

CHAPTER 22

FAIR HOUSING AND EQUAL OPPORTUNITY (FHEO)

22-1 PURPOSE. This Chapter provides guidance to CPD Field Office staff in carrying out their responsibilities to conduct limited monitoring reviews of:

- civil rights-related program requirements (CRRPRs) in CPD programs;
- program requirements for equal opportunity for persons with disabilities; and
- the economic development requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable to CPD programs.

22-2 APPLICABILITY. Fair Housing and Equal Opportunity (FHEO) monitoring reviews are on specific fair housing and equal opportunity requirements that are established by the statutes and administered by CPD and FHEO and their program regulations.

A. Compliance is based on requirements pertaining to nondiscrimination in programs receiving Federal financial assistance, including:

- Title VI of the Civil Rights Act of 1964;
- Section 109 of Title I of the Housing and Community Development Act of 1974;
- Section 504 of the Rehabilitation Act of 1973; and
- the Age Discrimination Act of 1975.

These requirements are designed to prevent discrimination in the delivery of benefits and services because of race, color, religion (creed), sex, national origin, age, familial status or disability.

B. Other issues reviewed are:

- nondiscrimination in the sale, rental or financing of housing (the Fair Housing Act and Executive Order 11063) to ensure that HUD programs are conducted in a manner to affirmatively further the objectives of the Fair Housing Act; and
- economic development requirements of Section 3 of the Housing and Urban Development Act of 1968 (Section 3) to ensure that, to the greatest extent feasible, employment and business opportunities generated by these programs are directed to low-income and very low-income residents and business concerns located within areas affected by such programs.

22-3 CPD LIMITED MONITORING REVIEW RESPONSIBILITIES. Primary responsibility for oversight of nondiscrimination requirements rests with the Office of Fair Housing and Equal Opportunity (FHEO). However, since “ensuring equal opportunity in housing” is a HUD strategic goal, CPD staff are responsible for conducting limited monitoring reviews as discussed in this Chapter. For purposes of this Chapter, limited monitoring review is the means for collecting certain data concerning program participants’ implementation of their nondiscrimination responsibilities within CPD’s programs. CPD staff’s responsibilities include the following steps:

A. Pre-Monitoring Review.

- (1) Conduct risk analysis to determine monitoring review priorities (following the guidance in Chapter 2 of this Handbook) and provide the monitoring schedule as well as any updates to the FHEO Field Office Director.
- (2) Provide Grants Management Process (GMP) data to FHEO.
- (3) Examine the recommended materials specified in this Handbook for the program or programs being monitored. At minimum, this includes reviews of:
 - (i) for CPD formula program participants, the CAPER and racial and ethnic direct beneficiary data in the Integrated Disbursement and Information System (IDIS);
 - (ii) for CPD formula program participants, the Analysis of Impediments to Fair Housing Choice (AI) and any information available in the FHEO Field Office on known impediments to fair housing choice and any known actions (appropriate or inappropriate) taken to address these impediments.
 - (iii) Grant agreements and other relevant legal documents (i.e., voluntary compliance agreements, special assurances, etc.) containing civil rights-related clauses.
 - (iv) CPD’s update to CPD Notice 00-10, issued December 26, 2000, “Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds -- Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and the Architectural Barriers Act.”

CPD and FHEO staff may coordinate their monitoring strategies based on risk assessment results.

B. Monitoring Review.

- (1) Complete the appropriate Exhibits in this Chapter for the applicable program. The review is based primarily on an examination of the program participant's records. This includes the regulatory records required by:
 - (i) 24 CFR 570.506(g), for Community Development Block Grant (CDBG) entitlement program participants,
 - (ii) 24 CFR 91.520(a), for State CDBG program participants, and
 - (iii) 24 CFR 92.509(b), for HOME participating jurisdictions,

and which are identified by FHEO for CPD prior to the monitoring review.

CPD staff does not make "findings of civil rights compliance" for program participants. However, CPD does identify civil rights/fair housing concerns for FHEO staff to further review. Civil rights concerns are identified on the appropriate Exhibit as well as the "Monitoring Summary Sheet." During the exit conference, CPD staff advises the program participant of nondiscrimination concerns, if any, that have been identified. CPD staff may provide guidance regarding civil rights-related program requirements (CRRPRs) although it is advisable to first discuss the guidance with FHEO staff. The CPD staff also advises the participants that any such concerns are being referred to FHEO for further review and possible action.

- (2) Within five (5) business days after the monitoring review has been completed, forward the completed Exhibit(s) and other relevant documentation to FHEO. FHEO follows up as needed and specified under FHEO responsibilities.
- (3) CPD reviewers are encouraged to discuss civil rights questions and issues with FHEO staff during the monitoring process.

