

1  
2  
3 **CHAPTER 5.02**  
4 **MONITORING CIVIL RIGHTS STATUTES, REGULATIONS**  
5 **AND PROGRAM REQUIREMENTS**  
6  
7

8 **5.02-1. Introduction**  
9

10 This chapter will discuss multifamily housing project monitoring requirements for civil rights/fair  
11 housing compliance. One of HUD's strategic goals is to "ensure open, diverse and equitable  
12 communities." Effective monitoring helps to achieve this goal. HUD's Office of Fair Housing  
13 and Equal Opportunity (FHEO) has designated each HUD program discipline as the lead  
14 responsible for conducting civil rights front-end reviews and monitoring reviews for the programs  
15 each discipline administers. (Refer to Appendix 1 of this chapter.) Therefore, MFH and FHEO  
16 jointly developed protocols and monitoring tools used to evaluate owner/agent conformity in  
17 subsidized and unsubsidized multifamily housing programs.  
18

19 The chapter will also explain the civil rights related program requirements, the civil rights  
20 monitoring tools, and the general operating procedures to include roles and responsibilities of  
21 MFH, Contract Administrators, and FHEO. Also discussed are the sanctions that may be  
22 imposed by MFH when civil rights violations have been determined by FHEO.  
23

24 Owners/agents of subsidized projects should also refer to HUD *Handbook 4350.3, REV-1*,  
25 Chapter 2, for more detailed civil rights requirements affecting admission and occupancy. See  
26 also <http://www.hud.gov/offices/fheo/FHLaws/> for general information about all the civil rights  
27 laws affecting subsidized and unsubsidized programs.  
28

29 **5.02-2. APPLICABILITY**  
30

31 This chapter applies, in whole or in part, to all projects administered by the Office of Multifamily  
32 Housing (MFH) Programs. These include:  
33

34 Projects with insured or HUD-held loans that were insured under the following sections of the  
35 National Housing Act:  
36

- 37     ▪ Section 207 Rental Housing Insurance
- 38     ▪ Section 213 Cooperative Housing Insurance
- 39     ▪ Section 220 Rehabilitation and Neighborhood Conservation Housing Insurance
- 40     ▪ Section 221 (d)(3) and Section 221 (d)(4) Mortgage Insurance for Rental and  
41         Cooperative Housing
- 42     ▪ Section 221(d)(5) of the National Housing Act (221(d)(3) Below Market Interest  
43         Rate)

## Unit 5 Compliance and Protection

### Chapter 5.02 Civil Rights Enforcement

---

- 1           ▪ Section 223 of the National Housing Act
- 2           ▪ Section 231 Housing for Elderly Persons
- 3           ▪ Section 232 Mortgage Insurance for Nursing Homes, Assisted Living Facilities,
- 4           Intermediate Care Facilities, and Board and Care Homes
- 5           ▪ Section 234 Mortgage Insurance for Condominiums
- 6           ▪ Section 236 Rental Housing (including units for which tenants receive rental
- 7           assistance payments)
- 8

9 Projects receiving direct loans, grants, or assistance from the Department under the following  
10 programs:

- 11
- 12           • Section 202 Supportive Housing for the Elderly
- 13           • Section 202/8 Direct Loan Program for Housing for the Elderly or Persons with
- 14           Disabilities
- 15           • Section 202 Assisted Living Conversion Program
- 16           • Section 811 Supportive Housing for Persons with Disabilities
- 17           • Section 201 of the Housing and Community Development Amendments Act of 1978, as
- 18           amended (Flexible Subsidy and Capital Improvement Loans)
- 19

20 Projects receiving rental assistance under the following programs:

- 21
- 22           • Section 101 of the Housing and Urban Development Act of 1965 (Rent Supplement)
- 23           • Section 8 Project-Based Rental Certificates/Vouchers
- 24

25 And projects participating in the following programs:

- 26
- 27           ▪ Sections 542(b) and (c) of the Housing and Community Development Act of 1992
- 28           (Risk Sharing Programs)
- 29

#### 30

#### 31 **5.02-3.                   Nondiscrimination Requirements**

32

33 Below is a list of applicable civil rights laws that owners/agents must comply with.  
34 Specific program requirements derived from these laws are applicable as CRRPRs and  
35 discussed in HUD Handbook 4350.3, REV-1, Chapter 2, Paragraph 2-9.

#### 36

#### 37 **A.           Fair Housing Act**

#### 38

39           The Fair Housing Act (Title VIII of the Civil Rights Act of 1968), as amended, applies to  
40 almost all housing sold or rented in the United States. As such, owners/agents are  
41 required to comply with the federal Fair Housing Act, which prohibits discrimination in the  
42 sale, rental, and financing of dwellings, and in other housing-related transactions based  
43 on race, color, national origin, religion, sex, familial status (including children under the

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1  
2  
3  
4 age of 18 living with parents or legal guardians, pregnant women, and people seeking  
5 custody of children under the age of 18), and handicap (disability).  
6

7 The Act also establishes requirements for the design and construction of covered  
8 multifamily dwellings built for first occupancy after March 13, 1991, to ensure a minimum  
9 level of accessibility for persons with disabilities. Covered multifamily dwellings are  
10 buildings having four or more dwelling units, irrespective of whether or not the buildings  
11 are privately owned or federally/publicly assisted. In addition, covered multifamily  
12 dwellings include single family dwelling units when located in a building of four or more  
13 units, e.g., condominiums.  
14

15 All owners/agents that are operating multifamily housing projects administered by the  
16 MFH programs and all housing providers applying for HUD mortgage insurance, not just  
17 those providers that qualify as recipients of federal financial assistance, are required to  
18 comply with the Fair Housing Act. However, owners/agents of subsidized multifamily  
19 housing projects must comply with additional requirements (see below), which do not  
20 apply to unsubsidized projects. Therefore, owners/agents of subsidized projects must  
21 also refer to HUD *Handbook 4350.3, REV-1* for detailed guidance. The Handbook also  
22 provides useful information for owners of unsubsidized projects with respect to the Fair  
23 Housing Act's requirements.

