make reasonable accommodations to rules and practices for persons with handicaps and further provide information as to the design and construction requirements applicable to certain new construction multifamily housing for first occupancy after March 13, 1991; and

—Describe the requirements which must be met for housing to be exempted from the prohibitions against discrimination based on familial status because it is housing for older persons.

Subpart A—General

Section 100.1 Authority.

The Fair Housing Amendments Act authorizes the Secretary of Housing and Urban Development to issue regulations implementing the provisions of the Fair Housing Act (42 U.S.C. 3600–3620). This section indicates that the regulations contained in Part 100 are being issued under the Secretary's authority for the administration and enforcement of the Fair Housing Act.

Section 100.5 Scope.

The Fair Housing Act provides, within constitutional limitations, for fair housing throughout the United States. It provides that no person shall, on the basis of race, color, religion, sex, handicap, familial status, or national origin be subject to discrimination in the sale, rental or advertising for sale or rental of dwelling, in the provision of brokerage services, or in residential real estate-related transactions. Section 100.5 (a) and (b) indicates that this part provides guidance as to the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of real estate-related transactions.

The provisions of this part generally reflect the language of the statutory prohibitions against discrimination under the Fair Housing Act. The specific prohibitions in each section are amplified by examples of unlawful conduct under the provision. Many of

the practices identified in these sections of the proposed rule have been the subject of court decision since the passage of Title VIII of the Civil Rights Act of 1968. In other cases, the examples reflect the interpretation of HUD based on its experience in the investigation of complaints of discriminatory housing practices since 1968. However, it must be noted that the illustrations in Part 100 are only examples of the conduct made unlawful under the Fair Housing Act.

Although the prohibitions against discrimination because of handicap and familial status are new, the Department believes that it is appropriate to interpret the protections afforded these new classes in the same manner as the protections provided to others under provisions of the Fair Housing Act. However, the Fair Housing Act prohibitions against discrimination because of handicap provide protection only to persons who are handicapped. A housing provider does not violate the Fair Housing Act by restricting occupancy in dwellings to persons with handicaps and the exclusion of non handicapped persons from such dwellings would not constitute a discriminatory housing practice.

The determination to treat the new protected classes in the same manner also is supported by the development of fair housing law in the area of discrimination because of sex. In enacting the Housing and Community Development Act of 1974 Congress amended sections 804, 805, and 806 by adding sex to the classes of persons protected under Title VIII. (See section 808(b)(1) of the Housing and Community Development Act of 1974. Pub. L. 93–383.) Although there was no legislative history regarding this expansion of the coverage of the law, courts in deciding cases involving discriminatory housing practices because of sex have held that conduct found to be unlawful when based on race, color, religion or national origin was also unlawful when based on sex.

As discussed earlier in this preamble, Congress not only added the protections of the existing law to persons with handicaps but provided additional requirements with respect to the treatment of persons with handicaps. In the Fair Housing Amendments Act, in addition to the general prohibition against discrimination Congress further made it unlawful to refuse to permit reasonable modifications, to make reasonable accommodations or to design and construct certain new construction multifamily dwellings in a manner to make dwellings accessible to and usable by handicap persons. In this regard Subpart D of this rule provides guidance on the additional practices made unlawful under the Fair Housing Act.

Section 100.5(c) indicates that nothing in this part relieves persons participating in a Federal or Federally assisted program or activity from complying with other requirements applicable to buildings and dwellings under those programs or activities.

Section 100.10 Exemptions.

The Fair Housing Act exempts certain types of housing from the coverage of the law. Section 807 of the Fair Housing Act provides that under certain circumstances religious organizations and private clubs may limit the sale, rental or occupancy of housing, owned or operated for other than a commercial purpose, to their members. Section 807 also provides that nothing in the provisions regarding familial status applies to housing for older persons. Section 803 of the Fair Housing Act provides that nothing in the Fair Housing Act, other than the prohibitions against discriminatory advertising, applies to the sale or rental by an owner of certain single family houses or to the rental of rooms in dwellings containing living quarters occupied by no more than four families, provided that the owner actually occupies one of the units. Section 100.10 of this part reflects these exemptions to the coverage of the law.

Section 100.10(a)(3) states that nothing in this regulation limits the applicability of any reasonable local, State or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit. This paragraph incorporates into the regulation the revisions to section 807 of the Fair Housing Act contained in section 6(d) of the Fair Housing Amendments Act of 1988. That provision is intended to allow reasonable governmental limitations on occupancy to continue as long as they are applied to all occupants, and do not operate to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin. H.R. Rep. No. 711, 100th Congress, 2d Sess. 31 (1988) ("House Report").

Section 100.10(a)(4) provides that nothing in this part prohibits the refusal to sell or rent a dwelling or to otherwise make unavailable or deny a dwelling to a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). This exemption was intended to allow landlords to protect tenants by refusing to provide housing to persons convicted of distributing or manufacturing illegal drugs. The exemption must be based upon a conviction. It does not apply to those who are not convicted of a drug offense. One conviction is sufficient for the exemption. However, as in the case of the exemption for governmental restrictions on the number of persons occupying dwellings, this exemption cannot be applied in a selective of different manner to exclude persons because of race, color, religion, sex, handicap, familial status, or national origin. (134 Cong. Rec. S10468–9 (daily ed. August 1, 1988) (colloquy between Sen. Thurmond and Sen. Kennedy)).

This section also provides that the prohibitions against discrimination based on familial status do not apply to housing for older persons and indicates that the definition of housing for older persons is set forth in Subpart E of this part. Section 100.10 also contains the limited exemption from the applicability of the provisions of the Fair Housing Act, other than the prohibitions against discriminatory advertising, for the sale or rental of certain single family houses by an owner and for rentals of rooms in dwellings in which the owner also occupies a room (Mrs. Murphy housing).

Section 100.20 Definitions.

Section 100.20 proposes definitions to be used for terms in this part.

The term "aggrieved person" means any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur. (Aggrieved person includes a fair housing organization as well as a tester or other person who seeks information about the availability of dwellings to determine whether discriminatory housing practices are occurring.)

A "broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any real estate related transactions.

A "discriminatory housing practice" is defined as an act that is unlawful under section 804, 805, 806, or 818. The definition of discriminatory housing practices reflects the addition of unlawful interference, coercion or intimidation in connection with housing under section 818 of the Fair Housing Act (formerly section 817 of Title VIII of the Civil Rights Act of 1968) as a discriminatory housing practice which

can be a basis for a complaint under the Fair Housing Act.

A "dwelling" means any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof, including mobile home parks, trailer courts, condominiums, cooperatives, and time-sharing properties.

"Fair Housing Act" means Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600–3620).

"Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or indivduals, or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The definition would also indicate that the protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"Handicap" means any person defined as handicapped under § 100.201 of Subpart D of this part.

The term "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

A "person in the business of selling or renting" is any person who:

(1) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) Within the preceding twelve months, has participated as agent, other than in the sale of their own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Section 100.20 also contains definitions of the terms "Secretary", "State" and "Department".

Subpart B—Discriminatory Housing Practices

Section 100.50 Real estate practices prohibited.

This section of the rule indicates that Subpart B contains the Department's interpretation of the conduct made unlawful under section 804 and section 806 of the Fair Housing Act. In general, these provisions describe conduct made unlawful with regard to any aspect related to the sale, rental, or advertising of dwellings and to the provision of brokerage services and facilities in connection with the sale or rental of dwellings.

Section 100.50(b) enumerates the specific conduct made unlawful in relation to the sale or rental of dwellings. The conduct described in this section forms the basis for the subsequent sections in this subpart. Each of the following sections provides illustrations of the scope and applicability of the rule to specific sales, rental and brokerage activities.

While the illustrations are set forth under the section of this subpart which is most applicable to the discriminatory conducted described, § 100.50 indicates that an action described in one section can constitute a violation under other sections as well. In addition, it should be noted that the illustrations of discriminatory conduct in this subpart are only examples of discriminatory conduct which violates the Fair Housing Act and are not intended to limit the scope of discrimination in housing made unlawful under the Fair Housing Act.

Section 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

This section of the rule describes the activities which constitute a refusal to sell or rent to a *bona fide* homeseeker or a refusal to negotiate with persons for the sale or rental of dwellings and which are unlawful when they are taken because of race, color, religion, sex, handicap, familial status, or national origin.

The illustrations in § 100.60(b)(3) through (6) are intended to indicate the Department's position that certain activities in which different treatment is provided to persons because of race, color, religion, sex, handicap, familial status, or national origin also can be tantamount to an unlawful refusal to negotiate under this section.

Section 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

Section 100.65 indicates that differences in the treatment of persons in connection with the provision of services and facilities or in the terms or conditions relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin constitute a discriminatory housing practice.

The illustrations in § 100.65(b) indicate that the coverage of this section extends beyond restrictions or differences in a lease or sales contract and the provision of different maintenance. This section would provide that denials of, or limitations on the amount of discounts, rebates or gifts, or on the use of privileges, services or facilities relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin are also discriminatory housing practices.

Section 100.70 Other prohibited sale and rental conduct.

This section would indicate that restricting or attempting to restrict the housing choices of persons as well as engaging in any conduct relating to the sale or rental of a dwelling that otherwise makes unavailable or denies dwellings because of race, color, religion, sex, handicap, familial status, or national origin, is a discriminatory housing practice.

Section 100.70(c) describes actions which result in limitations of housing choice which would violate the Fair Housing Act. These practices, which are commonly referred to as "steering", include practices designed to discourage persons from seeking housing in a particular community, neighborhood, or development in addition to those used to direct or assign persons to a particular community, neighborhood, or development because of race, color, religion, sex, handicap, familial status, or national origin.

With respect to practices which otherwise make unavailable or deny a dwelling, the illustrations focus primarily on activities with respect to the sale or rental of dwellings which may not be taken against a specific person but nonetheless result in housing being made unavailable to persons because of race, color, religion, sex, handicap, familial status, or national origin. This section indicates, for example, that a policy of encouraging or rewarding discriminatory housing practices or of taking adverse actions

against employees refusing to participate in such discriminatory practices would violate the Fair Housing Act. In these cases, the actions taken will result in a limitation on the housing opportunities and choices available to persons.

This section also states that the denial of the approval of an otherwise qualified person by a cooperative association because of race, color, religion, sex, handicap, familial status, or national origin which results in the inability of a person to complete a sale or rental transaction constitutes a violation of the Fair Housing Act. This example illustrates the broad reach of the "otherwise make unavailable" language in the Fair Housing Act which covers the denial of benefits essential to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

In view of the broad reach of the "otherwise make unavailable" language in the Fair Housing Act, it is especially important to note that the illustrations in this subpart are only examples of discriminatory conduct and are not intended to limit the scope of discrimination in housing made unlawful under the Act. For instance, although not set forth as an example in this subpart, discrimination in the provision of services and facilities which are prerequisites to obtaining dwellings, including discriminatory refusals to provide municipal services or adequate property or hazard insurance as well as discriminatory appraisal and financing practices, has been interpreted by the Department and by courts to render dwellings unavailable under the "otherwise make unavailable" in the Fair Housing Act.

The language regarding the "otherwise make unavailable" provisions of the Fair Housing Act has not been interpreted to impose upon private individuals an affirmative obligation to construct or offer housing of a particular type or cost. Rather, a private individual's decisions based solely on legitimate business reasons other than race, color, religion, sex, handicap, familial status or national origin will not violate the Act. Thus, for example, a private developer's market-based decision to include only efficiency apartments in a development would not violate the Act solely because, as a practical matter, such housing would be unavailable to families with children. For that reason, the unlawful conduct described in this section does not include such actions. The obligations of developers to make new multifamily housing accessible to handicapped persons are addressed in § 100.205.

Section 100.75 Discriminatory advertisements, statements, and notices.

Although the Fair Housing Advertising Regulation (24 CFR Part 109) applies to all advertising for dwellings, the Department believes it is appropriate in connection with regulations describing prohibited conduct related to the sale or rental of housing to include additional guidance as to prohibited conduct in the making of advertising, notices and statements regarding this specific area. Section 100.75 describes prohibited conduct related to advertisements, notices and statements, by persons engaged in the sale or rental of housing or in the printing and publishing of such advertisements, notices and statements.

Section 100.80 Discriminatory representations on the availability of dwellings.

Section 100.80 indicates that the provision of inaccurate or untrue information about the availability of dwellings for sale or rent because of race, color, religion, sex, handicap, familial status, or national origin constitutes a violation of the Fair Housing Act. In this regard, it should be noted that a person who receives the inaccurate or untrue information need not be an actual seeker of housing in order to be the victim of a discriminatory housing practice under this section.

Section 100.85 Blockbusting.

Blockbusting consists of any effort, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into a neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

Section 100.85(b) indicates it is not necessary that there be in fact a profit realized as a result of blockbusting as long as the availability of profit was a factor involved in the blockbusting activity. In addition, the illustrations of unlawful blockbusting activity include uninvited solicitations for listings in a neighborhood which are different than uninvited solicitations in other neighborhoods because of the race, color, religion, sex, handicap, familial status, or national origin of the neighborhood.

Section 100.90 Discrimination in the provision of brokerage services.

This section reflects the prohibition in the Fair Housing Act against denying any person access to, or membership or participation in, any multiple listing service, real estate brokers' organization or facility relating to the business of selling or renting dwellings. This section also indicates that it is unlawful to discriminate against any person in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

Section 100.110 Discriminatory practices in residential real estate-related transactions.

Section 100.110 indicates the general prohibition against discrimination in the availability of, or in the terms or conditions imposed in any residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin. The prohibitions against discrimination in this subpart apply to any person or other entity whose business includes engaging in residential real estate-related transactions.

Section 100.115 Residential real estate-related transactions.

This section incorporates into this part the definition of the term "residential real estate transaction" contained in section 6(c) of the Fair Housing Amendments Act of 1988.

Section 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

This section indicates that it is unlawful for a person or entity engaged in residential real estate transactions to discriminate against persons because of race, color, religion, sex, handicap, familial status, or national origin in making available loans and other financial assistance relating to dwellings. The prohibitions against discrimination in the making of loans and in the provision of other financial assistance reflects the language relating to discrimination in the financing of housing under Title VIII of the Civil Rights Act of 1968.

In connection with the development of the illustrations of activities which would constitute discriminatory practices under the Fair Housing Act relating to the making available of loans and other assistance the Department has been guided by its experiences in connection with the administration and enforcement of the current law.

The definition of the term residential real estate-related transactions includes

loans and other financial assistance which are secured by residential real estate. This revision expands the types of financing transactions which are covered by the nondiscrimination requirements of Title VIII of the Civil Rights Act of 1968. However, there is nothing in the legislative history of the Fair Housing Amendments Act of 1988 which indicates that the Congress intended that loans and other assistance secured by a dwelling be treated any differently than loans for the purchase, construction, improvement, repair, or maintenance of a dwelling. Thus, the illustrations in this section apply equally to both types of loans.

The illustrations of unlawful conduct under this section include the making of statements, notices and advertisements which indicate a preference of an intention to make a preference because of race, color, religion, sex, handicap, familial status, or national origin. Although the Fair Housing Advertising Regulation (24 CFR Part 109) applies to all advertising for dwellings, the Department has determined that it is appropriate in connection with regulations describing prohibited conduct related to residential real estate-related transactions to include additional guidance as to prohibited conduct in the making of advertising, notices and statements regarding this specific area. Section 100.120(b)(3) describes prohibited conduct related to advertisements, notices and statements in connection with residential real estate-related transactions.

Section 100.125 Discrimination in the purchasing of loans and other financial assistance.

The principal change in the nature of the conduct made unlawful regarding loans and other assistance with respect to dwellings is the inclusion of activities relating to the purchase of such loans. In prohibiting discrimination in the purchasing of loans Congress extended the coverage of the Fair Housing Act to conduct in the secondary mortgage market. The House Report on the Fair Housing Amendment Act of 1988 states, with regard to this expanded coverage however, that "[T]he Committee does not intend that those purchasing mortgage loans be precluded from taking into consideration factors justified by business necessity (including requirements of Federal law) which relate to the financial security of the transaction or the protection against default or diminution in the value of the property." (House Report at 30).

Section 100.125 indicates the new coverage of secondary mortgage market activities under the Fair Housing Act. Since the protections provided under this section are new, the illustrations of discriminatory housing practices in this section focus on general areas of unlawful conduct under the Act. In this respect, the illustrations indicate that conduct made unlawful with regard to secondary mortgage market activities include actions taken with respect to the purchase and pooling of loans as well as the terms and conditions of the sale of securities issued based on such loans.

Section 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

Section 100.130 indicates that it is unlawful to impose different terms or conditions for the availability of a loan or other financial assistance for a dwelling or which is, or will be secured by a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

The illustrations of the unlawful activities indicate that requirements, procedures, policies or practices relating to loans or other financial assistance which are different or imposed in a different manner because of race, color, religion, sex, handicap, familial status, or national origin are discriminatory housing practices. This section also indicates that imposing different loan provisions (such as the interest rate or the duration of the loan), or providing different types of loans because of race, color, religion, sex, handicap, familial status, or national origin are unlawful.

In addition, § 100.130(b)(4) indicates it is unlawful to fail to make available a loan or other assistance because of the race, color, religion, sex, handicap, familial status, or national origin of the present or prospective residents or occupants of dwellings in the area of the dwelling for which the loan or other financial assistance is sought, or in the area in which the dwelling which is provided as security for the loan or other assistance is located.

The practice of refusing to make loans or certain types of loans or other assistance for dwellings in particular areas has been generally referred to as "redlining". However, the determination of the nature and types of loans and other financial assistance to be offered by a person or entity engaged in residential real estate-related transactions in many cases involves legitimate business judgments and complex financial, economic and social issues and problems. Unless the failure to provide loans or other assistance to a particular area is because of the race, color, religion, sex, handicap, familial status, or national origin of persons, it does not violate the Fair Housing Act. In order to avoid confusion as to the nature of conduct prohibited under the Fair Housing Act the term redlining has not been used in this section of the rule.

Section 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

The prohibitions against discrimination because of race, color, religion, sex, handicap, familial status, or national origin in connection with residential real estate-related transaction apply to the selling, brokering and appraising of residential real property. Section 100.135 states that it is unlawful for any person whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such activities, or in the terms or conditions of such activities because of race, color, religion, sex, handicap, familial status, or national origin.

For the purpose of this rule the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a commercial context in connection with the sale, rental, financing or refinancing of a dwelling or with any other residential real estate-related transactions, whether the appraisal is oral or written, or transmitted formally or informally.

While the Fair Housing Act provides a specific exemption for appraisals stating that nothing in the Act prohibits a person in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin, the illustrations of unlawful conduct make clear that consideration of any factor because of race, color, religion, sex, handicap, familial status, or national origin *does* constitute a discriminatory housing practice.

Section 100.135(d)(3) would provide that it is unlawful, in a commercial context, by either statements or conduct, to instruct or encourage any person, or to impose standards requiring such person, to consider any factor in making an appraisal of a dwelling which relates to race, color, religion, sex, handicap, familial status or national origin. This illustration is intended to cover, among other activities, instruction or training of appraisers by professional appraiser associations, or the adoption of discriminatory appraisal standards by governmental agencies providing home mortgage financing. By limiting its application to activities undertaken in a

commercial context, the Department intends to indicate that activities which may be subject to First Amendment protections, such as the publication of treatises, articles, etc., regarding appraisal theory or practices, are excluded from coverage.

In addition, § 100.135(d)(4) provides that it is unlawful for any person to (a) use any appraisal or appraisal report if such person knows or reasonably should know that the appraisal takes into account a factor or factors based on race, color, religion, sex or national origin, or (b) use any information relating to race, color, religion, sex, handicap, familial status or national origin which is contained in an appraisal report. This rule is intended primarily to prohibit lenders or other persons who engage in residential real estate-related activities from utilizing a discriminatory appraisal, or information relating to race, color, religion, sex, handicap, familial status, or national origin contained in an appraisal report, in determining the eligibility or the terms and conditions for financing. This illustration would also relate to other persons, such as real estate brokers, who might use an appraisal report in establishing the sales price of a dwelling.

Subpart D—Prohibitions Against Discrimination Because of Handicap

The Fair Housing Amendments Act of 1988 extended the principle of equal housing opportunity to persons with handicaps. The Act makes "a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals." House Report at 18. The Act makes it unlawful to discriminate or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that individual, someone associated with that individual, or of a resident or potential resident (section 804(f)(1)). It also prohibits discrimination against the same person in the terms, conditions, or privileges of sale or rental, or provision of services or facilities (section 804(f)(2)). It requires that persons with handicaps be permitted to make reasonable modifications, at their expense, to existing premises to afford them full enjoyment of the premises (section 804(f)(3)(A)). It also requires that after March 13, 1991, new multifamily dwellings of four or more units be designed and constructed to allow ready access to and use by persons with handicaps (section 804(f)(3)(C)).

Section 100.200 Purpose.

Section 100.200 explains that the purpose of Subpart D is to effectuate the provisions concerning handicap in the Fair Housing Amendments Act of 1988.

Section 100.201 Definitions.

Section 100.201 proposes definitions to be used for terms used only in subpart D. The definitions in subpart A also apply to subpart D.

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords handicapped persons access essentially equivalent to or greater than that required by ANSI A117.1 is "accessible" within the meaning of this definition.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 is an "accessible route". This definition is consistent with the definition of "accessible route" in ANSI A117.1.

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. The American National Standards Institute, Inc. (ANSI) is a private, national organization that publishes standards on a wide variety of subjects. The Secretariat that developed the 1986 edition of the ANSI standard was composed of the National Easter Seal Society, the President's Committee on Employment of the Handicapped, and HUD. The current version of these standards was published in 1986 and is referred to as "ANSI A117.1–1986". Whenever ANSI A117.1 is used in subpart D, the reference is to the most recently published edition of ANSI A117.1 as of the date bids for construction of a particular building are solicited.

"Building" means a structure, facility or the portion thereof that contains or serves one or more dwelling units. For example, a structure that serves one or more dwelling units includes a structure containing recreational facilities for residents of an apartment complex.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route within the boundary of the site accessible to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 complies with the requirements of this definition.

"Common use areas" means rooms, spaces or elements inside or outside a building that are made available for the use of residents of a building or the guests thereof. Examples of common use areas include hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units. A single structure consisting of 5 two-story townhouses is not a "covered multifamily dwelling" if the units do not have elevators because the entire dwelling unit is not on the ground floor.

"Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person or family. Examples of dwelling units include single family detached houses, townhouses, apartments, and condominiums.

"Entrance" means any access point to a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit. The term exterior is used in the definition of "premises".

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of having such an impairment; or being regarded as having such an impairment. However, this term does not include current, illegal use of or addiction to a controlled substance. The term also does not include an individual solely because that individual is a transvestite. Paragraphs (a), (b), (c) and (d) of the definition clarify the key phrases in the definition: "physical or mental impairment"; "major life activities"; "has a record of such an impairment"; and "is regarded as having an impairment".

With the exception of current, illegal use of or an addiction to a controlled substance, the definition of "handicap" in the Act is very similar to the definition of the term "individual with handicaps" in the Rehabilitation Act of 1973. 29 U.S.C. 706. Congress intended that the definition of "handicap" in the Fair Housing Amendments Act to be interpreted in a manner that is consistent with regulations interpreting the meaning of the similar provision found in section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. House Report at 22; 134 Cong. Rec. S10492 (daily ed. August 1, 1988) (statement of Sen. Chafee); 134 Cong. Rec. H4689 (daily ed. June 23, 1988) (statement of Rep. Pelosi); 134 Cong. Rec. H4612 (daily ed. June 22, 1988) (statement of Rep. Schroeder).

Section 504 of the Rehabilitation Act prohibits discrimination against otherwise qualified individuals with handicaps in programs or activities receiving federal financial assistance as well as in federally conducted programs and activities. The Department of Justice section 504 coordination regulation for federally assisted programs is at 28 CFR Part 41. HUD's section 504 regulation for federally assisted programs is at 24 CFR Part 8. Paragraphs (a), (b), (c) and (d) of the definition of "handicap" closely follow the definitions of these key phrases used in regulations interpreting section 504.

Paragraph (a) of the definition of "handicap" in § 100.201 closely follows the definition in HUD's section 504 regulation for federally assisted programs and activities (24 CFR 8.3), except that this rule's definition does not include drug addiction caused by current illegal use of a drug that is a controlled substance. Section 5(b) of the Fair Housing Amendments Act expressly excludes from the definition of "handicap" current, illegal use of or addiction to a controlled substance, as defined by the Controlled Substances Act (21 U.S.C. 802). The legislative history of the Fair Housing Amendments Act demonstrates that the Act does not exclude from protection persons who take controlled substances for a medical condition under the care of, or by prescription from, a physician. Use of a medically prescribed drug does not constitute illegal use of a controlled substance. Similarly, individuals who have a record of drug use or addiction but do not currently use illegal drugs would continue to be protected if they fell within the definition of "handicap." It is not the intent of the Act to exclude from protection individuals who have recovered from an addiction or are participating in a self-help group. House Report at 22; 134 Cong. Rec. S10553 (daily ed. August 2, 1988) (statement of Sen. Domenici). However, individuals who are participating in a self-help group (*e.g.*, Narcotics Anonymous) are not automatically thereby included within the definition of "handicap." Rather, they are protected only if they fall within the definition of "handicap," *i.e.*, they are not illegally using controlled substances.

Paragraph (b) defines the term "major life activities" the same way the concept is defined in regulations implementing section 504. A major life activity includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Paragraph (c) defines the phrase "has a record of such an impairment" as that phrase is used in the definition of handicap. A person who has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities is a handicapped person under the Fair Housing Act.

Paragraph (d) defines the phrase "is regarded as having an impairment" to mean a person who:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) but is treated by a person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit. The term "interior" is used in § 100.203 relating to modifications of existing premises and in the definition of "premises". The kitchen and bathroom of an apartment are examples of elements of a dwelling unit and are also part of the "interior" of the premises.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components or elements of a building or a dwelling unit, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

Section 100.202 General prohibitions against discrimination because of handicap.

Section 100.202 contains the general prohibitions against discrimination because of handicap and serves as the analytical foundation for the remaining sections of the subpart. The remaining sections of Subpart D explain in greater detail what conduct is discriminatory. Thus, whenever a person has violated any of the subsequent sections of Subpart D, that person has also violated § 100.202.

Paragraph (a) restates the Fair Housing Amendments Act's mandate of nondiscrimination in the sale or rental of dwellings. Under paragraph (a), it is unlawful to discriminate against any person in the sale or rental of or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made unavailable, or any person associated with that buyer or renter. Under this provision, a landlord may not, for example, refuse to rent to an individual solely because the applicant uses a wheelchair or has a history of physical or mental illness.

Paragraph (b) restates the Act's ban of discrimination in the terms, conditions, or privileges of the sale or rental of a dwelling. Paragraph (b) makes it unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of a handicap of that

buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or any person associated with that person. This provision is intended to prohibit special restrictive covenants or other terms or conditions, or denials of service because of an individual's handicap and which have the effect of excluding, for example, congregate living arrangements for persons with handicaps. Under this provision it is unlawful to bar discriminatorily a person with handicaps from access to recreation facilities, parking privileges, cleaning and janitorial services and other facilities, uses of premises, benefits and privileges made available to other tenants, residents, and owners. House Report at 23.

Paragraphs (a) and (b) prohibit not only discrimination against the primary purchaser or named lessee, but also prohibit denials of housing opportununities to applicants because they have children, parents, friends, spouses, roommates, patients subtenants or other associates who have disabilities. House Report at 24.

The legislative history of the Fair Housing Amendments Act makes it clear that the Act was intended to prohibit landlords and owners for asking prospective tenants and buyers blanket questions about the individuals' disabilities. The House Report explains that the approach taken in section 504 regulations dealing with pre-employment inquiries should apply also to the Fair Housing Amendments Act. House Report at 30. Under section 504 regulations, employers may not inquire, as part of pre-employment inquiries, whether an applicant is a handicapped person. Employers may only make preemployment inquires into an applicant's ability to perform job-related functions. *See* 45 CFR 84.14; 24 CFR 8.13.

Paragraph (c) is an adaptation of the "pre-employment inquiries" provisions in section 504 regulations; it prohibits inquiries to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person has a handicap or to make inquiry as to the nature or severity of a handicap of such person.

Paragraph (c) also states that it does not prohibit five types of inquires, provided these inquiries are made of all applicants, whether or not they have handicaps.

Paragraph (c)(i) clarifies that a housing provider may inquire into an applicant's ability to meet the requirements of ownership or tenancy. Thus, in assessing an application for tenancy, a landlord or owner may ask an individual the question that he or she asks of all other applicants that relate directly to the tenancy (*e.g.*, questions relating to rental history or a targeted inquiry as to whether the individual has engaged in acts that would pose a direct threat to the health or safety of other tenants), but may not ask an applicant blanket questions with regard to whether the individual has a disability. A housing provider may also not ask an applicant questions which would require the applicant to waive his or her right to confidentiality concerning his or her medical condition or history. House Report at 30.

