



**AFFIRMATIVE FAIR HOUSING MARKETING  
PLAN AND PROCEDURES**



**City of Santa Monica  
Resource Management Department  
Housing and Redevelopment Division  
2121 Cloverfield Boulevard  
Santa Monica, California 90404  
(310) 458-8702**

## OVERVIEW OF THE AFFIRMATIVE FAIR HOUSING MARKETING PLAN

The Affirmative Fair Housing Marketing Plan (AFHMP) is a marketing strategy designed to attract renters and buyers of all majority and minority groups, regardless of sex, handicap and familial status to assisted rental units and sales of dwellings that are being marketed. The City of Santa Monica, Housing and Redevelopment Division, and project owners must adopt affirmative marketing procedures and requirements for any housing with five or more Home-assisted units. Affirmative marketing differs from general marketing activities because it specifically targets potential tenants and homebuyers who are least likely to apply for the housing, in order to make them aware of available affordable housing opportunities.

This marketing plan and procedure is a guide to assist the City of Santa Monica, Housing Division and its recipients and subrecipients receiving funds. It summarizes AFHM plans and affirmative marketing procedures as required by the Department of Housing and Urban Development.

In developing an Affirmative Marketing Plan, the City of Santa Monica requires all applicants do the following:

1. **Targeting:** Identify the segments of the eligible population
2. **Outreach:** Outline an outreach program that includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total population.

3. **Indicators:** State the indicators to be used to measure the success of the marketing program. The effectiveness of the marketing program can be determined by noting if the program effectively attracted renters or buyers who are:
  - ✓ from the majority and minority groups, regardless of gender, as represented in the population of the housing market area;
  - ✓ person with disabilities and their families; and
  - ✓ families with children, if applicable.

All applicants are required to make a “good faith effort” to carry out the provisions of the Department of Housing and Urban Development’s Affirmative Marketing requirements (see Appendix B). Good faith efforts are recorded activities and documented outreach to those individuals identified as least likely to apply. Examples of such efforts include:

1. **Advertising** in print and electronic media that is used and viewed or listened to by those identified as least likely to apply;
2. **Marketing** housing to specific community, religious or other organizations frequented by those least likely to apply;
3. **Developing a brochure or handout** that describes facilities to be used by buyers or renters, e.g., transportation services, schools, hospitals, industry, and recreational facilities. The brochure should also describe how the proposed project will be accessible to physically handicapped

persons and describes any reasonable accommodations made to persons with disabilities; and

4. **Insuring** that the management staff has read and understood the Fair Housing Act, and the purpose and objectives of the AFHM Plan.

**THE AFFIRMATIVE FAIR MARKETING PLAN  
HUD FORM -935.2  
(EXP. 11/30/2006)**

**PLEASE SEE APPENDIX A FOR FORM**

## **AFFIRMATIVE FAIR HOUSING MARKETING PROCEDURES**

Recipients and subrecipients of HOME funds through the City of Santa Monica, Housing and Redevelopment Division, for rental and homebuyer projects containing 5 or more HOME-assisted housing units must use affirmative marketing practices when soliciting renters or buyers.

HUD's definition of affirmative marketing is marketing efforts intended to reach those persons who are least likely to apply for HOME-assisted housing.

All project owners are required to do the following:

### **Outreach Documentation**

At least once annually, all project owners will conduct a public outreach effort that will make available public information on all rental units that have received assistance.

1. All marketing of HOME-assisted housing will be jurisdiction-wide and that all advertising will be placed in sources of wide circulation.
2. Media sources should include advertisement to a particular audience, (e.g. newspapers that serve protected classes).
3. All advertisement and brochures, and other written materials should be published in multiple languages, in order to reach non-english speaking audiences and display the equal opportunity logotype or slogan.
4. Contact organizations whose membership or clientele consists primarily of protected class members.

5. The project owner must display the Equal Opportunity logo and fair housing poster in an area accessible to the public (e.g., rental office).

## **File Documentation**

The City of Santa Monica, Housing and Redevelopment Division, will review for compliance project owners AFHM plan in accordance with Compliance procedures as set forth in 24 CFR Part 108. All project owners must keep the following materials in the AFHM file for future monitoring of records:

1. Copies of advertisements, brochures, leaflets, and letters to community contacts.
2. Maintenance of information on the race, sex and ethnicity of applicants and tenants to demonstrate the results of the owner's affirmative marketing efforts.

In instances of noncompliance by a project owner, a finding will be issued and corrected action taken by the project owner in the time specified. The project owner will for the period of affordability maintain information demonstrating compliance with the requirements in this marketing plan.