24 **B. Title VI of the Civil Rights Act of 1964**

25 Title VI prohibits discrimination on the basis of race, color, or national origin in programs  
26 and activities receiving federal financial assistance. See the definition of federal  
27 financial assistance in HUD's Section 504 regulations at 24 CFR 8.3, and note that  
28 federal financial assistance does not include assistance made available through direct  
29 Federal procurement contracts or payments made under these contracts or any other  
30 contract of insurance or guaranty.

31 Owners/agents of subsidized multifamily housing projects must refer to HUD *Handbook*  
32 *4350.3, REV-1* for detailed information regarding Title VI.

33 **C. Section 504 of the Rehabilitation Act of 1973 (Section 504)**

34 Section 504 prohibits discrimination based on disability in any programs, services and  
35 activities receiving federal financial assistance. See the definition of federal financial  
36 assistance in HUD's Section 504 regulations at 24 CFR 8.3, and note that federal  
37 financial assistance does not include assistance made available through direct Federal  
38 procurement contracts or payments made under these contracts or any other contract of  
39 insurance or guaranty.

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1 Owners/agents of subsidized multifamily housing projects must refer to HUD *Handbook*  
2 *4350.3, REV-1* for detailed information regarding Section 504.

3 **D. Titles II and III of the Americans with Disabilities Act of 1990 (ADA)**

4 Title II prohibits discrimination based on disability in programs, services, and activities  
5 provided or made available by public entities. For example, Title II of the ADA applies to  
6 housing provided by public housing agencies. Title III, in most cases, does not apply to  
7 housing, however, certain parts of a housing development that are, by their nature, open  
8 to the general public, or otherwise made available to the general public, would be  
9 covered by Title III of the ADA; for example, rental offices and leasing offices. Similarly,  
10 if a common use clubhouse that is for the residents and their guests is also made  
11 available to the general public, it would be covered by Title III.

12 Detailed information about the ADA can be obtained from the U.S. Department of Justice  
13 ADA webpage at <http://www.ada.gov>.

14 **E. Architectural Barriers Act of 1968**

15 The Architectural Barriers Act applies to certain buildings financed with Federal funds to  
16 ensure that they are designed, constructed or altered so as to be accessible to persons  
17 with disabilities. The Act applies to buildings, other than a privately owned residential  
18 structure, which are (1) constructed or altered by or on behalf of the United States; (2)  
19 leased in whole or in part by the United States after August 12, 1968, if constructed or  
20 altered in accordance with plans and specifications of the United States; or (3) financed  
21 in whole or in part by a grant or loan made by United States after August 12, 1968, if the  
22 structure is subject to standards for design, construction, or alteration issued under  
23 authority of the law authorizing such grant or loan.

24 **F.** For example, the ABA applies to housing provided by public housing agencies  
25 and through HUD's Community Development Block Grant Program. For more  
26 information on the ABA see HUD's ABA regulations at 24 CFR Parts 40 and 41.

27 **G. Age Discrimination Act of 1975**

28 The Age Discrimination Act prohibits discrimination on the basis of age in federally  
29 assisted and funded programs or activities, except in limited circumstances. For more  
30 information, see HUD *Handbook 4350.3, REV-1*.

31 **H. Title IX of the Education Amendments Act of 1972**

32  
33 Title IX prohibits discrimination on the basis of sex in education programs or activities  
34 that receive federal financial assistance.  
35  
36  
37

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

**I. Title VI, Subtitle D of the Housing and Community Development Act of 1992**

Although not a civil rights law and therefore enforcement of this title is the responsibility of MFH, Title VI, Subtitle D of the Housing and Community Development Act of 1992 has an impact on housing rights of persons with disabilities in certain assisted multifamily housing programs. Title VI-D authorizes owners of certain assisted multifamily developments to elect occupancy preferences for the elderly, and in some cases restrict occupancy to elderly families. Owners/agents must comply with additional requirements when such elections/restrictions are implemented. Owners/agents of assisted multifamily housing projects must refer to *HUD Handbook 4350.3, REV-1* for more detailed information regarding Title VI-D.

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1           **J.       Executive Order 11063**

2           Executive Order 11063 prohibits discrimination in the sale, leasing, rental, or other  
3           disposition of properties and facilities owned or operated by the federal government or  
4           provided with federal funds.

5           **K.       Executive Order 12892**

6           Executive Order 12892, as amended, requires that federal agencies affirmatively further  
7           fair housing in their programs and activities and that the Secretary of HUD be  
8           responsible for coordinating the effort. The Order also establishes the President's Fair  
9           Housing Council, which will be chaired by the Secretary of HUD.