C. Post-Monitoring Review.

- (1) Enter pertinent information into CPD's database(s) for future risk analyses.
- (2) Provide a copy of CPD's final monitoring letter to FHEO. (Note: It is preferable that CPD and FHEO engage in joint decision-making on advice given and/or actions taken to contribute to consistency in program oversight and management.)

- (3) Review any correspondence between FHEO and the program participant and discuss joint issues with FHEO.
- (4) Provide FHEO with any correspondence received from program participant in response to FHEO communication with the program participant.

22-4 FHEO REVIEW AND FOLLOW-UP RESPONSIBILITY. FHEO retains the authority to determine and resolve matters involving compliance with non-discrimination requirements, as detailed in the Delegation of Authority published in the Federal Register dated August 4, 2003 (see Vol. 68, No. 149, page 45844; FR-4837-D-27). However, CPD may make noncompliance findings under specific program regulations. FHEO uses the results of CPD staff's limited monitoring reviews as one of the bases for risk determination. In sharing this limited monitoring review responsibility, FHEO Field Office staff work cooperatively with CPD staff throughout the process by:

- A. Providing training and technical assistance (TA) to CPD Field Office staff who will be conducting the limited monitoring reviews. This training and TA will be conducted upon request or on an as-needed basis.
- B. Conducting its FHEO risk analysis process to identify which program participants FHEO will recommend for review during the year. In years in which CPD reviews a specific program participant but FHEO does not conduct a Title VI and/or Section 109 limited monitoring review of that recipient, CPD staff will conduct the FHEO limited monitoring review, if CPD and/or FHEO risk assessment results indicate the need. FHEO risk assessment results will be provided to the CPD Field Office Director and a negotiated monitoring review schedule and monitoring strategies will be developed for the local Field Office based on risk analysis results.
- C. Providing CPD with information on any Fair Housing Act, Section 504, and other civil rights issues encountered with CPD program participants. FHEO will coordinate provision of this information with Regional Counsel. Headquarters FHEO, with assistance from the Office of General Counsel for Fair Housing, and the Department of Justice (DOJ), will update this information throughout the year and share with FHEO Field Offices. This list is also available on FHEO's Civil Rights Front-End and Limited Monitoring Review website at <http://hudatwork.hud.gov/po/e/FERReview/threshold.cfm>. Within five (5) business days of receipt, FHEO Field Offices will forward any information to CPD that may be relevant for CPD staff with respect to CPD's scheduled monitoring review of program participants during the year.
- D. Reviewing all completed Exhibits for civil rights, Section 504, and Section 3 concerns to determine whether identified civil rights problems that surfaced

during the limited monitoring review require further action (such as additional monitoring or referral to the FHEO Regional Hub office for possible compliance review). If deficiencies or concerns are raised, FHEO staff will take the following steps:

- i. provide technical assistance to the program participant to resolve the findings, as needed, and/or
 - ii. conduct an FHEO program monitoring or compliance review.
- E. Reviewing a randomly selected sample of all Exhibits and attachments (approximately 35% of the universe) for quality control purposes.
- F. Providing copies of letters and related information to CPD staff on all follow-up and discussing problems, as necessary.
- G. If there are any civil rights-related program noncompliance findings, providing any requested guidance or technical assistance to the program participant to resolve any Fair Housing Act, Section 504, or other civil rights problems. Working directly with the program participant and keeping CPD staff apprised of all issues and progress, FHEO will do this by drafting language describing any noncompliance findings to be included in CPD's monitoring review letter within ten (10) days of a request, providing technical assistance to resolve the findings or following up with its own monitoring review, compliance reviews, etc.
- H. Using CPD's completed Exhibits for FHEO's future risk analyses. All limited monitoring review concerns referred to FHEO and any follow-up actions that FHEO may take will be entered into FHEO's risk analysis data management systems (RADMS). Information from RADMS will be used to assist FHEO in determining low, medium, or high-risk program participants in the following year.

22-5 CDBG EQUAL OPPORTUNITY AND FAIR HOUSING REVIEW CRITERIA.

The requirements at 24 CFR 570.904 set performance review criteria for equal opportunity and fair housing for the CDBG Program in the reviews for equal opportunity, equal employment opportunity, fair housing, and actions to use minority and women's business firms. It is assumed that all CDBG program participants are in compliance with their certification for nondiscrimination and affirmatively furthering fair housing unless there is evidence that proves different treatment to beneficiaries based on race, color, national origin, sex, religion, familial status, and disability.

22-6 CDBG NONDISCRIMINATION COMPLIANCE. The requirements at 24 CFR 570.912 establish what actions HUD may impose if a CDBG program participant is found to be in noncompliance with civil rights and fair housing statutes.

Program participants are given sixty (60) days to come into compliance. If after 60 days, the program participant fails to comply, HUD may:

- A. Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.
- B. Exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).
- C. Exercise the powers and functions provided for in 24 CFR 570.913.
- D. Take such other action as may be provided by law.

