

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

24 CFR Part 108

[Docket No. FR-4514-F-01]

RIN 2529-AA87

Compliance Procedures for Affirmative
Fair Housing Marketing; Nomenclature
Change

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: HUD's regulations at 24 CFR part 108 cover compliance procedures for affirmative fair housing marketing. As a result of internal HUD organizational changes, the offices referred to in these regulations no longer exist as they did when the regulations were issued. This final rule updates these references. This final rule also incorporates language that all correspondence that could lead to an enforcement action against a small entity (such as audits, investigations, or compliance reviews) will notify the small entity of its right to comment to the National Small Business Ombudsman. This requirement is added in accordance with the Small Business Regulatory Enforcement Fairness Act.

DATES: *Effective date:* September 13, 1999.

FOR FURTHER INFORMATION CONTACT:

Pamela D. Walsh, Office of Fair Housing and Equal Opportunity, Room 5224, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410-2000; telephone (202) 708-2288 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background Information**

HUD's regulations at 24 CFR part 108 cover compliance procedures for affirmative fair housing marketing. These regulations were published in 1979. Since then, HUD and the Office of Fair Housing and Equal Opportunity have experienced several reorganizations. As currently promulgated, the regulations define a compliance process that requires two offices to perform complementary monitoring and reviewing functions. An Area Office is primarily responsible for monitoring functions and a Regional Office is primarily responsible for reviewing functions. As a result of

recent internal HUD organizational changes, however, these offices no longer exist as they did when the regulations were issued in 1979.

This final rule replaces references to Area Office and Regional Office with the terms *monitoring office* and *civil rights/compliance reviewing office*, respectively. These terms do not correspond to actual offices within HUD, but are intended to reflect the functions of each office within the compliance process. HUD will publish concurrently with this final rule a notice in the **Federal Register** that designates the specific offices within HUD that will act as monitoring and civil rights/compliance reviewing offices under this part. In the future, should HUD's internal organizational structure change again, the specific offices that will act as monitoring and civil rights/compliance reviewing offices will again be designated through a notice published in the **Federal Register**.

With respect to compliance reviews, which are addressed in 24 CFR part 108, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows: Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1-888-REG-FAIR (1-888-734-3247).

As HUD stated in its notice describing HUD's actions on implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration (SBA) to provide small entities with information on the

Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD. Accordingly, this rule adopts the language requested by the SBA and it is included in § 108.25(b).

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). For the following reasons, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment.

This final rule makes nomenclature changes to 24 CFR part 108. As a result of internal HUD organizational changes the offices referred to in the current regulations no longer exist as they did when the regulations were issued. This final rule merely replaces references to Area Office and Regional Office with the terms *monitoring office* and *civil rights/compliance reviewing office*, respectively. This rule also amends 24 CFR part 108 to include "notification" language to small entities, consistent with SBREFA, which the SBA has requested Federal agencies adopt in their enforcement regulations, and which HUD has agreed to adopt in its enforcement regulations. Neither of these two amendments make any substantive changes to the compliance procedures contained in part 108. Therefore, we have determined that it is unnecessary to publish this rule for public comment prior to publishing the rule for effect.

III. Findings and Certifications*Environmental Impact*

This final rule involves regulations that set out fair housing or nondiscrimination standards or enforcement procedures. Accordingly, under 24 CFR 50.19(c)(3), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852, codified as amended at 42 U.S.C. 4321-4347).

Regulatory Flexibility Act

Section 605(b). The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities. This final rule implements a nomenclature change only and does not make any substantive changes to the regulations at 24 CFR part 108. Therefore, the action taken by this rule (the nomenclature change) does not create any additional burden.

Section 610. HUD notes, however, that changes were last made to this rule in 1985. Section 610 of the Regulatory Flexibility Act requires Federal Agencies to review every ten years existing regulations that have or will have a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities. In deciding whether change is necessary, the Regulatory Flexibility Act establishes several factors that must be considered:

- (1) Whether the rule is still needed;
- (2) What type of complaints or comments were received from the public concerning the rule;
- (3) The complexity of the rule;
- (4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- (5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

During the years that the regulations in 24 CFR part 108 have been in effect, HUD has not received any data that indicates that the requirements of this part have had a significant economic impact on a substantial number of small entities. Nevertheless, HUD has reviewed this rule in accordance with the principles of section 610.

