
CHAPTER 3. NEGOTIATING VOLUNTARY AFFIRMATIVE
MARKETING PLANS AND AGREEMENTS

3-1. DEFINITIONS AND DISTINCTIONS.

- a. **Agreements.** Voluntary affirmative marketing agreements are quasi-contractual instruments negotiated between HUD Headquarters and any national association that represents some component of the housing industry, e.g., Realtors, Realtists, home builders and real estate license commissions. Each agreement is designed to carry out a broad equal opportunity program, including outreach advertising, affirmative employment, safeguards against racial steering, etc.,--all designed to ensure that housing will be marketed on an equal opportunity basis. The national association party to an agreement then commends its adoption by member affiliates on a State and local level, and HUD's relationship shifts to the Area Office for purposes of technical assistance, monitoring, and organizing a citizen participation component. When approved and signed by a Regional Administrator, an agreement permits signatory applicants for HUD housing assistance to reference that document as meeting HUD fair housing/equal opportunity requirements.
- b. **Plans.** Voluntary affirmative marketing plans are similar to agreements in purpose, but are negotiated on a local rather than a national level. While certain minimum plan elements, and housing industry group and individual signatory member responsibilities, are required to be included in all voluntary plans, local plan development is generally flexible. Optional provisions are negotiable and plans need not follow a standard format. In addition, the negotiation of voluntary plans do not exempt applicants for HUD housing assistance from fulfilling standard EO fair housing requirements. Voluntary plans are further distinguished from HUD's individual affirmative marketing plans in that the former involve all signatory members of an industry group in a given area, and must be signed by the Assistant Secretary for FHEO, while the latter are restricted to individual project applicants for HUD assistance.

3-2. PURPOSE AND ADVANTAGES.

- a. Voluntary affirmative marketing plans and agreements promote institutional change on an areawide basis. The Department cannot expect complete equal housing opportunity until the real estate and building industries, apartment house association members, financial institutions, and local governments demonstrate their acceptance of minority applicants and affirmatively promote open communities.
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- b. There are several advantages to these voluntary plans and agreements over individual affirmative marketing plans:
- (1) A voluntary program may involve all key elements of the housing industry--i.e. brokers, apartment house managers, and lending institutions, as well as builders.
 - (2) An industry group plan is likely to be more effective in achieving the objectives of affirmative marketing than an individual plan because of the areawide impact made by the most important firms of any industry group that simultaneously commit themselves to undertake educational activity among their employees and the public, spend their own funds for affirmative marketing, and effect a continuing liaison with the minority community through Community Housing Resource Boards.
 - (3) The industry group program applies to conventional, as well as HUD-assisted and insured housing, and the former constitutes over 90% of the housing market.
- 3-3. PROGRAM EMPHASIS. The Office of Voluntary Compliance is currently involved with four kinds of voluntary affirmative marketing instruments, each tailored to the particular kind of housing industry represented: builder groups, real estate boards, apartment house associations, and mortgage lending groups. Each Area Office FHEO Director must decide whether to negotiate with one group or a number of them simultaneously. The course taken should be influenced by the "readiness level" of the particular industry groups, negotiating difficulty expected, and community "climate."
- 3-4. SELLING POINTS. Since industry representatives may not be interested in adopting voluntary programs unless they perceive a direct benefit to them, HUD negotiators should continually stress these benefits to the industry and to the community.
- a. Advantages to the housing industry:
- (1) Avoids the necessity of builders, doing business with HUD, filing detailed affirmative marketing plans for each HUD project application.
 - (2) Enables builders to secure waivers from the Veterans Administration and the Farmers Home Administration with respect to their equal opportunity requirements.

- (3) Taps the minority and female market for housing more efficiently than individual plans, since group advertising is periodically employed to assure housing availability to potential minority and female home seekers.
- (4) Achieves economies of scale over individual action, since industry-group staff assist individual firms in fulfilling their commitments under the voluntary agreement or plan.
- (5) Provides credit for leadership in dealing with a critical social problem, and puts signatory firms on record in support of fair housing and equal opportunity.
- (6) Promotes understanding and good will among the minority community, women's groups and industry groups.
- (7) Makes it more difficult for discriminatory firms to undercut legitimate business competition.
- (8) Reduces the likelihood of discrimination by agents of signatory firms.

b. Advantages to the community:

- (1) Reduces the prospect of blockbusting, discrimination, and racial impaction by making housing more readily available, and providing an outlet for minority housing demands.
- (2) Enhances the image of the city and should result in reduced racial tension.
- (3) Promotes voluntary compliance with civil rights laws, thereby enhancing awareness of and respect for these laws.