Paragraph (c) (ii) states that paragraph (c) does not prohibit inquiry to determine whether an applicant is qualified for a dwelling that is available only to persons with handicaps or to persons with a particular type of handicap. The Fair Housing Amendments Act does not prohibit the exclusion of non-handicapped persons from dwellings. A housing facility may lawfully restrict occupancy to persons with handicaps. For example, some Federal and State housing programs are designed for, and occupied by, persons with handicaps. Only persons with handicaps are eligible to live in such dwellings. The owner or operator of such a housing facility may inquire of applicants to determine whether they have a handicap for the purpose of determining eligibility.

Paragraph (c)(iii) provides that paragraph (c) does not prohibit an inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap. A housing provider may choose to offer some or all of its units to persons with handicaps on a priority basis and may inquire whether applicants qualify for such a priority. For example, a housing provider may offer accessible units to persons with mobility impairments on a priority basis and may ask applicants whether they have a mobility impairment which would qualify them for such a priority.

Paragraph (c)(iv) provides that paragraph (c) does not prohibit inquiring whether an applicant for a dwelling is a current illegal abuser of or addict to a controlled substance. The definition of "handicap" in the Fair Housing Amendments Act does not include current, illegal use of or addiction to a controlled substance. *See* House Report at 30.

Paragraph (c)(v) provides that paragraph (c) does not prohibit inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance. Section 807(b)(4) of the Fair Housing Act states that nothing in the Act prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

Paragraph (d) restates new section 804(f)(9) of the Fair Housing Act which provides that nothing in section 804(f) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. This provision was included "to allay the fears of those who believe that the non-discrimination provisions of this Act could force landlords and owners to rent or sell to persons whose tenancies could pose such a risk." House Report at 28 (footnote omitted). However, this provision was not intended to create or permit a presumption that individuals with handicaps generally pose a greater threat to the health or safety of others than do individuals without handicaps.

In adopting this provision, the House Committee on the Judiciary affirmed that all individuals with handicaps, with the exception of current illegal abusers of or addicts to controlled substances, are entitled to the protections under the Act. *Id.* This approach differs in one significant respect from that taken in the Rehabilitation Act of 1973. The definition of "individuals with handicaps" in the Rehabilitation Act does not *per se* exclude persons who currently, illegally use or are addicted to a controlled substance. The Rehabilitation Act's definition of "individuals with handicaps" excludes, with regard to employment, "any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others." 29 U.S.C. 706(8)(B).

With respect to individuals with contagious diseases and infections, section 804(f)(9) is, however, parallel to the corresponding provision of the Civil Rights Restoration Act of 1988 (CRRA) (Pub. L. 100–259, 102 Stat. 28 (March 22, 1988)). Section 9 of the CRRA amended the Rehabilitation Act's definition of "individuals with handicaps" further to exclude, for purposes of section 504 as it relates to employment, "an individual who has a currently contagious disease

or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job."

The provision was added to the CRRA in order to codify the decision of the Supreme Court in *School Board of Nassau County v. Arline*, 107 S. Ct. 1123 (1987). House Report at 29.

In *Arline*, a case involving an allegation of employment discrimination under section 504, the Supreme Court held that a person who has the contagious disease of tuberculosis can be an "individual with handicaps" within the meaning of section 504. 107 S.Ct. at 1132. The Court in *Arline* further explained that an employee "who poses a significant risk of communicating a contagious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk." 107 S.Ct. at 1131, n. 16.

The legislative history of the Fair Housing Amendments Act indicates that the "direct threat" language restated in paragraph (d) should be interpreted consistently with *Arline*. House Report at 29.

The House Report states that "[w]hile *Arline* dealt with employment in the context of section 504, the Committee intends that same standard to apply in the context of housing under this Act. Thus, the direct threat requirement incorporates the *Arline* standards, and a dwelling need not be made available to an individual whose tenancy can be shown to constitute a direct threat and a significant risk of harm to the health or safety of others." *Id.* However, if a reasonable accommodation could eliminate the risk, entities covered by the Act are required to provide such accommodation under § 100.203. *Id.*

The provision concerning direct threat posed by an individual's tenancy is formulated to require that the landlord or property owner establish a nexus between the fact of the particular individual's tenancy and the asserted direct threat. Any claim that an individual's tenancy poses a direct threat and substantial risk of harm must be established on the basis of objective evidence, *e.g.*, a history of overt acts or current conduct. Generalized assumptions, subjective fears, and speculation are insufficient to prove the requisite direct threat. For instance, if a landlord determines, by objective evidence that is sufficiently recent to be credible, and not from unsubstantiated inferences, that the applicant will pose a direct threat to the health or safety of others, the landlord may reject the applicant as a tenant. In assessing information, the landlord may not infer that a history of a physical or mental illness or disability, or treatment for such illnesses or disabilities, constitutes proof that an applicant will be unable to fulfill his or her tenancy obligations. House Reports at 29–30.

Paragraph (d) also states that nothing in subpart D requires that a dwelling be made available to an individual whose tenancy would result in "substantial physical damage to the property of others." The legislative history of this provision makes it clear that this provision was intended to be read in conjunction with the other provisions in the Act providing access for persons in wheelchairs. 134 Cong. Rec. S 1064 (daily ed. August 1, 1988) (statement of Sen. Harkin). Thus, this provision should not be construed to allow a landlord to exclude a person in a wheelchair because of effects of using a wheelchair upon property. For example, the normal wear and tear to a dwelling unit that might be expected on the part of an individual who uses a wheelchair, such as the nicking of doorframes or of walls, would *not* constitute "substantial" physical damage within the meaning of paragraph (d). 134 Cong. Rec. H4932 (daily ed. June 29, 1988) (statement of Rep. Edwards); 134 Cong. Rec. S1064 (daily ed. August 1, 1988) (statement of Sen. Harkin). In addition, the individual's tenancy would have to be shown to cause substantial physical harm to significant pieces of property. Thus, the fact that a person might damage some piece of property would also not be sufficient to trigger this provision. *Id.*

Section 100.203 Reasonable modifications of existing premises.

Paragraph (a) implements section 804(f)(3)(A) of the Fair Housing Act, as amended. Under paragraph (a), it is illegal to refuse to permit tenants with disabilities to make reasonable modifications, at their expense, of existing premises if the proposed modifications are necessary for their full enjoyment of the premises. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter ageeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The premise of § 100.203 is that a housing provider's refusal to allow reasonable modifications "operates, at worst, to deny housing to handicapped persons, and, at least, to deny them the opportunity to enjoy their premises safely and fully." House Report at 25. The term "full enjoyment" was used because Congress recognized "that the nature of individual handicaps, and therefore the potential need for environmental modifications varies greatly." *Id.* The Department wishes to stress that any modifications protected by this section must be reasonable and must be made at the expense of the individual with handicaps.

Paragraph (a) allows reasonable modifications at the expense of the individual with handicaps to existing "premises". "Premises" is defined in § 100.201 to mean the interior or exterior parts, components or elements of a building or a dwelling unit, including the public and common use areas of a building. Thus, an individual with handicaps would be able, at his or her own expense, to make reasonable accommodations to lobbies, main entrances of apartment buildings, laundry rooms and other common and public use areas necessary to the full enjoyment of the premises. The Department has proposed to define the term "premises" to encompass the public and common use areas because it appears that this is what Congress intended. The Act allows reasonable modifications of "existing premises" if necessary to afford the handicapped person full enjoyment of the premises. If the laundry room is not accessible, for example, a person with a mobility impairment will not have "full enjoyment" of the premises.

Beyond this, section 15 of the Fair Housing Amendments Act provides that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the *interior* of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The use of the word "interior" in the language of the Act dealing with the restoration of modifications, but not in the language allowing reasonable modifications of existing "premises" further indicates that Congress intended that the term "premises" encompass public and common use areas as well as individual dwelling units. Of course, modifications to public and common use areas must be reasonable and must be made at the expense of the individual with handicaps.

It also follows from the language of section 15 of the Fair Housing Amendments Act that landlords may not condition approval of modifications to the premises on the renter agreeing to restore the "exterior" of the premises to the condition that existed before the

modification. Since the term "interior" is not defined in the Fair Housing Amendments Act the distinction between "interior" and "exterior" must be addressed in this subpart.

The term "interior of the premises" in section 15 of the Fair Housing Amendments Act may have two possible meanings. The term "interior" might be interpreted to refer to any area "inside" existing premises (*i.e.*, not out-of-doors), whether the area is an individual dwelling unit or a public or common use area. If the term is interpreted in this way then a landlord would be able to condition permission for a modification on the renter agreeing to restore any area located "inside" existing premises to the condition that existed before the modification, where it is reasonable to do so. For example, under this possible interpretation a landlord could, where it is reasonable to do so, condition permission for modifications to a lobby on the renter agreeing to restore the lobby to the condition that existed before the modification. However, under this interpretation the landlord would not be able to condition permission on the renter agreeing to restore a public or common use area located in the exterior portion of existing premises (*e.g.*, a curb cut or ramp to a building entrance) to the condition that existed before the modification.

In the alternative, the word "interior" might refer to the interior space of an individual dwelling unit but not to public and common use areas, whether located on the "inside" or "outside" of existing premises. Under this interpretation, the landlord would not be able to condition permission for making a modification on the renter agreeing to restore any public or common use area to the condition that existed before the modification.

The Department proposes to adopt the second interpretation of the term "interior" discussed above because the Department believes that the phrase "interior of the premises" in section 15 of the Fair Housing Amendments Act was intended to distinguish between individual dwelling units and public and common use areas rather than between elements of premises that happen to be in or out of doors. Section 15 was added to the Fair Housing Amendments Act on the Senate floor near the end of the legislative process. As a result, there is little legislative history on section 15. Nonetheless, the examples of modifications that a landlord may require that a tenant restore that were discussed during the Senate debate of section 15 all concern the restoration of modifications made to elements of individual dwelling units. 134 Cong. Rec. S10548 (daily ed. August 2, 1988) (statements of Sens. Kennedy and Specter).

Further, the examples in the legislative history indicate that it would not be reasonable for a landlord to condition permission for modifications on the tenant agreeing to restore the premises to the condition that existed before the modifications, where the modifications will not interfere with the use and enjoyment of the dwelling unit by future occupants. Some modifications to an individual dwelling unit might interfere with or detract from the use and enjoyment of the dwelling unit by future occupants. For example, if a tenant with a handicap seeks permission to modify the bathroom walls in order to install grab bars it would be reasonable for the landlord to require that the walls to which the grab bars are to be attached be restored to their original condition, reasonable wear and tear excepted. The grab bars might interfere with or detract from the next tenant's use and enjoyment of the bathroom. However, if it is necessary to add blocking behind the walls to affix the grab bars, it would be unreasonable for the landlord to require the tenant to remove the blocking since the reinforced walls will not interfere with the use and enjoyment of the premises by future occupants. *Id.* (statement of Sen. Kennedy).

The Department does not believe that *reasonable* modifications to public and common use areas would detract significantly from the public and common use areas modified and indeed may be of benefit to other persons with and without handicaps. Moreover, this should be the case whether the public or common use area is on the inside or on the outside of a structure. For example, an accessible building entrance, laundry room or curb would not significantly detract from, and indeed may enhance, the use and enjoyment of the lobby, laundry room or curb by persons with and without handicaps. An accesible element may be easier and more convenient for everyone to use. Furthermore, if a specific modification to a public or common use area proposed by a tenant with a handicap can reasonably be expected to interfere significantly with the use or enjoyment of the public or common use area in question by persons without handicaps then the proposed modification would not be reasonable.

For the foregoing reasons, "interior" is defined in § 100.201 as the spaces, parts, components or elements of an individual dwelling unit. Thus, the "interior of the premises" *excludes* all public and common use areas, including lobbies, laundry rooms, party rooms, as well as curbs and outside elements of a premises. It follows that under § 100.203(a) of the proposed rule a landlord could, where it is reasonable to do so, condition approval of modifications to an individual dwelling unit on the renter agreeing to restore the dwelling unit to the condition that existed before the modification. However, a landlord would *not* be able to condition approval of modifications to public or common use areas on the tenant agreeing to restore the public or common use area to the condition that existed before the modification and would *not* be permitted to charge such tenants an additonal security deposit. The Department specifically invites public comment on these issues.

Paragraph (b) contains two examples that illustrate the application of paragraph (a). The first example involves a tenant who seeks the permission of a landlord to install grab bars in the bathroom. The second example relates to an applicant for rental housing who has a child who uses a wheelchair and seeks the permission of the landlord to widen the bathroom door. Both examples are close adaptations of the examples specifically discussed by Senators Kennedy and Specter during Senate debate of the Fair Housing Amendments Act. 134 Cong. Rec. S10548 (daily ed. August 2, 1988). These examples are illustrative and not exhaustive.

Section 100.204 Reasonable accommodations.

Section 100.204 implements section 804(f)(3)(B) of the Fair Housing Act which makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services if necessasry to afford a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accommodation" is also used in regulations and case law interpreting section 504 of the Rehabilitation Act of 1973. *See,* 28 CFR 41.53; 24 CFR 8.11 and 8.33; *Southeastern Community College v. Davis,* 442 U.S. 397 (1979); *Alexander v. Choate,* 469 U.S. 287 (1985). The legislative history of the Fair Housing Amendments Act indicates that this was the source from which the concept of "reasonable accommodation" was drawn. House Report at 25; 134 Cong. Rec. H4923 (daily ed. June 29, 1988) (statement of Rep. Owens). The term "reasonable" means that "feasible, practical modifications" must be made,

"but that extreme, infeasible modifications are not required." 134 Cong. Rec. H4923 (daily ed. June 29, 1988) (statement of Rep. Owens).

Paragraph (b) illustrates the application of paragraph (a) with two examples of reasonable accommodations.

Section 100.205 Design and construction requirements.

Section 100.205 implements section 804(f)(3)(C) of the Fair Housing Act which places "modest accessibility requirements on 'covered multifamily dwellings' designed and built for first occupancy 30 months after enactment." House report at 25.

The term "covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if the building has one or more elevators and "ground floor" dwelling units in other buildings consisting of 4 or more dwelling units. The ground floor is any floor of a building with a building entrance on an accessible route. A building may have more than one ground floor. A "building" is a structure, facility or the portion thereof that contains one or more dwelling units.

Paragraph (a) requires that "covered multifamily dwellings" for first occupancy after March 13, 1991 be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The legisltative history makes it clear that Congress "was sensitive to the possibility that certain natural terrain may pose unique building problems." House Report at 27. For example, some sites cannot be made accessible because of hilly terrain. In some locales it is common to construct housing on stilts because of flooding problems. A requirement that housing on such sites have an accessible entrance on an accessible route would be tantamount to prohibiting the construction of covered multifamily housing on such sites. This is not what Congress intended. Thus, paragraph (a) requires that a "covered multifamily dwelling" for first occupancy after March 13, 1991 have an accessible entrance on an accessible route unless it would be impractical to do so. The Department expects that it will be feasible and practical for the vast majority of covered multifamily dwellings to have at least one accessible building entrance on an accessible route. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed and constructed the housing facility. Residents of such buildings would, of course, be able to make reasonable modifications at their own expense to accommodate any other disabilities, as permitted under §100.203(a).

An "entrance" means any access point to a building or portion of a building used by residents for the purpose of entering. Thus, a service entrance would not qualify as an entrance under the proposed rule because it is not used by residents. Handicapped persons should be able to enter a newly constructed building through an entrance used by persons who do not have handicaps.

Paragraph (b) contains three examples that illustrate the application of paragraph (a). The first two examples are drawn from examples in the Report of the House Committee on the Judiciary. *See* House Report at 27.

Paragraph (c) requires that all covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route satisfy certain accessibility requirements set forth in paragraph (c). If, in accordance with paragraph (a), a covered multifamily dwelling does not have an accessible entrance on an accessible route because it is impractical to do so because of the terrain or unusual characteristics of the site then none of the units in the building are required to meet the accessibility requirements in paragraph (c). Since, in these relatively infrequent cases, persons with mobility impairments will not be able to enter the building there is no reason to require that the building and the dwelling units therein satisfy the accessibility requirements of paragraph (c).

The accessibility requirements of paragraph (c) apply to all "covered multifamily dwellings" for first occupancy after March 13, 1991 with an accessible entrance on an accessible route. Thus, all of the dwelling units in elevator buildings consisting of 4 or more dwelling units must be accessible. Furthermore, the "ground floor" dwelling units in non-elevator buildings with 4 or more units must be accessible. The definition of ground floor is functional: The ground floor is any floor that has an accessible entrance. That is, if persons with mobility impairments are able to enter a floor of a building through an accessible route, then the dwelling units on that floor must be designed and constructed in accordance with the accessibility requirements of paragraph (c).

The remainder of paragraph (c) sets forth the sepcific accessibility requirements for covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route. The Department intends to publish proposed accessibility guidelines to help builders understand and comply with the specific accessibility requirements of the Fair Housing Act. The guidelines would, of course, not be mandatory. Rather, they would provide technical assistance to persons who must comply with paragraph (c).

Paragraph (c)(1) requires that the public and common use areas be readily accessible to and usable by handicapped persons. A common use area, as that term is defined in § 100.201, means interior and exterior rooms, spaces or elements of a building that are made available for the use of residents of a building or the guests thereof. This provision means that hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings and other common areas and facilities not contain barriers to entrance and use by persons with disabilities. House Report at 26. Public use areas include interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned. Paragraph (c)(1) further requires that one regular entrance to public and common use areas be accessible to persons with handicaps for the same purpose for which it is used by others. Thus, paragraph (c)(1) does not require that all entrances be made accessible to handicapped persons. Moreover, in a building without an elevator, only the public and common use areas on the "ground floor" of the building need be made accessible. At least one of each type of public and common use area available to residents of the building, however, must be accessible from the dwelling units on the ground floor.

Paragraph (C)(2) requires that all of the doors "designed to allow passage" into and within all covered premises be sufficiently wide to allow passage by handicapped persons in wheelchairs. This requirement does not apply to doorways not designed to allow passage, such as into a linen closet, but does apply to a walk-in closet since such a doorway is designed to allow passage. House Report at 26.

Paragraph (c)(3) requires that all premises within covered multifamily dwelling units contain four features of adaptive design.

Under paragraph (c)(3)(i), there must be an accessible route into and through the covered dwelling unit. An "accessible route" is defined in § 100.201 to mean a continuous unobstructed path

connecting accessible elements and spaces in a building that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities.

Under paragraph (c)(3)(ii) light switches, electrical outlets, thermostats and other environmental controls must be provided in accessible locations. That is, the controls must neither be too high or too low. This provision is not intended to increase the risk of danger to others or necessarily to require waist high controls. House Report at 26–27.

Under paragraph (c)(3)(iii), bathroom walls must be reinforced to allow later installation of grap bars around the toilet, tub, shower stall and shower seat, where such facilities are provided.

Under paragraph (c)(3)(iv), the kitchens and bathrooms in covered dwelling units must be "usable * * * such that an individual in a wheelchair can maneuver about the space." Paragraph (c)(3)(iv) would *not* require that fixtures, cabinetry or plumbing be adjustable. *Id.* 134 Cong. Rec. S10535 (daily ed. August 2, 1988) (statement of Sen. Harkin). The legislative history of this provision indicates that design of standard sized kitchens and bathrooms can be done in such a way as to assure usability by persons with handicaps without necessarily increasing the size of the space. House Report at 27. The provision requires that such space be usable by persons with handicaps, but does not require that a turning radius be provided "in every situation." *Id.* The Department will address this requirement in greater detail in accessibility guidelines to be published in the near future. These guidelines are expected to contain examples of kitchens and bathrooms that meet the "usability" requirement of paragraph (c)(3)(iv).

Paragraph (d) provides two examples that illustrate the application of paragraph (c).

Paragraph (e) states that compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of paragraph (c)(3). Paragraph (e) implements section 804(f)(4) of the Fair Housing Act. This section does not require that designers and builders follow ANSI A117.1 exclusively. However, if designers and builders do follow ANSI A117.1 then they will have satisfied the requirements of paragraph (c)(3). House Report at 27.

A dwelling unit that complies fully with ANSI A.117.1 goes beyond what is required by the Fair Housing Act. For example, under ANSI A117.1 the kitchen cabinets either must be at the proper height for a person in a wheelchair or must be capable of being adjusted to the proper height. Ranges and cooktops must have controls which are accessible to a person in a wheelchair. All rooms and spaces must meet minimum space allowances which allow for wheelchair turning space. As previously explained, the language of the Fair Housing Act and its legislative history make it plain that the Act does not require these features of accessibility or adaptability.

Paragraphs (f) and (g) implement the provisions of the Fair Housing Amendments Act designed to encourage enforcement by the States and local governments of the provisions of the Act regarding adaptability and accessibility requirements for newly constructed multifamily dwellings. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Senators Kennedy and Specter Regarding Their Substitute Amendment).

Paragraph (f) states that compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) satisfies the requirements of paragraphs (a) and (c).

Paragraph (g)(1) explains that it is the policy of HUD to encourage States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c). HUD will provide technical assistance to States and localities, and to private individuals to assist them in interpreting the new construction requirements. The accessibility guidelines which the Department intends to propose in the near future will provide technical assistance.

Paragraph (g)(2) states that a State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) are met.

Paragraph (h) states that determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

Paragraph (i) states that subpart D does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart. Many states and localities have enacted accessibility and equal opportunity requirements for persons with disabilities. The Fair Housing Act establishes minimum standards for accessibility, and does not supplant or replace State or local laws which impose higher standards. House Report at 28.

Subpart E—Housing for Older Persons

Section 100.300 Purpose.

The Fair Housing Amendments Act exempts "housing for older persons" from the prohibitions against discrimination because of familial status. The purpose of the prohibitions against discrimination because of familial status and the housing for older persons exemption is to protect families with children from discrimination in housing without unfairly limiting housing choices for elderly persons. 134 Cong. Rec. S10465–66 (daily ed. August 1, 1988) (statement of Sen. Karnes). Section 100.300 explains that the purpose of subpart E is to effectuate the housing for older persons exemption in the Fair Housing Amendments Act.

Section 100.301 Housing for older persons exemption.

Section 100.301 provides the analytical framework for subpart E. Paragraph (a) implements the second sentence of section 807(b)(1) of the Fair Housing Act, as amended. It states that the prohibitions against discrimination because of familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302 (*"State and Federal Elderly Housing Programs"*), 100.303 (*"62 or Over Housing"*), or 100.304 (*"55 or Over Housing"*).

Paragraph (b) states that nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Paragraph (b) implements the first sentence section 807(b)(1) of the Fair Housing Act. Many jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit; HUD also enforces occupancy standards in its assisted housing programs. Reasonable limitations do not violate the Fair Housing Act as long as they apply equally to all occupants.

Section 100.302 State and Federal elderly housing programs.

Section 100.302 implements section 807(b)(2)(a) of the Fair Housing Act. Section 100.302 exempts housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to

assist elderly persons, as defined in the State or Federal program from the prohibitions against discrimination because of familial status in this part.

For example, section 202 of the Housing Act of 1959, 12 U.S.C. 1701 ("section 202"), provides Federal financial assistance to private sponsors who provide housing for elderly or handicapped persons. There are three distinct categories of eligible handicapped persons in the section 202 program, those who are physically handicapped; developmentally disabled; and chronically mentally ill. Thus, including elderly persons (age 62 or over) there are actually four separate groups of persons eligible for section 202 assistance, and each group has distinct needs. Accordingly, section 202 developments are custom-tailored to the specific client population or populations the sponsor was approved by HUD to serve. For instance, many section 202 projects are lawfully limited to elderly (62 years of age or older) and physically handicapped persons. It follows that persons who are not elderly or physically handicapped are not eligible for projects designed and approved for elderly and physically handicapped persons and cannot be admitted to them. Section 100.302 makes it clear that such a policy does not violate the Fair Housing Act because the housing is a Federal program specifically designed and operated to assist elderly persons. State programs determined by the Secretary to be specifically designed and operated to assist elderly persons are also exempt from the prohibitions against discrimination in this part.

Section 100.303 62 or over housing.

Section 807(f)(2)(B) exempts housing intended for, and solely occupied by, persons 62 years of age or older. If *all* of the persons occupying a housing facility are 62 or older, then that housing facility is exempt from the prohibitions against discrimination because of familial status in this part, regardless of what other features the housing may or may not have. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding Their Substitute Amendment). *See also,* 134 Cong. Rec. S10466 (daily ed. August 1, 1988) (statement of Sen. Karnes) ("Elderly housing is . . . exempted . . . from the requirement to admit families with children if no one in the building is under 62 years of age . . .").

Paragraph (a)(1) contains a transition provision to ensure that the interests of current residents of housing that excludes children will not be unduly disturbed by the Fair Housing Amendments Act. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding Their Substitute Amendment). It provides that housing satisfies the requirements of § 103.303 even though three persons residing in such housing on September 13, 1988 who are under 62 years of age, *provided that* all new occupants thereafter are persons 62 years of age or older.

Section 6(d) of the Fair Housing Amendments Act provides that housing shall not fail to meet the requirements for housing for older persons by reason of "persons residing in such housing *as of the date of enactment of this Act* [*i.e.,* September 13, 1988]" who do not meet the age requirements of the housing for older persons exemption, provided that all new occupants meet the age requirements of the housing for older persons exemption. Section 13(a) of the Fair Housing Amendments Act provides that "[t]his Act and the Amendments made by this Act shall take effect on the 180th day beginning after the date of enactment of this Act." The date described in section 13(a) of the Fair Housing Amendments Act is March 12, 1989. This presents a question as to whether the appropriate date for the transition provision in § 100.303(a)(1) is September 13, 1988 or March 12, 1989. If section 6(d) of the Fair Housing Amendments Act is applied literally then housing providers, in order to avail themselves of this transition provision, had to begin filling units in accordance with the age requirements of the housing for older persons exemption on September 13, 1988, which is before the effective date of the Act.

The proposed rule follows the plain meaning of section 6(d) of the Fair Housing Amendments Act. Thus, paragraph (a)(1) of §100.303 provides that housing satisfies the requirements of the housing for older persons exemption even though there were persons on September 13, 1988 who did not meet the age requirements, provided that new occupants after September 13, 1988 satisfy the applicable age requirements. The Department has proposed this date instead of the effective date in section 13(a) of the Fair Housing Amendments Act (March 12, 1989) because the Department believes that the general language in section 13(a) was not intended to render the more specific language in section 6(d) a nullity. Moreover, under this interpretation of the Act there is not inconsistency between sections 6(d) and 13(a) of the Fair Housing Act. The Act will take effect on March 12, 1989 and, by its terms, the housing for older persons exemption will be satisfied even though, on September 13, 1988, there were persons in the housing facility who did not meet the age requirements, provided that all new occupants concepts after September 13, 1988 meet the age requirements. The same date (September 13, 1988) is, for the same reasons, referenced in §100.304(d)(1) ("*55 or Over Housing*").

This interpretation of the Act may seem unduly restrictive because, since the date of enactment, some owners may have already filled vacant units in a manner which substantially restricts them from converting their property to housing for older persons within the meaning of the Act. Such an interpretation is driven by the statutory language. The transition provision in Section 805(b)(3) of the statute relating to persons residing in a housing facility who do not meet the age restrictions for housing for older persons is expressly limited to "persons residing in such housing as of the date of enactment of this Act." In view of the consequences of this interpretation of the Act, the Department invites public comment on this issue.

Paragraph (a)(2) states that housing satisfies the requirements of §100.303 even though there are occupied units (at any time), provided that such units are reserved for occupancy by persons 62 years of age or over.

Paragraph (b) contains two examples that illustrate the application of paragraph (a). The purpose of the first example is to show that all persons occupying the housing in question must be 62 years of age or older. The presence of one person per unit 62 years of age or older is not sufficient to qualify a housing facility for this exemption to the prohibition of discrimination against families with children. However, a housing facility that does not qualify for the "62 or over" exemption in § 100.303 may nonetheless qualify for the "55 or over exemption" in § 100.304. The second example in paragraph (b) illustrates the application of paragraphs (a)(1) and (a)(2).

Section 100.304 55 or over housing.

Section 100.304 implements section 807(b)(2)(C) of the Fair Housing Act which exempts housing communities intended and operated for occupancy by at least one person 55 years of age or over per unit that satisfy certain criteria.

Paragraph (a) exempts from the prohibitions against discrimination because of familial status in this part housing intended and operated for occupancy by at least one person 55 years of age or older per unit *provided* the housing satisfies the requirements of

§ 100.304(b)(1) *or* (b)(2) *and* the requirements of § 100.304(c).

Paragraph (b)(1) is satisfied if the housing facility has significant facilities and services specifically designed to meet the physical and social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include an accessible physical environment, congregate dining facilities, social and recreational programs, emergency and preventive health care or programs, continuing education, welfare, information and counseling, recreational, homemaker, outside maintenance and referral services, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them.

