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24 CFR Parts 91 and 570

Fair Housing Performance Standards for Acceptance of Consolidated Plan Certifications and Compliance With Community Development Block Grant Performance Review Criteria; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 570

[Docket No. FR–4133–P–01]

RIN No. 2529–AA81

Fair Housing Performance Standards for Acceptance of Consolidated Plan Certifications and Compliance With Community Development Block Grant Performance Review Criteria

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD regulations on Consolidated Submissions for Community Planning and Development Programs to establish a standard for determining if the jurisdiction's certification regarding affirmatively furthering fair housing is inaccurate.

This rule would also amend HUD regulations on Community Development Block Grants to provide performance review standards for affirmatively furthering fair housing requirements. The performance review standards would clarify the basis upon which the Department makes its annual statutory determination that a grantee is carrying out its Community Development Block Grant (CDBG) program in compliance with its certifications and with other applicable laws.

Both revisions would also make clear that compliance with the requirement to affirmatively further fair housing would require grantees to have a complete and accurate analysis of impediments to fair housing choice and to not violate the Fair Housing Act or civil rights laws prohibiting discrimination in housing programs receiving Federal financial assistance. These revisions would serve to provide communities with a clear idea of the standards that HUD would use in both reviewing certifications included as part of a grantee's Consolidated Plan submission, as well as determining CDBG grantees' compliance with the statutory requirements of the CDBG program to affirmatively further fair housing.

DATES: *Comment Due Date:* December 28, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communications submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For questions on part 570, Deirdre Maguire-Zinni, Director, Entitlement Communities Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7282, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–1577, ext. 4529. For questions on part 91, Sal Sclafani, Acting Director, Policy Coordination Division, Office of Executive Services, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–1283, ext. 4364. For questions on affirmatively furthering fair housing or the analysis of impediments to fair housing choice, William Dudley Gregorie, Deputy Director, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 452 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–2288, ext. 266. (These telephone numbers are not toll-free.) Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal information relay service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Statutory Bases

Section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) established a requirement for the development of a Comprehensive Housing Affordability Strategy (CHAS) as a condition of a jurisdiction receiving grants from HUD, primarily CDBG and HOME program funds. (The CHAS replaced the CDBG Housing Assistance Plan requirement.) The CHAS includes a certification that jurisdictions receiving the HUD grants will affirmatively further fair housing.

Section 104(b)(2) of the Housing and Community Development Act of 1974 (HCD Act), as amended, (42 U.S.C. 5304), the governing statute for the CDBG program, requires that each grantee certify to HUD's satisfaction that (1) the grant will be conducted and administered in conformity with the Fair Housing Act (42 U.S.C. 3601–20) and (2) the grantee will affirmatively further fair housing. Further, section 104(c)(1) of the HCD Act authorizes CDBG Entitlement grants to be made only to a grantee that is following an approved CHAS. Section 104(e) of the HCD Act also contains a requirement for the Department to determine, at least annually, that each CDBG grantee is carrying out its program in compliance with applicable laws and requirements.

The Consolidated Plan Regulation's Review Standard for Acceptance

When the Consolidated Submission for CPD Programs regulation (part 91) (the ''Consolidated Plan regulation'') was promulgated in 1995, one of the primary purposes of the rule was to coordinate statutory requirements for CPD formula grant programs (CDBG, HOME Investment Partnerships, Emergency Shelter Grant, and Housing Opportunities for Persons with AIDS) in a comprehensive way, in order to simplify application requirements while simultaneously addressing local priority needs more effectively. The Consolidated Plan regulation thus incorporates CHAS requirements as well as CDBG submission requirements.

Departmental approval of a Consolidated Plan is required in order for a jurisdiction to receive any of the four CPD formula grant funds. Disapproval of a Consolidated Plan is based on the statutory standards of the CHAS which authorizes disapproval of any Plan only on two grounds: the Plan is either (1) inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act or (2) substantially incomplete. One of the ways that a Plan may be determined substantially incomplete is if HUD concludes that a certification is inaccurate. In addition, the separate CDBG certifications may be disapproved if not satisfactory to HUD, which would result in disapproval of the CDBG component of the Consolidated Plan.

The Consolidated Plan regulations contain an affirmatively further fair housing certification. The regulations define the certification to mean that a grantee will conduct an ''analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard'' [§§ 91.225(a)(1), 91.325(a)(1) and 91.425(a)(1)]. The analysis of impediments is not restricted to the design and operation of HUD-funded programs within a grantee's jurisdiction but is meant to be an assessment of conditions, both public and private, that affect fair housing choice.