**APPENDIX A**  
**HUD FORM 935.2 AND INSTRUCTIONS**  
**AFFIRMATIVE FAIR HOUSING MARKETING PLAN**



4c. **Community Contacts.** To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations listed below that are located in the housing market area. If more space is needed, attach an additional sheet. Notify HUD-Housing of any changes in this list. Attach a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information.)

Name of Group/Organization	Group Identification	Approximate Date (mm/dd/yyyy)	Person Contacted or to be Contacted
Address & Phone Number	Method of Contact	Indicate the specific function the Group/Organization will undertake in implementing the marketing program	

5. **Future Marketing Activities (Rental Units Only)** Mark the box(s) that best describe marketing activities to fill vacancies as they occur after the project has been initially occupied.

Newspapers/Publications       Radio       TV  
 Brochures/Leaflets/Handouts  
 Site Signs       Community Contacts       Other(specify)

6. **Experience and Staff Instructions (See instructions)**

6a. Staff has experience.      Yes      No

6b. On separate sheets, indicate training to be provided to staff on Federal, State and local fair housing laws and regulations, as well as this AFHM Plan. Attach a copy of the instructions to staff regarding fair housing.

7. **Additional Considerations** Attach additional sheets as needed.

8. **Review and Update** By signing this form, the applicant agrees to review their AFHM Plan every 5 years and update as needed to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (24 CFR 200.620).

Signature of person submitting this Plan & Date of Submission (mm/dd/yyyy) \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title & Name of Company \_\_\_\_\_

For HUD-Office of Housing Use Only	For HUD-Office of Fair Housing and Equal Opportunity Use Only
Reviewing Official:	Approved _____ Disapproval _____ (Check One)
Signature & Date (mm/dd/yyyy)	Signature & Date (mm/dd/yyyy)
Name (type or print)	Name (type or print)
Title	Title

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Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

The Affirmative Fair Housing Marketing (AFHM) Plan is needed to ensure that insured and subsidized developers are taking necessary steps to eliminate discriminatory practices involving Federally insured and subsidized housing. No application for any housing project or subdivision insured or subsidized under the Department of Housing and Urban Development's (HUD) housing programs can be funded without an approved AFHM Plan (See the "Applicability" section in the instructions below.) The responses are required to obtain or retain a benefit under the Fair Housing Act, Section 808(e)(5) & (6) and 24 CFR Part 200, Subpart M. The form contains no questions of a confidential nature.

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**Applicability:** This form is to be completed by all insured or subsidized: (1) multifamily projects; and (2) single-family homebuilders that can not meet at least one of the following requirements: (a) is a signatory in good standing to a Voluntary Affirmative Marketing Agreement (VAMA); (b) has a HUD approved AFHM Plan; (c) has contracted with someone to market their houses who has an AFHM Plan or is a signatory to a VAMA; or (d) can self certify compliance with HUD's AFHM Regulations, maintain records of their AFHM activities and make the records available to HUD upon request. Single-family homebuilders that can meet at least one of the above requirements can complete block 11 on form HUD-92541-Builder's Certification of Plans, Specifications, & Site instead of completing the AFHM Plan. [See HUD Mortgage Letters 1995-18 dated April 28, 1995 and 2001-09 dated April 2, 2001]

Each applicant is required to carry out an affirmative program to attract prospective buyers or tenants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, or familial status. Racial groups include White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Other Pacific Islander. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino, persons with disabilities, or families with children. The applicant shall describe in the AFHM Plan the proposed activities to be carried out during advance marketing, where applicable, and the initial sales and rent-up period. The affirmative marketing program also should ensure that any group(s) of persons ordinarily **not** likely to apply for this housing without special outreach (See Part 3), know about the housing, feel welcome to apply and have the opportunity to buy or rent.

## INSTRUCTIONS

**Send completed form to:** your local HUD Office

**Attention:** Director, Office of Housing

**Part 1-Applicant and Project Identification.** Blocks 1a thru 1f-Self-Explanatory. Block 1g-the applicant should specify the approximate date for starting marketing activities to the groups targeted for special outreach and the anticipated date of initial occupancy (if unoccupied). Block 1h-the applicant should indicate the housing market area, in which the housing will be (is) located. Block 1i - the applicant may obtain census tract location information from local planning agencies, public libraries and other sources of census data. Block 1j the applicant should complete only if a Managing/Sales Agent (the agent can not be the applicant) is implementing the AFHM Plan.

### **Part 2-Type of Affirmative Marketing Plan:**

Applicants for multifamily housing projects should check both the MFH (Multifamily Housing) Plan and indicate the status of the AFHM Plan, e.g. new or update. As appropriate, single-family homebuilders who submit an AFHM Plan, should check the SFH (Single-family Housing) Plan box.

