

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 100, 103, and 109**

[Docket No. FR-4029-F-01]

RIN 2529-AA78

**Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Regulatory Reinvention; Streamlining of HUD's Regulations Implementing the Fair Housing Act**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations implementing the requirements of the Fair Housing Act. The Fair Housing Act makes it unlawful to discriminate in any aspect relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling. In an effort to comply with the President's regulatory reform initiatives, this rule streamlines these regulations by eliminating provisions which are obsolete or which do not require codification. This final rule will assist in HUD's continuing efforts to make its regulations clearer and to streamline the content of title 24 of the Code of Federal Regulations.

**EFFECTIVE DATE:** May 1, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Susan Forward, Deputy Assistant Secretary for Enforcement and Investigations, Room 5106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-4211. For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1-800-877-8339. (With the exception of the "800" number, these numbers are not toll free.)

**SUPPLEMENTARY INFORMATION:****I. Background****A. The Fair Housing Act and the President's Regulatory Reinvention Initiative**

The Fair Housing Act (title VIII of the Civil Rights Act, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3600-3619) (the Act) makes it unlawful to discriminate in any aspect relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a

dwelling because of race, color, religion, sex, disability, familial status, or national origin.<sup>1</sup> HUD has implemented the requirements of the Fair Housing Act in 24 CFR parts 100, 103, 106, and 109.

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. As part of this review, HUD examined its regulations implementing the Act. HUD has determined that these regulations may be streamlined by eliminating unnecessary provisions.

Some provisions in HUD's regulations implementing the Act are now obsolete and may be removed. Further, some provisions are not regulatory requirements and, therefore, do not require codification. For example, several sections contain nonbinding guidance or explanations. While this information is very helpful to HUD's clients, HUD will more appropriately provide this information through handbook guidance or other materials, rather than maintain it in title 24. HUD believes these revisions will strengthen its enforcement of the Act by making the regulations clearer and more concise. The following section of the preamble details the streamlining amendments made by this final rule.

**B. Streamlining Amendments**

This final rule implements the amendments to the Act made by the Housing for Older Persons Act of 1995 (Pub. L. No. 104-76, 109 Stat. 787 (1995)) by revising HUD's provisions governing housing for persons "55 or over." Specifically, 24 CFR §§ 100.304 and 100.315 have been merged, and the provisions of the amended § 100.304 track the statutory language. In addition, the provisions describing the "significant facilities and services" requirement for "55 or over housing" in §§ 100.305, 100.306, 100.307, 100.310, and 100.316, have been deleted to conform to the new requirements for "55 or over housing" established by the Housing for Older Persons Act.

The President's regulatory reform initiative calls for the simplification of regulatory requirements. Accordingly, this final rule streamlines paragraph (b) of § 103.30 to eliminate the detailed requirements for the form of fair

housing complaints. As amended, this paragraph states only that the Assistant Secretary for Fair Housing and Equal Opportunity may require complaints to be made on prescribed forms.

Sections 103.105 and 103.110 have been revised to eliminate redundancies caused by HUD's consolidation, through a separate rulemaking, of the requirements for certification of State and local enforcement agencies and the Fair Housing Assistance Program (FHAP) regulations. Paragraph (a) of § 103.105 has been removed, as it duplicates a provision of the consolidated certification/FHAP rule. This final rule also amends paragraph (c) of § 103.110 to eliminate provisions that are repeated in the consolidated rule.

Section 103.225 has been clarified by eliminating the reference to "the reasonable cause determination." The section is revised to make clear that an investigation will remain open until a determination has been made or a conciliation agreement has been executed and approved. Parts 106 (Fair Housing Administrative Meetings) and 109 (Advertising Guidelines) have been entirely eliminated, in accordance with the President's initiative on regulatory reinvention and reform, which requires the deletion of nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this nonbinding guidance and information through handbook guidance or other materials rather than maintain it in the CFR.

**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 in 24 CFR part 10. However, 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). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes obsolete regulatory provisions, guidelines and advisory materials and conforms regulatory provisions to current public law. It does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

<sup>1</sup> The Fair Housing Act uses the term "handicap." However, HUD prefers the use of the term "disability." Accordingly, this final rule makes the necessary substitution.

### III. Other Matters

#### A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

#### B. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the Act. That finding remains applicable to this rule and 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 General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

#### C. 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 will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

#### D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD

policies or programs will result from promulgation of this rule.

#### List of Subjects

##### 24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

##### 24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

##### 24 CFR Part 109

Administrative practice and procedure, Advertising, Aged, Fair housing, Individuals with disabilities, Mortgages.

Accordingly, under the authority of 42 U.S.C. 3535(d), 24 CFR parts 100 and 103 are amended, and parts 106 and 109 are removed as follows:

#### **PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT**

1. The authority citation for part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Section 100.304 is revised to read as follows:

##### **§ 100.304 55 or over housing.**

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit pursuant to this section.

(b) In order to qualify as housing for older persons under this section, at least 80 percent of the units in the housing facility must be occupied by at least one person 55 years of age or older, except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this section until 25 percent of the units in the facility are occupied.

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

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

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing provider (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties directly related to the management or maintenance of the housing.

(4) There are insufficient units occupied by at least one person 55 years of age or older to meet the requirements of this section, but the housing provider at the time the exemption is asserted:

(i) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 or older; or

(ii) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units which must be occupied by at least one person who is 55 or older.

##### **§§ 100.305, 100.306, 100.307, 100.310, 100.315, and 100.316 [Removed]**

3. Sections 100.305, 100.306, 100.307, 100.310, 100.315, and 100.316 are removed.

#### **PART 103—FAIR HOUSING COMPLAINT PROCESSING**

4. The authority citation for part 103 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

5. Section 103.30 is amended by revising paragraph (b) to read as follows:

##### **§ 103.30 Form and content of complaint.**

\* \* \* \* \*

(b) The Assistant Secretary may require complaints to be made on prescribed forms.

\* \* \* \* \*

##### **§ 103.105 [Amended]**

6. Section 103.105 is amended by removing paragraph (a) and removing the paragraph designation “(b)” from paragraph (b).

7. Section 103.110 is amended by revising paragraph (c) to read as follows:

##### **§ 103.110 Reactivation of referred complaints.**

\* \* \* \* \*

(c) The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that it received the notification and referral of the complaint; or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness.

8. Section 103.225 is revised to read as follows:

**§ 103.225 Completion of investigation.**

The investigation will remain open until a determination is made under § 103.400, or a conciliation agreement is executed and approved under § 103.310. Unless it is impracticable to do so, the Assistant Secretary will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Assistant Secretary reactivates the complaint, within 100 days after service of the notice of reactivation under § 103.115). If the Assistant Secretary is unable to complete the investigation within the 100-day period, HUD will notify the aggrieved person and the respondent, by mail, of the reasons for the delay.

**PART 109—[REMOVED]**

9. Part 109 is removed.

Dated: February 22, 1996.

Elizabeth K. Julian,  
*Acting Assistant Secretary for Fair Housing  
and Equal Opportunity.*

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