The physical environment of the housing facility is one factor the Department may consider in determining whether a housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. While residents of a housing facility for persons 55 years old or older may generally be of good health when they enter a development, they are likely to experience a diminution of physical capacity as the years pass. A physical environment designed to accommodate the changing needs of its residents might include hand rails along steps and interior hallways to reduce the risk of falls, reinforcement for grab bars in bathrooms, routes that allow the use of wheelchairs, canes and walkers, lever type doorknobs and single lever faucets. House Report at 32. All of these features need not be present for a housing facility to be considered as having been designed to accommodate the changing needs of its residents.

The list of significant facilities and services designed to meet the social needs of older persons in the proposed rule is drawn from section 202(f) of the Housing Act of 1959, 12 U.S.C. 1701q, listing examples of facilities and services for older persons. The House Report (at p. 32) relies heavily upon the listing in section 202(f) of the Housing Act of 1959 in its discussion of such facilities. The provision of significant facilities and services designed to meet the social needs of older persons may extend the period of independence of older persons and enhance the quality of their lives. House Report at 31–32.

The facilities and services designed to meet the physical and social needs of older persons must be "significant" in order to satisfy paragraph (b)(1). For example, the installation of a ramp at the front entrance of a housing facility would not constitute a "significant" facility designed to meet the physical needs of older persons. Similarly, the provision of minor amenities, such as putting a couch in a laundry room and labeling it a recreation center would not constitute a "significant" facility designed to meet the social needs of older persons. House Report at 32.

The listing of facilities and services in paragraph (b)(1) is not exclusive nor is a facility required to have all of the items listed.

A housing facility may qualify for the "55 or over" exemption even if it does not satisfy the requirements of paragraph (b)(1). Under paragraph (b)(2), a housing facility that does not provide significant facilities and services specifically designed to meet the physical or social needs of older persons may nonetheless qualify for the "55 or over" exemption. Such a housing facility must demonstrate that it is not practicable for it to provide significant facilities and services designed to meet the physical and social needs of older persons and also demonstrate that the housing facility is necessary to provide important housing opportunities for older persons.

The following factors, among others, are relevant in determining whether a housing facility satisfies the requirements of paragraph (b)(2)—

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical and social needs of older persons.

(ii) The cost of providing such services, including the availability of such services at little or no cost to the owners or managers of the facility.

(iii) The amount of rent charged, if the dwellings are rented. The price of the dwellings, if they are offered for sale.

(iv) The income range of the residents of the housing facility.

(v) The demand for housing for older persons in the relevant geographic area.

(vi) The range of housing choices for older persons in the relevant geographic area.

(vii) The availability of other similarly priced housing for older persons in the relevant geographic area.

(viii) The vacancy rate of the housing facility. For example, a housing facility satisfies paragraph (b)(2) if the housing facility can demonstrate that the cost of providing significant facilities and services designed to meet the physical or social needs of older persons would result in depriving low- and moderate-income persons of needed and desired housing. 134 Cong. Rec. S10549 (daily ed. August 2, 1988) (statement of Sen. Kennedy).

In order to qualify for the "55 or over" exemption a housing facility, in addition to satisfying the requirements of paragraph (b)(1) *or* (b)(2) must also satisfy the requirements of paragraph (c)(1) and (c)(2).

Paragraph (c)(1) requires that at least 80% of the units in the housing facility be occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with paragraph (c)(1) of this section until 25% of the units in the facility are occupied. The exception for partially occupied newly constructed housing facilities is designed to deal with the practical problem of filling units in a new and unoccupied housing facility in a reasonable manner, consistent with the "55 or over" exemption. For example, a large newly constructed housing facility that intends to qualify for the exemption should not lose its right to claim the exemption simply because the first unit happens to be filled with persons all of whom are under 55 years of age. However, once a reasonable percentage of units has been filled the housing facility can reasonably be expected to comply with the percentage requirement in paragraph (c)(1). The proposed rule would require a housing facility to comply with the 80% requirement in paragraph (c)(1) once 25% of the units in the housing facility have been filled. The Department invites comment on the question of whether the 25% point is too high or too low.

Under paragraph (c)(2), the owner or manager of a housing facility must also publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of paragraph (c)(2):

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

Paragraph (d)(1) states that housing satisfies the requirements of this section even though on September 13, 1988,

under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are newly occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Paragraph (d)(1), like paragraph (a)(1) of § 100.303, is a transition provision to ensure that the interests of current residents of housing that excludes children will not be be unduly disturbed by the Fair Housing Amendments Act.

Under paragraph (d)(2), housing satisfies the requirements of $100.304 even though there are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age of over.

Paragraph (e) contains three examples that illustrate the application of § 100.304.

Subpart F—Interference, Coercion or Intimidation

Section 100.400 Prohibited interference, coercion or intimidation.

The Fair Housing Amendments Act revises the statutory definition of discriminatory housing practices in the Fair Housing Act to include actions to intimidate, coerce or interfere with persons engaged in activities protected under the Fair Housing Act. Under Title VIII of the Civil Rights Act of 1968 such actions were violations of the law, but vindication of these rights could be obtained only through the initiation of a private civil action or through an action brought by the Attorney General in Federal district court.

The inclusion of interference, coercion and initimidation as discriminatory housing practices means that allegations that such conduct has occurred, or is about to occur because of race, color, religion, sex, handicap, familiar status, or national origin can be the subject of an administrative complaint under the Fair Housing Act. This subpart provides the interpretation of the Department as to the conduct which constitutes a discriminatory housing practice in this area.

Section 100.400(b) states that the Fair Housing Act makes it unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

The illustrations in this section indicate any type of activity can constitute a discriminatory housing practice. Threatening or intimidating actions include acts against the possessions of persons such as damage to automobiles or vandalism which limits a person's ability to have full enjoyment of a dwelling. Threatening or intimidating actions include acts against the possessions of persons such as damage to automobiles or other acts of vandalism which limit a person's ability to have full enjoyment of a dwelling. In addition, the protections against discrimination reach any person, including persons selling or renting dwellings and persons engaged in activities promoting fair housing. Further, persons who are not involved in any aspect of the sale or rental of a dwelling are nonetheless prohibited from engaging in conduct to coerce, intimidate, threaten or interefere with persons in connection with protected activities or to retaliate against any person involved in any way in proceeding under the Fair Housing Act.

PART 103—FAIR HOUSING COMPLAINT PROCESSING

Subpart A—Purpose and Definitions

Section 103.1 Purpose and applicability.

Proposed Part 103 would contain the procedures established by the Department for the investigation and conciliation of complaints under section 810 of the Act, as amended by the 1988 Amendments. Part 105 would be retained to govern the investigation and conciliation of complaints under section 810 of the Act as it existed before the 1988 Amendments. (§§ 103.1 and 105.1)

Except for complaints that involve allegations of discriminatory housing practices that occur before and continue after the effective date of the 1988 Amendments (March 12, 1989), the proposed rule provides that:

—Complaints alleging discriminatory housing practices that occurred before the effective date of the 1988 Amendments would be governed by the procedures in Part 105.

—Complaints alleging discriminatory housing practices that occur on or after the effective date of the 1988 Amendments would be governed by the procedures in Part 103.

To the extent that complaints allege violations that occur before and continue after the effective date of the 1988 Amendments, complainants should be accorded the full range of remedies provided under the 1988 Amendments. (For example, an applicant for rental housing who was unlawfully excluded before the effective date of the Act may continue to be unlawfully excluded after the effective date.) Accordingly, § 103.1(b)(1)(i) provides that complaints filed after March 12, 1989 alleging such continuing discriminatory housing practices would be processed under Part 103. The proposed rule at § 105.81 would ensure that complainants who filed complaints before March 12, 1989 alleging such continuing discriminatory housing practices will have an opportunity to have their complaints processed under the new Part 103 procedures. While such complaints initially would be processed under Part 105, if during the investigation or conciliation of the complaint the Department determines that the complaint involves an alleged discriminatory housing practice that continues after March 12, 1989, the Department will provide the complainant with a reasonable opportunity to elect to have the complaint processed under Part 103 in lieu of the Part 105 procedures. This notice would describe the procedures available to the complainant under each part. If the complainant makes the election, HUD would notify the respondent of the election and process the complaint under Part 103. (Also see §§ 103.1 and 105.1.)

This section would also include a provision requiring HUD to conduct investigations and conciliations in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A related amendment to existing Part 105 is also proposed.

Section 103.9 Definitions.

The proposed rule would adopt the definitions currently contained in Part 105 with the following major changes:

—The proposed definition of "discriminatory housing practice" would include acts that are unlawful under section 818 of the Act. Section 818 makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 804, 805 or 806 of the Act. Before the 1988 Amendments, this section could only be enforced by an appropriate civil action. This expanded definition of discriminatory housing practice would permit the enforcement of this section through complaints filed with HUD.

—"Complainant", as defined under the proposed rule, would implement sections 802(j) and 810(a)(1)(A)(i) of the Act by clarifying that any person,

including HUD, may file a complaint under Part 103.

—New definitions added to section 802 of the Act by the 1988 Amendments including "aggrieved person", "conciliation", "conciliation agreement" and "respondent" would be added and other miscellaneous definitions including "substantially equivalent State or local agency", "Attorney General", and "General Counsel" would be included for clarity.

Subpart B—Complaints

Subpart B of Part 103 would contain the procedures for the filing of complaints and answers. These procedures reflect the current requirements for the filing of complaints and answers described in Part 105 with the following major revisions:

Section 103.15 Who may file complaints.

As required by section 810(a)(1)(A)(i) of the Act, complainants may submit complaints not later than one year after an alleged discriminatory housing practice has occurred or terminated. This language is intended to reaffirm the concept of continuing violations, under which the statute of limitations is measured from the date of the last asserted occurrence of the unlawful practice. The one-year limitation represents an increase from the pre-1988 Amendment limitation of 180 days, but is less than the two-year period provided for civil cases. See H. R. Rep. No. 711, 100th Cong., 2d Sess. 33 (1988).

Section 103.45 Service of notice on aggrieved person.

Proposed § 103.45 implements section 810(a)(1)(B)(i) of the Act which requires the Secretary to serve notice upon the aggrieved person acknowledging the filing of a complaint and advising the person of the time limits and choice of forums provided under Title VIII. In accordance with this statutory requirement, the proposed rule would require the Assistant Secretary to notify each aggrieved person on whose behalf the complaint was filed. The notice would: (1) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing; (2) include a copy of the complaint; (3) advise the person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under Parts 103 and 104; (4) advise the aggrieved person of the right to commence a civil action under section 813 of the Act, not later than two years after the occurrence or termination of the alleged discriminatory housing practice; and (5) advise the aggrieved person that retaliation against a person because he or she made a complaint, or testified, assisted, or participated in an investigation or conciliation under Part 103 or an administrative proceeding under Part 104, is a discriminatory housing practice prohibited under section 818 of the Fair Housing Act.

Section 103.50 Notification of respondent; joinder of additional or substitute respondents.

Section 810(a)(1)(B)(ii) of the Act requires the Secretary to serve a notice on the respondent within 10 days of the filing of the complaint (or within 10 days of the identification of a substitute or additional respondent). In accordance with these provisions, proposed § 103.50 would require the Assistant Secretary to serve a notice on the respondent. The notice would: (1) Identify the alleged discriminatory housing practice upon which the complaint is based and include a copy of the complaint; (2) state the date that the complaint was accepted for filing; (3) advise the respondent of the time limits applicable to complaint processing under Part 103 and of the procedural rights and obligations of the respondent under Parts 103 and 104, including the opportunity to submit an answer; (4) notify the respondent of the aggrieved person's right to commence a civil action under section 813 of the Act; (5) if the respondent was not named in the complaint, but is being joined as an additional or substitute respondent, explain the basis for HUD's belief that the joined person is properly joined (see section 810(a)(2) of the Act); and (6) advise the respondent that retaliation against a person because he or she made a complaint, or testified, assisted or participated in an investigation or conciliation under Part 103 or an administrative proceeding under Part 104, is a discriminatory housing practice under section 818 of the Fair Housing Act.

Section 103.55 Answer to complaint.

Under existing procedures, respondents are given only seven days to answer a complaint. Section 810(a)(1)(B)(iii) of the Act provides that each respondent may file an answer to the complaint not later than 10 days from the date of receipt of the notice. Proposed § 103.55 reflects this increased time period.

Subpart C—Referral of Complaints to State and Local Agencies

Section 103.100 Notification and referral to substantially equivalent State or local agencies.

Section 810(f)(1) of the Act provides: "whenever a complaint alleges a discriminatory housing practice—(A) Within the jurisdiction of a State or local public agency; and (B) as to which such agency has been certified by the Secretary under this subsection; the Secretary shall refer the complaint to that cetified agency before taking any action with respect to the complaint." Proposed § 103.100 would state the procedures for the notification and referral of complaints to substantially equivalent State and local agencies; and would provide for the notification of the aggrieved person and the respondent of the referral, including a notification of the right to file a civil action under section 813 of the Act.

Under § 103.9, HUD is permitted to file complaints alleging discriminatory housing practices. To ensure that HUD-initiated complaints will be investigated and conciliated by HUD, the memorandum of understanding executed by HUD and the substantially equivalent State or local agency will include the agency's consent to HUD's processing of the complaint.

Section 103.105 Cessation of action on referred complaints.

Proposed § 103.105 would address HUD's responsibilities regarding referred complaints. As required under section 810(f)(2) of the Act, after a complaint is referred, the Assistant Secretary shall not take any further action with respect to the complaint, except reactivation as described below. The proposed rule would provide, however, that the referral of the complaint to a substantially equivalent State or local agency would not prohibit the Assistant Secretary from taking appropriate actions under other civil rights authorities applicable to departmental programs.

Section 103.110 Reactivation of referred complaints.

In accordance with section 810(f)(2) of the Act, proposed § 103.110 would permit HUD to reactivate a complaint referred to a substantially equivalent State or local agency if:

—The substantially equivalent State or local agency consents to the reactivation.

—The Assistant Secretary determines that the agency no longer qualifies for recognition as a substantially

equivalent State or local agency and may not accept interim referrals with respect to the alleged discriminatory housing practice.

—The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that the agency received the notification and referral of the complaint, or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness. HUD would not reactivate a complaint under these conditions, however, until the appropriate HUD Regional Office has conferred with the agency to determine the reason for the delay in the processing of the complaint. If the Assistant Secretary believes that the agency will proceed expeditiously following the conference, HUD may leave the complaint with the agency for a reasonable time.

Before the 1988 Amendments, section 810(d) of the Act permitted the reactivation of complaints where the Secretary certifies that "in his judgment, under the circumstance of the particular case, the protection of the rights of the parties or the interests of justice requires such actions." This statutory basis for reactivation of complaints was not retained in the new act. Accordingly, reactivation on this basis would not be permitted under Part 103.

The 1988 Amendments permit HUD to make referrals for up to 48 months following the date of enactment to agencies that are certified (including agencies that are certified for interim referrals under Part 115) on the day before enactment of the 1988 Amendments. It is unlikely that such agencies will immediately provide the full range of remedies accorded complainants under the 1988 Amendments. However, given the limited statutory authorization for reactivation provided under section 810(f)(2) of the Act, it does not appear that HUD has the authority to reactivate such complaints to provide the complainant with the full range of remedies available under the 1988 Amendments. However, where an agency consents, HUD may resume processing of a complaint.

Section 103.115 Notification upon reactivation.

Proposed § 103.115 would require the Assistant Secretary to notify the substantially equivalent of State or local agency, the aggrieved person and the respondent of the reactivation of a complaint. The notification would advise the aggrieved person and the respondent of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person and respondent under Parts 103 and 104. The notification would also describe the aggrieved person's right to commence a civil action under section 813 of the Act.

Subpart D—Investigation Procedures

Section 103.200 Investigations.

Under § 103.200 of the proposed rule, investigations would be initiated upon the filing of a complaint (see section 810(a)(1)(B)(iv) of the Act). The purposes of such investigations would be to obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint; to document the policies and practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint; and to develop factual data necessary for the General Counsel to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions under Part 103.

In addition to investigations initiated by complaints, the 1988 amendments permit HUD to initiate an investigation of housing practices to determine whether a complaint should be filed under Subpart B (see section 810(a)(1)(A)(iii) of the Act). The proposed rule would permit such investigations upon the written direction of the Assistant Secretary.

Section 103.205 Systemic processing.

Three specialized types of investigations are available under existing Part 105. These include: systemic processing, accelerated processing, and rapid response processing. Rapid response and accelerated processing were developed to enable HUD to expeditiously resolve certain types of recurring complaints without first conducting an extensive investigation. Since the 1988 Amendments permit HUD to begin conciliation upon the filing of a complaint without first completing an investigation, a specific reference to these two procedures in the regulation is not necessary. Provisions permitting systemic processing, however, would be retained.

Section 103.215 Conduct of investigations.

Proposed § 103.215 would continue HUD's existing practice of seeking the voluntary cooperation of persons to obtain access to information necessary to further the investigation. Additionally, this rule would implement section 811 of the Act which addresses the issuance of subpoenas and the conduct of discovery in aid of investigations. The proposed rule would state that the Assistant Secretary and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative hearing under Part 104, except that the Assistant Secretary would have the power to issue subpoenas as described in § 104.590 in support of the investigation or at the request of the respondent. Subpoenas issued by the Assistant Secretary would require the approval of the General Counsel before issuance.

Section 103.220 Cooperation of Federal, State and local agencies.

Proposed § 103.220 reflects provisions currently contained in Part 105 which permit the Assistant Secretary, in processing Fair Housing Act complaints, to seek the cooperation and utilize the services of State and local agencies and of other appropriate Federal agencies. To ensure that other Federal agencies are aware of their responsibility under section 808(d) and (e) of the Act and under Executive Order No. 12259, the proposed rule would add that Federal agencies, including agencies having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing, and for cooperating with the Assistant Secretary in furthering the purposes of the Fair Housing Act, including investigations.

Section 103.225 Completion of investigation.

The Assistant Secretary is required to complete investigations within 100 days after the filing of the complaint (or, when the Assistant Secretary reactivates a complaint referred to a substantially equivalent State or local agency, within 100 days after service of the notification of reactivation), unless it is impracticable to do so. If the investigation cannot be completed within this time limit, HUD is required to notify the aggrieved person and the respondent of the reasons for the delay (see section 810(a)(1)(B)(iv) and (C) of the Act). These requirements are included in the proposed rule at § 103.225.

Section 103.230 Final investigative report.

Section 810(b)(5)(A) of the Act requires the Secretary to prepare a final investigative report at the end of the investigation. This section also includes specific requirements for the contents of the investigative report. These requirements are included in the proposed rule at § 103.230. Under the proposed rule, the report shall contain:

—The names and dates of contacts with witnesses. The proposed rule would provide for the nondisclosure of the names of witnesses that request anonymity, but notes that HUD may be required to disclose the names of such witnesses during the course of an administrative hearing under Part 104 or in a civil action under Title VIII.
—A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent.
—A summary description of other pertinent records.
—A summary of witness statements.
—Answers to interrogatories.

The proposed rule, in accordance with section 810(d)(2) of the Act, would provide that the Assistant Secretary shall make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, upon request, at any time following the completion of the investigation.

Subpart E—Conciliation Procedures

The 1988 Amendments provide for the continuation of conciliation procedures as a primary feature of fair housing enforcement. Thus, while HUD is investigating the complaint, HUD will also seek to resolve the complaint and issues raised during the investigation of the complaint through informal negotiations involving the aggrieved person, the complainant and the respondent (see definition of "conciliation" at § 103.9).

Section 103.300 Conciliation.

Proposed § 103.300 provides that the Assistant Secretary shall, to the extent feasible, attempt to conciliate the complaint during the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the General Counsel. In conducting conciliation, HUD would attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy violations of the rights of the aggrieved person and take such action as will assure the elimination of discriminatory housing practices in the future.

Proposed § 103.300(c) would prohibit officers, employees, and agents of HUD engaged in the investigation of the complaint under Part 103 from participating or advising in the conciliation of the same complaint or in any factually related complaint. The purpose of this prohibition is to ensure that information gathered during the conciliation process is not used in the investigation of the complaint. HUD recognizes, however, that there may be circumstances where a dual role for the HUD employee may be necessary. Accordingly, § 103.300(c) states that the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation where the rights of the aggrieved person and the respondent can be protected and the prohibitions with respect to the disclosure of information obtained during conciliation can be observed. (These prohibitions are discussed below at § 103.330.)

Section 103.310 Conciliation agreement; Section 103.315 Relief sought for aggrieved persons; and Section 103.320 Provisions sought for the public interest.

If conciliation is successful, the terms of the settlement of a complaint would be reduced to a written conciliation agreement (see § 103.310 and definition of conciliation agreement at § 103.9). The agreement would seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought are described at §§ 103.315 and 103.320 and are the same as those permitted under existing Part 105, except that the proposed rule would also permit binding arbitration of the dispute arising under the complaint (see section 810(b)(3) of the Act).

Section 810(b)(2) of the Act provides that a conciliation agreement shall be an agreement between the respondent and the complainant, and shall be subject to the approval of the Secretary. The proposed rule at § 103.310(b) would incorporate these requirements. In addition, this rule would state that the Assistant Secretary will indicate HUD approval of the conciliation agreement by signing the agreement. The assistant Secretary would execute (as a complainant) or approve a conciliation agreement only if: The complainant and the respondent agree to the relief accorded the aggrieved person; the agreement will adequately vindicate the public interest; and, where the Assistant Secretary is the complainant, the aggrieved person is satisfied with the relief provided to protect his or her interest. Propsed § 103.310(b)(2) would preserve the General Counsel's ability to issue a charge under § 103.405, where the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

Section 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

Section 810(d) of the Act contains prohibitions and requirements with respect to the disclosure of information. Under this section, nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under Title VIII without the written consent of the persons concerned. This section would be implemented at § 103.330 with the clarifying statement that information disclosed during conciliation would not be used in the investigation of the complaint.

Section 810(b)(4) recognizes an exception to the prohibition against disclosure of conciliation information. To encourage enforcement and compliance with the law, this section provides that conciliation agreements will be made public, unless the aggrieved person and the respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. This statutory provision is implemented at § 103.330(b). This proposed rule would also permit the publication of tabulated descriptions of the results of *all* conciliation efforts.

Section 103.335 Review of compliance with conciliation agreements.

Proposed § 103.335 would permit HUD to continue its current practice of monitoring and reviewing compliance with the terms of conciliation agreements, and would implement section 810(c) of the Act. Section 810(c) provides that whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, HUD shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814(b)(2) of the Act for the enforcement of the terms of the conciliation agreement.

Subpart F—Issuance of Charge

While conciliation will continue to be a primary feature of fair housing enforcement, the 1988 Amendments provide for a new enforcement mechanism when conciliation fails. This

mechanism permits the Act to be enforced by HUD in an administrative proceeding under Part 104 or, if the complainant, the aggrieved person or the respondent elects, through a civil action commenced and maintained by the Attorney General under section 812(o) of the Act.

Section 103.400 Reasonable cause determination.

If a conciliation agreement has not been executed by the complainant and the respondent and approved by the Assistant Secretary, section 810(g)(1) of the Act requires HUD to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. Under the proposed rule at § 103.400, the responsibility for this determination would be delegated to the General Counsel of HUD. As indicated in section 810(g)(1), this determination is to be based on the totality of the factual circumstances concerning the alleged discriminatory housing practice. Inasmuch as this determination will in the case of an election to proceed in Federal court under § 103.410 form the basis for the civil action, in making this determination the general Counsel would apply the same standard that is appropriate for a determination of when to proceed with a civil action of this kind in federal court.

This determination would be made within 100 days after the filing of the complaint (or where the Assistant Secretary has reactivated a complaint referred to a substantially equivalent State or local agency, within 100 days after service of the notice of reactivation), unless it is impracticable to do so. If the determination cannot be made within this time period, HUD would notify the aggrieved person and the respondent of the reasons for the delay (see section 810(g)(1) of the Act).

The proposed rule provides that the investigation would remain open until a reasonable cause determination is made (see § 103.225). This permits the General Counsel to request that the Assistant Secretary make a further investigation, where the investigative report is insufficient to determine whether reasonable cause exists. Where appropriate, the General Counsel may make direct inquiries to supplement the investigation.

If the General Counsel determines that reasonable cause exists, section 810(g)(2)(A) of the Act requires the immediate issuance of a charge on behalf of the aggrieved person. The charge forms the basis for further administrative proceedings or a civil action under section 812(o) of the Act. A charge would not, however, be issued if the matter involves the legality of a State or local zoning or other land use law or ordinance, since HUD is required to refer such matters to the Attorney General for appropriate action under section 814(b)(1) of the Act (see the proposed rule at § 103.400(a)(1)). Furthermore, section 810(g)(4) of the Act prohibits the issuance of a charge after the beginning of a trial in a civil action commenced by the aggrieved person under an Act of Congress or a State law, seeking relief with respect to the discriminatory housing practice (see proposed rule at § 103.400(b)).

If the General Counsel determines that no reasonable cause exists, section 810(g)(3) of the Act requires the dismissal of the complaint and public disclosure of the dismissal. The proposed rule at § 103.400(a)(2) would state that HUD shall notify the aggrieved person and the respondent of such a dismissal and shall make public disclosure of the dismissal. The Department notes that the dismissal of a complaint under this section would not preclude the filing of a new complaint based on newly discovered or previously unavailable information, provided the statutory one-year time limit for the filing of the complaint is met.

Section 103.405 Issuance of charge.

Section 810(g)(2)(B) of the Act provides that the charge: Shall consist of a short and plain statement of the facts upon which HUD has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; shall be based on the final investigative report; and need not be limited to the facts or grounds alleged in the complaint. This statutory language is reflected in § 103.405(a).

Within three days of the issuance of the charge, the General Counsel would: (1) Obtain a time and a place for an administrative hearing from the Chief Docket Clerk in the Office of Administrative Law Judges; (2) file and serve the charge along with notifications concerning the rights of the complaint; the respondent, and the aggrieved person to elect to have the claims asserted in the charge decided in an administrative hearing or civil action (the contents of the notification and requirements for service of the charge are more fully described below); and (3) notify the Assisant Secretary of the filing of the charge (see proposed § 103.405(b)).

Section 103.410 Election of administrative hearing or civil action.

The claims asserted in the charge will be decided either in a civil action under section 812(o) of the Act or in an administrative proceeding under Part 104. In accordance with section 812(a) of the Act, proposed § 103.410 provides that upon the issuance of a charge, the complainant (including the General Counsel, if HUD filed the complaint), the respondent, or the aggrieved person on whose behalf the complaint was filed may elect the civil action. If none of the parties elects the civil action, the General Counsel would maintain an administrative proceeding under Part 104 based on the charge. If an election is made, the General Counsel would promptly notify and authorize the Attorney General to commence and maintain a civil action under section 812(o) of the Act on behalf of the aggrieved person in an appropriate United States District Court. The notification and authorization would include the transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

The election must be made not later than 20 days after the receipt of service of the charge, or in the case of the General Counsel, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in HUD's Office of Administrative Law Judges and served on the General Counsel, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification shall be filed and served in accordance with the procedures established under Part 104.

The General Counsel would be available for consultation concerning any legal issues raised by the Attorney General regarding how best to proceed in the event that commencement of a civil action would implicate Rule 11 of the Federal Rules of Civil Procedure.

Subpart G—Other Actions by the Department

Section 103.500 Prompt judicial action.

Proposed § 103.500 would implement section 810(e) of the Act. If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes of Part 103 or 104, the General Counsel would request that the Attorney General commence a civil action for appropriate temporary or preliminary relief pending the final disposition of the complaint. Before making the determination to request

such action the proposed rule also requires the General Counsel to consult with the Assistant Attorney General for the Civil Rights Division. Inasmuch as under section 810(e) of the Act it is incumbent upon the Attorney General to promptly commence an action upon receipt of such a request and in view of the Assistant Attorney General's prior experience in seeking such relief in different factual situations and before different forums, such prior consultation is appropriate and desirable. The commencement of the civil action would not affect the initiation or administrative proceedings under Part 103 or 104.

Paragraph (b) of this proposed rule would require the General Counsel to transmit information to the Attorney General and to State and local governmental licensing or supervisory authorities, as appropriate, whenever the General Counsel has a reason to believe that a basis exists for the commencement of proceedings under section 814(a) of the Act (Pattern or Practice Cases), proceedings under section 814(c) of the Act (Enforcement of Subpoenas), or proceedings by any governmental licensing or supervisory authority.

Section 103.510 Other action by HUD.