The Consolidated Plan requirement contains a narrow review standard and a review time frame of 45 days (after which a Plan may be deemed approved automatically unless the Department

specifically notifies a jurisdiction that the Plan has been disapproved). Disapproval of a Consolidated Plan results in the withholding of all CPD formula grant funds for a grantee unless and until an adequate submission is made within an established time frame.

The CDBG Program's Greater Flexibility To Require Grantee Actions in Connection With Grant Award or Improve Performance

The CDBG Entitlement regulations were amended with the Consolidated Plan regulations so that the affirmatively further fair housing certification has the same requirements in the CDBG regulations as in the Consolidated Plan regulations. See § 570.601(a)(2). A determination made by HUD that a CDBG grantee is not affirmatively furthering fair housing, however, offers a wider array of opportunities for resolution in connection with either making the CDBG grant or applying sanctions because of the statutory review authority in the HCD Act (e.g., requesting special assurances; seeking voluntary compliance; or taking actions to reduce or withdraw a grant), whereas evaluation of the grantee's affirmatively furthering activities in the context of the Consolidated Plan offers only one opportunity for HUD action (i.e., disapproval of a Consolidated Plan). Furthermore, corrective actions with respect to the CDBG program are not limited to the Consolidated Plan submission review time frame but can be initiated at any point during a grantee's program year.

The Need for Clarification

While the Department has provided both guidance and training to grantees on meeting the Consolidated Plan fair housing certification requirements, the Department's experience indicates that confusion remains over both the meaning and application of the affirmatively further fair housing requirements. Notwithstanding the identical statutory predicates for affirmatively furthering fair housing in both the CDBG program and the CHAS (included now as a Consolidated Plan requirement), this confusion has been complicated by the placement of the CDBG requirement in the Consolidated Plan regulation at part 91 as a certification requirement (which now applies to all CPD formula grant programs) while remaining in the CDBG regulations at part 570 as a performance review standard. Certification of compliance with the Fair Housing Act is in the Consolidated Plan regulations applicable only to the CDBG program. Thus, in cases where a grantee has been determined to have violated the Fair Housing Act, the narrow disapproval standard for the Consolidated Plan complicates the withholding of CPD grant funds, despite the Department's clear mandate to ensure compliance with Fair Housing Act requirements. Confusion has also resulted over what it means to have a ''complete'' Consolidated Plan as well as the language of the certification which is written in the future tense (that grantees ''will'' conduct an analysis).

Purpose of the Proposed Rule Change

The Department seeks to foster effective fair housing strategies and to provide clear guidance to local communities to help them in their efforts to responsibly identify and solve fair housing problems, as these grantees strive to achieve their own visions of ''viable urban communities.'' Furthermore, the Department believes that grantees receiving CPD formula grant funds not only have the responsibility to identify and endeavor to overcome impediments to fair housing choice, but clearly should not be receiving the grant funds if they are in violation of the Fair Housing Act. At the same time, the Department wishes to ensure more objective application of requirements and to ensure that grantees have a current and accurate analysis of impediments to fair housing choice in place at the time of grant award. To that end, the proposed rule is intended to provide specific standards and the bases upon which these requirements would be measured—both for purposes of receiving CPD formula grant funds and to aid the Department in annually determining that CDBG grantees are in compliance with applicable requirements.

Proposed Change to Part 91

This rule would amend §§ 91.225(a)(1), 91.325(a)(1) and 91.425(a)(1) to make clear that a certification to affirmatively further fair housing means that (1) an analysis of impediments to fair housing choice has already been conducted (and would be updated, as appropriate) and (2) the grantee is taking actions to eliminate identified impediments if the impediments are within the control of the grantee and to overcome the effects of other identified impediments, and is keeping appropriate supporting documentation. Amendments are also made to § 91.500(b)(3) to add three standards for a Departmental determination that a grantee's Consolidated Plan certification to affirmatively further fair housing is inaccurate. HUD could determine that the certification is inaccurate if: (1) the analysis of impediments to fair housing choice is inaccurate or substantially incomplete based on generally available facts and data; (2) the actions taken do not address an identified impediment (eliminate an impediment within the grantee's control or overcome the effects of an impediment that is outside the grantee's control) or do not result in meaningful and measurable progress; or (3) the grantee (a) has been charged with a violation of the Fair Housing Act by HUD, (b) is the defendant in a Fair Housing Act lawsuit filed by the U.S. Department of Justice, or (c) has received from HUD a letter of noncompliance findings involving housing under title VI of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973 or section 109 of the HCD Act, and the grantee has not resolved such charge, lawsuit, or letter of noncompliance findings to the satisfaction of HUD.