10          **L.       Executive Order 12898**

11          Executive Order 12898 requires that each federal agency conduct its programs, policies,  
12          and activities that substantially affect human health or the environment in a manner that  
13          does not exclude persons based on race, color, or national origin.

14          **L.       Executive Order 13166**

15          Executive Order 13166 eliminates, to the extent possible, limited English proficiency  
16          (LEP) as a barrier to full and meaningful participation by beneficiaries in all federally-  
17          assisted and federally-conducted programs and activities. Costs for LEP-related  
18          activities are considered front-line management activities and may be charged to the  
19          project operating account, provided that the costs are reasonable for the population that  
20          will be served. Owners/agents should refer to HUD's "Final Guidance to Federal  
21          Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin  
22          Discrimination Affecting Limited-English Proficient Persons" published in the Federal  
23          Register on January 22, 2007 (72 F.R. 2732). For guidance in identifying language  
24          assistance needs and developing language assistance strategies refer to [www.lep.gov](http://www.lep.gov).

25  
26          **M.       Equal Access to Housing in HUD Programs Regardless of Sexual  
27          Orientation or Gender Identity.**

28  
29          As the Nation's housing agency, HUD policy is to ensure that its programs do not involve  
30          arbitrary discrimination against any individual or family otherwise eligible for HUD-  
31          assisted or –insured housing, and that its policies and programs serve as models for  
32          equal housing opportunity. Toward this goal, HUD revised its program regulations on  
33          February 3, 2012 (77 FR 5662) to ensure that its core programs are open to all eligible  
34          individuals and families without regard to actual or perceived sexual orientation, gender  
35          identity or marital status in housing assisted with HUD funds or subject to FHA  
36          insurance, and to prohibit inquiries on actual or perceived sexual orientation or gender  
37

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

identity for the purpose of determining eligibility for the housing or otherwise making such housing available (24 CFR 5.105(a)(2)).

**5.02-4. On-Site Limited Monitoring Review**

**A. General Operating Procedures.**

General operating procedures were developed between MFH and FHEO staff to incorporate the delegated responsibility for conducting civil rights front-end and limited monitoring reviews into MFH’s on-site review process. The “General Operating Procedures” is an agreement between the MFH and FHEO that describes the roles and responsibilities of MFH staff, Traditional Contract Administrators and Performance-Based Contract Administrators (herein referred to as “CAs”), and FHEO staff for coordinating civil rights monitoring activities. The GOP described below apply to on-site limited monitoring reviews of all HUD projects (subsidized and unsubsidized.)

**B. FHEO Field Office Responsibilities:**

1. Provide training and technical assistance to MFH and CA staffs, upon request or on an as-needed basis, for civil rights limited monitoring review responsibilities.
2. Conduct risk analyses on civil rights related program requirements to determine monitoring and compliance priorities and to identify which program participants FHEO will recommend for review during the year. Prioritized lists will be shared between FHEO and MFH, and a negotiated monitoring schedule will be developed for the local field office. The monitoring schedule should be based on all risk analyses, as called for in local Management Plans. Since every CA is required to conduct a management review for all project-based Section 8 properties in its portfolio every year, FHEO will accept the priorities established by the CA for these properties.
3. Provide MFH with information on any civil rights and fair housing (including Section 504) issues encountered with housing program participants. FHEO will coordinate provision of this information with Field Counsel. Within three (3) business days of FHEO’s receipt of any such information, FHEO Field Offices will forward any information to MFH that may be relevant for MFH and CA during the scheduled on-site reviews in the current year. 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.
4. Provide written requests to obtain documents and/or observations from MFH. As part of the on-site management review process, FHEO may request Housing/CA to make observations and/or collect documents as listed in Part D of the Checklist for On-site

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1 Limited Monitoring and section 504 Reviews, or as otherwise requested by FHEO. Such  
2 requests for documents and/or observations must be forwarded to MFH/CA annually.  
3

4 5. Maintain a record of received checklists.  
5

6 6. Follow up on **all** civil rights issues found and noted on completed checklists.  
7

8 7. Review a sample of all checklists and attachments for quality control purposes.  
9

10 8. Communicate FHEO concerns to owner, providing copies to MFH, within ten (10)  
11 business days of the receipt of completed checklists and attachments.  
12

13 9. Provide copies to MFH on all follow up and discuss problems, as necessary.  
14

15 10. Provide final resolution of civil rights/fair housing issues, including those for Section  
16 504. FHEO will also provide any requested guidance or technical assistance on civil  
17 rights, Section 504, or fair housing issues to the owner/agent. Further, FHEO will work  
18 directly with the owner/agent and keep Housing staff apprised of all issues and progress.  
19

20  
21 **C. MFH Responsibilities:**  
22

23 1. For all reviews (performed by either MFH staff or CAs), conduct risk analysis to  
24 determine monitoring and compliance priorities. Prioritized lists should be shared  
25 between FHEO and the Multifamily Regional Director so that a negotiated monitoring  
26 schedule can be developed for the field office. The monitoring schedule should be  
27 based on all risk analyses, as called for in the local Management Plans.  
28

29 2. For reviews performed by CAs, provide the CA with information supplied by FHEO for  
30 projects prior to review, if applicable.  
31

32 3. For reviews performed by CAs, advise the CA to observe property-specific issues  
33 and/or collect documents identified by FHEO.  
34