(1) This rule is only applicable to participants in certain HUD programs, as specified in § 108.1. Because HUD's mission is to provide a decent, safe and sanitary home and suitable living environment for every American, and this mission encompasses fighting for fair housing and increasing affordable housing and homeownership, HUD believes that this rule is needed for

HUD's programs. HUD's programs should provide the leadership in marketing sales and rentals of homes that affirmatively furthers fair housing.

(2) HUD has not received complaints about this rule.

(3) The rule is not complex.

(4) The rule does not overlap, duplicate or conflict with other Federal rules, nor, to the extent feasible, with State and local governmental rules. Again, this rule is only applicable to HUD programs.

(5) The rule was last evaluated in 1995 as part of President Clinton's directive to all Federal agencies to review all existing regulations and determine which regulations were obsolete, no longer necessary or could be consolidated with other regulations. In 1995, HUD determined, as it has now, that this rule is needed, and that the rule did not duplicate other HUD regulations, and therefore consolidation with other regulations was not appropriate.

The marketing techniques addressed by this rule have changed given the change in technology. The rule, however, does not regulate the type of marketing techniques used. Rather, the rule provides that whatever marketing techniques the HUD program participant commits to utilize in its Affirmative Fair Housing Marketing (AFHM) plan, the participant utilizes such techniques to affirmatively further fair housing.

As noted earlier, although this rule makes no substantive changes to 24 CFR part 108, only nomenclature changes, HUD welcomes comments from its program participants about its part 108 regulation and their experience with its requirements to date. Comments that provide a factual basis for any views or suggestions presented are particularly helpful to HUD in its evaluation of this regulation. Comments should be submitted to: Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the docket number of FR-4514-F-01.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or

tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects in 24 CFR Part 108

Fair housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 108 as follows:

PART 108—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

1. The authority citation for part 108 is revised to read as follows:

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

2. Add new paragraphs (e) and (f) to § 108.1 to read as follows:

§ 108.1 Purpose and application.

* * * * *

(e) The term monitoring office includes any office within HUD designated by HUD to act as a monitoring office. As necessary, HUD will designate specific offices within HUD to act as monitoring offices through a notice published in the **Federal Register**.

(f) The term *civil rights/compliance reviewing office* includes any office within HUD designated by HUD to act as a civil rights/compliance reviewing office. As necessary, HUD will designate specific offices within HUD to act as civil rights/compliance reviewing offices through a notice published in the **Federal Register**.

3. Revise the first and second sentences of § 108.15 to read as follows:

§ 108.15 Pre-occupancy conference.

Applicants shall submit a Notification of Intent to Begin Marketing to the monitoring office no later than 90 days prior to engaging in sales or rental marketing activities. Upon receipt of the Notification of Intent to Begin Marketing from the applicant, the monitoring office shall review any previously approved plan and may schedule a pre-occupancy conference. * * *

4. Revise § 108.20 to read as follows:

§ 108.20 Monitoring office responsibility for monitoring plans and reports.

(a) *Submission of documentation.*

Pursuant to initiation of marketing, the applicant shall submit to the monitoring office reports documenting the implementation of the AFHM plan, including sales or rental reports, as required by the Department. Copies of such documentation shall be forwarded to the civil rights/compliance reviewing office by the monitoring office as requested.

(b) *Monitoring of AFHM plan.* The monitoring office is responsible for monitoring AFHM plans and providing technical assistance to the applicant in preparation or modification of such plans during the period of development and initial implementation.

(c) *Review of applicant's reports.* Each sales or rental report shall be reviewed by the monitoring office as it is received. When sales or rental reports show that 20% of the units covered by the AFHM plan have been sold or rented, or whenever it appears that the plan may not accomplish its intended objective, the monitoring office shall notify the civil rights/compliance reviewing office.

(d) *Failure of applicant to file documentation.* If the applicant fails to file required documentation, the applicant shall be sent a written notice indicating that if the delinquent documentation is not submitted to the monitoring office within 10 days from date of receipt of the notice, the matter will be referred to the civil rights/compliance reviewing office by the monitoring office for action which may lead to the imposition of sanctions.

5. Revise § 108.21 to read as follows:

§ 108.21 Civil rights/compliance reviewing office compliance responsibility.

The civil rights/compliance reviewing office shall be responsible for determining whether an applicant's actions are in apparent compliance with its approved AFHM plan, the AFHM regulations, and this part and for determining changes or modifications necessary in the plan after initiation of marketing.

6. Revise paragraphs (a), (b), (d), (e), (f), (g), and (h) of § 108.25 to read as follows:

§ 108.25 Compliance meeting.