Proposed § 103.510 would address other actions that HUD may take with respect to matters asserted in a complaint. These would include: (1) The referral of matters to the Attorney General for appropriate action (e.g., enforcement of criminal penalties, under section 811(c) of the Act); the initiation of debarment proceedings or other action leading to the imposition of administrative sanctions; the initiation of proceedings under other civil rights authorities; or the provision of information to other Federal agencies with an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

PART 104—ADMINISTRATIVE PROCEEDINGS UNDER SECTION 812 OF THE FAIR HOUSING ACT

Part 104 would contain the rules of practice and procedure for administrative proceedings before an administrative law judge (ALJ) adjudicating the claims asserted in a charge issued under Part 103.

Subpart A—General Information

Subpart A would contain general information concerning administrative proceedings before an ALJ. This subpart would include provisions addressing: The scope of the rules (§ 104.10(a)); the requirement that hearings under the rules should be conducted as expeditiously and inexpensively as possible consistent with the needs and rights of the parties to obtain a fair hearing and a complete record (see section 812(d)(2) of the Act) (§ 104.10(b)); a statement that the Department would reasonably accommodate persons with disabilities who are participants in the hearing or interested members of the public (§ 104.10(c)); the definitions used in the part (§ 104.20); the computation of time periods (including provisions permitting the ALJ to modify any time period, except for time periods required by statute) (§ 104.30); and the service and filing of documents by the parties and by the ALJ (§ 104.40).

Subpart B—Administrative Law Judge

Subpart B would prescribe provisions governing the designation of the presiding administrative law judge and the powers of the ALJ. As required by section 812(b) of the Act, the conduct of administrative proceedings under Part 104 is delegated to an ALJ appointed under 5 U.S.C. 3105. The presiding ALJ in a proceeding would be appointed by HUD's Chief ALJ (see proposed § 104.100).

This subpart would also: Prescribe the powers of the ALJ in the administrative hearing (§ 104.110); contain provisions for the disqualification of the ALJ (§ 104.120); prohibit ex parte communications (§ 104.130); and provide for the separation of all investigative, conciliatory and prosecutorial functions from the decision-making function of the ALJ (§ 104.140).

Subpart C—Parties

Subpart C would describe the parties to the proceeding. The parties would include: HUD, the respondent named in the charge and against whom relief is sought, and any intervenors. In accordance with section 812(c) of the Act, the proposed rule would permit the intervention by any aggrieved person. No other intervention is permitted in the proceedings, although briefs of amicus curiae may be permitted at the discretion of the ALJ (§ 104.200 (a) and (c)).

The rights of the parties to the proceeding are addressed in section 812(c) of the Act and would be implemented at § 104.200(b). These include the right to appear in person, to be represented by counsel, to examine and crossexamine witnesses, to introduce documentary or other relevant evidence into the record, and to request the issuance of subpoenas. The representation of the parties (including notice of appearance and withdrawal of representation) is described at proposed § 104.210. Standards of conduct for parties and their representatives are addressed at proposed § 104.220.

Subpart D—Pleadings and motions

Provisions governing pleadings and motions in an administrative proceeding are included at Subpart D. The requirements for the filing, service and contents of the charge are found at § 104.410. This rule would require filing with the Chief Docket Clerk in the Office of the Administrative Law Judges, and service upon the respondent and the aggrieved person on whose behalf the complaint was filed. The charge would consist of a short and plain statement of the facts upon which the General Counsel has reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The charge would be served with a notice of the rights of the complainant, the respondent and the aggrieved person on whose behalf the complaint was filed, to elect to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, in lieu of an administrative hearing under Part 104. The notice would also state that if an administrative proceeding under Part 104 is elected: The parties would have an opportunity for a hearing at a date and place specified in the notice; the respondent would have a right to submit an answer to the charge within 30 days of the service of the charge; the aggrieved person may intervene as a party within 30 days of the service of the charge; and all discovery must be concluded 15 days before the date set for hearing.

Proposed § 104.420 would govern the contents and the submission of the respondent's answer to the charge. This rule would require the submission of an answer if the respondent contests material facts alleged in a charge or contends that the respondent is entitled to judgment as a matter of law. Answers would be required to include: A statement that the respondent admits, denys or does not have sufficient information to admit or deny, each allegation made in the charge; and a statement of each affirmative defense (and a statement of facts in support of each affirmative defense) claimed by the respondent.

This subpart also would contain: Provisions governing requests for intervention (§ 104.430); amendments and supplemental pleadings (§ 104.440); motions (§ 104.450); and general requirements for the form, signature and timely filing of all pleadings, motions, briefs and other documents. (§ 104.400).

Subpart E—Discovery

Section 811(a) of the Act states, in part, that the Secretary may order discovery in aid of administrative hearings under Title VIII. In accordance with this statutory authority, discovery procedures are included in Subpart E of the proposed rule. Consistent with section 812(d) of the Act, the procedures were designed to permit the parties to conduct discovery as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence (see § 104.500(b)). Except for the time periods stated in the rule, to the extent that the rules prescribed in Subpart E conflict with discovery procedures in aid of civil actions in the United States District Court for the district in which the investigation took place, § 104.500 would provide that the rules of the District Court apply.

Specific discovery methods would include: Deposition upon oral examination and written interrogatories (§§ 104.510 and 104.520); written interrogatories (§ 104.530); requests for the production of documents or other evidence, entry upon land for inspection and other purposes, and physical and mental examinations (§ 104.540); and requests for admissions (§ 104.550). The frequency and sequence of these methods is not limited, except that discovery must be completed 15 days before the date scheduled for the hearing (§ 104.500 (d) and (e)). The proposed rule would also include provisions governing the supplementation of responses (§ 104.560); the issuance of protective orders (§ 104.570); and motions to compel discovery and the imposition of sanctions (§ 104.580).

Subpart F—Subpoenas

In accordance with the authorization contained in section 811(a) of the Act, Subpart F would provide for the issuance of subpoenas in aid of administrative hearings. Consistent with this statutory authority, the subpart would provide that the rules of the United States District Court for the district in which the investigation of the discriminatory housing practice took place would apply to the extent that Subpart F conflicts with procedures for the issuance of subpoenas in civil actions in that district court (except for time periods stated in the rules).

Under proposed § 104.590, the Chief ALJ or the presiding ALJ would be permitted to issue subpoenas upon the written request of a party. The subpoena could require: The attendance of a witness for the purpose of giving testimony at a deposition; the attendance of a witness for the purpose of giving testimony at a hearing; or the production of relevant books, papers, documents, or tangible things. As required by section 811(b) of the Act, witnesses summoned by subpoenas issued under Part 104 would be entitled to the same witness and mileage fees as witnesses in proceedings in United States District Courts. Witness and mileage fees would be paid by the party requesting the subpoena or, where the party is unable to pay the fees, by HUD. Proposed § 104.590 would also address the time of the request for issuance of subpoena; the service of subpoenas; motions to quash or limit subpoenas; and referral to the Attorney General for enforcement under section 814(c) of the Act where a person fails to comply with a subpoena.

Subpart G—Prehearing procedures

Subpart G would permit the ALJ to direct the parties to file prehearing statements (§ 104.600) and to participate in prehearing conferences (§ 104.610). These proposed procedures are designed to aid in the clarification of the issues and facts in dispute and to promote the orderly and expeditious disposition of the proceeding.

Subpart G would also provide for settlement negotiations before a settlement judge. The ALJ conducting the settlement negotiations would be appointed by the Chief ALJ and would not be the ALJ presiding at the hearing.

Subpart H—Hearing Procedures

Procedures for the conduct of the hearing are described at Subpart H. Under this subpart:

—The hearing would be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur (see section 812(b) of the Act). This requirement is included in the proposed rule at § 104.700(b).

—The hearing would commence not later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the ALJ would be required to notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay (see section 812(g) of the Act). This requirement is included in the proposed rule at § 104.700(a).

—The hearing would be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551–59) (§ 104.710).

—The Federal Rules of Evidence would apply to the presentation of evidence at the hearing, as required by section 812(c) of the Act (§ 104.730).

—The parties may waive the right to an oral hearing and present the matter for decision on a written record (§ 104.720).

—The ALJ may hear oral arguments following the submission of all evidence at the oral hearing and may permit the submission of written briefs (§ 104.790).

Part H would also include provisions governing: Notification and change of time and place of hearing (§ 104.700(c)); the issuance of in camera and protective orders (§ 104.740); the submission, identification and exchange of exhibits (§ 104.750); the authenticity of documents (§ 104.760); stipulations of the parties (§ 104.770); the record of the hearing (§ 104.780); the end of the hearing (§ 104.800); and the receipt of evidence following the end of the hearing (§ 104.810).

Subpart I—Dismissals and Decisions

Section 104.900 Dismissal.

Under § 104.900 of the proposed rule, the ALJ would be required to dismiss the proceeding: (1) Where the complainant, the respondent, or the aggrieved person on whose behalf the complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act; or (2) where an aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the discriminatory housing practice and the trial of the civil action has commenced.

Section 104.910 Initial decision of administrative law judge.

Proposed § 104.910 describes the initial decision of the ALJ. Under this proposed rule, the ALJ would be required to issue an initial decision containing findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The decision must be issued within 60 days after the end of the hearing, unless it is impracticable to do so. If the ALJ is unable to issue the decision within this time period (or within a succeeding 60-day period), the ALJ would be required to notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay (see section 812(g)(2) of the Act).

Proposed § 104.910(b) would require the ALJ to issue an initial decision against the respondent and to order appropriate relief, if the ALJ determines that the respondent has engaged, or is about to engage in a discriminatory

housing practice. Relief that may be ordered includes:

—Damages to the aggrieved person (including damages caused by humiliation or embarassment).

—Injunctive or such other equitable relief as may be appropriate. No such relief, however, may affect any contract, sale, encumbrance, or lease consummated before the issuance of the initial decision that involves a bona fide purchaser, encumbrancer, or tenant without actual knowledge of the charge (see sections 810(g) (3) and (4) of the Act)).

—Civil penalties subject to ceilings of $10,000 to $50,000. The ceiling on the civil penaly will depend on the number of previous discriminatory housing practices the respondent has been adjudged to have committed within designated time periods in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency. In determining the number of previous adjudications, the ALJ would consider adjudications that occurred before the effective date of the Act. Determinations to resolve issued under § 105.55 would not be included as an adjudication of a previous discriminatory housing practice. If the ALJ determines that more than one respondent has been engaged or is about to engage in a discriminatory housing practice, the ALJ would be permitted to assess the civil penalty, up to the maximum permitted under the rule, against each respondent. (See section 812(g)(3) of the Act.)

Proposed § 104.910(c) would provide that the ALJ will make an initial decision dismissing the charge if the ALJ finds that the respondent has not engaged and is not about to engage in a discriminatory housing practice (see section 812(g)(7) of the Act).

Section 104.920 Service of initial decision.

Simultaneously with the issuance of the initial decision, the ALJ would be required to serve the decision on the respondent, the aggrieved person on whose behalf the charge was filed any intervenors, the General Counsel, and the Secretary of HUD. The initial decision would state that it will become the final decision of the Department unless the Secretary issues a final decision within 30 days (see § 104.920).

Section 104.925 Resolution of the charge.

Section 812(e) of the Act provides that any resolution of the charge before the issuance of a final decision by the Secretary requires the consent of the aggrieved person on whose behalf the charge is filed. Proposed § 104.925 would permit the parties to submit an agreement resolving the charge at any time before the issuance of the final decision. The agreement must be signed by the respondent, all aggrieved persons on whose behalf the charge was issued, and the General Counsel. The ALJ would accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge would waive any right to challenge or contest the validity of a decision based on the agreement.

Section 104.930 Final decision.

In accrodance with section 812(h) of the Act, proposed § 104.930 would permit the Secretary to review findings of fact, conclusions of law, or orders contained in the ALJ's initial decision, and issue a final decision. The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings, Such a final decision would be served on the respondent, the aggrieved person on whose behalf the charge was filed, intervenors, and the General Counsel no later than 30 days from the date of issuance of the initial decision. If no final decision is issued by the Secretary within this time period, the initial decision of the ALJ would become the final decision of the Department. Such a final decision would be considered to have been issued 30 days following the date of issuance of the initial decision.

Under section 812(g)(7), HUD is required to make public disclosure of orders dismissing charges based on findings that the respondent has not engaged and is not about to engage in a discriminatory housing practice. The proposed rule at § 104.930 provides that HUD would make public disclosure of all final decisions, including those based on finding in favor of or against a respondent.

Section 104.935 Action upon issuance of a final decision.

Where a final decision includes a finding that the respondent engaged or is about to engage in a discriminatory housing practice in the course of a business subject to licensing or regulation by a Federal, State or local governmental agency, section 812(g)(5) requires HUD within specified time limits, to send copies of the findings of fact, conclusions of law, and decision to the governmental entity, and to recommend appropriate disciplinary action (including the suspension or revocation of the license of the respondent). This statutory requirement is implemented at § 104.935(a) of the proposed rule.

Where a final decision includes a finding that a respondent is engaged or about to engage in a discriminatory housing practice and another final decision including such a finding was issued under Part 104 within five years preceding the date of the issuance of the final decision, section 812(g)(6) requires HUD to send the Attorney General copies of the decisions. This requirement is contained in § 104.935(b).

Section 104.940 Attorney's fees and costs.

Section 812(p) of the Act provides that the ALJ may allow the prevailing party, other than HUD, reasonable attorney's fees and costs, and that HUD shall be liable for such fees and costs to the extent provided in 5 U.S.C. 504 (Equal Access to Justice Act). Section 802(o) provides that prevailing party has the same meaning as this term has under 42 U.S.C. 1988 (Civil Rights Attorney's Fees Awards Act).

Proposed § 104.940 would provide that any prevailing party, except HUD, may apply to the ALJ for attorney's fees and costs following the issuance of the final decision under § 104.940. The initial decision on fees and costs would become the final decision of HUD unless the Secretary reviews the decision and issues a final decision within 30 days.

The recovery of fees and costs would be permitted as follows:

If the respondent is the prevailing party, HUD shall be liable for reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act and HUD's regulations at 24 CFR Part 14; and intervenors shall be liable for reasonable attorney's fees and costs to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

To the extent that an intervenor is a prevailing party, the respondent shall be liable for reasonable attorney's fees and costs unless special circumstances make the recovery of such fees and costs unjust.

Subpart J—Judicial Review and Enforcement of Final Decision

Judicial review of the final decision is addressed in § 104.950. This proposed rule is based on section 812(i) and (1) of the Act and would provide that:

—Any party adversely affected by a final decision under § 104.930 may file a

petition for review of the decision in the appropriate United States Court of Appeals within 30 days of the date of issuance of the final decision.

—If no such petition for review is filed within 45 days of the date of issuance of the final decision, the findings of fact and final decision would be conclusive in connection with any petition for enforcement filed thereafter.

Enforcement of the final decision would be addressed in § 104.955. Under this rule, HUD may petition the appropriate United States Court of Appeals for enforcement of the final decision and for appropriate temporary relief or restraining orders under section 812(j) of the Act at any time following the issuance of the final decision. Any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals for enforcement under section 812(m) of the Act if before the expiration of 60 days from the date of issuance of the final decision, no petition for judicial review of the final decision has been filed and the General Counsel has not sought enforcement of the final decision.

Section 812 of the Act contains references to judicial proceedings involving the ALJ's initial decision and to judicial proceedings involving the final decision of the Secretary. For example, section 812(i) of the Act provides for judicial review of the "final order for relief under this section"; section 812(j) of the Act provides for the enforcement by HUD of "the order of the administrative law judge"; section 812(1) of the act describes the effect of the "administrative law judge's findings of fact and order" where a petition for review under section 812(i) of the Act has not been filed; and section 812(m) of the Act describes the enforcement of "the administrative law judge's order" by parties other than HUD. The provisions for Secretarial review of the initial decision of the administrative law judge were added as an amendment on the floor of the House of Representatives and were clearly intended to provide for review and enforcement of the final rather than the initial HUD decision. (E.g., 134 Cong. Rec. H4676–77 (daily edition June 23, 1988) (remarks of Rep. Fish). Accordingly, HUD has interpreted the statutory references to the administrative law judge's order to be references to the final decision of the Department.

PART 106—FAIR HOUSING ADMINISTRATIVE MEETINGS UNDER TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968

Part 106 was adopted in 1972 to establish procedures for the scheduling of public meetings or conferences to gather information to assist the Assistant Secretary for Equal Opportunity (now the Assistant Secretary for Fair Housing and Equal Opportunity) in achieving the aims and objectives of title VIII of the Civil Rights Act of 1968 for the promotion and assurance of equal opportunity in housing with regard to race, color, religion, or national origin. Part 106 was amended in 1975 to add "sex" as a basis of equal opportunity in housing.

The Department proposes to revise the heading of 24 CFR Part 106 and §§ 106.1, 106.2(b) and 106.2(c) to reflect the new short title of Title VIII of the Civil Rights Act of 1968, now known as the Fair Housing Act. "Handicap" and "familial status" would be inserted in § 106.1 as additional protected classes, and appropriate editorial modifications would be made for clarification purposes and for consistency in terminology.

PART 109—FAIR HOUSING ADVERTISING

The Fair Housing Advertising Regulations (Part 109) would be revised to reflect the expansion of the classes of persons protected under the Fair Housing Act from discriminatory advertising.

General

The purpose of the HUD Fair Housing Advertising Regulations is to assist all advertising media, advertising agencies and advertisers in complying with the requirements of the Fair Housing Act with respect to advertisements for the sale, rental or financing of housing. These regulations also describe the matters which the Department will consider in evaluating compliance with the Fair Housing Act in connection with the investigation of complaints alleging discrimination in advertising.

Section 804(c) of the Fair Housing Act has been amended to expand the prohibitions on discrimination in advertising for the sale or rental of a dwelling. The amendment added "handicap" and "familial status" to the existing prohibitions of discrimination on the basis of race, color, religion, sex, or national origin.

The Department is proposing to revise the Fair Housing Advertising Regulations to reflect the expanded coverage of the Fair Housing Act with respect to discrimination in advertising. Following is a section-by-section description of the proposed changes.

Section 109.5 Policy.

This section describes the statutory provisions on which the Fair Housing Advertising Regulations are based. The two new protected coverages of the amended statute—"handicap" and "familial status"—would be added in two places to the existing list of bases on which discrimination is prohibited. In addition, a reference to appraisal services would be inserted in the list of discriminatory practices specifically made unlawful under the Fair Housing Act. Because of the exemption in section 807(b) of the Fair Housing Act for "housing for older persons", it is also proposed to add a sentence to § 109.5 to explain that the prohibitions of the act regarding familial status do not apply with respect to such housing.

In addition, references to Title VIII of the Civil Rights Act of 1968 would be changed to the new short title of the statute, the "Fair Housing Act", both in this section and throughout the regulations.

Section 109.10 Purpose.

The Department is proposing only editorial changes to this section.

Section 109.15 Definitions.

This section contains definitions of the major terms used in Part 109. The Department proposes to add definitions of the terms "handicap" and "familial status" in paragraph (g) and (h), respectively. These new definitions are the same as the definitions contained in the Fair Housing Act. In addition, the definition of "Secretary" would be eliminated since the term is not used in the regulations, and the definitions of "person" and "discriminatory housing practice" would be revised to reflect statutory changes.

Section 109.16 Scope.

This section explains the use of the criteria contained in Part 109 by the Assistant Secretary with regard to action on complaints alleging discriminatory advertising with respect to advertising media and persons placing advertisements. The Department has proposed changes in the introductory language of paragraph (a) and in the language of paragraphs (a)(1) and (a)(2) to reflect the changes in complaint processing brought about by the Fair Housing Act amendments. Under the new procedure, the Assistant Secretary will make determinations as to whether there is reasonable cause to

believe that a discriminatory housing practice (or a violation of section 804 of the Fair Housing Act) has occurred or is about to occur.

Section 109.20 Use of words, phrases, symbols, and visual aids.

This section discusses how certain words, phrases, symbols and forms have been used in residential real estate advertising to convey either overt or tacit discriminatory intent.

In the undesignated introductory paragraph, it is proposed that the Assistant Secretary will consider whether, in a particular case, there is a need for "further proceedings on" the complaint, rather than a need for "seeking resolution of" the complaint. This change would reflect the new complaint processing procedures under the amended act.

In paragraph (a), which provides examples of words descriptive of dwelling, landlord, and tenants which should not be used in advertising, the Department proposes to add the phrase "adult building".

In paragraph (b), which lists examples of words indicative of persons in the protected groups covered by the Fair Housing Act, the Department proposes to add specific provisions on words relating to handicap and familial status. In proposed paragraph (b)(6), the rule would provide that nothing in the part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings. In proposed paragraph (b)(7), concerning familial status, the Department would include a statement making it clear that nothing in Part 109 would restrict advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in section 807(b) of the Fair Housing Act.

In paragraphs (c) and (d), the words "handicap" and "familial status" would be added to the list of protected groups.

Section 109.25 Selective use of advertising media or content.

This section indicates examples of how the selective use of advertising media or content can be used exclusively with respect to particular housing developments or sites, with discriminatory results.

In paragraph (c), which concerns selective use of human models when conducting an advertising campaign, the Department is proposing changes in the last two sentences of the paragraph to provide an example of selective advertising with respect to familial status.

Section 109.30 Fair housing policy and practices.

This section discusses actions that advertisers can take which would be considered as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

The Department proposes to add the words "handicap" and "familial status" where appropriate in paragraphs (a) and (b). In addition, the Department proposes to add language in paragraph (c), concerning use of human models, to indicate that models used in display advertising should represent families with children, when appropriate, as well as both majority and minority groups in the metropolitan area and both sexes.

Appendix to Part 109

The appendix to Part 109 contains three tables intended to serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising. The Department proposes to add the words "handicap" and "familial status" where appropriate in the three tables.

PART 110—FAIR HOUSING POSTER

Part 110 sets forth the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Civil Rights Act of 1968, 42 U.S.C. 3604–3606.

The Department proposes to amend Part 110 to comply with the requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, approved September 13, 1988). The major changes are in § 110.25, Description of Posters. The proposal would change the legend of the poster to add "handicap" and "familial status" to the bases of illegal discriminatory acts. The legend would also be revised to show that discrimination in the appraising of housing is illegal. In addition to the above amendments, editorial modification would be made for clarification purposes and for consistency in terminology.

PART 115—RECOGNITION OF JURISDICTIONS WITH SUBSTANTIALLY EQUIVALENT LAWS

On August 9, 1984 the Department published 24 CFR Part 115 as a final rule (49 FR 32042) with an effective date of October 8, 1984. Part 115 sets forth the procedures and criteria used to determine whether a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in Title VIII of the Civil Rights Act of 1968. The Department proposes to revise Part 115 to comply with the requirements of the Fair Housing Act (the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, enacted September 13, 1988). The principal changes proposed would: (1) Provide for than a recognition process as provided in the current Part 115; (2) define the requirements for certification with the specificity required by the Act; (3) define the effect of the Act on agencies recognized as substantially equivalent under current Part 115; (4) require that in order to become certified agencies must provide protection against discrimination based on "handicap" and "familial status"; and (5) provide a prohibition against coercion, intimidation and threats.

To obtain certification, State and local agencies must administer laws which prohibit all discriminatory housing practices which are prohibited by the Act and must include as protected classes all classes protected by the Act. Discrimination on the basis of handicap is described in the statutory language and only those provisions of section 804(f) of the Act which clearly do not apply to State or local agencies may be omitted from the law or ordinance the agency administers if certification is to be granted. Further the remedies available to a certified agency must be substantially equivalent to the remedies available under the Act. Final agency actions must be subject to judicial review and aggrieved persons must have the right of access to a State or local court. The Act also requires that the procedures followed by a certified agency be shown to be substantially equivalent to those created by the Act. Such procedures as: Filing of complaints by the agency; acknowledgment of receipt of complaints and notice of procedural rights and obligations, completion of investigation and investigative report within 100 days and notice of cause for delay; provision for conciliation and a conciliation agreement which shall be made public under certain conditions; are examples of procedural matters which must be included in the law or ordinance administered by a certified agency.

The regulations require that the law or ordinance provide for resolution of a complaint by a body empowered to grant relief substantially equivalent to the relief which mat be granted by the Secretary under the Act.

The following revisions to Part 115 are proposed:

Section 115.1 Purpose.

Paragraph (a) is amended to permit the Secretary to take further action with regard to a complaint referred to a certified agency when the agency has consented; or the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral; or having commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or when the Secretary has determined that the agency no longer qualifies for certification with respect to the relevant jurisdiction. It is further amended to remove the provision permitting the Secretary to take further action with regard to a referred complaint on certification that the protection of the rights of the parties or the interests of justice require such action. This reflects the removal of comparable language from the statute.

Only technical changes are required in paragraph (b) to accommodate the change from "recognition" to "certification."

Section 115.2 Basis of determination.

The Fair Housing Amendments Act of 1988, section 810(f)(3)(A), makes it clear that the Secretary may certify a State or local agency for the purpose of referral of complaints of housing discrimination "* * * only if the Secretary determines that: (i) The substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made; (ii) the procedures followed by such agency; (iii) the remedies available to such agency; and (iv) the availability of judicial review of such agency's action are substantially equivalent to those created by and under this title." The language of Title VIII, before the Fair Housing Amendments Act of 1988, required only that a State or local law provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in Title VIII.

As revised the section retains the current two-phase determination process for recognition. Paragraph (a) requires a determination that the law administered by the agency, on its face, provides that: (1) The substantive rights protected by the agency; and (2) the procedures followed by the agency; (3) the remedies available to the agency; and (4) the availability of judicial review of such agency's action; are substantially equivalent to those created by and under the Act.

Paragraph (b) requires a determination that the current practices and past performance of the agency demonstrate that in operation the law in fact porvides rights and remedies which are substantially equivalent to those provided in the Act.

Section 115.3 Criteria for adequacy of law.

This section is retained in substantial part. However, extensive revisions are proposed.

Paragraph (a)(1) is expanded to show that the law or ordinance of a certified agency must provide that (1) complaints must be in writing, (2) the agency must serve notice on complainant acknowledging receipt of the complaint and advising the complainant of the time limits and choice of forums provided, (3) the agency promptly serve notice of the filing of a complaint on the respondent or person charged advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint, and (4) that a respondent may file an answer.

Paragraph (a)(2) is expanded to show that a certified agency must, as adjunct to its authority to investigate complaints, have subpoena power. The subsection codifies the longtime practice of the Department to require that, with few exceptions, a certified agency have subpoena power. Title VIII of the Civil Rights Act granted the Department subpoena power and the Department found it an effective and necessary adjunct in the investigative process. When the department had no authority beyond conciliation, it was thought that an agency that could grant relief might have more power to assure the cooperation of respondents than did HUD. Since the Act empowers HUD to grant relief this reasoning is no longer suasive and the exception to the requirement of subpoena power no longer valid.

Paragraph (a)(2) is further expanded to show that a certified agency must administer a law or ordinance which requires that: (1) The agency commence proceedings with respect to a complaint within thirty days of receipt of the complaint; (2) the agency investigate the complaint and complete its investigation within 100 days of receipt of the complaint; (3) the agency notify the complainant and respondent in writing if it is unable to complete the investigation within the 100 day period; (4) the agency make final administrative disposition of a complaint within one year of date of receipt of a complaint, unless it is impractical to do so, and notify the complainant and respondent in writing of the reasons for not doing so.

Although the one year time limitation within which the agency must make final administrative disposition of a complaint is not verbatim from the Act the requirement is consonant with the provisions of the Act. The Act (section 810(g) requires that the Secretary, within 100 days after the filing of a complaint, make a reasonable cause determination and when appropriate, issue a charge. Section 812 provides for a hearing before an administrative law judge to commence no later than 120 days following the issuance of the charge; the administrative law judge to make findings of fact and conclusions of law within 60 days after the hearing. The Secretary has 30 days thereafter to review the administrative law judge's findings. This completes the administrative disposition of the complaint. The approximate time allotted by the Act from date of receipt of complaint to final disposition is 310 days. The requirement that a certified agency make final disposition of a complaint within one year from date of receipt of a complaint, unless it is impractical to do so, is reasonable and within the time limitations prescribed in the Act. Paragraph (a)(2) also requires that a criterion for certification be the power to conciliate and that conciliation agreements must, under certain conditions, be made public as does the Act.

Paragraph (a)(3) is retained and examples of improper burdens on complainant are given: (1) A provision that a complaint must be filed within less than 180 days after the alleged discriminatory housing act (The Act provides one year to file a complaint. No complaint would be referred if filed with HUD within the one year period provided in the Act but after a lesser time for filing required by a certified agency.); (2) anti-testing provisions (courts have held that testing is a protected activity under Title VIII; (3) provisions that could subject a complainant to costs, criminal penalties or fees in connection with the filing of complaints, since they would have a chilling effect on prospective complainants.

Paragraph (a)(4) is retained verbatim.

Paragraph (a)(5) is expanded to include "familial status" to reflect the statutory change.