35 4. For reviews performed by MFH staff, forward Part A, Sections I, II, and III of the  
36 Checklist for On-Site Limited Monitoring and Section 504 Reviews (Addendum B) of the  
37 form HUD-9834 (See Paragraph 9-8.B) to the owner/agent for completion prior to the on-  
38 site management review.  
39

40 5. For reviews performed by MFH staff, retrieve Part A of Addendum B completed by  
41 the owner. MFH staff, not the owner, complete Parts B and C of Addendum B if the  
42 project is subsidized. If the project is unsubsidized, MFH staff will only complete the  
43 applicable section of Part B; Part C is not applicable for unsubsidized projects. MFH  
44 staff observe and retrieve information as listed in Part D (Documents Reviewer Should



**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1  
2  
3 Obtain from Owner/Agent) and as requested by FHEO in its annual request. MFH staff  
4 will note the FHEO requested documents in column A of Part D.  
5

6 7. For all reviews (performed by either MFH staff or CAs), Enter the information from  
7 Addendum B, Part A, Sections I, II, and III into the Integrated Real Estate Management  
8 System (iREMS) and forward all completed Checklists for On-Site Limited Monitoring  
9 and Section 504 Reviews and attachments to FHEO within five (5) business days.  
10

11 8. For all reviews (performed by either MFH staff or CAs), Review all correspondence  
12 between FHEO and owner/agent and discuss joint issues with FHEO.  
13

14 9..Provide FHEO with any correspondence received from owner/agent in response to  
15 FHEO communication with the owner/agent.  
16

17 **D. CA Responsibilities:**  
18

19 1. Forward Part A, Sections I, II, and III of the Checklist for On-Site Limited Monitoring  
20 and Section 504 Reviews (Addendum B) of the form HUD-9834 to the owner/agent for  
21 completion prior to the on-site management review.  
22

23 2. For reviews performed by CAs, retrieve Part A of Addendum B completed by the  
24 owner. The CA, not the owner, completes Parts B and C of Addendum B if the project is  
25 subsidized. If the project is unsubsidized, the CA will only complete the applicable  
26 section of Part B; Part C is not applicable for unsubsidized projects. . The CA observes  
27 and retrieves information as listed in Part D (Documents Reviewer Should Obtain from  
28 Owner/Agent) and as requested by FHEO. The CA will note the FHEO requested  
29 documents in column A of Part D.  
30

31  
32  
33 3. Enter the information from Part A, Sections I, II, and III into the (iREMS) and forward  
34 the Checklist for On-Site Limited Monitoring and Section 504 Reviews (Addendum B) to  
35 the local area MFH staff. MFH will submit a copy to FHEO for review.  
36

37 **Note:** For reviews performed by Traditional Contract Administrators, HUD staff is  
38 required to enter the information from Part A, Sections I, II, and III into iREMS.  
39

40 **5.02-5 Front-End Review**  
41

42 Civil Rights Front-End reviews require MFH to conduct limited reviews to ensure  
43 compliance with the nondiscrimination requirements in multifamily housing programs.  
44 Specifically, MFH is responsible for conducting civil rights front-end reviews when the

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1 following actions occur: • When a new or revised form HUD-935.2, Affirmative Fair  
2 Housing Marketing Plan, is submitted; and, • During the on-site management and  
3 occupancy review using form HUD-9834, Management Review of Multifamily Housing  
4 Projects

5 Limited monitoring reviews are conducted after projects are transferred to asset  
6 management and become part of the insured portfolio.

7  
8 **A. General Operating Procedures**  
9

10 GOPs were developed between MFH and FHEO staffs to incorporate the delegated  
11 responsibility for conducting front-end reviews of MFH Affirmative Fair Housing  
12 Marketing Plans (AFHMP). See Section 9-8.A below to determine required frequency  
13 for AFHMP reviews and updates. The GOPs described below apply to these reviews.  
14

15 **B. MFH Responsibilities**  
16

- 17 1. Use the Affirmative Fair Housing Marketing Plan (AFHMP) Checklist, Attachment A of  
18 the GOP, as a guide for reviewing the AFHMP.
- 19 2. Review the AFHMP for completeness and internal consistency, as explained in  
20 Attachment A, and sign the AFHMP to show review was done.
- 21 3. If the AFHMP is not complete or internally consistent, return it to owner/agent for  
22 more detail and clarification.
- 23 4. After receipt of the owner/agent's complete, internally consistent Plan forward a copy  
24 to FHEO within five (5) business days FHEO follow-up is handled as specified under  
25 FHEO responsibilities.
- 26 5. If owner submitted a residency preference request, forward it to FHEO for review as  
27 no Residency Preferences may be used without HUD FHEO approval. In order for  
28 a Residency Preference to be approved, the preference must satisfy the  
29 requirements specified on HUD Form 935.2A and in 24 CFR 5.655(c)(1)(i).

30  
31 **C. FHEO Responsibilities**  
32

- 33 1. Provide training and technical assistance to all MFH staff for civil rights front-end  
34 review responsibilities upon request or on an as-needed basis.
- 35 2. After MFH has reviewed and forwarded the AFHMP to FHEO:
  - 36 a. Maintain a record of receipt of all AFHMPs and residency preference  
37 requests.