These amendments would make clear that a grantee must (1) have a complete and accurate analysis of impediments to fair housing choice before submitting its Consolidated Plan, (2) be taking appropriate actions to eliminate the impediments within the grantee's control and overcome the effects of identified impediments outside the grantee's control, and (3) comply with the Fair Housing Act and other statutes prohibiting discrimination in housing that the Department enforces. Failure to do so will result in a rejection of its Consolidated Plan certification to affirmatively further fair housing. The amendments are also designed to clarify what is meant by appropriate actions. For example, a grantee that identifies certain types of zoning as impediments to fair housing choice and then holds a housing poster contest as an appropriate action in response to the zoning impediment could expect HUD to question the accuracy of its certification.

Proposed Change to Part 570

This rule would amend § 570.601 to make clear that the requirement to affirmatively further fair housing means that (1) grantees have conducted an analysis of impediments to fair housing choice before submission of a Consolidated Plan (and would require updates to an analysis, as appropriate) and (2) the grantees are taking actions to eliminate identified impediments that are within the control of the grantee and to overcome the effects of identified impediments outside the grantee's control and are maintaining records reflecting the analysis and actions. Section 570.904 would be amended to clarify the distinction between the

rebuttable presumption of compliance with civil rights nondiscrimination requirements versus the standards to measure performance with the requirements for affirmatively furthering fair housing. Currently, this section of the regulation states that the Department will consider grantees to be in compliance with applicable equal opportunity and fair housing criteria UNLESS there is evidence to the contrary. The requirements to affirmatively further fair housing and carry out programs in compliance with the Fair Housing Act require, however, positive actions on the part of grantees. Moreover, the section no longer contains criteria because they were deleted when substantive requirements for affirmatively furthering fair housing were added to the Consolidated Plan rule. Accordingly, the introductory language is proposed to be deleted in paragraph (a) and the paragraph is renamed ''Nondiscrimination requirements.'' In addition, the current paragraph (b) is proposed to be removed because it essentially repeats paragraph (a). Paragraphs (c) and (d) are reordered as paragraphs (b) and (c). As a technical matter, the regulation is amended to reflect that the Fair Housing Act also prohibits discrimination based on disability or familial status.

This section of the regulation is also amended to specify three performance review standards that HUD will use to determine whether a grantee has affirmatively furthered fair housing. Two of the standards are: (1) that the analysis of impediments to fair housing choice is accurate and substantially complete based on generally available facts and data, and (2) that the actions taken to eliminate the impediments within the grantee's control or overcome the effects of identified impediments outside the grantee's control result in meaningful and measurable progress. The third standard is a presumption by HUD that a grantee has not violated the civil rights laws prohibiting discrimination in housing unless the grantee (a) has been charged with a violation of the Fair Housing Act by HUD, (b) is the defendant in a Fair Housing Act lawsuit filed by the U.S. Department of Justice, or (c) has received from HUD a letter of noncompliance findings involving housing under title VI of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973 or section 109 of the HCD Act, and the grantee has not resolved such charge, lawsuit, or letter of noncompliance findings to the satisfaction of HUD. Such violations could result from actions taken by the grantee in connection with programs other than the four CPD formula grant programs. For example, a grantee that takes discriminatory actions to prevent a public housing authority from acquiring or building scattered site public housing units could be determined to be in violation of the Fair Housing Act and thus might expect the Department to challenge its Consolidated Plan certification to affirmatively further fair housing.

In reviewing performance based on an existing analysis of impediments to fair housing choice, the Department would expect that a jurisdiction would identify actions to be taken based on the analysis and would have taken such actions, or have begun to undertake actions with a reasonable time frame for completion. Further, the appropriateness of the actions would be judged on what impact they have had in eliminating impediments within the grantee's control or overcoming the effects of identified impediments to fair housing choice that are outside the grantee's control.

Examples of such appropriate actions are contained in Volume 1 of HUD's Fair Housing Planning Guide, specifically, Chapter 3, Appendix A, the Chapter 4 Appendix and throughout Chapter 5. A detailed discussion of grantee actions, in general, is the focus of Volume 2 of the Fair Housing Planning Guide.

Comments are specifically sought on (1) the clarity and usefulness of the standards in assisting the Department's review of a grantee's compliance with its certification to affirmatively further fair housing, both as part of a Consolidated Plan submission and as a CDBG performance review requirement; and (2) the identification of any unintended consequences in applying these requirements that would frustrate the purposes of, or otherwise impede a grantee's ability to comply with, fair housing requirements.