22-7 REVIEW OF ECONOMIC OPPORTUNITY ISSUES (Section 3 of the Housing and Urban Development Act of 1968). The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing.

Section 3 monitoring reviews are directed to reviewing whether economic opportunity is directed towards appropriate beneficiaries as described above. In years in which FHEO is not conducting its own program monitoring of Section 3 activities for a specific program participant, CPD Field Office staff will conduct a limited monitoring review of the participant's Section 3-based activities if it will be conducting a program monitoring review of that program for its own purposes. Because the Section 3 program is administered by Headquarters FHEO, the following protocol governs the Section 3 limited monitoring review:

- A. The local FHEO Field Office will inform CPD as to which program participants will be monitored for Section 3 compliance by FHEO staff during the program year. This list must be provided prior to completion of the Field Office's Management Plan.
- B. CPD will use the FHEO listing to determine which of the programs it is monitoring in that year should be monitored for Section 3 activities (using Exhibit 22-7).
- C. At the exit conference, CPD staff will advise the program participant if there are Section 3 concerns that will be referred to FHEO for further review and action.

- D. After conducting a Section 3 review, CPD is responsible for forwarding the completed Exhibit and related information and documents to its FHEO Field Office counterpart.
- E. FHEO is responsible for reviewing the limited monitoring review information and determining if further action is warranted. Additional actions will be conducted in accordance with Section 22-4 above.

22-8 CHAPTER ATTACHMENT AND EXHIBITS. This Chapter contains an Attachment and seven (7) Exhibits. Attachment 22-1. “Applicable Civil Rights Laws, Their Applicable Regulations and Coverage,” provides a summary table of the civil rights laws and their applicable regulations by the categories of program participants that must comply with these authorities. The 7 Exhibits, which contain the limited monitoring review standards and procedures for CPD field staff use, are briefly described below. CPD staff need only use the Exhibit applicable to the on-going CPD monitoring review along with the Exhibits to review Section 504 of the Rehabilitation Act and Section 3 of the Housing and Urban Development Act. For example, if CPD staff is conducting a HOME review, Exhibit 22-3, “Guide for Review of the HOME Investment Partnerships Program,” is used along with Exhibit 22-6, Guide for Review of the Civil Rights-Related Program Requirements for Section 504 of the Rehabilitation Act of 1973, as amended,” and Exhibit 22-7, “Guide for Review of Section 3 of the Housing and Urban Development Act of 1968.”

- A. Exhibit 22-1, “Guide for Review of Civil Rights-Related Program Requirements for the Community Development Block Grant (CDBG) Entitlement Program.” This Exhibit is designed to determine whether:
 1. A program participant maintains records as required by 24 CFR 570.506(g).
 2. The records maintained by the program participant accurately portray its actions and, if the CPD reviewer is conducting an on-site monitoring review, the activities can be verified on-site.
- B. Exhibit 22-2, “Guide for Review of Civil Rights-Related Requirements for the State Community Development Block Grant (CDBG) Program.” This Exhibit is to be used when conducting a monitoring review of the State CDBG Program for record-keeping requirements by the program and monitoring of its recipients’ record-keeping requirements.
- C. Exhibit 22-3, “Guide for Review of the HOME Investment Partnerships Program.” When reviewing a HOME participating jurisdiction (PJ), this Exhibit is designed to determine whether the PJ has records and data that document its implementation of the program’s civil rights-related requirements.

- D. Exhibit 22-4, “Guide for Review of the Emergency Shelter Grants (ESG) Program.” This Exhibit is designed for use in conducting a monitoring review of either a local jurisdiction’s or a State’s ESG program with emphasis on record-keeping requirements.
- E. Exhibit 22-5, “Guide for Review of the Civil Rights-Related Program Requirements for CPD Non-Formula Grant Programs.” This Exhibit is to be used when conducting a monitoring review of the civil rights-related program requirements for any of CPD’s non-formula grant programs. It covers competitively funded programs and, in the case of the Housing Opportunities for Persons With AIDS (HOPWA) program, it is to be used for either the formula or competitive portion of the HOPWA program.
- F. Exhibit 22-6, “Guide for Review of the Civil Rights-Related Program Requirements for Section 504 of the Rehabilitation Act of 1973, as amended.” This Exhibit is designed to assess the program participant’s implementation of the requirements pertaining to persons with disabilities covered under this law. Section 109 of the Housing and Community Development Act makes Section 504 requirements applicable to all programs under Title I of this Act. This Exhibit is to be used when monitoring the CDBG (Entitlement and State), HOME and ESG Programs.
- G. Exhibit 22-7, “Guide for Review of Section 3 of the Housing and Urban Development Act of 1968.” This Exhibit covers reviews of a program participant’s Economic Opportunity (Section 3) activities and is to be used by CPD Field Office Staff if FHEO is not conducting its own program monitoring review during the same year.