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

- 
- b. Review and provide final approval/disapproval of AFHMP and residency preference (if any).
  - c. Follow up on all civil rights issues found during review of the AFHMP.
  - d. Communicate any FHEO concerns to owner within ten (10) business days of the receipt of the AFHMP, checklists and attachments from MFH. Send a copy to the Multifamily Regional Director of any written communication to the owner.
  - e. Provide copies to MFH staff on all follow up and discuss problems with MFH staff, as necessary.
  - f. Provide a final resolution of any problems found on the AFHMP and provide any requested guidance or technical assistance to the owner/agent. Work directly with the owner/agent and keep MFH staff apprised of all issues and progress.

**5.02-6            Frequency of Reviews**

Civil rights on-site limited monitoring reviews are scheduled in conjunction with the on-site management review. CAs conduct annual reviews of HUD's project-based Section 8 projects; therefore, the civil rights limited monitoring review of these projects will occur annually. Non-project-based Section 8 projects will be scheduled by MFH based on joint risk analyses. For more information regarding the frequency of reviews, please refer to Chapter 6 of this Handbook.

**5.02-7.            Scheduling the Review**

Civil rights limited monitoring reviews are scheduled in conjunction with the on-site management review. MFH staff should advise FHEO of these schedules. For more information regarding scheduling reviews, please refer to Chapter 6 of this Handbook.

**5.02-8.            Monitoring Tools**

There are two civil rights monitoring tools used by MFH. The checklists for: (1) On-Site Limited Monitoring and Section 504 Reviews, and (2) Front-end review of the Affirmative Fair Housing Marketing Plan.

**A.            Affirmative Fair Housing Marketing Plan (AFHMP)**

The Fair Housing Act requires HUD to administer all programs and activities in a manner that affirmatively furthers fair housing. Subpart M of 24 CFR, Part 200, sets forth HUD's equal opportunity regulations for affirmative fair housing marketing. All owners/agents of FHA Housing programs, whether subsidized or unsubsidized, are required to take the

## Unit 5 Compliance and Protection

### Chapter 5.02 Civil Rights Enforcement

---

1 necessary steps to eliminate discriminatory practices and must engage in affirmative  
2 marketing to Fair Housing Act protected classes, with a presence in the community, that  
3 are least likely to apply for occupancy (This includes all FHA-insured Multifamily housing  
4 programs, whether subsidized or not). The marketing methods should target  
5 populations present in the community that differ from those groups generally served by  
6 the project. In doing so, this process (1) enables minorities and other Fair Housing Act  
7 protected classes, generally not likely to apply to participate more effectively in the  
8 housing market; (2) helps to ensure racial and ethnic diversity; and (3) ensures housing  
9 equity for persons with disabilities, large families, and single parents.

10  
11 Any Residency Preferences for tenant selection must target the same populations to  
12 which advertising is targeted. Under no circumstances may a residency preference lead  
13 to different results than affirmative marketing activities are intended to achieve. All  
14 Residency Preference require FHEO approval. See Requirements for Residency  
15 Preferences at 24 CFR 5.655(c)(1)(i).

16  
17 HUD conducts periodic compliance reviews in accordance with 24 CFR 108.40 to  
18 determine if owners are meeting these requirements and implementing the AFHMP.  
19 To assist with monitoring these requirements, owners/agents are required to complete  
20 form HUD-935.2A, "Affirmative Fair Housing Marketing Plan (AFHMP) – Multifamily  
21 Housing." (Refer to Appendix 2 of this chapter; however, all reviewers are required to  
22 use the current official HUD form that displays the OMB approval number.)

23 [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/form](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms)  
24 [s](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms) MFH staff is only required to review the AFHMP for completeness and internal  
25 consistency, using the checklist to do so. Completeness and internal consistency is  
26 defined as ensuring that all items on the form HUD-935.2A have been completed, there  
27 are no obvious or known errors (e.g., correct name and address), and that no responses  
28 are inconsistent with other responses.

29  
30 MFH then completes the section for the reviewing official and forwards the AFHMP to  
31 FHEO. To assist with determining completeness and internal consistency, a checklist  
32 was developed (Attachment A, Review of Affirmative Fair Housing Marketing Plan) as a  
33 guide for MFH staff (Available in Appendix 3 of this chapter). *Attachment A should not*  
34 *be forwarded to FHEO.* MFH is encouraged to contact FHEO staff for guidance and  
35 technical assistance when necessary. MFH does not make a determination of fair  
36 housing compliance. FHEO will review the AFHMP to determine if the plan meets the  
37 criteria and approve/disapprove based on their review.

38  
39 **Note:** Requirements to review the AFHMP are distinct from requirements to update the  
40 AFHMP. Owners/agents are required to first review the AFHMP in order to determine  
41 whether or not an update to the AFHMP is necessary. The two instances when a review  
42 is required are as follows:

- 43 (1) a review of the plan must be conducted every five years; and,  
44

## Unit 5 Compliance and Protection

### Chapter 5.02 Civil Rights Enforcement

---

1  
2  
3  
4 (2) in addition to the mandatory five-year review, owners/agents must review the  
5 AFHMP whenever there are major changes in the market area that affect  
6 demographic composition (e.g., disasters, industries opening or closing, new  
7 wave of immigration, etc.).  
8

9 A review upon either of these two instances may indicate a need to update the plan. For  
10 example, the owner/agent should update the plan if the property's circumstances or local  
11 demographics changed, or if they determine that the current AFHMP has led to  
12 demographic concentrations among residents. If updated, the AFHMP must be  
13 submitted to MFH staff for review and forwarded to FHEO for review and approval. Any  
14 new or revised residency preferences must be submitted for review and approval at the  
15 same time.  
16