All Plans should indicate the racial composition of the housing market area in which the housing will be (is) located by checking one of the three choices. Single-family scattered site builder should submit an SFH Plan that reflects the racial composition of each the housing market area in which the housing will be (is) located. For example, if a builder plans to construct units in both minority and non-minority housing market areas, a separate AFHM Plan shall be submitted for each housing market area.

**Part 3-Direction of Marketing Activity.** Indicate which group(s) the applicant believes are least likely to apply for this housing without special outreach. Consider factors such as price or rental of housing, sponsorship of housing, racial/ethnic characteristics of housing market area in which housing will be (is) located, disability or familial status of eligible population, public transportation routes, etc.

**Part 4-Marketing Program.** The applicant shall describe the marketing program to be used to attract all segments of the eligible population, especially those groups designated in Part 3 of this AFHM Plan as least likely to apply. The applicant shall state: the type of media to be used, the names of newspaper/call letters of radio or TV stations; the identity of the circulation or audience of the media identified in the AFHM Plan (e.g., White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Other Pacific Islander, Hispanic or Latino, persons with disabilities, and families with children) and the size or duration of newspaper advertising or length and frequency of broadcast advertising. Community contacts include individuals or organizations that are well known in the housing market area or the locality, that can influence persons within groups considered least likely to apply. Such contacts may include, but need not be limited to: neighborhood, minority and women's organizations, grass root faith-based or other community based organizations, labor unions, employers, public and private agencies, disability advocates, schools and individuals who are connected with these organizations and/or are well-known in the community. Applicants should notify their local HUD—Office of Housing of any changes to the list in Part 4c of this AFHM Plan.

**Part 5-Future Marketing Activities.** Self-Explanatory.

**Part 6-Experience and Staff Instructions.**

- 6a. The applicant should indicate whether the sales/rental staff have had previous experience in marketing housing to group(s) identified as least likely to apply for the housing.
- 6b. Describe the instructions and training provided or to be provided to sales/rental staff. This guidance to staff must include information regarding Federal, State and local fair housing laws and this AFHM Plan.

Copies of any written materials should be submitted with the AFHM Plan, if such materials are available.

**Part 7-Additional Considerations.** In this section describe other groups to which the housing may be marketed and efforts not previously mentioned which are planned to attract persons least likely to apply for the housing. Such efforts may include outreach activities to grass root faith-based or other community based organizations, and other ethnic groups with limited English proficiency (LEP).

**Part 8-Review and Update.** By signing, the applicant assumes full responsibility for the AFHM Plans implementation and required reviews and updates. HUD may monitor the implementation of this AFHM Plan at any time and request modification in its format or content, where deemed necessary.

**Notice of Intent to Begin Marketing.** No later than 90 days prior to the initiation of sales or rental marketing activities, the applicant of an approved AFHM Plan shall submit notice of intent to begin marketing. The notification is required by the Affirmative Fair Housing Marketing Plan Compliance Regulations (24 CFR Part 108.15). It is submitted either orally or in writing to the Office of Housing in the appropriate HUD Office servicing the locality in which the proposed housing will be located.

OMB approval of the Affirmative Fair Housing Plan includes approval of this notification procedure as part of the AFHM Plan. The burden hours for such notification are included in the total designated for this AFHM Plan form.

## **APPENDIX B**

### **TITLE 24 SUBPART H, SECTION 92.351 AFFIRMATIVE MARKETING; MINORITY OUTREACH PROGRAM**

[Code of Federal Regulations]  
[Title 24, Volume 1]  
[Revised as of April 1, 2004]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 24CFR92.351]

[Page 618-619]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 92\_HOME INVESTMENT PARTNERSHIPS PROGRAM--Table of Contents

Subpart H\_Other Federal Requirements

Sec. 92.351 Affirmative marketing; minority outreach program.

(a) Affirmative marketing. (1) Each participating jurisdiction must adopt affirmative marketing procedures and requirements for rental and homebuyer projects containing 5 or more HOME-assisted housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. (The affirmative marketing procedures do not apply to families with Section 8 tenant-based rental housing assistance or families with tenant-based rental assistance provided with HOME funds.)

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(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and

(v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

(b) Minority outreach. A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the

participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

**APPENDIX C**  
**24 CFR PART 108**  
**COMPLIANCE PROCEDURES**  
**FOR AFFIRMATIVE**  
**FAIR HOUSING MARKETING;**

# Federal Register

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Thursday  
August 12, 1999

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## Part III

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### Department of Housing and Urban Development

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24 CFR Part 108

Compliance Procedures for Affirmative  
Fair Housing Marketing; Nomenclature  
Change; Final Rule

**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.

\* \* \* \* \*

**§ 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.*  
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