3-5. THE NATIONAL REALTORS AGREEMENT

- a. Background. A standardized Voluntary Affirmative Marketing Agreement between HUD Headquarters (FHEO) and the National Association of Realtors (NAR) was adopted by the NAR at its annual convention in San Francisco on November 11, 1975. (See Appendix A.) Copies of the Agreement were then dispatched by the NAR to its 1,696 member boards across the country, with a cover letter and explanatory booklet (Realtors Guide to Practice Equal Opportunity in Housing) urging endorsement of the Agreement through local HUD Area Offices.
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- b. **Applicability and Coverage.** The Agreement applies only to those local real estate boards and member firms that endorse it. Subscription is not required of member firms of a local Board that endorses the Agreement, nor does Board adoption impose affirmative marketing obligations on any Realtor member of the Board who has not voluntarily and independently subscribed to the Agreement. However, in respect to signatory firms, coverage of the Agreement extends to all housing, however financed, sold or rented through those firms. Every effort should be made by Area Office FHEO Directors to bring previously executed voluntary Realtor plans up to the standard established by the National Agreement.
- c. **Parties and Administrative Responsibility.** The Agreement operates through three official parties on a local level: the HUD Area Office, a signatory Board of Realtors, and signatory member firms of that Board. Interpretation and overall direction of the Agreement is provided by HUD Headquarters and the National Association of Realtors while, on a local level, administrative responsibility is vested in the Member Board's Equal Opportunity Committee.
- d. **Key Real Estate Board Responsibilities**
- (1) Places a fair housing ad in a newspaper of general circulation and makes an effort to secure the HUD-approved "Publisher's Notice" in the local press and on television. Suggested ads are contained in Appendix "F" of the Affirmative Marketing Handbook, prepared by the NAR with HUD endorsement, and distributed to all local Boards of Realtors and HUD Field Offices.
 - (2) Provides educational materials and training courses for member Realtors pertaining to their responsibilities under fair housing laws and this Agreement.
 - (3) Disseminates to member firms the HUD/NAR-approved suggested office procedures and techniques designed to prevent discrimination. These are contained in the NAR Affirmative Marketing Handbook, pages 43-56.
 - (4) Urges minority brokers to join the local Board of Realtors.
 - (5) Sponsors outreach and training programs to attract and qualify minority brokers and salespersons. The controlling word is "sponsor" rather than "conduct."
 - (6) Monitors progress of the Agreement through the Board's EO Committee.

- (7) Assesses progress of the Agreement at least semi-annually with HUD and a Community Housing Resource Board (CHRB).
- (8) Pays for administrative costs. Section VI of the Agreement does not require a local Board to subsidize the operation of a Community Housing Resources Board, although it may do so if it chooses. CHRB activity is eligible for funding under Community Development Block Grant Regulation 570.206(c). To secure such funding, application must be made to the county or municipal agency designated to administer the CDBG program.

e. Responsibilities of Signatory Realtor Firms

- (1) Place Equal Opportunity logo or slogan in classified ads of 6 inches or longer, except when that page contains the "Publishers Notice."
- (2) Place EO logo or slogan in all brochures.
- (3) Circulate in-house information on the Agreement and the Federal Fair Housing Law.
- (4) Display the Fair Housing Poster in all places of business, including model homes.
- (5) Recruit minority employees to be considered for vacancies as they occur.
- (6) Adopt office procedures, suggested by HUD and the NAR, which are designed to ensure against discrimination. While adoption of these procedures is not required of signatory firms, failure to provide some effective safeguards against racial steering--which these procedures were primarily designed to prevent--could be construed as lack of commitment by the signatory firm in question. That problem should be referred by HUD and/or the CHRB to the Board's Equal Opportunity Committee with the expectation that the particular firm either respond or terminate its participation in the program. Should this become an endemic problem with broker signatories to an Agreement, the Agreement should be referred to the Assistant Secretary for possible termination.
- (7) Advise homesellers, by means of pamphlet, of legal responsibility not to violate applicable fair housing laws.