Paragraph (a)(5) is further expanded by substituting the term "discrimination in residential real estate related transactions" for the term discrimination in financing and the prohibition of such practices is practically verbatim from

the Act. A new subsection is added describing certain coercion, intimidation, threats or interference as acts which must be prohibited by the law administered by a certified agency.

The proviso to paragraph (a)(5) which permitted recognition even if the law did not contain adequate prohibitions with respect to blockbusting, discrimination in financing and access to or membership in brokers' organizations, has been removed. A certified agency should be able to process these types of complaints as well as other paragraph (a)(5) complaints. These rights created by Title VIII in 1968 should by now be fully protected by any certified agency.

Paragraph (b) is a substitute section and requires that the law administered by a certified agency grant that agency authority to: (1) Seek prompt judicial relief pending final disposition of a complaint; (2) issue subpoenas; (3) grant actual damages, or arrange to have adjudicated in court at agency expense the award of actual damages to an aggrieved person; (4) grant injunctive or other equitable relief; and (5) assess a civil penalty against the respondent or arrange to have adjudicated in court at agency expense the award of punitive damages against the respondent. The Act grants this authority to the Secretary and a substantially equivalent agency must include this authority in its arsenal of remedies to combat housing discrimination effectively.

Paragraph (b) provides that actions by certified agencies must, under the law or ordinance the agency administers, be subject to judicial review. The agency must provide administrative and judicial remedies substantially equivalent to those required by the Act. The Act requires that a State or local agency administer a law which provides remedies which are substantially equivalent to those provided by the Act; it does not require that they be identical to those provided by the Act.

Paragraph (c) codifies section 807(b)(1) of the Act.

Paragraph (d) requires that the State or local law assure that no prohibition based on familial status applies to housing for older persons. Previously we have not required States or localities to include in their laws or ordinances those exceptions or exemptions pertaining to unfair housing practices which the Federal law contains. However, Congress exhibited serious concern that the prohibition against discrimination because of familial status not impinge on housing for older persons. The Congressional concern is reflected in this requirement.

Paragraph (e), formerly paragraph (c), is adopted and expanded to show that an analysis of the adequacy of a State or local fair housing law "on its face" must take into account regulations, directives and rules of procedure of a State or local agency as well as other relevant matters of State or local law or interpretations by competent authorities.

Paragraph (f) provides that a law administered by a certified agency may not permit it to contract out or delegate to a non-governmental authority its decision making authority, including the dismissal of a complaint and any action specified in §§ 115.3(a)(2)(iv) or 115.3(b)(1). This provision is considered to be necessary since some agencies appear to have relinquished their responsibilities and obligations under the law by entering into contracts with private organizations. The Department would have no authority to monitor such organizations and could not assure that a complaint filed with the Department would, when referred, receive the attention required by the Act.

Paragraph (g) provides for civil action by an aggrieved person and is based on section 813 (Enforcement by Private Persons) of the Act. The State or local agency must administer a law or ordinance which provides for such civil enforcement and the court should be empowered to: award actual and punitive damages; grant temporary or permanent injunctions; and allow reasonable attorney's fees and costs.

Section 115.3a Criteria for adequacy of the law—prohibition of discrimination because of handicap.

This section codifies the provisions of law prohibiting discrimination on the basis of handicap which must be included in a fair housing law administered by a certified agency. The uniqueness of the handicap prohibitions justifies this separate section. The prohibition against discrimination because of a handicap also provides that the law must contain certain provisions relating to design and construction of covered multifamily dwellings (as defined in Part 100) for first occupancy after March 13, 1991. While this date is 30 months after enactment of the regulations, it is important for a State or locality that desires to have its law certified in the near future to enact these provisions at or before the time it enacts the other provisions required by this section, so as to allow sufficient lead time for persons to have sufficient notice to include the necessary considerations in the design and construction phases of their development efforts.

Section 115.4 Performance standards

This section is retained in substantial part with editorial changes. The subsections of § 115.4(b) have been rearranged for clarity. Time limits for the commencement and processing of complaints are imposed and § 115.4(b)(3) requires that compliance reviews be conducted.

Section 115.5 Request for recognition.

This section only required editorial changes.

Section 115.6 Procedure for certification.

This section has been retained with editorial changes. A new paragraph (d) has been added (other paragraphs have been relettered) describing the effect of the act on agencies recognized prior to enactment.

The paragraph delineates the time period during which certification under this section is effective, *i.e.*, March 12, 1988 (effective date of the law) through January 13, 1992 unless the Secretary determines in an individual case that the State or local agency has not been able to meet the certification requirements because of exceptional circumstances and the Secretary extends the period to no later than September 13, 1992.

The States and localities which were recognized as substantially equivalent on September 12, 1988 (and whose agencies are therefore deemed certified for a limited period) are:

States

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon

Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
West Virginia
Wisconsin

Localities

ALASKA
  Anchorage
ARIZONA
  Phoenix
CONNECTICUT
  New Haven
DISTRICT OF COLUMBIA
  Washington
FLORIDA
  Broward County
  Clearwater
  Dade County (Metropolitan)
  Escambia County
  Gainesville
  Hillsborough Cty.
  Jacksonville
  Orlando
  Pensacola
  Pinellas County
  St. Petersburg
  Tallahassee
  Tampa
ILLINOIS
  Bloomington
  Danville
  Elgin
  Evanston
  Hazel Crest
  Park Forest
  Springfield
  Urbana
INDIANA
  Columbus
  East Chicago
  Ft. Wayne
  Gary
  Hammond
  Marion
  South Bend
IOWA
  Des Moines
  Dubuque
  Iowa City
KANSAS
  Kansas City
  Lawrence
  Olathe
  Saline
KENTUCKY
  Jefferson County
  Lexington-Fayette
MARYLAND
  Howard County
  Montgomery Cty.
  Prince Georges Cty.
MASSACHUSETTS
  Boston
  Cambridge
MINNESOTA
  Minneapolis
  St. Paul
MISSOURI
  Kansas City
  St. Louis
NEBRASKA
  Lincoln
  Omaha
NEW YORK
  New York
  Rockland County
NORTH CAROLINA
  Asheville
  Charlotte
  Mecklenburg Cty.
  New Hanover Cty.
  Raleigh
  Winston-Salem
OHIO
  Dayton
PENNSYLVANIA
  Allentown
  Harrisburg
  Philadelphia
  Pittsburgh
  Reading
  York
SOUTH DAKOTA
  Sioux Falls
TENNESSEE
  Knoxville
TEXAS
  Fort Worth
VIRGINIA
  Arlington County
WASHINGTON
  King County
  Seattle
  Tacoma
WEST VIRGINIA
  Beckley
  Charleston
  Huntington
WISCONSIN
  Beloit
  Madison

The States and localities which had entered into an agreement for interim referrals on September 12, 1988 (and whose agencies are therefore deemed cetified for a limited period) are:

States

Georgia
Ohio

Localities

Lee County, FL
St. Joseph, MO
Albany, NY
Durham, NC
Greensboro, NC

It is made clear that certification under this paragraph does not permit referral of complaints alleging discrimination based on "familial status" or "handicap." Since these are new protected classes, HUD has not analyzed the laws of these jurisdictions to determine whether "on its face" the law of any of these jurisdictions protects these classes in a manner substantially equivalent to the protection provided by the Act.

Similarly it is made clear that no State or locality certified under this paragraph is to be considered certified for the purpose of processing complaints alleging coercion, intimidation or threats as described in § 115.3(a)(5)(vii). HUD did not previously have authority to process such complaints and therefore HUD has not analyzed the laws of these jurisdictions to make the appropriate determination.

Further, the proposed regulation makes it clear that certification under this paragraph does not imply that the administrative or judicial remedies provided are substantially equivalent to those provided by the Act. This is a required conclusion since HUD could provide no administrative remedies before the Act and the current regulation, § 115.3(b), specifically excludes a determination concerning judicial protection and enforcement.

The requirement for publication of annual lists has been retained.

Section 115.7 Denial of certification, section 115.8 withdrawal of certification, and section 115.9 conferences.

These sections are retained with editorial changes.

Section 115.10 Consequences of certification.

This section is retained with editorial changes. A paragraph has been added to reinforce the principle that currently recognized agencies do not become certified with regard to complaints alleging discrimination on the basis of "handicap" or "familial status." A paragraph has been added to provide for action by the Secretary before referral to a certified agency in certain instances, as mandated by statute.

Section 115.11 Interim referrals.

Section 115.11 is retained. A time limitation of two years in interim status has been imposed. It was felt that two years was a sufficient time for an agency to show that it could conform to the performance standards of § 115.4. It is made clear that this does not apply to agencies that are certified under §115.6(d) since these agencies entered this status with no foreknowledge of such limitation.

PART 121—COLLECTION OF DATA

The Department is proposing to recodify the provisions of 24 CFR Part 100, entitled "Racial, Sex, and Ethnic Data", as a new Part 121 of Title 24. Part 100 was originally adopted in 1971 under the heading "Racial and Ethnic Data", to enable the Secretary of Housing and Urban Development to obtain information concerning minority-group identification to assist the Secretary in carrying out responsibility for administering the national policies prohibiting discrimination and providing for fair housing. In 1975, in light of the 1974 amendment of Title VIII to prohibit discrimination on the basis of sex, Part 100 was amended to provide for obtaining information on sex, as well as minority-group, identification.

Section 562 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) requires the Secretary of Housing and Urban Development to collect data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefitting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by the Secretary, and to include a summary and evaluation of such data in the Secretary's annual report to the Congress.

Section 808(e)(6) of the Fair Housing Act, 42 U.S.C. 3608(e)(6), as added by section 7(b)(1)(D) of the Fair Housing Amendments Act of 1988, requires the Secretary to collect data on the race, color, religion, sex, national origin, age, handicap and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department, to the extent that such persons and households are within the coverage of the civil rights laws and executive orders referred to in section 808(f) of the Fair Housing Act or specified by the Secretary by publication in the Federal Register and to the extent that the Secretary determines the data to be necessary or appropriate.

The existing provisions of Part 100 are not adequate for the purpose of enabling the Secretary to carry out the new responsibilities mandated by the legislation described above. Accordingly, the Department proposes to revise those provisions to provide appropriate regulatory authority for this purpose.

Since Part 100 would be used for other regulations under this proposed rule, the Department proposes to move the revised provisions of that part to a new Part 121—Collection of Data.

Section 121.1 would describe the purpose of the new Part 121—to enable the Secretary to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, Title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department, and they direct the Secretary, among other things, to collect certain data to assess the extent of compliance with these policies.

Section 121.2 would provide for the furnishing of data by HUD program participants concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department. The language proposed for this section is drawn largely from that contained in section 808(e)(6) of the Fair Housing Act, described above.

Legislative Review Under Section 7(o) Of the Department of Housing and Urban Development Act and Comment Period Applicable to the Proposed Rule

The proposed rule was not submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate of the Committee on Banking, Finance and Urban Affairs of the House of Representatives for prepublication review as described in section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)). Section 7(o)(2) requires certain rules to be transmitted to both Committees at least 15 calendar days of continuous session before their publication for comment in the Federal Register. The last date for submission of a proposed rule to the committees for the 15-day prepublication review during 1988 was the first week of October 1988. The next period of 15 days of continuous session of Congress will not occur until early 1989.

Section 13 of the Fair Housing Amendments Act of 1988 provides that the Secretary shall issue rules to implement the amendments not later than 180 days after the enactment of the Act (*i.e.*, 180 days from September 13, 1988 or March 12, 1989). Section 13 of the 1988 Amendments also requires HUD to consult with other appropriate Federal agencies and to give public notice and an opportunity for comment on the rules. (Also see section 812(d) and 815 of the Act.)

Given the statutory 180-day time limit for the production of a final rule, the statutory requirements for public notice and comment, and the 1988 congressional schedule, the Department has interpreted the statutory rulemaking schedule as an expression of congressional intent to exempt this rulemaking from the legislative review requirements under section 7(o)(2).

As noted above, section 13 of the 1988 Amendments requires the Department to provide an opportunity for public notice and comment. For proposed rules, it is HUD's usual policy to afford the public not less than 60 days for the submission of public comments (see 24 CFR 10.1). However, based on the 180-day production schedule and the requirement that a final rule be effective by March 19, 1989, the Department has provided 30 days for public comment on this proposed rule.

Other Matters

This rule constitutes a "major rule" as defined in section 1(b) of Executive Order 12291. Analysis of the proposed rule indicates that it would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions or have a significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. However, analysis of the rule indicates that it may have an impact of $100 million or more. The Director of the Office of Management and Budget in accordance with section (6)(a)(4) of the Executive Order has waived the requirement for the preparation of a preliminary Regulatory Impact Analysis under section 3 of the Executive Order. This waiver is based on the Director's determination that compliance with the requirement for a preliminary Regulatory Impact Analysis may unduly delay the rule and may prohibit the issuance of a final rule effective by March 12, 1989. A final Regulatory Impact Analysis, however, will be prepared before the publication of the final rule.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the

Office of General Counsel, Rules Docket Clerk, at the address listed above.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the rule will require all entities, including small entities, to comply with certain accessibility standards in the design and construction of certain multifamily buildings, compliance with these standards will require a minimal expenditure of funds. In "The Estimated Cost of Accessible Buildings," a study prepared for HUD by Edward Steinfeld, Department of Architecture, State University of New York at Buffalo, the cost of redesigning a high rise tower to comply with ANSI A117.1 standards was estimated to be 0.98 percent of the total cost of the structure. The increase was 0.59 percent for garden style apartments. These estimates are based on compliance with the ANSI A117.1 standards which are more rigorous than the accessibility standards in the Fair Housing Act and are based on the redesign rather than a new design of a structure. HUD, therefore, believes that the figures overstate the economic burden of compliance. Moreover, HUD notes that the accessibility requirements will have no impact on many entities since such compliance with equal or more rigorous standards is already required under many State and local laws.

The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 100.304(c)(2), 103.30, 115.3(a)(i), 115.5, 115.7 and 115.9 of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements are provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—FAIR HOUSING AMENDMENTS ACT OF 1980

Description of information collection	Section No. 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual respones	Hours per response	Total hours
Policy and Procedures-Housing for Persons 55 years and older.	§ 100.304(c)(2)	1,231	1	1,231	1	1,231
Housing Discrimination Complaint Forms HUD-903 & 903A Spanish Version (2529-0011).	§§ 103.30 & 115.3(a)(i)	8,400	1	8,400	1	8,400
Certification Request Documentation (2529-0025)	§§ 115.5, 115.7 & 115.9	30	1	30	17	510
Total Annual Burden						10,141

Collections of information conducted or sponsored by HUD during the conduct of an administrative action or investigation against specific individuals or entities after a case file is opened are not covered by 5 CFR Part 1320—Controlling Paperwork Burdens on the Public (see 5 CFR 1320.3(c)). Accordingly, the tabulation above, does not include the information collection hours associated with §§ 104.420, 104.530, 104.540(b)(4), 104.540(c), 104.550(a), 104.550(b), 104.590, 104.600(b), 104.620(b)(2), 104.700(a), 104.720, 104.790(b), 104.910(d), 115.3(a) (ii), (iii) and (iv), and 115.4(b)(2)(i). No burden hours are reported for Part 110 since public disclosure of information originally supplied by the Federal Government to the recipient for the purposes of disclosure is not a collection of information. (See 5 CFR 1230.7(c)(2)). No burden hours are included for § 121.2 because information collection requirements on race, color, religion, sex, national origin, age, handicap, and family characteristics will be imposed under the regulations applicable to the specific HUD program.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that this rule, if implemented, may have a significant impact on family formation, maintenace and general well-being because the rule provides Federal law enforcement assistance to families confronting housing discrimination based on race, color, religion, national origin, familial status or handicap. However, review under the Order is not required because the statutory mandate leaves little effective discretion in the Department to lessen the family impact. In any event, the purpose of the statute is to have a positive impact on family values by offering a measure of protection to persons confronting illegal discrimination.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612—Federalism, has determined that the policies contained in this rule would, if implemented, have federalism implications and are subject to review under the Order. Specifically, the amended statute continues to provide for referral to State and local fair housing enforcement agencies. However, in the future the determination of substantial equivalency will depend upon State and local enforcement machinery that matches up with the much-strengthened Federal law. Accordingly, the effect of the amended Fair Housing Act will be to encourage States and localities to amend their laws to match the Federal enforcement machinery, or suffer the eventual loss of recognition as substantially equivalent State or local agencies and possible loss of function if citizens of the jurisdiction do not choose to file complaints with State or local officials. Additionally, jurisdictions losing equivalency status will lose eligibility for grant funds available to co-enforcers of fair housing laws.

While the rule would have federalism impacts, review under the Federalism Executive Order is not required because the implementation of the statute leaves little discretion with HUD to lessen these impacts. HUD's statutory mandate is clear—it must accept complaints nationwide, and refer complaints for processing (after the initial grandfather period) only to jurisdictions with substantially equivalent laws. Moreover, since the statute addresses the Federalism issue by declaring that certain conduct will be illegal and by providing machinery for referral to State and local authority under appropriate circumstances, further study of Federalism implications could not appreciably affect the approach taken in the implementing regulations.

This rule was not listed in the Department's Semiannual Agenda of Regulations published April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number and title is 14.400 Equal Opportunity in Housing.)

List of Subjects

24 CFR Part 14

Equal access to justice, Lawyers, Claims.

24 CFR Part 100

Fair housing, Incorporation by reference, Nondiscrimination.

24 CFR Part 103

Administrative practice and procedure, Fair housing.

24 CFR Part 104

Administrative practice and procedure, Fair housing.

24 CFR Part 105

Administrative practice and procedure, Fair housing.

24 CFR Part 106

Administrative practice and procedure, Fair housing.

24 CFR Part 109

Advertising, Fair housing, Signs and symbols.

24 CFR Part 110

Fair housing, Signs and symbols.

24 CFR Part 115

Fair housing, Intergovernmental relations.

24 CFR Part 121

Fair housing, Statistics, Reporting and Recordkeeping requirements.

Accordingly, Title 24 of the Code of Federal Regulations would be amended to read as follows.

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

1. The authority citation for Part 14 continues to read as follows:

Authority: Sec. 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1); sec 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 14.115, the phrase "or" at the end of paragraph (a)(8) would be deleted, the period at the end of paragraph (a)(9) would be deleted and in its place the phrase "; or" would be added, and a new paragraph (a)(10) would be added to read as follows:

§ 14.115 Proceedings covered.

(a) * * *

(10) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3600–3620) and 24 CFR Part 104.

* * * * *

3. Part 100 would be redesignated as Part 121, and a new Part 100 would be added to read as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Subpart A—General

Sec.
100.1 Authority.
100.5 Scope.
100.10 Exemptions.
100.20 Definitions.

Subpart B—Discriminatory Housing Practices

100.50 Real estate practices prohibited.
100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.
100.65 Discrimination in terms, conditions and privileges and in services and facilities.
100.70 Other prohibited sale and rental conduct.
100.75 Discriminatory advertisements, statements and notices.
100.80 Discriminatory representations on the availability of dwellings.
100.85 Blockbusting.
100.90 Discrimination in the provision of brokerage services.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

100.110 Discriminatory practices in residential real estate-related transactions.
100.115 Residential real estate-related transactions.
100.120 Discrimination in the making of loans and in the provision of other financial assistance.
100.125 Discrimination in the purchasing of loans.
100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.
100.135 Unlawful practices in the selling, brokering or appraising of residential real property.

Subpart D—Prohibitions Against Discrimination Because of Handicap

100.200 Purpose.
100.201 Definitions.
100.202 General prohibitions against discrimination because of handicap.
100.203 Reasonable modifications of existing premises.
100.204 Reasonable accommodations.
100.205 Design and construction requirements.

Subpart E—Housing for Older Persons

100.300 Purpose.
100.301 Exemption.
100.302 State and Federal elderly housing programs.
100.303 62 or over housing.
100.304 55 or over housing.

Subpart F—Interference, Coercion or Intimidation

100.400 Prohibited interference, coercion or intimidation.

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600–3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 100.1 Authority.

This regulation is issued under the authority of the Secretary of Housing and Urban Development to administer and enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act).

§ 100.5 Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in residential real estate related transactions.

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of real estate related transactions.

(c) Nothing in this part relieves persons participating in a Federal or Federally Assisted program or activity from other requirements applicable to buildings and dwellings.

§ 100.10 Exemptions.

(a) This part does not:

(1) Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin;

(2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members; or

(3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or

(4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(b) Nothing in this part regarding familial status applies with respect to housing for older persons as defined in Subpart E of this Part.

(c) Nothing in this part, other than the prohibitions against discriminatory advertising, applies to:

(1) The sale or rental of any single family house by an owner provided the following conditions are met:

(i) The owner does not own or have any interest in more than three single family houses at any one time; and

(ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) applies to only one such sale in any 24-month period.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

§ 100.20 Definitions.

As used in this Part:

"Aggrieved Person" includes any person who—

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Broker" or "Agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any real estate related transactions.

"Department" means the Department of Housing and Urban Development.

"Discriminatory Housing Practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

"Dwelling" means any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof, including mobile home parks, trailer courts, condominiums, cooperatives and time-sharing properties.

"Fair Housing Act" means Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600–3620).

"Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is the process of securing legal custody of any individual who has not attained the age of 18 years.

"Handicap" is defined in § 100.201.

"Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

"Person in the business of selling or renting" means any person who:

(a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

"Secretary" means the Secretary of the Department of Housing and Urban Development.

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Subpart B—Discriminatory Housing Practices

§ 100.50 Real estate practices prohibited.

(a) This subpart provides the Department's interpretation of conduct that is unlawful housing discrimination under section 804 and section 806 of the Fair Housing Act. In general the prohibited actions are set forth under sections of this subpart which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under other sections in the subpart. For example, the conduct described in § 100.60(b)(3)–(5) would constitute a violation of § 100.65(a) as well as § 100.60(a).

(b) It shall be unlawful to:

(1) Refuse to sell or rent a dwelling after a *bona fide* offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.

(2) Discriminate in the terms, conditions or privileges of sale or rental, or in the provision of services or facilities in connection with sales or rentals because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status or national origin.

(4) Make, print or publish, or cause to be made, printed or published, any advertisement, notice or statement that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make any such preference, limitation or discrimination.

(5) Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.

(6) Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in,

any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions of membership or participation, because of race, color, religion, sex, familial status, or national origin.

(c) The application of the Fair Housing Act with respect to persons with handicaps is discussed in Subpart D of the Part.

§ 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

(a) It is unlawful for a person to refuse to sell or rent a dwelling to a person who has made a *bona fide* offer, because of race, color, religion, sex, familial status, or national origin, or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin or to discriminate against any person in the sale or rental of a dwelling because of handicap.

(b) Prohibited actions under this section include, but are not limited to:

(1) Failing to accept or consider a *bona fide* offer because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Providing different information, promotional activity, encouragement or salesmanship because of race, color, religion, sex, handicap, familial status, or national origin or operating a business in a manner that conveys that housing is available only to persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(6) Evicting any tenants because of race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

§ 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

(1) Using different provisions in leases or contracts of sale such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting discounts, rebates, gifts or any other incentives, benefits or privileges available to persons in connection with the sale or rental of dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Failing or delaying maintenance or repairs of sale or rental dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.

§ 100.70 Other prohibited sale and rental conduct.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighorhood or development.

(b) It shall be unlawful to because of race, color, religion, sex, handicap, familial status, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

(c) Prohibited actions under paragraph (a), which are generally referred to as unlawful steering practices, include, but are not limited to:

(1) Directing any person to dwellings in a particular community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin or referring because of race, color, religion, sex, handicap, familial status, or national origin any purchaser or renter to persons in the business of selling or renting dwellings who sell or rent dwelling or provide sales or rental services principally in areas predominantly or increasingly inhabited by persons of the prospect's race, color, religion, sex, handicap, familial status, or national origin.

(2) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin or because of race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

(3) Exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development in order to discourage the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Communicating to any prospective purchaser or renter that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Assigning any person to a particular section of a community, neighborhood or development or to a particular floor of a building because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Prohibited sales and rental activities under paragraph (b) include, but are not limited to:

(1) Employing policies, procedures or activities with respect to the sale or rental of dwellings to encourage, permit or reward discriminatory housing practices, such as assigning employees, brokers or agents to a sales or rental office because of race, color, religion, sex, handicap, familial status, or national origin of persons residing in the area of that office, or varying compensation provided to sales and rental employees, brokers or agents because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Engaging in conduct which limits information available to a prospective purchaser or renter, such as showing a prospective purchaser or renter less desirable units in a project, providing different or more limited tours of a subdivision, neighborhood or community, refusing to deal with persons who cannot speak English or who cannot see or hear, when there is a means to do so or using different listing books in order to discourage persons from purchasing or renting dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

(4) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin or refusing to deal with certain brokers or agents because one more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origins.

(5) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(6) Publishing advertisements displaying the equal housing opportunity slogan, logotype or statement selectively because of race, color, religion, sex, handicap, familial status, or national origin, such as by using such fair housing advertising techniques in predominantly minority areas and integrated areas, but not using these techniques for dwellings located in primarily nonminority areas.

§ 100.75 Discriminatory advertisements, statements and notices.

(a) It shall be unlawful to make, print or publish or cause to be made printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make any such preference, limitation or discrimination.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements and advertisements include, but are not limited to:

(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons based on race, color, religion, sex, handicap, familial status, or national origin.

(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter based on race, color, religion, sex, handicap, familial status, or national origin of such persons.

(3) Selecting media or locations for advertising the sale or rental of dwellings in order to deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Part 109 of this Title 24 provides information to assist persons to advertise dwellings in a nondiscriminatory manner and describes the matters the Department will review in evaluating compliance with the Fair Housing Act in investigating complaints alleging discriminatory housing practices involving advertising.

§ 100.80 Discriminatory representations on the availability of dwellings.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

(b) Prohibited actions under this section include, but are not limited to:

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person.

(3) Enforcing covenants or other deed, trust or lease provisions in order to preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.85 Blockbusting.

(a) It shall be unalwful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

(c) Prohibited actions under this section include, but are not limited to:

(1) Engaging, for profit, in conduct to convey to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it in order to encourage the person to offer a dwelling for sale or rental.

(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin or with handicaps can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools or other services or facilities.

(3) Engaging in uninvited solicitations for listings in a neighborhood which are different or more intense than uninvited solicitation activity in other neighborhoods, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.90 Discrimination in the provision of brokerage services.

(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or

conditions of such access, membership or participation on account of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to:

(1) Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different standards or criteria for membership in real estate sales or rental organization based on race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Real Estate-Related Transactions

§ 100.110 Discriminatory practices in real estate-related transactions.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 805 of the Fair Housing Act.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.

§ 100.115 Residential real estate-related transactions.

(a) The term "real estate-related transactions" means:

(1) The making or purchasing of loans or providing other financial assistance—

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(ii) Secured by residential real estate, or

(2) The selling, brokering or appraising of residential real estate property.

§ 100.120 Discrimination in the availability of loans and other financial assistance.

(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited practices under this section include, but are not limited to:

(1) Refusing to provide a loan or other financial assistance to any person for the purchase, construction, repair or maintenance of a dwelling or refusing to provide a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Making or causing to be made any advertisement or any oral or written notice or statement, as described in § 100.75(b) of this Part, with respect to loans or other financial assistance for dwellings or which are secured by residential real estate indicating any preference, limitation, condition, or distinction, or an intention to make any preference, limitation, condition, or distinction, because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Denying or limiting services, facilities or privileges in connection with a loan or other financial assistance for a dwelling, or, in connection with a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Discouraging any person from inquiring about or making an application for a loan or other financial assistance for a dwelling, or in connection with a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(6) Failing or refusing to provide information, or to accept an application or to approve a long or other financial assistance for a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of the present or prospective residents or occupants of dwellings in the area.

(7) Engaging in any conduct, because of the race, color, religion, sex, handicap, familial status, or national origin of any person seeking a loan or other financial assistance, or because of the race, color, religion, sex, handicap, familial status, or national origin of any person associated with such persons with regard to a loan or other financial assistance for a dwelling which would otherwise make unavailable or deny a dwelling.

§ 100.125 Discrimination in the purchasing of loans.

(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts of securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of person in such neighborhoods or communities.

(2) Pooling or packaging loans or other debts or securities which relate to, or which are secured by dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Using different qualification requirements, processing procedures, or evaluation standards in accepting applications or in approving loans and other financial assistance for dwellings

or which are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Determining the type of loan or other financial assistance to be provided with respect to dwelling or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Failing to make available the same information or the same types of loans or other financial assistance which are for a dwelling or which are, or would be, secured by dwellings because of the race, color, religion, sex, handicap, familial status, or national origin of the present or the prospective residents or occupants of dwellings in the area of the dwelling for which such loan or other financial assistance is sought or in the area in which a dwelling, which is provided for security, is located.

§ 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the terms or conditions of the availability of such services because of race, color, religion, sex, handicap, familial status, or national origin.