(a) *Scheduling meeting.* If an applicant fails to comply with requirements under § 108.15 or § 108.20 or it appears that the goals of the AFHM plan may not be achieved, or that the implementation of the Plan should be

modified, the civil rights/compliance reviewing office shall schedule a meeting with the applicant. The meeting shall be held at least ten days before the next sales or rental report is due. The purpose of the compliance meeting is to review the applicant's compliance with AFHM requirements and the implementation of the AFHM Plan and to indicate any changes or modifications which may be required in the Plan.

(b) *Notice of Compliance Meeting.* A Notice of Compliance Meeting shall be sent to the last known address of the applicant, by certified mail or through personal service. The Notice will advise the applicant of the right to respond within seven (7) days to the matters identified as subjects of the meeting and to submit information and relevant data evidencing compliance with the AFHM regulations, the AFHM Plan, Executive Order 11063 and title VIII of the Civil Rights Act of 1968, when appropriate. If the applicant is a small entity, as defined by the regulations of the Small Business Administration, the Notice shall include notification that the entity may submit comment on HUD's actions to the Small Business and Agriculture Regulatory Enforcement Ombudsman, and shall include the appropriate contact information.

* * * * *

(d) *Preparation for the compliance meeting.* The monitoring office will provide information concerning the status of the project or housing involved to be presented to the applicant at the meeting. The monitoring office shall be notified of the meeting and may send representatives to the meeting.

(e) *Resolution of matters.* Where matters raised in the compliance meetings are resolved through revision to the plan or its implementation, the terms of the resolution shall be reduced to writing and submitted to the civil rights/compliance reviewing office within 10 days of the date of the compliance meeting.

(f) *Determination of compliance.* If the evidence shows no violation of the AFHM regulations and that the applicant is complying with its approved AFHM plan and this part, the civil rights/compliance reviewing office shall so notify the applicant within 10 days of the meeting.

(g) *Determination of possible noncompliance.* If the evidence indicates an apparent failure to comply with the AFHM plan or the AFHM regulation, or if the matters raised cannot be resolved, the civil rights/compliance reviewing office shall so notify the applicant no later than ten (10) days after the date the compliance

meeting is held, in writing by certified mail, return receipt requested, and shall advise the applicant that the Department will conduct a comprehensive compliance review or refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for consideration of action including the imposition of sanctions. The purpose of a compliance review is to determine whether the applicant has complied with the provisions of Executive Order 11063, title VIII of the Civil Rights Act of 1968, and the AFHM regulations in conjunction with the applicant's specific AFHM plan previously approved by HUD.

(h) *Failure of applicant to attend the meeting.* If the applicant fails to attend the meeting scheduled pursuant to this section, the civil rights/compliance reviewing office shall so notify the applicant no later than ten (10) days after the date of the scheduled meeting, in writing by certified mail, return receipt requested, and shall advise the applicant as to whether the civil rights/compliance reviewing office will conduct a comprehensive compliance review or refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for consideration of action including the imposition of sanctions.

7. Revise the first and second sentences of § 108.35 to read as follows:

§ 108.35 Complaints.

Individuals and private and public entities may file complaints alleging violations of the AFHM regulations or an approved AFHM plan with any monitoring office, civil rights/compliance reviewing office, or with the Assistant Secretary for FH&EO. Complaints will be referred to the civil rights/compliance reviewing office.

* * *

8. Revise paragraphs (a) and (b) of § 108.40 to read as follows:

§ 108.40 Compliance reviews.

(a) *General.* All compliance reviews shall be conducted by the civil rights/compliance reviewing office. Complaints alleging a violation(s) of the AFHM regulations, or information ascertained in the absence of a complaint indicating an applicant's failure to comply with an AFHM plan, shall be referred immediately to the civil rights/compliance reviewing office. The monitoring office shall be notified as appropriate of all alleged violations of the AFHM regulations or alleged failure to comply with an AFHM plan.

(b) *Initiation of compliance reviews.* Even in the absence of a complaint or other information indicating

noncompliance pursuant to paragraph (a), the civil rights/compliance reviewing office may conduct periodic compliance reviews throughout the life of the mortgage in the case of multi-family projects and throughout the duration of the Housing Assistance Payments Contract with the Department in the case of housing assisted under

section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437.

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§ 108.45 [Amended]

9. Remove the last sentence of § 108.45.

Dated: July 26, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99-20801 Filed 8-11-99; 8:45 am]

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