(8) Monitor the above listed affirmative marketing practices.

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f. Adoption by State Association of Realtors. State Association adoption of the Agreement should be encouraged as part of its leadership role with Member Boards within the State. In addition, a State Association serves, in effect, as the Member Board for those Realtors located in unassigned territory, not located within the jurisdiction of a local Board of Realtors. Hence, a "rural" Realtor in unassigned territory is able to subscribe to the Agreement only if it has been adopted by the State Association. In rural states lacking a local Board structure, a signatory State Association has obligations under the Agreement similar to those of a Member Board, such as administration, monitoring, displaying of posters, providing materials and training, and advertising in a newspaper that has state-wide circulation. HUD would have responsibility for organizing a state-wide CHRB (for example, a state human rights agency could function as a nucleus in the organization of a state-wide CHRB). Under these circumstances, Realtor firm signatories to a State Association Agreement have the same obligations as Realtor firm signatories to a Member Board Agreement.

g. HUD Area Office Responsibilities

- (1) Solicits endorsement of the Agreement by real estate boards in the metropolitan areas of local office jurisdiction. Endorsements should appear for each Board separately on the signature page of a copy of the Agreement. The Agreement requires execution in triplicate by representatives of the Board, the HUD Area Manager, the Regional Administrator and the Director for Regional Fair Housing and Equal Opportunity. Additional signed copies should not be requested of a local Board.
- (2) In soliciting local Board endorsement of the Agreement, HUD officials may not require terms or conditions other than those approved by the National Association of Realtors and HUD Headquarters (FHCO), as contained in the National Agreement. In the event that a local Board should prefer to negotiate its own agreement with HUD that is at variance with the National Agreement, HUD representatives must refuse to sign anything less comprehensive than the National Agreement. Moreover, such Board officials should be advised that the NAR will terminate its errors and omissions liability insurance coverage for Boards that endorse a deviant

agreement.

- (3) Organizes a Community Housing Resource Board (CHRB) per 3-5h of this Handbook.

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- (4) Monitors and evaluates the Agreement per Chapter 4 of this Handbook.
- (5) Becomes familiar with NAR instructions for implementing the Agreement and other Realtor material on Fair Housing. Two primary sources of Realtor material are Realtors Guide to Practice Equal Opportunity in Housing and the NAR's Affirmative Marketing Handbook.
- (6) It is the local real estate Board's responsibility to secure all Realtor fair housing posters and documents from the National Association of Realtors, 430 North Michigan Avenue, Chicago, Illinois 60611.
- (7) Exempts any Realtor signatory of this Agreement from the requirement of completing Form HUD-9556 (Joint HUD-VA Nondiscrimination Certification) if he/she desires to participate in the sale of HUD or VA owned properties. This exemption information should be provided to HUD's Housing Management Division and the local Veterans Administration Office. However, in addition to fulfilling the commitments of the Voluntary Realtors Agreement, a signatory Realtor recipient of HUD financial subsidy/insurance is required to file monthly occupancy reports with HUD on Form(s) HUD 935.1 (Monthly Sales Report) and/or HUD 935.4 (Monthly Rental Report), as applicable.
- (8) Accepts requests from local Boards and CHRBs for technical assistance, conducts and participates in workshops, and works closely with CHRBs and Boards until they understand their functions and have begun effective cooperation. Assistance should be requested from the Regional Office and Headquarters, as needed.

h. Community Housing Resources Board (CHRB)

- (1) Following a real estate Board's decision to adopt the Agreement, the first major task of a local HUD Office is to organize a Community Housing Resources Board (CHRB), consisting of a cross section of representatives of community organizations throughout the metropolitan area that have a demonstrated interest in fair housing and equal opportunity. This should be done in consultation with whatever local human rights agencies, women's