(b) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a commercial context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this section include, but are not limited to:

(1) Taking into consideration any factor in connection with the selling, brokering or appraising of residential real property because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Imposing different standards or procedures in the selling or brokering of dwellings or in conducting an appraisal of residential real property because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Instructing or encouraging any person, either by statement or conduct, or imposing standards requiring any person, to consider any factor which relates to race, color, religion, sex, handicap, familial status, or national origin in the selling or brokering of residential real-estate transactions or in making an appraisal of residential real property.

(4) Using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal takes into consideration a factor or factors based on race, color, religion, sex, handicap, familial status, or national origin, or using any information contained in an appraisal report with respect to an appraisal which relates to race, color, religion, sex, handicap, familial status, or national origin.

Subpart D—Prohibitions Against Discrimination Because of Handicap

§ 100.200 Purpose.

The purpose of this subpart is to effectuate sections (6)(a) and (b) and 15 of the Fair Housing Amendments Act of 1988.

§ 100.201 Definitions.

As used in this subpart:

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords handicapped persons access essentially equivalent to or greater than that required by ANSI A117.1 is "accessible" within the meaning of this paragraph.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 is an "accessible route".

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Copies may be inspected at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

"Building" means a structure, facility or the portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route within the boundary of the site to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 complies with the requirements of this paragraph.

"Common use areas" means rooms, spaces or elements inside or outside of a building that are made advailable for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor

dwelling units in other buildings consisting of 4 or more dwelling units.

"Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person or family. Examples of dwelling units include single family detached houses, townhouses, apartments, and condominiums.

"Entrance" means any access point to a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) "Phyiscal or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

§ 100.202 General prohibitions against discrimination because of handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

(3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

(4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(d) Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

§ 100.203 Reasonable modifications of existing premises.

(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not, however, increase for handicapped persons any customarily required security deposit for this purpose.

(b) The application of paragraph (a) may be illustrated by the following examples:

Example (1): A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear or tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not undermine the integrity of the wall or otherwise interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may *not*, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

§ 100.204 Reasonable accommodations.

(a) It is unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants to live in a dwelling unit with a seeing eye dog. The building has a "no pets" policy. It is a violation of § 100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a "first come first served" basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of §100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

§ 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of paragraph (a) may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six town houses on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter each townhouse. Since there is no practical way to provide an accessible route to any of the town houses, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c).

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the "ground floor" units are covered multifamily units. The "ground floor" is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of paragraph (c)(3).

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c)

satisfies the requirements of paragraphs (a) and (c).

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c).

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

Subpart E—Housing for Older Persons

§ 100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

§ 100.301 Exemption.

(a) The provisions regarding familial status in this part shall not apply to housing for older persons if it meets the conditions in §§ 100.302, 100.303 or 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

§ 100.302 State and federal elderly housing programs.

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

§ 100.303 62 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over.

(b) The following examples illustrate the application of paragraph (a):

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in § 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were newly occupied after September 13, 1988 were occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

§ 100.304 55 or over housing.

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, *Provided that* the housing satisfies the requirements of § 100.304(b)(1) *or* (b)(2) *and* the requirements of § 100.304(c).

(b)(1) The housing facility has significant facilities and services specifically designed to meet the physical and social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include an accessible physical environment, congregate dining facilities, social and recreational programs, emergency and preventive health care or programs, continuing education, welfare, information and counseling, recreational, homemaker, outside maintenance and referral services, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

(2) It is not practicable to provide significant facilities and services designed to meet the physical and social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. The following factors, among others, are relevant in determining whether a housing facility satisfies the requirements of paragraph (b)(2)—

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical and social needs of older persons.

(ii) The cost of providing such services, including the availability of such services at little or no cost to the owners or managers of the facility.

(iii) The amount of rent charged, if the dwellings are rented. The price of the dwellings, if they are offered for sale.

(iv) The income range of the residents of the housing facility.

(v) The demand for housing for older persons in the relevant geographic area.

(vi) The range of housing choices for older persons within the relevant geographic area.

(vii) The availability of other similarly priced housing for older persons in the relevant geographic area.

(viii) The vacancy rate of the housing facility.

(c)(1) At least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph (c)(1) until 25% of the units in the facility are occupied; and

(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of paragraph (c)(2):

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(d) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over.

(e) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty (80) units are occupied by at least one person who is 55 years of age or older. Eighteen (18) units are occupied exclusively by persons who are under 55 years of age. These 18 units were all occupied by new occupants after September 13, 1988. Two (2) units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82% of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years old or older. If John and Mary are accepted for occupancy, then 81 out of the 99 occupied units (82%) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption. If John and Mary had both been under 55 years old, they still could have occupied a unit without Valley Heights losing its exemption because, in that case, 80 out of 99 occupied units (81%) would have been occupied by at least one person 55 years of age or older.

B. If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988, 67% of the Green Meadow's occupied units (600 out of 900) were occupied by at least one person 55 years of age or older. Under paragraph (d)(1), Green Meadow qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that were occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older. Under paragraph (d), Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80% of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in paragraph (c)(1) that at least 80% of the occupied units be occupied by at least one person 55 years of age or older per unit *until* 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 50 occupied units (*i.e.*, 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

Subpart F—Interference, Coercion, or Intimidation

§ 100.400. Prohibited interference, coercion or intimidation.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 818 of the Fair Housing Act.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

(c) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means to deny or limit the benefits provided a person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

(3) Threatening an employee or agent with dismissal or an adverse employment action or taking such adverse employment action for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.

(4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or to encourage such other persons to exercise rights granted or protected by this part.

(5) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act.

4. Part 103 would be added to read as follows:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

Subpart A—Purpose and Definitions

Sec.

Subpart B—Complaints

Subpart C—Referral of Complaints to State and Local Agencies

Subpart D—Investigation Procedures

Subpart E—Conciliation Procedures

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600–3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—Purpose and Definitions

§ 103.1 Purpose and applicability.

(a) This part contains the procedures established by the Department of Housing and Urban Development for the investigation and conciliation of complaints under section 810 of the Fair Housing Act, 42 U.S.C. 3610, as amended by the Fair Housing Act of 1988 (Pub. L. 100–430, approved September 13, 1988).

(b)(1) This part applies to:

(i) Complaints filed on or after March 12, 1989 that involve alleged discriminatory housing practices that occur on or after March 12, 1989 or involve alleged discriminatory practices that occur before and continue on or after March 12, 1989; and

(ii) Complaints filed before March 12, 1989 that involve alleged discriminatory housing practices that occur before and continue on or after March 12, 1989, where the complainant elects under § 105.81 to proceed under this part.

(2) Part 104 governs the administrative proceedings before an administrative law judge adjudicating charges issued under § 103.405.

(3) Part 105 contains the procedures established by HUD for the investigation and conciliation of complaints filed with HUD under section 810 of the Fair Housing Act, as it existed prior to the amendment of the Act by the Fair Housing Amendments Act of 1988.

(c) The procedures under this part for the investigation and conciliation of complaints will be conducted in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

§ 103.5 Other civil rights authorities.

In addition to the Fair Housing Act, other civil rights authorities may be applicable in a particular case. Thus, where a person charged with a discriminatory housing practice in a complaint filed under section 810 of the Fair Housing Act is also prohibited from engaging in similar practices under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), Executive Order No. 11063 of November 20, 1962, on Equal Opportunity in Housing (27 FR 11527–30, November 24, 1962), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or other applicable law, the person may also be subject to action by HUD or other Federal agencies under the rules, regulations, and procedures prescribed under Title VI (24 CFR Parts 1 and 2), section 109 (24 CFR 570.602)), Executive Order 11063 (24 CFR Part 107), section 504 (24 CFR Part 8), or other applicable law.

§ 103.9 Definitions.

As used in this part,

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

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

Attorney General means the Attorney General of the United States.

Complainant means the person (including the Assistant Secretary) who files a complaint under this part.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent, and the Assistant Secretary.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Discriminatory housing practice means an act that is unlawful under section 804, 805, 806 or 818 of the Fair Housing Act, as described in Part 100.

Dwelling means any building, structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, including mobile home parks and trailer courts.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–3620, as amended by the Fair Housing Amendments Act of 1988.

General Counsel means the General Counsel of HUD.

HUD means the United States Department of Housing and Urban Development.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts,unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Receipt of notice means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail.

Respondent means:

(a) The person or other entity accused in a complaint of a discriminatory housing practice; and

(b) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under § 103.50.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Substantially equivalent State of local agency means a State or local agency certified by HUD under 24 CFR Part 115 (including agencies certified for interim referrals).

To rent includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

Subpart B—Complaints

§ 103.10 Submission of information.

(a) Any person may submit information concerning alleged discriminatory housing practices to the Assistant Secretary. Where the information constitutes a complaint within the meaning of this part and is furnished by an aggrieved person, it will be considered to be filed under § 103.40. Where additional information is required for purposes of perfecting a complaint under this part, HUD shall advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

(b) If the submitted information warrants, HUD may also concurrently initiate compliance reviews under other appropriate civil rights authorities, such as Executive Order No. 11063 on Equal Opportunity in Housing, Title VI of the Civil Rights Act of 1964, section 109 of

the Housing and Community Development Act of 1974, or section 504 of the Rehabilitation Act of 1973. The information may also be made available to any other Federal, State or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant, where desired by the informant or claimant.

§ 103.15 Who may file complaints.

Any aggrieved person or the Assistant Secretary may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

§ 103.20 Persons against whom complaints may be filed.

(a) A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

(b) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope or his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

§ 103.25 Where to file complaints.

(a)(1) Complaints may be delivered or mailed to the Assistant Secretary. Complaints should be sent to: Fair Housing, Department of Housing and Urban Development, Washington DC 20410, or any Regional or Field Office of HUD. A list of Regional Offices (with addresses and areas of jurisdiction) and Field Offices (with addresses) is contained in an appendix to Part 105.

(2) Aggrieved persons may provide information to be contained in a complaint by telephone to any Regional or Field Office of HUD. HUD will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and attested to as provided in § 103.30(a).

(3) Complaints may be delivered or mailed to any substantially equivalent State or local agency. Complaints filed with a substantially equivalent State or local agency shall be considered to be complaints dual filed with the agency under its own law, and with HUD under this part.

(b) Generally, complaints will be processed through HUD's Regional Administrator having jurisdiction in the State in which the alleged discriminatory housing practice occurred. However, where a complaint has been identified for systemic processing under § 103.205, that complaint may be processed in the Office of the Assistant Secretary in Washington, D.C.

§ 103.30 Form and content of complaint.

(a) Each complaint must be in writing and must be signed by the aggrieved person filing the complaint. If the complaint is filed by HUD, it will be signed by the Assistant Secretary. The complaint shall be attested to before a notary public or a duly authorized representative of the Assistant Secretary. The signature and attestation may be made at any time during the investigation.

(b) The Assistant Secretary may require complaints to be made on prescribed forms. Complaint forms will be available in any Regional or Field Office of HUD or in any substantially equivalent State or local agency. Notwithstanding the requirement for use of the prescribed form, HUD will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the Fair Housing Act (including any such statement filed with a substantially equivalent State or local agency) as a Fair Housing Act complaint. Personnel in these offices will provide appropriate assistance in filling out forms and in filing a complaint.

(c) Each complaint must contain substantially the following information:

(1) The name and address of the aggrieved person.

(2) The name and address of the respondent.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

§ 103.40 Date of filing of complaint.

(a) Except as provided in paragraph (b) below, a complaint is filed when it is received by HUD, or dual filed with HUD through a substantially equivalent State or local agency, in a form that reasonably meets the standards of § 103.30.

(b) The Assistant Secretary may determine that a complaint is filed for the pruposes of the one-year period for the filing of complaints, upon the submission of written information (including information provided by telephone and reduced to writing by an employee of HUD) identifying the parties and describing generally the alleged discriminatory housing practice.

(c) Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint shall be timely if filed within one year of the last alleged occurrence of that practice.

§ 103.42 Amendment of complaint.

Complainants may reasonably and fairly amend the complaint at any time to cure technical defects or omissions, including failure to attest to a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondent under § 103.50, amended complaints will be considered as having been made as of the original filing date.

§ 103.45 Service of notice on aggrieved person.

Upon the filing of a complaint, the Assistant Secretary shall notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice must:

(a) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing

(b) Include a copy of the complaint.

(c) Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under this part and Part 104 of this title.

(d) Advise the aggrieved person of this or her right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(e) Advise the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under this part or an administrative proceeding under Part 104, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.50 Notification of respondent; joinder of additional or substitute respondents.

(a) Within ten days of the filing of a complaint under § 103.40 or the filing of an amended complaint under § 103.42, the Assistant Secretary shall serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under Subpart D of this part as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice under this section within ten days of the identification.

(b)(1) The notice shall identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint.

(2) The notice shall state the date that the complaint was accepted for filing.

(3) The notice shall advise the respondent of the time limits applicable to complaint processing under this part and of the procedural rights and obligations of the respondent under this part and Part 104, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice.

(4) The notice shall advise the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice shall also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice shall explain the basis for the Assistant Secretary's belief that the joined person is properly joined as a respondent.

(6) The notice shall advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under this part or an administrative proceeding under Part 104, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.55 Answer to complaint.

(a) The respondent may file an answer not later than ten days after receipt of the notice described in § 103.50. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be attested to before a notary public or a duly authorized representative of the Assistant Secretary.

(b) An answer may be reasonably and fairly amended at any time with the consent of the Assistant Secretary.

Subpart C—Referral of Complaints to State and Local Agencies

§ 103.100 Notification and referral to substantially equivalent State or local agencies.

(a) Whenever a complaint alleges a discriminatory housing practice that is within the jurisdiction of a substantially equivalent State or local agency and the agency is certified or may accept interim referrals under Part 115 with regard to the alleged discriminatory housing practice, the Assistant Secretary shall notify the agency of the filing of the complaint and refer the complaint to the agency for further processing before HUD takes any action with respect to the complaint. The Assistant Secretary shall notify the State or local agency of the referral by certified mail.

(b) The Assistant Secretary shall notify the aggrieved person and the respondent, by certified mail or personal service, of the notification and referral under paragraph (a) of this section. The notice shall advise the aggrieved person and the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

§ 103.105 Cessation of action on referred complaints.

(a) After a complaint is referred under § 103.100, the Assistant Secretary shall not take any further action with respect to the complaint, except as provided in § 103.110.

(b) A referral under § 103.100 does not prohibit the Assistant Secretary from taking appropriate action to review or investigate matters in the complaint that raise issues cognizable under other civil rights authorities applicable to departmental programs (see § 103.5).

§ 103.110 Reactivation of referred complaints.

The Assistant Secretary may reactivate a complaint referred under § 103.100 for processing by HUD if:

(a) The substantially equivalent State or local agency consents to the reactivation;

(b) The Assistant Secretary determines that, with respect to the alleged discriminatory housing practice, the agency no longer qualifies for certification as a substantially equivalent State or local agency and may not accept interim referrals; or

(c) The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that it received the notification and referral of the complaint; or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness. HUD shall not reactivate a complaint under this paragraph (c) until the appropriate HUD Regional Office has conferred with the agency to determine the reason for the delay in processing of the complaint. If the Assistant Secretary believes that the agency will proceed expeditiously following the conference, the Assistant Secretary may leave the complaint with the agency for a reasonable time, notwithstanding the expiration of the 30-day period or a previous failure to carry the proceedings forward with reasonable promptness.

§ 103.115 Notification upon reactivation.

(a) Whenever a complaint referred to a State or local fair housing agency under § 103.100 is reactivated under

§ 103.110, the Assistant Secretary shall notify the substantially equivalent State or local agency, the aggrieved person and the respondent of HUD's reactivation. The notification must be made by certified mail or personal service.

(b) The notification to the respondent and the aggrieved person shall advise the aggrieved person and the respondent of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person and the respondent under this part and Part 104. The notice shall advise the respondent and the aggrieved person of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

Subpart D—Investigation Procedures

§ 103.200 Investigations.

(a) Upon the filing of a complaint under § 103.40, the Assistant Secretary shall initiate an investigation. The purposes of an investigation are:

(1) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

(2) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(3) To develop factual data necessary for the General Counsel to make a determination under § 103.400 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

(b) Upon the written direction of the Assistant Secretary, HUD may initiate an investigation of housing practices to determine whether a complaint should be filed under Subpart B. Such investigations shall be conducted in accordance with the procedures described under this subpart.

§ 103.205 Systemic processing.

Where the Assistant Secretary determines that the alleged discriminatory practices contained in a complaint are prevasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will impact on a large number of persons, the Assistant Secretary may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Fair Housing Act.

§ 103.215 Conduct of investigation.

(a) In conducting investigations under this part, the Assistant Secretary shall seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(b) The Assistant Secretary and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under Part 104, except that the Assistant Secretary shall have the power to issue subpoenas described in § 104.590 in support of the investigation or at the request of the respondent. Subpoenas issued by the Assistant Secretary must be approved by the General Counsel before issuance.

§ 103.220 Cooperation of Federal, State and local agencies.

The Assistant Secretary, in processing Fair Housing Act complaints, may seek the cooperation and utilize the services of State and local agencies and of other appropriate Federal agencies. In accordance with section 808 (d) and (e) of the Fair Housing Act and Executive Order No. 12259, other Federal agencies, including any agency having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing, and for cooperating with the Assistant Secretary in furthering the purposes of the Fair Housing Act, including investigations under this part.

§ 103.225 Completion of investigation.

The investigation will remain open until the reasonable cause determination is made under § 103.400, or a conciliation agreement is executed and approved under § 103.310. Unless it is impracticable to do so, HUD shall complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Assistant Secretary reactivates the complaint, within 100 days after service of the notice of reactivation under § 103.115). If the Assistant Secretary is unable to complete the investigation within the 100-day period, HUD shall notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§ 103.230 Final investigative report.

(a) At the end of each investigation under this part, the Assistant Secretary shall prepare a final investigative report. The investigative report shall contain:

(1) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. HUD, however, may be required to disclose the names of such witnesses in the course of an administrative hearing under Part 104 or a civil action under Title VIII of the Fair Housing Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

(b) A final investigative report may be amended at any time, if additional evidence is discovered.

(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in § 103.330, the Assistant Secretary shall make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, upon request, at any time following the completion of the investigation.

Subpart E—Conciliation Procedures

§ 103.300 Conciliation.

(a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the

General Counsel, the Assistant Secretary shall, to the extent feasible, attempt to conciliate the complaint.

(b) In conciliating a complaint, HUD shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

(c) Generally, officers, employees, and agents of HUD engaged in the investigation of a complaint under this part will not participate or advise in the conciliation of the same complaint or in any factually related complaint. Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information obtained during conciliation can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

§ 103.310 Conciliation agreement.

(a) The terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in § 103.315. The provisions that may be sought for the vindication of the public interest are described in § 103.320.

(b)(1) The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the Assistant Secretary, who will indicate approval by signing the agreement. The Assistant Secretary shall approve an agreement and, if the Assistant Secretary is the complainant, shall execute the agreement, only if:

(i) The complainant and the respondent agree to the relief accorded the aggrieved person;

(ii) The provisions of the agreement will adequately vindicate the public interest; and

(iii) If the Assistant Secretary is the complainant, the aggrieved person is satisfied with the relief provided to protect his or her interest.

(2) The General Counsel may issue a charge under § 103.405 if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

§ 103.315 Relief sought for aggrieved persons.

(a) The following types of relief may be sought for aggrieved persons in conciliation:

(1) Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney fees;

(2) Other make-whole relief, including access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or

(3) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

(b) The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in paragraph (a) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

§ 103.320 Provisions sought for the public interest.

The following are types of provisions that may be sought for the vindication of the public interest:

(a) Elimination of discriminatory housing practices.

(b) Prevention of future discriminatory housing practices.

(c) Remedial affirmative activities to overcome discriminatory housing practices.

(d) Reporting requirements.

(e) Monitoring and enforcement activities.

§ 103.325 Termination of conciliation efforts.

(a) HUD may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with HUD; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or HUD finds, for any reason, that voluntary agreement is not likely to result.

(b) Where the aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, HUD shall terminate conciliation unless the court specifically requests assistance from the Assistant Secretary.

§ 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

(a) Except as provided in paragraph (b) of this section and § 103.230(c), nothing that is said or done in the course of conciliation under this party may be made public, used in an investigation, or used as evidence in a subsequent administrative hearing under Part 104 or in civil actions under Title VIII of the Fair Housing Act, without the written consent of the persons concerned.

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purpose of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.

§ 103.335 Review of compliance with conciliation agreements.

HUD may, from time to time, review compliance with the terms of any conciliation agreement. Whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, the General Counsel shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under section 814(b)(2) of the Fair Housing Act for the enforcement of the terms of the conciliation agreement.

Subpart F—Issuance of Charge

§ 103.400 Reasonable cause determination.

(a) If a conciliation agreement under § 103.310 has not been executed by the complainant and the respondent, and approved by the Assistant Secretary, the General Counsel, within the time limits set forth in paragraph (c) of this section below, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination shall be based on all facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise, disclosed during the investigation. In making the reasonable cause determination, the General Counsel shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in Federal court.

(1) If the General Counsel determines that reasonable cause exists, the General Counsel shall immediately issue a charge under § 103.405 on behalf of the

aggrieved person, unless the matter involves the legality of any State or local zoning or other land use law or ordinance. If the General Counsel determines that the matter involves local zoning or land use laws or ordinances, the General Counsel shall immediately refer the matter to the Attorney General for appropriate action under section 814(b)(1) of the Fair Housing Act, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.

(2) If the General Counsel determines that no reasonable cause exists, the General Counsel shall dismiss the complaint, notify the aggrieved person and the respondent of the dismissal by certified mail or personal service and make public disclosure of the dismissal.

(b) The General Counsel may not issue a charge under paragraph (a) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the General Counsel shall so notify the aggrieved person and the respondent by certified mail or personal service.

(c)(1) The General Counsel shall make a reasonable cause determination within 100 days after the filing of the complaint (or where the Assistat Secretary has reactivated a complaint, within 100 days after service of the notice of reactivation under § 103.115), unless it is impracticable to do so.

(2) If the General Counsel is unable to make the determination within the time limits specified in pragraph (c)(1), HUD will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§ 103.405 Issuance of charge.

(a) A charge:

(1) Shall consist of a short and plain statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint filed under Subpart B of this part.

(b) Within three days after the issuance of the charge, the General Counsel shall:

(1) Obtain a time and place for hearing from the Chief Docket Clerk of the Office of Administrative Law Judges;

(2) File the charge along with the notifications described in § 104.410(b) with Office of Administrative Law Judges;

(3) Serve the charge and notifications in accordance with § 104.410(c); and

(4) Notify the Assistant Secretary of the filing of the charge.

§ 103.410 Election of administrative proceeding or civil action.

(a) If a charge is issued under § 103.405, a complainant (including the General Counsel, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding under Part 104, to have the claims asserted in the charge decided in a civil action under section 812(o) of the Fair Housing Act.

(b) The election must be made not later than 20 days after the receipt of service of the charge, or in the case of the General Counsel, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in the Office of Administrative Law Judges and served on the General Counsel, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under Part 104.

(c) If an election is not made under this section, the General Counsel will maintain an administrative proceeding based on the charge in accordance with the procedures under Part 104.

(d) If an election is made under this section, the General Counsel shall promptly notify and authorize the Attorney General to commence and maintain a civil action seeking relief under section 812(o) of the Fair Housing Act on behalf of the aggrieved person in an appropriate United States District Court. Such notification and authorization shall include transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

(e) The General Counsel shall be available for consultation concerning any legal issues raised by the Attorney General regarding how best to proceed in the event that commencement of a civil action would implicate Rule 11 of the Federal Rules of Civil Procedure.

Subpart G—Other Actions by the Department

§ 103.500 Prompt judicial action.

(a) If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes of this part or Part 104, the General Counsel will request that the Attorney General commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. Before making the determination that prompt judicial action is necessary, the General Counsel will consult with the Assistant Attorney General for the Civil Rights Division. The commencement of a civil action by the Attorney General under this section will not affect the initiation or continuation of proceedings under this part or administrative proceedings under Part 104.

(b) If the General Counsel has reason to believe that a basis exists for the commencement of proceedings under section 814(a) of the Fair Housing Act (Pattern or Practice Cases), proceedings under section 814(c) of the Fair Housing Act (Enforcement of Subpoenas), or proceedings by any governmental licensing or supervisory authorities, the General Counsel will transmit the information upon which that belief is based to the Attorney General and to other appropriate authorities.

§ 103.510 Other action by HUD.

In addition to the actions described in § 103.500, HUD may pursue one or more of the following courses of action:

(a) Refer the matter to the Attorney General for appropriate action (e.g., enforcement of criminal penalties under section 811(c) of the Act).

(b) Take appropriate steps to initiate proceedings leading to the debarment of the respondent under 24 CFR Part 24, or initiate other actions leading to the imposition of administrative sanctions where HUD determines that such actions are necessary to the effective operation and administration of Federal programs or activities.

(c) Take appropriate steps to initiate proceedings under:

(1) 24 CFR Part 1, implementing Title VI of the Civil Rights Act of 1964;

(2) 24 CFR 570.912, implementing section 109 of the Housing and Community Development Act of 1974;

(3) 24 CFR Part 8, implementing section 504 of the Rehabilitation Act of 1973; or

(4) 24 CFR Part 107, implementing Executive Order No. 11063.

(d) Inform any other Federal, State or local agency with an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

5. A new Part 104 would be added to read as follows:

PART 104—ADMINISTRATIVE PROCEEDINGS UNDER SECTION 812 OF THE FAIR HOUSING ACT

Subpart A—General Information

Sec.

Subpart B—Administrative Law Judge

Subpart C—Parties

Subpart D—Pleadings and Motions

Subpart E—Discovery

Subpart F—Subpoenas

Subpart G—Prehearing Procedures

Subpart H—Hearing Procedures

Subpart I—Dismissals and Decisions

Subpart J—Judicial Review and Enforcement of Final Decision

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Information

§ 104.10 Scope of rules.

(a) *Applicability.* This part contains the rules of practice and procedure established by the Department of Housing and Urban Development for administrative proceedings before an Administrative Law Judge adjudicating the claims asserted in a charge issued under Part 103, where no party—the complainant, the respondent, or an aggrieved party—elects to have the claims decided in a civil action under section 812(o) of the Fair Housing Act. The provisions of this part do not apply to complaints processed under Part 105.

(b) *General application of rules.* Hearings under this subpart shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(c) *Conduct of proceedings.* The Department will reasonably accommodate persons with disabilities who are participants in the hearing process or interested members of the general public.

§ 104.20 Definitions.

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

Attorney General means the Attorney General of the United States.

Charge means the statement of facts issued under § 103.405 upon which HUD has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

Complainant means the person (including the Assistant Secretary for Fair Housing and Equal Opportunity) who filed the complaint under Part 103 of this title.

Complaint means a complaint filed under Part 103 of this title.

Discriminatory housing practice means an act that is unlawful under Part 100 of this title.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–3620, as amended by the Fair Housing Amendments Act of 1988.

General Counsel means the General Counsel of HUD.

Hearing means that part of an administrative proceeding that involves the submission of evidence, either by oral presentation or written submission, and includes the submission of briefs and oral arguments on the evidence and applicable law.

HUD means the United States Department of Housing and Urban Development.

Party means a person or agency named or admitted as a party to a proceeding. Party includes an aggrieved person who intervenes under § 104.430.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title II of the United States Code, receivers, fiduciaries governmental entities, banks, building and loan associations, or other firms or enterprises.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Prevailing party has the same meaning as the term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

Respondent means the person accused in a charge of a discriminatory housing practice.

State means any of the several States, the District of Columbia, the Commonweath of Puerto Rico, or any of the territories and possessions of the United States.

§ 104.30 Time computations.

(a) *In general.* In computing time under this part, the time period shall begin the day following the act, event, or default and include the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal Government, in whch case the time period includes the next

business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Modification of time periods.* Except for time periods required by statute, the administrative law judge may enlarge or reduce any time period required under this part where necessary to avoid prejudicing the public interest or the rights of the parties.

(c) *Entry of orders.* In computing any time period involving the date of the issuance of an order or decision by an administrative law judge, the date of issuance shall be the date the order or decision is served by the Chief Docket Clerk.

(d) *Computation of time for delivery by mail.*

(1) Documents shall not be considered filed until received by the Chief Docket Clerk. However, when documents are filed by mail, three days shall be added to the prescribed time period.

(2) Service is effected at the time of mailing.

(3) When a party has the right or is required to take an action within a prescribed period after the service of a document upon the party, and the document is served by mail, three days shall be added to the prescribed period.

§ 104.40 Service and filing.

(a) *Generally.* Copies of all filed documents shall be served on all parties of record. All filed documents shall clearly designate the docket number, if any, and title of the proceeding. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, Room 2158, 451 Seventh Street, SW., Washington, DC 20410.