Most grantees completed their analysis of impediments to fair housing choice last year and are now taking actions to address identified impediments. Thus, grantees' concerns are now generally focused on how HUD will view the appropriateness and sufficiency of their actions. The proposed regulation is intended to provide for a more objective determination of appropriateness. The regulation does not specifically address, however, the following issues: (1) Is a grantee required to take actions to eliminate or overcome the effects of all identified impediments? (2) Must the actions be taken each program year, or over a period of time—which may coincide with the grantee's Consolidated Plan period or some other period of time? (3) Should certain impediments have a priority for action? (4) At what point in the future would the grantee be expected to have eliminated all identified impediments within the grantee's control and taken all possible actions to overcome the effects of impediments not within the grantee's control? Comments are sought on whether and how the regulation should address these issues.

States are requested to comment on the issue of whether the State CDBG regulations should contain fair housing performance standards comparable to those proposed under § 570.904. The CDBG Entitlement program regulations contain an entire subpart (subpart O) concerning HUD reviews and determinations of grantee performance. Section 570.904, for example, describes the review criteria for determining compliance with equal opportunity and fair housing requirements. In contrast, the regulatory language governing performance reviews under the State CDBG program is much shorter and less detailed. Section 570.493 essentially declares only that HUD shall make such reviews and audits as are necessary to determine whether a State is in compliance with the various requirements of the Act and other applicable laws.

This rule proposes to clarify the review standard (at § 570.904) concerning fair housing performance for entitlement communities. There is no comparable review standard being proposed for States because there is no comparable section in the State program regulations. This proposed rule seeks to ensure more objective determinations of compliance with fair housing requirements. It also seeks to resolve the discontinuity between HUD's limited authority for action under the Consolidated Plan rule and HUD's broader authority to undertake performance reviews under the CDBG program rules. Not including specific review standards for the State CDBG program, however, means that the disparity and ambiguity over standards for performance will still exist for States. The difference between the CDBG program regulations for States and for Entitlement communities could also impart the false impression that HUD is more concerned about fair housing performance under the Entitlement program than under the State program. On the other hand, if HUD revises § 570.493 to include fair housing performance standards comparable to those proposed under § 570.904, the State program regulations

would be far more specific about fair housing performance than about other program requirements. This likewise could convey a false impression that HUD is more concerned about fair housing performance by States than about other CDBG program requirements. Comments on these State CDBG issues are therefore requested.

Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Nevertheless, the Department is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. The Department, therefore, is soliciting alternatives for compliance from small entities as to how these small entities might comply in a way less burdensome to them.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to the Community Development Block Grant entitlement program is 14.218 and for the State CDBG program is 14.228.

List of Subjects in 24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

List of Subjects in 24 CFR Part 570

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

Accordingly, the Department proposes to amend parts 91 and 570 of title 24 of the Code of Federal Regulations as follow:

PART 91—CONSOLIDATED SUBMISSION FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. Section 91.225 is amended by revising paragraph (a)(1) to read as follows:

§ 91.225 Certifications.

(a) * * *

(1) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that it will affirmatively further fair housing which means that it will assume the responsibility of fair housing planning by having conducted a complete and accurate analysis of impediments to fair housing choice within the jurisdiction (with periodic updates, as appropriate); is taking appropriate actions to overcome the effects of any impediments identified through that analysis outside the jurisdiction's control and to eliminate identified impediments within the control of the jurisdiction; and is maintaining records reflecting the analysis and actions in this regard.

* * * * *

3. Section 91.325 is amended by revising paragraph (a)(1) to read as follows:

§ 91.325 Certifications.

(a) *General*—(1) *Affirmatively furthering fair housing.* Each State is required to submit a certification that it will affirmatively further fair housing which means that it will assume the responsibility of fair housing planning by having conducted a complete and accurate analysis of impediments to fair housing choice within the State (with periodic updates, as appropriate); is taking appropriate actions to overcome the effects of any impediments identified through that analysis outside the State's control and to eliminate identified impediments within the State's control; and is maintaining records reflecting the analysis and actions in this regard. (See § 570.487(b)(4) of this title.)

* * * * *

4. Section 91.425 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 91.425 Certifications.

(a) *Consortium certifications*—(1) *General*—(i) *Affirmatively furthering fair housing.* Each consortium must certify that it will affirmatively further fair housing which means that it will assume the responsibility of fair housing planning by having conducted a complete and accurate analysis of impediments to fair housing choice within the area (with periodic updates, as appropriate); is taking appropriate actions to overcome the effects of any impediments identified through that analysis outside the consortium's control and to eliminate identified impediments within the consortium members' control; and is maintaining records reflecting the analysis and actions in this regard.