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- are functioning in the area. Recommendations for organizational representation - one from each organization - should be solicited from the chief elected official of each organization. The local real estate Board should be included in that representation.
- (2) The CHRB is an essential component to any voluntary plan or agreement. It is organized by local HUD FHEO staff to: (a) maximize communication between the housing industry group(s) involved and the minority and women's groups of the particular community; and (b) enhance the prospect of implementation of industry group commitments. The first objective requires broad minority and fair housing group representation on the CHRB. The second objective requires the most influential community representation possible, e.g., real estate board, Chamber of Commerce, Mayor's Office, League of Women Voters, local bar association, mortgage lending institutions, etc.
 - (3) Joint meetings, referred to in the Agreement, should be held at least quarterly in order to maximize the prospect for success in attaining the above stated objectives. Indeed, monthly meetings would be desirable in the initial stages of agreement or plan implementation.
 - (4) Appointments to a CHRB should be made for a one-year term, renewable annually at the discretion of HUD's FHEO Director. The constructive participation of a current appointee in the work of the CHRB should be considered prior to reappointment or replacement. If necessary, an Area Office FHEO Director may also dissolve a CHRB, but only with the full concurrence of the Director of Regional FHEO and the Assistant Secretary for FHEO.
 - (5) A list of CHRB designees, and the organizations which they represent should be forwarded through the Director of Regional FHEO to the Assistant Secretary for Fair Housing and Equal Opportunity, Attention: Director, Office of Voluntary Compliance. News releases relative to CHRB appointment should be handled at the Area Office level.
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- (6) The CHRB is a third party monitoring and advisory body. Minutes should be taken for each meeting of the CHRB and the real estate Board. Progress under the Agreement may well be conditioned upon the prestige of the CHRB and its interest in building a better community. HUD representatives should seek to sustain a cooperative and conciliatory working environment between the Equal Opportunity Committee of the Board and the CHRB.
- (7) Civil rights/fair housing, and women's representatives on the CHRB should function in direct liaison with their organizations to assist HUD, the real estate Board, and member firms in the affirmative recruitment of minority and female salaried and sales employees. The CHRB should also assist and seek to resolve relevant problems brought to its attention by the local Board or any of its signatory firms.
- (8) As part of its monitoring functions (to "assess progress" requires monitoring), the CHRB is expected to question the real estate board's EO Committee with regard to Board and signatory firm progress in meeting their commitments under the Agreement. The CHRB should also monitor housing ads for the presence of the "Publisher's Notice", EO logo or slogan, and to review the appropriateness with which human models are portrayed.
- (9) Another way for the CHRB to assess progress is to maintain a record of any audits or discrimination complaints that their respective organizations may have referred to HUD, other agencies, or the courts. While HUD could not discuss the merits of complaints in the process of investigation or conciliation at meetings with the CHRB and the Board, the status of such complaints could be reported, and the Board's ED Committee could be apprised of the nature and extent of the problem that exists. Moreover, the kind of treatment accorded housing referrals made by the CHRB should be discussed at these meetings in order to get as complete a picture as possible of real estate practices. However, no CHRB may undertake testing of member brokers.

i. Evaluation, Amendment and Termination

- (1) Section VIII of the Agreement is ambiguous in several respects. It is here clarified (in parenthesis) according to HUD-NAR interpretation:

"This (nationally executed) Agreement shall be effective for five years upon approval by the Assistant Secretary for Fair Housing and Equal Opportunity of HUD. During the sixty days prior to the expiration of each year (of the locally endorsed Agreement, as computed from the date of the highest ranking HUD official's signature), representatives of the Board, the State or local human rights enforcement agency (if represented on the CHRB), the Community Housing Resources Board, and HUD will meet to evaluate the effectiveness of the Agreement. HUD and the Board shall determine whether the Agreement, or some modification thereof, should be adopted for the following year. (Readoption does not require re-execution by HUD.) However, where an evaluation of the Agreement at any time during its term reveals that reasonable progress is not being made toward achieving its objectives, the Agreement may be modified upon mutual consent of the parties. (Modification requires approval of the Assistant Secretary for FHEO and will result in NAR termination of the local Board's errors and omissions insurance.) Where the parties are unable to agree upon the terms of a modification, any party may terminate the Agreement (although HUD may not do so without approval of the Assistant Secretary for FHEO)."