(b) *By parties.* Parties shall file all documents with the Office of Administrative Law Judges with a copy to all other parties of record. Service of documents upon any party may be made by personal service or by mailing a copy to the last known address. When a party is represented by an attorney, service shall be made upon the attorney. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* The Office of Administrative Law Judges shall serve all notices, order, decisions and all other documents by mail to the last known address.

Subpart B—Administrative Law Judge

§ 104.100 Designation.

Proceedings under this part shall be presided over by an administrative law judge appointed under 5 U.S.C. 3105. The presiding administrative law judge shall be designated by the Chief Administrative Law Judge at HUD.

§ 104.110 Authority.

The administrative law judge shall have all powers necessary to the conduct of fair and impartial hearings including, but not limited to, the power:

(a) To conduct hearings in accordance with this part.

(b) To administer oaths and affirmations and examine witnesses.

(c) To issue subpoenas in accordance with § 104.590.

(d) To rule on offers of proof and receive evidence.

(e) To take depositions or have depositions taken when the ends of justice would be served.

(f) To regulate the course of the hearing and the conduct of parties and their counsel.

(g) To hold conferences for the settlement or simplification of the issues by consent of the parties.

(h) To dispose of motions, procedural requests, and similar matters.

(i) To make initial decisions as described under Subpart I of this Part.

(j) To exercise such powers vested in the Secretary as are necessary and appropriate for the purpose of the hearing and conduct of the proceeding.

§ 104.120 Disqualification.

(a) *Disqualification.* If an administrative law judge finds that there is a basis for his or her disqualification in a proceeding, the administrative law judge shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and by providing a copy of the notice to the Chief Administrative Law Judge.

(b) *Motion for recusal.* If a party believes that the presiding administrative law judge should be disqualified in a proceeding for any reason, the party may file a motion to recuse with the administrative law judge. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The administrative law judge shall rule on the motion. If the administrative law judge denies the motion, the administrative law judge shall incorporate a written statement of the reasons for the denial in the record.

(c) *Redesignation of administrative law judge.* If an administrative law judge is disqualified, the Chief Administrative Law Judge shall designate another administrative law judge to preside over further proceedings.

§ 104.130 Ex parte communications.

(a) *General.* An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the administrative law judge assigned to the proceeding and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, or requesting information on the status of cases.

(b) *Prohibition.* Ex parte communications are prohibited.

(c) *Procedure upon receipt.* If the administrative law judge receives an ex parte communication that the administrative law judge knows or has reason to believe is prohibited, the administrative law judge shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be subject to sanctions including, but not limited to, exclusion from the proceeding, and an adverse ruling on the issue that is the subject of the prohibited communication.

§ 104.140 Separation of functions.

No officer, employee, or agent of the Federal government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in that proceeding or any factually related proceeding under this part, participate or advise in the decision of the administrative law judge, except as a witness or counsel during the proceedings.

Subpart C—Parties

§ 104.200 In general.

(a) *Parties.* Parties to the proceeding include:

(1) HUD. HUD files the charge under § 103.405 of this title seeking appropriate relief for an aggrieved party and vindication of the public interest.

(2) The respondent. The respondent is the person named in the charge issued

under § 103.405 of this title against whom relief is sought.

(3) Intervenors. Any aggrieved person may intervene as a party to the proceeding. No other intervention will be permitted.

(b) *Rights of parties.* Each party may appear in person, be represented by counsel, examine or cross-examine witnesses, introduce documentary or other relevant evidence into the record, and request the issuance of subpoenas.

(c) *Amicus curiae.* Briefs of amicus curiae may be permitted at the discretion of the administrative law judge. Such participants are not parties to the proceeding.

§ 104.210 Representation.

(a) *Representation of HUD.* HUD is represented by the General Counsel.

(b) *Representation of other parties.* Other parties may be represented as follows:

(1) Individuals may appear on their own behalf.

(2) A member of a partnership may represent the partnership.

(3) An officer of a corporation, trust or association may represent the corporation, trust or association.

(4) An officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority.

(5) An attorney admitted to practice before a Federal Court or the highest court in any State. The attorney's representation that he or she is in good standing before any of these courts is sufficient evidence of the attorney's qualifications under this section, unless otherwise ordered by the administrative law judge.

(c) *Notice of appearance.* Each attorney or other representative of a party shall file a notice of appearance. The notice must indicate the party on whose behalf the appearance is made. Any individual acting in a representative capacity may be required by the administrative law judge to demonstrate authority to act in that capacity.

(d) *Withdrawal.* An attorney or other representative of a party must file a written notice of intent before withdrawing from participation in the proceeding.

§ 104.220 Standards of Conduct.

(a) *In general.* All persons appearing in proceedings under this part shall act with integrity and in an ethical manner.

(b) *Exclusion.* The administrative law judge may exclude parties or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violations of the prohibitions against ex parte communications. If an attorney is suspended or barred from participation in a proceeding by an administrative law judge, the administrative law judge shall include in the record the reasons for the action. An attorney who is suspended or barred from participation may appeal to the Chief Administrative Law Judge. The proceeding shall not be delayed or suspended pending disposition on the appeal, except that the administrative law judge shall suspend the proceeding for a reasonable time to enable the party to obtain another attorney.

Subpart D—Pleadings and motions

§ 104.400 In general.

(a) *Form.* Every pleading, motion, brief, or other document shall contain a caption setting forth the title of the proceeding, the docket number assigned by the Office of Administrative Law Judges, and the designation of the type of document (*e.g.*, charge, answer or motion to dismiss).

(b) *Signature.* Every pleading, motion, brief, or other document filed by a party shall be signed by the party, the party's representative, or the attorney representing the party, and must include the signer's address and telephone number. The signature constitutes a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief there is good ground to support the document; and that it is not interposed for delay.

(c) *Timely filing.* The administrative law judge may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this part.

§ 104.410 The charge.

(a) *Filing and service.* Within three days after the issuance of a charge under § 103.405, the General Counsel shall file the charge with the Chief Docket Clerk in the Office of Administrative Law Judges and serve copies (with the additional information required under paragraph (b) of this section) on the respondent and the aggrieved person on whose behalf the complaint was filed.

(b) *Contents.* The charge shall consist of a short and plain statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served with the charge:

(1) The notice shall state that a complaint (including HUD, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, in lieu of an administrative proceeding under this part. The notice shall state that the election must be made not later than 20 days after the receipt of the service of the charge. Where HUD is the complainant, the General Counsel must make the election not later than 20 days after the service of the charge. The notice shall state that the notification of the election must be served on the Chief Docket Clerk in the Office of Administrative Law Judges, the respondent, the aggrieved party on whose behalf the complaint was filed, and the General Counsel.

(2) The notice shall state that if an election is made under paragraph (b)(1) to use the administrative procedure:

(i) The parties will have an opportunity for a hearing at a date and place specified in the notice.

(ii) The respondent will have an opportunity to file an answer to the charge within 30 days of the date of service of the charge.

(iii) The aggrieved person may intervene as a party to the administrative proceeding within 30 days of the date of service of the charge.

(iv) All discovery must be concluded 15 days before the date set for hearing.

§ 104.420 Answer to charge.

Within the 30 days after the service of the charge, a respondent contesting material facts alleged in a charge or contending that the respondent is entitled to judgment as a matter of law shall file an answer to the charge. An answer shall include:

(a) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made in the charge. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.

(b) A statement of each affirmative defense and a statement of facts supporting each affirmative defense.

§ 104.430 Request for intervention.

Within 30 days after the service of the charge, any aggrieved person may file a request for intervention and participate as a party to the proceeding. No other intervention will be permitted.

§ 104.440 Amendments and supplemental pleadings.

(a) *Amendments.* (1) By right. HUD may amend its charge once as a matter of right prior to filing of the answer.

(2) By leave. Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the administrative law judge may allow amendments to pleadings upon motion of the party.

(3) Conformance to the evidence. When issues not raised by the pleadings are reasonably within the scope of the original charge and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

(b) *Supplemental pleadings.* The administrative law judge may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

§ 104.450 Motions.

(a) *Motions.* Any application for an order or other request shall be made by a motion which, unless made during an appearance before the administrative law judge, shall be made in writing. Motions or requests made during an appearance before the administrative law judge shall be stated orally and made a part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(b) *Answers to written motions.* Within five days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to the motion. Unless otherwise ordered by the administrative law judge, no further responsive documents may be filed.

(c) *Oral argument.* The administrative law judge may order oral argument on any motion.

Subpart E—Discovery

§ 104.500 Discovery.

(a) *In general.* This subpart governs discovery in aid of administrative proceedings under this part. Except for time periods stated in these rules, to the extent that these rules conflict with discovery procedures in aid of civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Scope.* The parties are encouraged to engage in voluntary discovery procedures. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the needs of all parties to obtain relevant evidence. Unless otherwise ordered by the administrative law judge, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of documents or persons having knowledge of any discoverable matter. It is not grounds for objection that information sought will not be admissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Parties may obtain discovery by one or more of the following methods:

(1) Deposition upon oral examination or written questions.

(2) Written interrogatories.

(3) Requests for the production of documents or other evidence, for inspection and other purposes, and physical and mental examinations.

(4) Requests for admissions.

(d) *Frequency and sequence.* Unless otherwise ordered by the administrative law judge, the frequency or sequence of these methods is not limited.

(e) *Completion of discovery.* All discovery shall be completed 15 days before the date scheduled for hearing.

§ 104.510 Depositions.

(a) *In general.* Depositions may be taken upon oral examination or upon written interrogatory before any person having the power to administer oaths.

(b) *Notice.* Any party desiring to take the deposition of a witness shall indicate to the witness and to all parties the time and place of the deposition, the name and post office address of the person before whom the deposition is to be taken, the name and address of the witness, and the subject matter of the testimony of the witness. Notice of the taking of a deposition shall be given not less than five days before the deposition is scheduled. The attendance of a witness may be compelled by subpoena under § 104.590.

(c) *Procedure at deposition.* Each witness deposed shall be placed under oath or affirmation, and other parties shall have the right to cross-examine. The questions propounded and all answers and objections made to the propounded questions shall be reduced to writing; read by or to, and subscribed by, the witness; and certified by the person before whom the deposition was taken.

(d) *Objections.* During a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party, or improper questioning. Upon the request for suspension, the deposition will be adjourned. The objecting party or deponent must immediately move the administrative law judge for a ruling on the objections. The administrative law judge may then limit the scope or manner of taking the deposition.

(e) *Payment of costs of deposition.* The party requesting the deposition shall bear all costs of the deposition.

§ 104.520 Use of deposition at hearings.

(a) *In general.* At the hearing, any part or all of a deposition, so far as admissible under the Federal Rules of Evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice of the taking of the deposition, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of expert witnesses may be used by any party for any purpose, unless the administrative law judge rules that such use is unfair or a violation of due process.

(3) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association that is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the administrative law judge finds:

(i) That the witness is dead;

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Whenever exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of

presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If a part of a deposition is offered in evidence by a party, any other party may require the party to introduce all of the deposition that is relevant to the part introduced. Any party may introduce any other part of the deposition.

(6) Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the latter proceeding.

(b) *Objections to admissibility.* Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part of a deposition for any reason that would require the exclusion of the evidence if the witness were present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the basis of the objection is one which might have been obviated or removed if presented at the time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection is made at the taking of the deposition.

(3) Objections to the form of written interrogatories are waived unless served in writing upon the party propounding the interrogatories.

§ 104.530 Written interrogatories.

(a) *Written interrogatories to parties.* Any party may serve on any other party written interrogatories to be answered by the party served. If the party served is a public or private corporation, a partnership, an association, or a governmental agency, the interrogatories may be answered by any authorized officer or agent who shall furnish such information as may be available to the party.

(b) *Responses to written interrogatories.* Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless the party objects to the interrogatory. If a party objects to an interrogatory, the response shall state the reasons for the objection in lieu of an answer. The answer and objections shall be signed by the person making them, except that objections may be signed by the counsel for the party. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties within 15 days after service of the interrogatories.

§ 104.540 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examinations.

(a) *In general.* Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on the party's behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served;

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or other purposes stated in paragraph (a)(1) of this section; or

(3) Submit to a physical or mental examination by a physician.

(b) *Contents of request.* The request shall:

(1) Set forth the items to be inspected by individual item or by category of items;

(2) Describe each item or category with reasonable particularity;

(3) Specify a reasonable time, place and manner for making the inspection and performing the related acts; and

(4) Specify the time, place, manner, conditions, and scope of the physical or mental examination, and the person or persons who will make the examination. A report of the examining physician shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure.

(c) *Response to request.* Within 15 days of the service of the request, the party upon whom the request is served shall serve a written response on the party submitting the request. The response shall state, with regard to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made to the request in whole or in part. If an objection is made, the response must state the reasons for the objection

§ 104.550 Admissions.

(a) *Request for admissions.* A party may serve on any other party a written request for the admission of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) *Response to request.* (1) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request, the party to whom the request is directed serves on the requesting party:

(i) A written statement specifically denying the relevant matters for which an admission is requested;

(ii) A written statement setting forth in detail why the party cannot truthfully admit or deny the matters; or

(iii) Written objections to the request alleging that the matters are privileged or irrelevant, or that the request is otherwise improper.

(2) The party to whom the request is directed may not give lack of information or knowledge as a reason for failure to admit or deny, unless the party states that it h as made a reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(c) *Sufficiency of response.* The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the administrative law judge determines that an objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, the administrative law judge may order either that the matter is admitted or that an amended answer be served.

(d) *Effect of admission.* Any matter admitted under this section is conclusively established unless, upon the motion of a party, the administrative law judge permits the withdrawal or amendment of the admission. Any admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purposes, and may not be used against the party in any other proceeding.

(e) *Service of requests.* Each request for admission and each written response must be served on all parties and filed with the Office of Administrative Law Judges.

§ 104.560 Supplementation of responses.

(a) *In general.* A party who responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information acquired after the response was made except:

(1) A party is under a duty to timely supplement responses with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to timely amend a previous response if the party later obtains information upon the basis of which:

(i) The party knows the response was incorrect when made; or

(ii) The party knows the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(b) *By order or agreement.* A duty to supplement responses may be imposed by order of the administrative law judge or by agreement of the parties.

§ 104.570 Protective orders.

Upon motion of a party or a person from whom discovery is sought or in accordance with § 104.580(c), the administrative law judge may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

(a) The discovery may not be had;

(b) The discovery may be had only on specified terms and conditions, including a designation of time and place for discovery;

(c) The discovery may be had by a method of discovery other than that selected by the party seeking discovery;

(d) Certain irrelevant matters may not be the subject of discovery, or that the scope of discovery be limited to certain matters;

(e) Discovery may be conducted with no one present other than persons designated by the administrative law judge;

(f) A trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way; or

(g) To protect privileged matters, the administrative law judge may take such other action permitted under § 104.740.

§ 104.580 Failure to make or cooperate in discovery.

(a) *Motion to compel discovery.* If a deponent fails to answer a question propounded, or a party upon whom a request is made under §§ 104.530 through 104.550 fails to respond adequately, objects to a request, or fails to permit inspection as requested, the discovering party may move the administrative law judge for an order compelling a response or an inspection in accordance with the request. The motion shall:

(1) State the nature of the request;

(2) Set forth the response or objection of the party upon whom the request was served;

(3) Present arguments supporting the motion; and

(4) Attach copies of all relevant discovery requests and responses.

(b) *Evasive or incomplete answers.* For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(c) *Administrative law judge ruling.* In ruling on a motion under this section, the administrative law judge may enter an order compelling a response or an inspection in accordance with the request, may issue sanctions under paragragh (d) of this section, or may enter a protective order under § 104.570.

(d) *Sanctions.* If a party fails to comply with an order (including an order for taking a deposition, the production of evidence within the party's control, a request for admission, or the production of witnesses), the administrative law judge may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought;

(4) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(5) Take such order action as may be appropriate.

Subpart F—Subpoenas

§ 104.590 Subpoenas.

(a) *In general.* This section governs the issuance of subpoenas in administrative proceedings under this part. Except for time periods stated in these rules, to the extent that this rule conflicts with procedures for the issuance of subpoenas in civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Issuance of subpoena.* Upon the written request of a party, the Chief Administrative Law Judge or the presiding administrative law judge may issue a subpoena requiring:

(1) The attendance of a witness for the purpose of giving testimony at a deposition;

(2) The attendance of a witness for the purpose of giving testimony at a hearing; and

(3) The production of relevant books, papers, documents or tangible things.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the date scheduled for the hearing. If a request for subpoena of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the Chief Administrative Law Judge or the presiding administrative law judge, as appropriate.

(d) *Service.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service on a person shall be made by delivering a copy of the subpoena to the person and by tendering witness fees and mileage to that person. When the subpoena is issued on behalf of HUD, witness fees and mileage need not be tendered with the subpoena.

(e) *Amount of witness fees and mileage.* A witness summoned by a subpoena issued under this part is entitled to the same witness and mileage fees as a witness in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena shall be paid by the party requesting the issuance of the subpoena, or where the administrative law judge determines that a party is unable to pay the fees, the fees shall be paid by the Department.

(f) *Motion to quash or limit subpoena.* Upon a motion by the person served with a subpoena or by a party, made within five days of the service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the administrative law judge may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

(2) Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers or documents.

Where the circumstances require, the administrative law judg may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

(g) *Failure to comply with subpoena.* If a person fails to comply with a subpoena issued under this section, the party requesting the subpoena may refer the matter to the Attorney General for enforcement in appropriate proceedings under section 814(c) of the Fair Housing Act.

Subpart G—Prehearing Procedures

§ 104.600 Prehearing statements.

(a) *In general.* Before the commencement of the hearing, the administrative law judge may direct parties to file prehearing statements.

(b) *Contents of statement.* The prehearing statement must state the name of the party or parties presenting the statement and, unless otherwise directed by the administrative law judge, briefly set forth the following:

(1) Issues involved in the proceeding.

(2) Facts stipulated by the parties and a statement that the parties have made a good effort to stipulate to the greatest extent possible.

(3) Facts in dispute.

(4) Witnesses (together with a summary of the testimony expected) and exhibits to be presented at the hearing.

(5) A brief statement of applicable law.

(6) Conclusions to be drawn.

(7) Estimated time required for presentation of the party's case.

(8) Such other information as may assist in the disposition of the proceeding.

§ 104.610 Prehearing conference.

(a) *In general.* Before the commencement or during the course of the hearing, the administrative law judge may direct the parties to participate in a conference to expedite the hearing.

(b) *Matters considered.* At the conference, the following matters may be considered:

(1) Simplification and clarification of the issues.

(2) Necessary amendments to the pleadings.

(3) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents.

(4) Limitations on the number of witnesses.

(5) Negotiation, compromise, or settlement of issues.

(6) The exchange of proposed exhibits.

(7) Matters of which official notice will be requested.

(8) A schedule for the completion of actions discussed at the conference.

(9) Such other information as may assist in the disposition of the proceeding.

(c) *Conduct of conference.* The conference may be conducted by telephone, correspondence or personal attendance. Conferences, however, shall generally be conducted by a conference call, unless the administrative law judge determines that this method is impracticable. The administrative law judge shall give reasonable notice of the time, place and manner of the conference.

(d) *Record of conference.* Unless otherwise directed by the administrative law judge, the conference will not be stenographically recorded. The administrative law judge will reduce the actions taken at the conference to a written order or, if the conference takes place less than seven days before the beginning of the hearing, may make a statement on the record summarizing the actions taken at the conference.

§ 104.620 Settlement negotiations before a settlement judge.

(a) *Appointment of settlement judge.* The administrative law judge, upon the motion of a party or upon his or her own motion, may request the Chief Administrative Law Judge to appoint another administrative law judge to conduct settlement negotiations. The order appointing the settlement judge may confine the scope of settlement negotiations to specified issues. The order shall direct the settlement judge to report to the Chief Administrative Law Judge within specified time periods.

(b) *Duties of settlement judge.* (1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement.

(2) The settlement judge shall report to the Chief Administrative Law Judge describing the status of the settlement negotiations, evaluating settlement prospects, and recommending the termination or continuation of the settlement negotiations.

(c) *Termination of settlement negotiations.* Settlement negotiations shall terminate upon the order of the Chief Administrative Law Judge issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the commencement of the hearing.

Subpart H—Hearing Procedures

§ 104.700 Date and place of hearing.

(a) *Date.* The hearing shall commence not later than 120 days following the issuance of the charge under § 103.405, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the administrative law judge shall notify HUD, the aggrieved persons on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay.

(b) *Place.* The hearing will be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) *Notification of time and place for hearing.* The charge issued under § 103.405 will specify the time, date and place for the hearing. The administrative law judge may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown. If such a change is made or the hearing is temporarily adjourned, the administrative law judge shall give the parties at least five days notice of the revised time, date and place for the hearing, unless otherwise agreed by the parties.

§ 104.710 Conduct of hearings.

The hearing shall be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551–559).

§ 104.720 Waiver of right to appear.

If all parties waive their right to appear before the administrative law judge or to present evidence and arguments, it is not necessary for the administrative law judge to conduct an oral hearing. Such waivers shall be made in writing and filed with the administrative law judge. Where waivers are submitted by all parties, the administrative law judge shall make a record of the relevant written evidence submitted by the parties and pleadings submitted by the parties with respect to the issues in the proceeding. These documents shall constitute the evidence in the proceeding and the decision shall be based upon this evidence. Such hearings shall be deemed to commence on the first day that written evidence may be submitted for the record.

§ 104.730 Evidence.

The Federal Rules of Evidence apply to the presentation of evidence in hearings under this part.

§ 104.740 In camera and protective orders.

The administrative law judge may limit discovery or the introduction of evidence, or issue such protective or other orders necessary to protect privileged communications. If the administrative law judge determines that information in documents containing privileged matters should be made available to a party, the administrative law judge may order the preparation of a summary or extract of the original. The summary or abstract may be admitted as evidence in the record.

§ 104.750 Exhibits.

(a) *Identification.* All exhibits offered into evidence shall be numbered sequentially and marked with a designation identifying the party offering the exhibit.

(b) *Exchange of exhibits.* One copy of each exhibit offered into evidence must be furnished to each of the parties and to the administrative law judge. If the administrative law judge does not fix a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time before the commencement of the hearing.

§ 104.760 Authenticity.

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be admitted, unless a party files a written objection to the exhibit before the commencement of the hearing. Upon a clear showing of good cause for failure to file such a written objection, the administrative law judge may permit the party to challenge the authenticity.

§ 104.770 Stipulations.

The parties may stipulate to any pertinent facts by oral agreement at the hearing or by written agreement at any time. Stipulations may be submitted into evidence at any time before the end of the hearing. When received into evidence, the stipulation is binding on the parties.

§ 104.780 Record of hearing.

(a) *Hearing record.* All oral hearings shall be recorded and transcribed by a reporter designated by, and under the supervision of, the administrative law judge. The original transcript shall be a part of the record and shall constitute the sole official transcript. All exhibits introduced as evidence shall be marked for identification and incorporated as a part of the record. Transcripts may be obtained by the parties and by the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion of a party. Motions for correction must be submitted within five days of the receipt of the transcript. Corrections of the official transcript will be permitted only where errors of substance are involved and upon the approval of the administrative law judge.

§ 104.790 Arguments and briefs.

(a) *Arguments.* Following the submission of evidence at an oral hearing, the administrative law judge may hear oral arguments. The administrative law judge may limit the time permitted for such arguments to avoid unreasonable delay.

(b) *Submission of written briefs.* The administrative law judge may permit the submission of written briefs following the adjournment of the oral hearing. Written briefs shall be simultaneously filed by all parties and shall be due not later than 30 days following the adjournment of the oral hearing.

§ 104.800 End of hearing.

(a) *Oral hearings.* Where there is an oral hearing, the hearing ends on the day of the adjournment of the oral hearing or, where written briefs are permitted, on the date that the written briefs are due.

(b) *Hearing on written record.* Where the parties have waived an oral hearing, the hearing ends on the date set by the administrative law judge as the final date for the receipt of submissions by the parties.

§ 104.810 Receipt of evidence following hearing.

Following the end of the hearing, no additional evidence may be accepted into the record, except with the permission of the administrative law judge. The administrative law judge may receive additional evidence upon a determination that new and material evidence was not readily available before the end of the hearing, the evidence has been timely submitted, and its acceptance will not unduly prejudice the rights of the parties. However, the administrative law judge shall include in the record any motions for attorney's fees (including supporting documentation), and any approved corrections to the transcripts.

Subpart I—Dismissals and Decisions

§ 104.900 Dismissal.

(a) *Election of judicial determination.* If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, the administrative law judge shall dismiss the administrative proceeding.

(b) *Effect of a civil action on administrative proceeding.* An administrative law judge may not continue an administrative proceeding under this part regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by an aggrieved person under an Act of Congress or a State law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the administrative law judge shall dismiss the administrative proceeding. The commencement of a civil action for appropriate temporary or preliminary relief under section 810(e) or section 813(c)(1) of the Fair Housing Act does not affect administrative proceedings under this part.

§ 104.910 Initial decision of administrative law judge.

(a) *In general.* Within the time period set forth in paragraph (d) below, the administartive law judge shall issue an intial decision including findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The initial decision of the administrative law judge shall be based on the record of the proceeding.

(b) *Finding against respondent.* If the administrative law judge finds that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the administrative law judge shall issue an initial decision against the respondent and order such relief as may be appropriate. The relief may include, but is not limited to, the following:

(1) The administrative law judge may order the respondent to pay damages to the aggrieved person (including damages caused by humiliation and embarrassment).

(2) The administrative law judge may provide for injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge issued under § 104.405.

(3) To vindicate the public interest, the administrative law judge may assess a civil penalty against the respondent.

(i) The amount of the civil penalty may not exceed:

(A) $10,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(B) $25,000, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudication was made during the five-year period preceding the date of filing of the charge.

(C) $50,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

(ii) The time periods set forth in paragraph (b)(3)(i)(B) and (C) do not apply if the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged to have committed acts constituting a discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(iii) If the administrative law judge determines that more than one respondent has been engaged or is about the engage in a discriminatory housing practice, the administrative law judge may assess a civil penalty, up to the maximum permitted under paragraph (b)(3)(i) and (ii) of this section, against each respondent.

(c) *Finding in favor of respondent.* If the administrative law judge finds that a respondnet has not engaged, and is not about to engage, in a discriminatory housing practice, the administrative law judge shall make an initial decision dismissing the charge.

(d) *Date of issuance.* The administrative law judge shall issue an initial decision within 60 days after the end of the hearing, unless it is impracticable to do so. If the administrative law judge is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the administrative law judge shall notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay.

§ 104.920 Service of initial decision.

Simultaneously with the issuance of the initial decision, the administrative law judge shall serve the initial decision on the respondent, the aggrieved person on whose behalf the charge was filed, the General Counsel, the Secretary of HUD and any intervenors. The initial decision will include a notice stating that the initial decision will become the final decision of the Department unless the Secretary issues a final decision under § 104.930 within 30 days of the date of issuance of the initial decision.

§ 104.925 Resolution of charge.

At any time before the issuance of a final decision under § 104.930, the parties may submit an agreement resolving the charge. The agreement must be signed by the General Counsel, the respondent, and all aggrieved persons upon whose behalf the charge was issued. The administrative law judge shall accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge constitutes a waiver of any right to challenge or contest the validity of a decision entered in accordance with the agreement.

§ 104.930 Final decision.

(a) *Issuance of final decision by Secretary.* The Secretary of HUD may review any finding of fact, conclusion of law, or order contained in the initial decision of the administrative law judge and issue a final decision in the proceeding. The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings. The Secretary shall serve the final decision on all parties no later than 30 days from the date of issuance of the initial decision of the administrative law judge. The final decision shall be served on the respondent, the aggrieved person on whose behalf the charge was filed, the General Counsel, and any intervenors.

(b) *No final decision by Secretary.* If the Secretary of HUD does not serve a final decision within the time period described above, the initial decision of the administrative law judge will become the final decision of the Department. For the purposes of this part, such a final decision will be considered to have been issued 30 days following the date of issuance of the initial decision.

(c) *Public disclosure.* HUD shall make public disclosure of each final decision.

§ 104.935 Action upon issuance of a final decision.

(a) *Licensed or regulated businesses.* (1) If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice in the course of a business that is subject to licensing or regulation by a Federal, State or local governmental agency, the General Counsel will notify the governmental agency of the decision by:

(i) Sending copies of the findings of fact, conclusions of law and the final decision to the governmental agency by certified mail; and

(ii) Recommending appropriate disciplinary action to the governmental agency, including, where appropriate, the suspension or revocation of the license of the respondent.