17 If, however, the review indicates that the Plan does not need to be updated, there should  
18 be sufficient data and notes in the record to indicate the specifics of the review, the  
19 results, and how the owner/agent reached the conclusion that an update was not  
20 required.  
21

#### 22 **B. On-Site Monitoring, Limited Monitoring and Section 504 Review Checklist**

23

24 As part of MFH's limited monitoring activities, MFH staff and CAs are required to  
25 complete the On-Site Limited Monitoring and Section 504 Review Checklist (Addendum  
26 B of form HUD-9834) when conducting on-site management reviews. (Refer to  
27 Appendix 4 of this chapter; however, all reviewers are required to use the official HUD  
28 form that displays the OMB approval number.) Addendum B is incorporated into the on-  
29 site management review form HUD-9834, Management Review for Multifamily Housing  
30 Projects.  
31

32 The Addendum B consists of four parts:  
33

- 34 Part A: Occupancy/Accessible Units/Program Accessibility
- 35 Part B: Limited On-Site Monitoring Review
- 36 Part C: Section 504 Review
- 37 Part D: Documents Reviewer Should Obtain from Owner/Agent  
38

39 Part A of Addendum B consists of three sections: Section I – Occupancy; Section II -  
40 Accessible Units, and Section III - Program Accessibility. The information obtained from  
41 the owner/agent in Part A of Addendum B is used to serve two purposes: (1) FHEO  
42 reviews and collects the data to ensure compliance with nondiscriminatory requirements;  
43 and (2) MFH reviews the data and maintains a copy in the project file to ensure  
44 compliance with Sections 651 and 658 of Title VI, Subtitle D of the Housing and

## Unit 5 Compliance and Protection

### Chapter 5.02 Civil Rights Enforcement

---

1 Community Development Act of 1992 (Title VI-D). For detailed instructions regarding  
2 Title VI-D monitoring, refer to Appendix 5.  
3

4 MFH and CAs must forward Part A of Addendum B to the owner/agent for completion  
5 before the scheduled on-site review. Owners/agents of unsubsidized projects are only  
6 required to complete Sections I and II. Owners/agents of subsidized projects are  
7 required to complete Sections I, II, and III. Section III pertains to compliance with  
8 Section 504 which applies only to projects receiving federal financial assistance. The  
9 information is retrieved during the on-site review and reviewed by MFH to determine  
10 Title VI-D compliance, and a copy is forwarded to FHEO for additional review.  
11

12 **Note: An owner/agent response of “No” to any question does not necessarily**  
13 **indicate a fair housing/civil rights/Section 504 violation.**  
14

15 Part B contains questions to determine the owner/agent’s compliance with reviewing and  
16 updating the AFHMP and maintenance of project profile data. This Section must be  
17 completed by the MFH or CA reviewer; not by the owner/agent.  
18

19 Part C contains questions that are used to determine the owner/agent’s compliance with  
20 Section 504. When applicable, this Section must be completed by the MFH or CA  
21 Reviewer; not by the owner/agent. These questions only apply to subsidized projects;  
22 therefore, reviewers of unsubsidized projects are not required to complete this section.  
23

24 Part D contains examples of documents to be retrieved by MFH/CAs for FHEO during  
25 the on-site review. With the exception of Part A of Addendum B, these documents are  
26 only to be retrieved for FHEO if requested by FHEO staff prior to the on-site review.  
27 Otherwise, Part A of Addendum B is the only document to be retrieved since it is used  
28 by MFH to monitor Title VI-D compliance. Part D, however, does not provide an  
29 exhaustive list of the documents or information that FHEO may request.  
30

#### 31 **5.02-9. Monitoring Compliance**

32  
33 FHEO has sole responsibility for ensuring fair housing and civil rights compliance. MFH  
34 completion of Parts B and C of Addendum B are not intended to cover the full range of civil  
35 rights concerns and do not require the reviewer to make a determination of civil rights or Section  
36 504 compliance. However, Part A requires MFH to review and determine compliance with Title  
37 VI-D. CAs are not required to perform the VI-D Compliance function and are only required to  
38 enter the necessary data into HUD systems and forward to MFH for review.  
39

40 Sections 651 and 658 of Title VI, Subtitle D of the Housing and Community Development Act of  
41 1992 authorize owners of certain HUD multifamily assisted projects to elect occupancy  
42 preferences/restrictions for the elderly. However, owners electing such preferences are subject  
43 to additional requirements as outlined in the statute. For a more detailed discussion regarding  
44

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1  
2  
3 Title VI-D, please refer to HUD Handbook 4350.3, REV-1, Occupancy Requirements of  
4 Subsidized Multifamily Housing Programs.

5  
6 MFH staff's role with monitoring Title VI-D was implemented to:

- 7  
8 (1) Monitor owner/agent compliance with Title VI, Subtitle D of the Housing and  
9 Community Development Act of 1992; and,  
10 (2) Maintain, and publish an inventory of units designated in whole or in part for the  
11 elderly and/or persons with disabilities.

12  
13 For additional guidance on Title VI-D monitoring, refer to Appendix 5 of this chapter.