- j. Reports. While there is no provision in the Agreement that requires performance reports of Realtor signatories, Report Form HUD 941-A is used to assist HUD FHEO staff in the annual evaluation (See Appendix C). This annual evaluation report is required by HUD Headquarters for each and every Agreement that has been in effect for six months or longer.
- k. Record of Signatories. While Section 1-C of the Agreement has been waived by both HUD and the NAR, the Agreement contemplates that the Board will maintain a current list of all Realtors who have individually subscribed to it. The NAR Affirmative Marketing Handbook (p. 20) states, with HUD concurrence: "This list shall be made available

to responsible officials of HUD upon reasonable request. It should be made available to parties other than HUD only on such terms and conditions as are mutually agreed upon by HUD and the Board."

1. Effectuating the Realtors Agreement on a Local Level. Listed below are procedural steps that might be used by local HUD FHEO personnel to implement the Voluntary Realtors Agreement:
 - (1) Contact the State Association of Realtors (Executive Vice President) having professional jurisdiction over local real estate boards to be solicited for Agreement execution, and seek his/her assistance in approaching those local Boards.
 - (2) Arrange informal lunch with the Executive Director/Executive Vice President, or President of the local real estate board. Bring copy of the Agreement together with copy of the NAR Affirmative Marketing Handbook. If conversation is affirmative, go to Step 3.
 - (3) Meet with special committee of the Board (EO Committee may already exist). Bring sufficient copies of the Agreement together with NAR Affirmative Marketing Handbook. Cover the Agreement paragraph by paragraph. Note any objections or controversy in interpretation. Try to clarify using NAR Handbook. Advise the Committee that you will respond to outstanding questions by mail.
 - (4) Consult with Regional Office or Headquarters (Voluntary Compliance) to clarify items noted above. Write a letter to the EO Committee Chairperson, copy to the Executive Vice President, responding to items of concern, and request that the Committee give a favorable recommendation to the Executive Board.
 - (5) Accept invitations by the Board to attend meetings concerning the Agreement. Use this Handbook and NAR Handbook as guides. Should an impasse be reached concerning some difficulty, suggest that the problem be referred to the National Office of the NAR in Chicago, Attn: Director of Member Activities.

- (6) Indicate desire to attend Board meeting at which final decision will be made on adoption of the Agreement. If the decision is favorable, immediately request a committee of the Board to work with you in setting up a press conference and signing ceremony within two weeks.
 - (7) Press Conference and Signing Ceremony. Secure approval of the Board for the invitations, announcement and press release. Invitations should go to key persons in the area who are involved with civil rights, politics, the building industry and the news media.
 - (8) Consider Organizing a County-Wide CHRB. In counties where a number of Agreements have been executed or are anticipated, consider the feasibility of organizing a county-wide CHRB that could relate to all of the signatory Boards in that county. Business might be facilitated by having representatives of the several Boards meet simultaneously with the one CHRB.
 - (9) Select CHRB Members. CHRB members should be recruited, not as individuals, but as group representatives. Thus, initial contact should be with the head of the agency or organization desired to be represented. The agency head should be supplied with a copy of the Agreement and its implications should be fully discussed. The obligations of CHRB representation should also be discussed, and a request made to formally designate one person to represent that agency on the CHRB.
 - (10) Contact the nominated representative to be assured that he/she fully understands the implications of the nomination. If there is a question as to the nominee's willingness to undertake the responsibilities involved, go back to the agency head to discuss the possibility of a substitute nomination. Once the designation is firm, a letter of appointment should be sent to the representative accompanied by: (1) a copy of the April 1976 HUD Challenge magazine article, "The Precedent-Setting Agreement Between HUD and NAR;" (2) a copy of the Agreement; (3) a list of members
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of the local real estate Board's EO Committee;
(4) a list of other CHRB members, and (5) the HUD Handbook for Community Housing Resource Boards.