(2) The General Counsel shall notify the appropriate governmental agencies within 30 days after the date of issuance of the final decision, unless a petition for judicial review of the final decision as described in § 104.950 has been filed before the issuance of the notification of the agency. If such a petition has been filed, the General Counsel will provide the notification to the governmental agency within 30 days of the date that the final decision is affirmed upon review. If a petition for judicial review is timely filed following the notification of the governmental agency, the General Counsel will promptly notify the governmental agency of the petition and withdraw his or her recommendation.

(b) *Notification to the Attorney General.* If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice and another final decision including such a finding was issued under this part within the five years preceding the date of issuance of the final decision, the General Counsel shall notify the Attorney General of the decisions by sending a copy of the final decisions in each administrative proceeding.

§ 104.940 Attorney's fees and costs.

Following the issuance of the final decision under § 104.930, any prevailing party, except HUD, may apply for attorney's fees and costs. The administrative law judge will issue an initial decision awarding or denying such costs. The initial decision will become the final decision of HUD unless the Secretary reviews the initial decision and issues a final decision on fees and costs within 30 days. The recovery of reasonable attorney's fees and costs will be permitted as follows:

(a) If the respondent is the prevailing party: (1) HUD shall be liable for reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act (5 U.S.C. 504) and HUD's regulations at 24 CFR Part 14; and (2) an intervenor shall be liable for reasonable attorney's fees and costs only to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(b) To the extent that an intervenor is a prevailing party, the respondent shall be liable for reasonable attorney's fees unless special circumstances make the recovery of such fees and costs unjust.

Subpart J—Judicial Review and Enforcement of Final Decision

§ 104.950 Judicial review of final decision.

(a) *Petition for review.* Any party adversely affected by a final decision under §104.930 may file a petition in the appropriate United States Court of Appeals for review of the decision under section 812(i) of the Fair Housing Act. The petition must be filed within 30 days of the date of issuance of the final decision.

(b) *No petition for review.* If no petition for review is filed under paragraph (a) within 45 days from the date of issuance of the final decision, the findings of facts and final decision shall be conclusive in connection with any petition for enforcement described under § 104.955(a) filed thereafter by the General Counsel, and in connection with any petition for enforcement described under § 104.955(b).

§ 104.955 Enforcement of final decision.

(a) *Enforcement by HUD.* Following the issuance of a final decision under § 104.930, the General Counsel may petition the appropriate United States Court of Appeals for the enforcement of the final decision and for appropriate temporary relief or restraining order in accordance with section 812(j) of the Fair Housing Act.

(b) *Enforcement by others.* If before the expiration of 60 days from the date of issuance of the final decision under § 104.930, no petition for review of the final decision described under § 104.950 has been filed, and the General Counsel has not sought enforcement of the final decision as described in paragraph (a) of this section, any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals for the enforcement of the final decision in accordance with section 812(m) of the Fair Housing Act.

PART 105—FAIR HOUSING

6. The authority citation for Part 15 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

7. In §105.1, paragraph (a) would be revised, paragraph (b) would be redesignated as paragraph (d), and new paragraphs (b) and (c) would be added, to read as follows:

§ 105.1 Purposes.

(a) This part contains the procedures established by the Department of Housing and Urban Development for the investigation and conciliation of complaints under section 810 of the Fair Housing Act, 42 U.S.C. 3610, as it existed before the amendment of the Act by the Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988).

(b)(1) This part applies to:

(i) Complaints filed before or after March 12, 1989 that involve alleged discriminatory housing practices that occurred before March 12, 1989 and are not alleged to have continued after March 12, 1989; and

(ii) Complaints filed before March 12, 1989 that involve alleged discriminatory housing practices that occurred before and continue after March 12, 1989, unless the complainant elects under § 105.81 to proceed under Part 103.

(2) Part 103 contains the procedures established by HUD for the investigation and conciliation of complaints under section 810 of the Act as amended by the Fair Housing Amendments Act of 1988. HUD's regulations governing proceedings before an administrative law judge adjudicating a charge issued under § 103.405 are contained in Part 104, and are not applicable to complaints processed under this Part 105.

(c) The procedures under this part for the investigation and conciliation of complaints will be conducted in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

* * * * *

8. Section 105.81 would be added to read as follows:

§ 105.81 Continuing violations.

If at any time during investigation or conciliation, the Department determines that a complaint involves an alleged discriminatory housing practice that continued after March 12, 1989, the Department shall notify the complainant and provide the complainant with a reasonable opportunity to elect to have the complaint processed under Part 103, in lieu of the procedures under this part. The notice shall describe the procedures available to the complainant under each part and shall be made by certified mail. If such an election is made, HUD shall notify the respondent of the election, and process the complaint under Part 103.

PART 106—FAIR HOUSING ADMINISTRATIVE MEETINGS UNDER THE FAIR HOUSING ACT

9. The authority citation for Part 106 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. Section 106.1 would be revised to read as follows:

§ 106.1 Purpose.

The purpose of this part is to establish procedures for public meetings or conferences that may be used to assist the Assistant Secretary in achieving the aims of the Fair Housing Act for the promotion and assurance of equal opportunity in housing with regard to race, color, religion, sex, handicap, familial status, or national origin, and, specifically, to carry out those responsibilities delegated to him or her by the Secretary of Housing and Urban Development under sections 808(e)(1), (2), and (3), and 809 of the Fair Housing Act.

11. Section 106.2 would be revised to read as follows:

§ 106.2 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

(b) "Meeting" means a public meeting or conference held under the authority of the Fair Housing Act and this part.

(c) "Fair Housing Act" means Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3600–3620.

12. Part 109 would be revised to read as follows:

PART 109—FAIR HOUSING ADVERTISING

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600–3620) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, on account of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to "housing for older persons", as defined in section 807(b) of the act.

§ 109.10 Purpose.

The purpose of this part is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed, or published, advertisements with respect to the sale, rental, or financing the dwellings which are in compliance with the requirements of the Fair Housing Act. These regulations also describe the matters this Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

§ 109.15 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor oganizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

(g) "Handicap" means, with respect to a person—

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment.

This term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (12 U.S.C. 802)). For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

(h) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

§ 109.16 Scope.

(a) *General.* This part describes the matters the Assistant Secretary will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria will be considered by the Assistant Secretary in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(1) *Advertising media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the Assistant Secretary in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(2) *Persons placing advertisements.* A failure by persons placing advertisements to comply with the provisions in this part, when found in connection with the investigation of a compaint alleging the making or use of discriminatory advertisements, will be a basis for making a determination of reasonable cause to believe that a violation of section 804 has occurred or is about to occur.

(b) *Affirmative advertising efforts.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

§ 109.20 Use of words, phrases, symbols, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising and convey either overt or tacit discriminatory intent. Their use should, therefore, be avoided in order to eliminate their discriminatory effect. In considering a complaint under the Fair Housing Act, the Assistant Secretary will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the act is likely to result.

(a) *Words descriptive of dwelling, landlord, and tenants.* White private

home, Colored home, Jewish home, Hispanic residence, adult building.

(b) *Words indicative of race, color, religion, sex, handicap, familial status, or national origin.*

(1) *Race*—Negro, Black, Caucasin, Oriental, American Indian.

(2) *Color*—White, Black, Colored.

(3) *Religion*—Protestant, Christian, Catholic, Jew.

(4) *National origin*—Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) *Sex*—the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this part shall restrict advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) *Handicap*—crippled, blind, deaf, mentally ill, retraded, impaired, handicapped, physically fit. Nothing in this part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

(7) *Familial status*—adults, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in Part 100 of this title.

(8) *Catch words*—words such as restricted and exclusive should be avoided. Also, words and phrases used in a discriminatory context should be avoided, e.g., "private", "integrated", "traditional", "board approval" or "membership approval".

(c) *Symbols or logotypes.* Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(d) *Colloquialisms.* Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(e) *Directions to real estate for sale or rent (use of maps or written instructions).* Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its inclusion of minorities (signal to whites) should not be used. Specific directions which make reference to a racial or national origin significant area may indicate a preference and should not be used. References to a synagogue, congregation or parish may also indicate a religious preference and should not be used.

(f) *Area (location) description.* Names of facilities which cater to a particular racial, national origin or religious group such as country club or private school designations, or names of facilities which are used exclusively by one sex, should not be used to describe an area.

§ 109.25 Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the Fair Housing Act. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

(a) *Selective geographic advertisements.* Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(b) *Selective use of equal opportunity slogan or logo.* When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(c) *Selective use of human models when conducting an advertising campaign.* Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

§ 109.30 Fair Housing policy and practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

(a) *Use of Equal Housing Opportunity logotype, statement, or slogan.* All advertisng of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see appendix) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see appendix) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness on the basis of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

(c) *Coverage of local laws.* Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the

coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

(d) *Notification of fair housing*—(1) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscriminatory policy to each employee and officer.

(2) *Clients.* All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) *Publishers' notice.* All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see appendix). The notice can include a statement regarding the coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

Appendix I to Part 109—Fair Housing Advertising

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

Table I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	Size of logotype in inches
½ page or larger	2 x 2
⅛ page up to ½ page	1 x 1
4 column inches to ⅛ page	½ x ½
Less than 4 column inches	(1)

[1] Do not use.

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less that 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size, the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, handicap, familial status, or national origin.

Table II

Illustrations of Logotype, Statement, and Slogan. Equal Housing Opportunity Logotype:

Equal Housing Opportunity Statement: We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

Table III

Illustration of Media Notice—Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

PART 110—FAIR HOUSING POSTER

13. The authority citation for Part 110 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. Section 110.1 would be revised to read as follows:

§ 110.1 Purpose.

The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Fair Housing Act, 42 U.S.C. 3604–3606.

15. In § 110.5, paragraphs (b), (e), (g) and (h) would be revised to read as follows:

§ 110.5 Definitions.

* * * * *

(b) "Discriminatory housing practice" means an act that is unlawful under sections 804, 805, 806, or 818 of the Act.

* * * * *

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

* * * * *

(g) "Fair housing poster" means the poster prescribed by the Secretary for display by persons subject to sections 804 through 806 of the Act.

(h) "The Act" means the Fair Housing Act (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3600–3620.

* * * * *

16. In § 110.10, paragraph (a) introductory text and paragraph (c) would be revised to read as follows:

§ 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing and Other Prohibited Practices, shall post and maintain a fair housing poster as follows:

* * * * *

(c) All persons subject to section 805 of the Act, Discrimination In Residential Real Estate-Related Transactions shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

* * * * *

17. Section 110.15 would be revised to read as follows:

§ 110.15 Location of posters.

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services as contemplated by sections 804 through 806 of the Act.

18. In § 110.25, paragraph (a) would be revised to read as follows:

§ 110.25 Description of posters.

(a) The fair housing poster shall be 11 inches by 14 inches and shall bear the following legend:

EQUAL HOUSING OPPORTUNITY

Equal Housing Opportunity

We do business in accordance with the Fair Housing Act.

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.)

It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status or national origin

- In the sale or rental of housing or residential lots.
- In advertising the sale or rental of housing.
- In the financing of housing.
- In the appraisal of housing.
- In the provision of real estate brokerage services.
- Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development, Assistant Secretary for Fair Housing and Equal Opportunity, Washington, DC 20410.

Toll free numbers for filing complaints are: 1-800-424-8590 1-800-543-8294 (TDD) or HUD Region or [Area Office stamp]

* * * * *

19. Part 115 would be revised to read as follows:

PART 115—CERTIFICATION OF SUBSTANTIALLY EQUIVALENT AGENCIES

Sec.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

§ 115.1 Purpose.

(a) Section 810(f) of the Fair Housing Act, (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Act) provides that: whenever a complaint alleges a discriminatory housing practice within the jurisdiction of a State or local public agency that has been certified by the Secretary as substantially equivalent, the Secretary shall refer the complaint to that certified agency before taking any action with respect to the complaint. Except with the consent of the certified agency, the Secretary, after referral is made, shall take no further action with respect to the complaint unless:

(1) The certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of referral;

(2) The certified agency, having commenced proceedings, fails to carry forward proceedings with reasonable promptness; or

(3) The Secretary determines that the certified agency no longer qualifies for certification.

The Secretary has delegated the exercise of functions and duties under section 810(f) of the Act to the Assistant Secretary for Fair Housing and Equal Opportunity (the Assistant Secretary).

(b) The purpose of this part is to set forth:

(1) The basis for agency certification.

(2) The procedure by which a determination to certify is made by the Assistant Secretary.

(3) The basis and procedure for withdrawal of certification.

(4) The consequences of certification.

§ 115.2 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, provides that:

(1) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(2) The procedures followed by the agency;

(3) The remedies available to the agency; and

(4) The availability of judicial review of the agency's actions; are substantially equivalent to those created by and under the act; and

(b) whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.3 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaint matters, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation in no more than 100 days after receipt of the complaint;

(iii) If the agency is unable to complete the investigation within 100 days it shall notify the complainant and respondent in writing of the reasons for not doing so;

(iv) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impractical to do so. If the agency is unable to do so it shall notify the complainant and respondent, in writing, of the reasons for not doing so;

(v) Any concilation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent and the complainant and shall be subject to the approval of the agency;

(vi) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act (which provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner and units in owner-occupied dwellings containing living quarters for no more than four families).

(5) Be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, prohibit the following acts:

(i) Refusal to sell or rent based on discrimination because of race, color, religion, sex, familial status, or national origin;

(ii) Refusal to negotiate for a sale or rental based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iii) Otherwise making available or denying a dwelling based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iv) Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, based on discrimination because of race, color, religion, sex, familial status, or national origin;

(v) Advertising in a manner that indicates any preference, limitation, or discrimination because of race, color, religion, sex, familial status, or national origin;

(vi) Falsely representing that a dwelling is not available for inspection, sale, or rental because of race, color, religion, sex, familial status, or national origin;

(vii) Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by section 803, 804, 805, or 806 of the Act;

(viii) Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin;

(ix) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, familial status, or national origin. Such transactions include:

(A) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(B) The selling, brokering, or appraising of residential real property;

(x) Denying a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization, or other service on account of race, color, religion, sex, familial status, or national origin.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the agency concludes that such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue subpoenas;

(iii) Grant actual damages, or arrange to have adjudicated in court at agency expense the award of actual damages, to an aggrieved person;

(iv) Grant injunctive or other equitable relief;

(v) Assess a civil penalty against the respondent, or arrange to have adjudicated in court at agency expense the award of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper; affirm, modify, or set aside, in whole or in part, the order or remand the order for further proceedings; and enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the State or local law prohibit discrimination on the basis of familial status does not require that the State or local law limit the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The State or local law must assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in Part 100 Subpart E.

(e) A determination of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account such relevant matters of State of local law, e.g., regulations, directives and rule of procedure, or interpretations of the fair housing law by competent authorities, as may be necessary.

(f) A law will be held to be not adequate "on its face" if it permits any of the agency's decision making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragrpah, "decision making authority" shall include:

(1) Acceptance of the complaint;

(2) Approval of the concliliation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in § 115.3(a)(2)(iv) or § 115.3(b)(1).

(g) Provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an

action in an appropriate court not less than 1 year after the occurrence or termination of an alleged discriminatory housing practice. The court should be empowered to:

(1) Award the plaintiff actual and puntitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order;

(3) allow reasonable attorney's fees and costs.

115.3a Criteria for adequacy of law—discrimination because of handicap.

(a) In addition to the provisions of § 115.3, in order for a determination to be made that a State or local fair housing agency administers a law which, on its face provides rights and remedies for alleged discriminatory housing practices, based on handicap, that are substantially equivalent to those provided in the Act, the law or ordinance must be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, it must prohibit the following acts:

(1) Advertising in a manner that indicates any preference, limitation, or discrimination because of handicap;

(2) Falsely representing that a dwelling is not available for inspection, sales, or rental based on discrimination because of handicap;

(3) Blockbusting, based on representations regarding the entry or prospective entry into the neighborhood of a person or persons with a particular handicap;

(4) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of handicap. Residential and real estate-related transactions include:

(i) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(ii) The selling, brokering, or appraising of residential real property;

(5) Denying a person access to, or membership or participation in, multiple listing services, real estate brokers' organizations, or other services because of handicap;

(6) Discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a handicap of that buyer or renter, or of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter;

(7) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of that person, of a person residing in or intending to reside in the dwelling after it is sold, rented, or made available, or of any person associated with that person.

(b) For purposes of this section, discrimination includes—

(1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multifamily dwellings for first occpancy after March 31, 1991, a failure to design and construct dwellings in such a manner that—

(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(ii) With respect to dwellings with a building entrance on a accessible route—

(A) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) All premises within covered multifamily dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in the bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(c) The law or ordinance administered by the State or local fair housing agency may provide that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (b)(3)(ii)(C).

(d) As used in this section, the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

§ 115.4 Performance standards.

(a) The initial and continued certification that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon an assessment of the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of the law to determine that, in operation, the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making this assessment.

(b) A State or local agency must:

(1) Engage in comprehensive and thorough investigative activities; and

(2) Commence proceedings with respect to a complaint before the end of the 30th day after the receipt of the complaint, carry forward proceedings with reasonable promptness, and in accordance with the memorandum of understanding described in 24 CFR 111.104(a)(2), make final administrative disposition of a complaint within one year of the date of receipt of the complaint and, within 100 days of receipt of the complaint, complete the following proceedings:

(i) Investigation, including the preparation of a final investigation report containing—

(A) The names and dates of contacts with witnesses;

(B) A summary and dates of correspondence and other contacts with

the aggrieved person and the respondent;

(C) A summary description of other pertinent records;

(D) A summary of witness statements; and

(E) Answers to interrogatories.

(ii) Conciliation activity.

(3) Conduct compliance reviews of all settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices.

(4) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(5) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law;

(c) Where the State or local agency has duties and responsibilities in addition to administration of the fair housing law, the Assistant Secretary may consider such matters as the relative priority given to fair housing administration, as compared to such other duties and responsibilities, and the compatibility or potential conflict of fair housing objectives with the agency's other duties and responsibilities.

§ 115.5 Request for certification.

(a) A request for certification under this part may be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organization of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) Data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.4.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at: (1) The office of the Assistant Secretary, (2) the HUD Regional Office in whose jurisdiction the State or local jurisdiction seeking recognition is located, and (3) the office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.6 Procedure for certification.

(a) Upon receipt of a request for certification filed under § 115.5, the Assistant Secretary may request further information that he or she considers relevant to the determinations required to be made under this part.

(b) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a that the State or local fair housing law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of that determination. Except under circumstances where the Assistant Secretary determines that interim referrals or other utilization of services under § 115.11 is appropriate, the Assistant Secretary shall publish a notice in the **Federal Register** which advises the public of the determination that the law, on its face, is substantially equivalent, and shall invite interested persons and organizations, during a period of not less than 30 days following publication of the notice, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of such law demonstrates that, in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act. The **Federal Register** notice shall also invite comments on the Department's determination as to the adequacy of the law on its face.

(c) If the Assistant Secretary determines, on the basis of the standards specified in § 115.4 and after considering the materials and information submitted pursuant to § 115.5, additional material obtained under paragraph (a) of this section, and any written comments filed under paragraph (b) of this section, that, in operation, a State or local fair housing law in fact provides rights and remedies which are substantially equivalent to those provided in the Act, the Assistant Secretary shall offer to enter into a written agreement with the appropriate State or local agency providing for referral of complaints to the agency and for procedures for communication between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the continuing substantial equivalency of the State or local law. The written agreement may, but need not, be incorporated in a Memorandum of Understanding as described in 24 CFR 111.104(a)(2). Upon execution of a satisfactory agreement, the Assistant Secretary shall publish notice of certification under this part in the **Federal Register.**

(d) During the period which begins on September 13, 1988 and ends January 13, 1992, each State or locality recognized as substantially equivalent under 24 CFR Part 115 (including any State or locality which had entered into an agreement for interim referrals under § 115.11, unless the State or locality is subsequently denied recognition under 24 CFR 115.7) for the purposes of the Fair Housing Act before September 13, 1988 shall, for the purposes of this paragraph (d), be considered certified under this part with respect to those matters for which the agency was previously recognized. If the Secretary determines in an individual case that a State or locality has not been able to meet the certification requirements within this 40-month period because of exceptional circumstances (such as the infrequency of legislative sessions in that jurisdiction), the Secretary may extend the period of temporary certification to no later than September 13, 1992.

(1) No State, locality or agency thereof shall be considered certified under this paragraph (d) for the purpose of processing complaints alleging—

(i) Discrimination based on familial status;

(ii) Discrimination based on handicap; or

(iii) Coercion, intimidation or threats as described in § 115.3(a)(5)(vii).

(2) Certification under this paragraph (d) is not a determination that the administrative or judicial remedies provided by the State or locality is substantially equivalent to those provided by the Act.

(e) Certification of a State or local fair housing agency under this part shall

remain in effect until withdrawn under § 115.8.

(f) Not less frequently than annually, the Assistant Secretary will cause to be published in the **Federal Register** a notice which sets forth:

(1) An updated, consolidated list of all certified agencies;

(2) A list of all agencies whose certification under this part has been withdrawn since publication of the previous notice;

(3) A list of agencies with respect to which notice of denial of certification has been published under § 115.7(c) since issuance of the previous notice;

(4) A list of agencies with respect to which a notice for comment has been published under paragraph (b) of this section whose request for certification remains pending.

(5) A list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) whose proposed withdrawal remains pending; and

(6) A list of agencies with which an agreement for interim referrals or other utilization of services has been entered under § 115.11 and remains in effect.

§ 115.7 Denial of certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that a State or local fair housing law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of the reasons for that determination. The Assistant Secretary's advice may include specification of the manner in which the State or local law could be amended in order to provide substantially equivalent rights and remedies. The Assistant Secretary shall extend to the State or local official an opportunity to submit data, views, and arguments in opposition to the Assistant Secretary's determination and to request an opportunity for a conference in accordance with § 115.9. If no submission or request is made, no further action shall be required to be taken by the Assistant Secretary. If the State or local official submits materials but does not request a conference, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency. If, after the evaluation, the Assistant Secretary is still of the opinion that the law, on its face, fails to provide rights and remedies for allegedly discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(b) If the Assistant Secretary determines, after considering the materials and information submitted under § 115.5, any additional information obtained under § 115.6(a), an assessment of the current practices and past performance of the agency in meeting the standards of § 115.4(b), and any written comments received under § 115.6(b), that it has not been demonstrated that, in operation, a State or local fair housing agency in fact provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the Assistant Secretary shall communicate this determination in writing to the State or local agency and shall allow the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9. If a request for a conference is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and, if after that evaluation the Assistant Secretary is still of the opinion that certification should be denied, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(c) Where comment on a request for certification was invited in accordance with § 115.6(b), notice of denial of certification under this section shall be published in the **Federal Register**.

§ 115.8 Withdrawal of certification.

(a) Not less frequently than every 5 years, the Assistant Secretary shall determine whether each agency certified under this part continues to qualify for certification. The Assistant Secretary shall take appropriate action with respect to any agency not so qualifying.

(b) The Assistant Secretary shall periodically review the administration of fair housing laws recognized under this part. If the Assistant Secretary finds, as a result of a periodic review, upon the petition of an interested person or organization, or otherwise, that taken as a whole, the agency's administration of its fair housing law or the law, on its face, no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(c) The Assistant Secretary shall propose withdrawal of certification unless review establishes that the current fair housing law administered by the certified agency meets the criteria of § 115.3 and that current practices and past performance of the agency meet the standards of § 115.4.

(d) Before the Assistant Secretary publishes notice of a proposed withdrawal of certification, the Assistant Secretary shall inform the State or local agency in writing of his or her intention to withdraw certification. The communication shall state the reasons for the proposed withdrawal and provide the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9.

(e) Notice of a proposed withdrawal shall be published in the **Federal Register**. The notice shall allow the State or local agency and other interested persons and organizations not less than 30 days in which to file written comments on the proposal.

(f) If a request for a conference in accordance with § 115.9 is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and other interested persons or organizations, and if after that evaluation the Assistant Secretary is still of the opinion that certification should be withdrawn, the Assistant Secretary shall withdraw certification and shall publish notice of the withdrawal in the **Federal Register**.

§ 115.9 Conferences.

(a) Whenever an opportunity for a conference is timely requested by a State or local agency in accordance with § 115.7 or § 115.8, the Assistant Secretary shall issue an order designating an officer who shall preside at the conference. The order shall indicate the issues to be resolved and any initial procedural instructions that might be appropriate for a particular conference. It shall fix the date, time and place of the conference. The date shall not be less than 20 days after the date of the order. The date and place shall be subject to change for good cause.

(b) A copy of the order shall be served on the State or local agency and:

(1) In the case of a denial of certification, on any person or organization that files a written comment in accordance with § 115.6(b); or

(2) In the case of a withdrawal of certification, on any person or

organization that files a petition in accordance with § 115.8(a) or written comment in accordance with § 115.8(c). The agency and all such persons and organizations shall be considered to be participants in the conference. After service of the order designating the conference officer, and until the officer submits a recommended determination, all communications relating to the subject matter of the conference shall be addressed to that officer.

(c) The conference officer shall have full authority to regulate the course and conduct of the conference. A transcript shall be made of the proceedings at the conference. The transcript and all comments and petitions relating to the proceedings shall be made available for inspection by interested persons.

(d) The conference officer shall prepare proposed findings and a recommended determination, a copy of which shall be served on each participant. Within 20 days after service, any participant may file written exceptions. After the expiration of the period for filing exceptions, the conference officer shall certify the entire record, including the proposed findings and recommended determination, and any exceptions to the findings and recommendations, to the Assistant Secretary, who shall review the record and issue a final determination within 30 days. Where applicable, this determination shall be published in the Federal Register.

§ 115.10 Consequences of certification.

(a) Where all alleged violations of the Act contained in a complaint received by the Assistant Secretary appear to constitute violations of a State or local fair housing law administered by an agency that has been certified as substantially equivalent, the complaint shall be referred promptly to the appropriate State or local agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint, except as provided for by the Act, this part, and by §§ 103.100 through 103.115 or 105.20 through 105.22 of this chapter.

(b) Notwithstanding paragraph (a) of this section, no complaint based in whole or in part on allegations of discrimination on the basis of familial status or handicap shall be referred to any State, locality or agency thereof whose certification was granted in accordance with § 115.6(d) or section 810(f)(4) of the Act, without regard to whether the fair housing law administered by such certified agency appears to prohibit discrimination based on familial status or handicap.

(c) Notwithstanding paragraph (a) of this section, whenever the Secretary has reason to believe that a complaint shows a basis may exist for the commencement of proceedings against any respondent under section 814(a) of the Act, or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which that belief is based to the Attorney General, or to appropriate governmental licensing or supervisory authorities.

§ 115.11 Interim referrals.

If the Assistant Secretary determines after application of the criteria set forth in § 115.3, that a State or local fair housing law on its face provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, but that the law has not been in effect, or the appropriate State or local agency in operation, for a sufficient time to permit a demonstration of compliance with the performance standards described in § 115.4, the Assistant Secretary may enter into a written agreement with the State or local agency providing for referral of complaints to the agency on such terms and conditions as the Assistant Secretary shall prescribe, or providing for other utilization of the services of the State or local agency and its employees upon agreed terms, and providing further for procedures for communications between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's administration and enforcement of its law and to assist the Assistant Secretary in making the determination required in § 115.2(b). The agreement may provide for reactivation of referred complaints by the Assistant Secretary without regard to the limitations described in § 115.10. If such an agreement for interim referrals or other utilization of services is entered, the Assistant Secretary may defer final determination under § 115.6 or § 115.7 for a reasonable period determined by the Assistant Secretary to be necessary in order to permit a fair assessment of the agency's performance. In no event shall this period extend more than two years beyond the date of entry into the agreement for interim referrals or other utilization of services. This two year limitation does not apply to agencies certified in accordance with § 115.6(d). However, an agreement under this section shall not be extended beyond the date of certification under § 115.6 or denial of recognition under § 115.7. Notice of entry into an agreement under this section shall be published in the Federal Register.

20. PART 121, redesignated from Part 100, would be revised to read as follows:

PART 121—COLLECTION OF DATA

Sec.

121.1 Purpose.

121.2 Furnishing of data by program participants.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); E.O. 11063, 27 FR 11527; sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1); sec. 562, Housing and Community Development Act of 1987 (42 U.S.C. 3608a); sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 121.1 Purpose

The purpose of this part is to enable the Secretary of Housing and Urban Development to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, dated November 20, 1962, Title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department of Housing and Urban Development, and they direct the Secretary to administer the Department's housing and urban development programs and activities in a manner affirmatively to further these policies and to collect certain data to assess the extent of compliance with these policies.

§ 121.2 Furnishing of data by program participants.

Participants in the programs administered by the Department shall furnish to the Department such data concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, those programs as the Secretary may determine to be necessary or appropriate to enable the Secretary to carry out his or her responsibilities under the authorities referred to in § 121.1. Specific requirements for furnishing such data are imposed under the individual program regulations contained under this Title 24.

Date: October 31, 1988.

Samuel R. Pierce, Jr.,

Secretary.

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