14  
15 **5.02-10. Coordination of Enforcement Efforts by FHEO and MFH**

16  
17 Enforcement is a joint concern of FHEO and Multifamily Housing, as FHEO is responsible for  
18 enforcing the fair housing and civil rights laws described in Section 9-3, and Multifamily Housing  
19 is responsible for its own regulations which incorporate the CRRPRs.

20  
21 **A. Possible Noncompliance Suspected**

22 Once FHEO discovers possible noncompliance with fair housing laws and CRRPRs , FHEO  
23 may seek MFH's assistance in achieving compliance through voluntary measures. An example  
24 of a voluntary measure could include scheduling a meeting with MFH, FHEO, and the project  
25 owner/agent to establish a plan and timetable for corrective action. If this method is selected to  
26 correct the violation(s), all plans, agreements, and/or extensions acceptable to the Department  
27 will be monitored by FHEO since all determinations of compliance are made by FHEO. If FHEO  
28 anticipates a satisfactory resolution of the deficiencies, a reasonable extension may be granted.  
29 However, the owner and/or manager should not be granted unlimited extensions of time to  
30 develop, submit, or implement an acceptable corrective action plan.

31  
32 **Note:** When meeting with the owner/agent, MFH/FHEO must clearly indicate that failure to  
33 reach a satisfactory solution could result in HUD taking remedial action(s) to correct program  
34 deficiencies.

35  
36 **B. Finding of Noncompliance**

37 If the results of the monitoring or compliance review indicate that the owner/agent is in  
38 noncompliance with any CRRPRs, , then FHEO may seek MFH's assistance in achieving  
39 compliance through voluntary measures as indicated above. However, if efforts to reach a  
40 satisfactory resolution through voluntary means are unsuccessful, FHEO may request MFH's  
41 assistance with program sanctions to correct program violations. Program sanctions are  
42 discussed in paragraph 9-11 of this chapter.

43  
44 **5.02-11. Program Sanctions**

---

## Unit 5 Compliance and Protection

### Chapter 5.02 Civil Rights Enforcement

---

1  
2 The regulatory agreement and/or the housing assistance payment (HAP) contract include the  
3 various authorities permitting HUD to impose administrative sanctions on the owner. These  
4 documents also include the sanctions that HUD can take in enforcing Title VI of the Civil Rights  
5 Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 and other  
6 applicable civil rights authorities. Sanctions may also be provided in HUD program regulations  
7 and handbooks.

8  
9 Although this list is not all inclusive, below are sanctions that may be imposed when an  
10 owner/agent fails to comply with fair housing and civil rights program requirements. The  
11 owner/agent may be prohibited from:

- 12
- 13 • remodeling, adding to, or removing property from the mortgaged property;
- 14 • participating in new business with the Department, which is enforced by placing a flag in  
15 HUD's Active Partners Performance System;
- 16 • receiving subsidy;
- 17 • completing a transfer of physical assets;
- 18 • receiving withdrawals from the reserve for replacements account;
- 19 • modifying mortgage terms or prepaying;
- 20 • receiving budgeted or Operating Cost Adjustment Factor (OCAF) rent increases; and/or
- 21 • taking authorized distributions.
- 22

23 After imposing any of the above-referenced sanctions, the MFH field office may elevate the  
24 matter to the Director, Office of Asset Management in Headquarters, who may:

- 25
- 26 • seek judicial action to take possession of the project in accordance with the terms of the  
27 regulatory agreement until the Secretary determines that the owner has resolved the  
28 noncompliance issues;
- 29 • apply to any state or Federal court for specific performance of the regulatory agreement,  
30 an injunction against any violation of the Agreement, or for other such relief as may be  
31 appropriate;
- 32 • cancel the subsidy contract, if applicable; or,
- 33 • accelerate the mortgage and initiate foreclosure of the mortgage.
- 34

35 Before MFH imposes sanctions, the project owner/agent should be provided sufficient time to  
36 contact FHEO in an effort to resolve outstanding issues. MFH reserves the right to determine  
37 the appropriate sanction and will consult with FHEO to determine the seriousness of the  
38 violation. MFH staff is responsible for notifying the owner/agent in the event that such action is  
39 taken, conveying FHEO's request for correction, and informing the owner/agent of possible  
40 enforcement action and remedies that may be sought. MFH staff should consult with Field  
41 Office Counsel and FHEO before imposing any sanctions to assure there is coordination among  
42 the offices when determining the appropriate program sanction and possible enforcement  
43 actions.

---



**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1  
2  
3  
4 Before deciding to impose sanctions, MFH must consider the potential impact of the sanctions  
5 on the FHA insurance funds, if applicable. MFH also must consider whether imposing program  
6 sanctions will cause economic harm to the project and interfere with the Department’s ability to  
7 maintain affordable housing units for those tenants the programs were intended to serve.  
8

9 **Note:** All imposed sanctions must comply with the administrative procedures found in the  
10 regulations and applicable regulatory agreement and/or subsidy contract.  
11

12 If the owner/agent continues to be in noncompliance after sanctions are imposed, FHEO may  
13 refer the matter to the Department of Justice to seek alternative remedies available in Federal  
14 court. This referral will require consultation among the Offices of General Counsel, MFH, and  
15 FHEO. MFH will consider other program violations in connection with subsequent management  
16 and occupancy reviews and any pending HUD-2530 cases involving the owner/agent scheduled  
17 with the Multifamily Participation Review Committee (MPRC). MPRC reviews 2530 submissions  
18 that contain critical findings and are not recommended by field office for approval.  
19

20 **5.02-12. Economic Opportunities for Low- and Very Low-Income**  
21 **Persons**

22  
23 Section 3 of the Housing and Urban Development Act of 1968 (Section 3) requires that  
24 recipients of funds for certain HUD-assisted housing projects, to the greatest extent feasible,  
25 and consistent with existing Federal, State and local laws, direct new employment, contracts  
26 and other economic opportunities generated by HUD financial assistance to low- and very low-  
27 income persons, particularly to those who receive government assistance for housing, and to  
28 business concerns which provide economic opportunities to local low- and very low-income  
29 persons, particularly to those who receive government assistance for housing, and to  
30 businesses that substantially employ such persons.