* * * * *

5. Section 91.500 is amended by adding a sentence to the end of paragraph (b)(3) to read as follows:

§ 91.500 HUD approval action.

* * * * *

(b) * * *

(3) * * * A jurisdiction's certification to affirmatively further fair housing would be determined to be inaccurate if the jurisdiction has no supporting records; the jurisdiction's analysis of impediments to fair housing choice (with periodic updates) is inaccurate or substantially incomplete based on generally available facts and data, including, but not limited to, Home Mortgage Disclosure Act data, facts disclosed in a HUD civil rights monitoring or compliance review, a civil action brought by the U.S. Department of Justice or private parties, and public and private studies of

housing discrimination affecting residents of the grantee jurisdiction; the actions taken by the jurisdiction to eliminate impediments within the grantee's control and overcome the effects of other identified impediments to fair housing choice were not appropriate because the actions did not address an identified impediment or did not result in meaningful and measurable progress in eliminating the impediment or overcoming the impediment's effects; or the grantee has been charged with a violation of the Fair Housing Act by HUD, is the defendant in a Fair Housing Act lawsuit filed by the U.S. Department of Justice, or has received from HUD a letter of noncompliance findings involving housing under title VI of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1974 or Section 109 of the Housing and Community Development Act of 1974, and the grantee has not resolved such charge, lawsuit, or letter of noncompliance findings to the satisfaction of HUD.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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

Authority: 42 U.S.C. 3535(d) and 5300–5320.

7. Section 570.487 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(b) * * *

(1) Conducting a complete and accurate analysis to identify impediments to fair housing choice within the State (with periodic updates, as appropriate);

(2) Taking appropriate actions to eliminate any impediments identified through that analysis that are within the control of the State and to overcome the effects of any impediments outside the control of the State;

* * * * *

8. Section 570.601 is amended by revising paragraph (a)(1) and the third sentence of paragraph (a)(2) to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

(a) * * *

(1) Public Law 88–352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR parts 1 and 100.

(2) * * * Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting a complete and accurate analysis to identify impediments to fair housing choice within its jurisdiction (with periodic updates, as appropriate), taking appropriate actions to eliminate any impediments identified through that analysis that are within the grantee's control and to overcome the effects of any identified impediments that are outside its control, and maintaining records reflecting the analysis and actions in this regard.

* * * * *

9. Section 570.904 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(ii), removing the current paragraph (b), redesignating paragraphs (c) and (d) as (b) and (c) respectively and revising newly redesignated paragraph (b), to read as follows:

§ 570.904 Equal opportunity and fair housing review.

(a) *Nondiscrimination requirements.* (1) The Department will presume that the recipient has carried out its CDBG-funded program in accordance with civil rights certifications and requirements of the Act prohibiting discrimination unless:

* * * * *

(ii) There is evidence that a policy, practice, standard or method of administration, although neutral on its face, operates to deny or affect adversely in a significantly disparate way the provision of employment or services, benefits or participation to persons of a particular race, color, religion where applicable, sex, national origin, age or handicap, or fair housing to persons of a particular race, color, religion, sex, disability, familial status, or national origin, or

* * * * *

(b) *Affirmatively furthering fair housing.* HUD will review to determine whether the grantee is affirmatively furthering fair housing in accordance with § 570.601(a)(2).

(1) HUD will determine whether:

(i) The grantee's analysis of impediments to fair housing choice (with periodic updates) is accurate and substantially complete based on generally available facts and data, including, but not limited to, Home Mortgage Disclosure Act data, facts disclosed in a HUD civil rights monitoring or compliance review, a civil action brought by the U.S. Department of Justice or private parties, and public and private studies of housing discrimination affecting residents of the grantee jurisdiction.

(ii) The grantee took appropriate actions to eliminate any identified impediments that are within its control and to overcome the effects of impediments to fair housing choice identified in the grantee's analysis of impediments to fair housing choice that are outside its control. An action is appropriate if the action addresses an identified impediment and results in meaningful and measurable progress in overcoming the impediment's effects.

(2) Notwithstanding favorable determinations under paragraph (b)(1) of this section, HUD may conclude that the grantee failed to meet its responsibility to affirmatively further fair housing if the grantee has been charged with a violation of the Fair Housing Act by HUD, is the defendant in a Fair Housing Act lawsuit filed by the U.S. Department of Justice, or has received from HUD a letter of noncompliance findings involving housing under title VI of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973 or section 109 of the HCD Act, and the grantee has not resolved such charge, lawsuit, or letter of noncompliance findings to the satisfaction of HUD.

* * * * *

Dated: September 25, 1998.

Andrew Cuomo,

Secretary.

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