31 The requirements of Section 3 apply to recipients of Multifamily Housing assistance in excess of  
32 \$200,000 which will be used for housing construction, rehabilitation (including lead abatement),  
33 or other public construction. Section 3 also applies to any contractor or subcontractor that is  
34 awarded \$100,000 or more to perform work on a project covered under Section 3. Section 3  
35 Multifamily Housing projects include Section 202 and Section 811 Supportive Housing  
36 Programs and their affiliated managing partners or management agents. ***Section 3 does not***  
37 ***cover housing constructed or rehabilitated utilizing HUD mortgage insurance programs.***  
38

39 The Office of FHEO is responsible for monitoring recipients of covered HUD funded assistance  
40 to ensure compliance with Section 3. Coordination between MFH staff and Section 3 staff will  
41 facilitate effective monitoring to ensure compliance with the Section 3 regulations.  
42

43 **A. Responsibilities for Recipients of Section 3 Covered Multifamily Housing**  
44 **Assistance**

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1  
2 During the construction or rehabilitation of Section 3 covered projects, recipients  
3 of covered assistance are required, to the greatest extent feasible, to ensure that  
4 30 percent of new hire opportunities are directed to Section 3 residents and that  
5 10 percent of covered contracts are awarded to Section 3 businesses annually.  
6 Recipients also have the responsibility for ensuring that their contractors and  
7 subcontractors meet these annual numerical goals if they are awarded covered  
8 contracts.

9  
10 Where a managing general partner or management agent is affiliated with  
11 recipients of Section 3 covered assistance for an aggregate of 500 or more units  
12 in any fiscal year, the managing partner or management agent is required, to the  
13 greatest extent feasible, to ensure that 30 percent of new hires are Section 3  
14 residents. The recipient is responsible for ensuring the compliance of its  
15 managing partners and/or management agents.

16  
17 Recipients, contractors, subcontractors, managing agents and managing  
18 partners are also required to:

- 19  
20 (1) Notify eligible low- and very low-income residents in the MSA of available  
21 training and employment opportunities available resulting from Section 3  
22 covered projects and activities;  
23 (2) Notifying potential contractors of Section 3 covered projects of the  
24 requirements of Section 3 and incorporating the Section 3 clause located at  
25 24 CFR § 135.38 in all solicitations and contracts;  
26 (2) Facilitate employment and training opportunities of Section 3 eligible  
27 residents;  
28 (3) Notify Section 3 eligible businesses of contracting opportunities available at  
29 Section 3 covered project sites;  
30 (4) Facilitate the award of contracts to Section 3 business concerns; and  
31 (5) Document efforts to comply with the requirements of Section 3.

32  
33 Each recipient that receives Section 3 covered assistance directly from HUD is  
34 required to submit a Section 3 annual report (HUD Form 60002) to the Assistant  
35 Secretary for Fair Housing and Equal Opportunity. Reports must be submitted  
36 from the link provided on the Section 3 webpage, [www.hud.gov/section3](http://www.hud.gov/section3)

37  
38 **B. Section 3 Monitoring Responsibilities for MFH Staff**

39  
40 MFH staff must ensure that direct recipients of Section 3 covered funds submit annual  
41 reports pursuant to 24 CFR § 135.90 . In addition, if potential instances of  
42 noncompliance with the requirements of Section 3 are observed, MFH staff must report  
43 the observations to FHEO immediately. FHEO staff conducts periodic compliance and  
44 monitoring reviews for compliance with Section 3 as stipulated at 24 CFR §135.76..

**Unit 5 Compliance and Protection**  
**Chapter 5.02 Civil Rights Enforcement**

---

1  
2  
3 Recipients that administer large amounts of HUD financial assistance will receive priority  
4 consideration for Section 3 monitoring. Copies of all associated correspondence will be  
5 forwarded to the local Multifamily Regional Director.  
6  
7  
8  
9

10 **APPENDICES**

- 11  
12  
13  
14 Appendix 1 Notice of Responsibility Within HUD for Civil Rights  
15 Front-End Reviews of HUD Program  
16  
17 Appendix 2 Affirmative Fair Housing Marketing Plan (AFHMP)  
18 (form HUD-935.2A)  
19 <http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf>  
20  
21 Appendix 3 “Attachment A: Review of Affirmative Fair Housing  
22 Marketing Plan (AFHMP) (For Multifamily Housing Staff  
23 Only) <http://hudatwork.hud.gov/po/e/FEReview/housing.cfm>  
24  
25 Appendix 4 On-Site Limited Monitoring and Section 504  
26 Review Checklist  
27 [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9a)  
28 [/hudclips/forms/hud9a](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9a)  
29  
30 Appendix 5 Title VI-D Monitoring  
31