- (11) Convene first meeting of the CHRB by mail with telephone reminder. This meeting should be coordinated with the Chairman of the Board's EO Committee and should be held at the local Board Office with members of its EO Committee. The meeting should be informal, and should be well publicized in advance, inviting media representation, and announcing CHRB membership. The meeting should facilitate representative group members meeting each other and the agenda should focus on the modus operandi of the CHRB, and a general discussion of the Agreement.
- (12) Convene second meeting of the CHRB by mail with telephone reminder. This meeting should be a working session with CHRB members, Chairperson of the EO Committee and FHEO Director. Elect officers of the CHRB, determine meeting place and time, etc. Clarify that future meetings of the CHRB will be convened by its Chairperson, and should include the Chairperson of the Board's EO Committee. Possible meeting places: Chamber of Commerce, FHEO Office, Board Office, local human rights agency office. Provision should be made for taking, transcribing, and mailing minutes of all CHRB meetings. If other offices/agencies cannot undertake this service on a voluntary basis, the local HUD Office should do so.

m. Miscellaneous Inquiries and Information

- (1) Is any member firm party to an Agreement immune from complaint investigation?

In no way is any exemption or immunity from compliance with Title VIII or any other fair housing law granted or implied by the Agreement.

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- (2) Should HUD authorize a local Board's Equal Opportunity Committee to investigate Title VIII complaints against member firms?

No. HUD may not delegate its investigative authority to any nongovernmental body.

- (3) Are prospective renters, as distinct from home buyers, covered by an Agreement?

Section II-A includes all services offered by a REALTOR firm to prospective home buyers and renters.

- (4) Does the Freedom of Information Act apply to meetings or records of the Board's Equal Opportunity Committee?

The Freedom of Information Act does not apply to meetings or records of nongovernmental bodies, notwithstanding the fact that HUD may attend meetings of such a body.

- (5) Can interested parties, who are not members of the Community Housing Resource Board, the Real Estate Board, or HUD attend meetings of the Board's Equal Opportunity Committee?

Not without unanimous consent of the officially designated representatives of the above three groups, since those meetings are intended as working sessions, not public forums.

- (6) Can the local Real Estate Board be represented on the Community Housing Resource Board?

Yes. Indeed, it is necessary that a Board representative participate in CHRB activities in order to facilitate communication between the two groups. Other members of a CHRB cannot veto Board representation because the responsibility for appointment resides in HUD.

- (7) Should HUD provide technical assistance to the Community Housing Resource Board as well as the local Real Estate Board?

Yes, to the extent of the Department's available resources.

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- (8) Since a Realtor signatory to the Agreement is exempt from filing an individual affirmative marketing plan when selling HUD acquired properties, what are the requirements if the Realtor is also a builder or developer who applies for a HUD-insured loan?

A builder/developer applicant for HUD assistance, who is also a Realtor signatory to a Voluntary Realtors Agreement, is exempt from filing an individual affirmative marketing plan; but as a builder/developer, he/she must submit monthly occupancy reports directly to the HUD Area Office. Form(s) HUD-935.1 and/or HUD-935.4 should be used for that purpose.

- (9) What does I-C of the Agreement mean in respect to "non-signatory members of any classification?"

It means that member firms or brokers of a local Board that did not sign an Agreement at the time of its endorsement by the Board may subsequently sign the Agreement. However, subsequent to the printing of the Agreement, HUD Headquarters and the NAR decided that HUD approval need not be required to enable non-signatory firms to sign at a later date. Non-Realtors are not eligible to sign the Agreement.

- (10) How will the Board's ED Committee monitor progress of the program if there are no reporting requirements?

The Agreement calls for an assessment of progress at least semi-annually (V-A-4). We do not care how a local Board assesses progress, but we do want to know what that progress is. If a Board's EO Committee cannot assess progress, then it should be given an opportunity to develop whatever methods it deems necessary to provide that assessment. The risk in formally modifying the Agreement on a local level is having the "errors and omissions" insurance with NAR terminated. However, if an adequate assessment of progress becomes impossible to obtain, the HUD Area Office should recommend termination of the Agreement to the Assistant Secretary for Fair Housing and Equal Opportunity who has sole HUD authority to terminate.

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- (11) What is the role of a State or local human rights agency referred to in Section VIII? Is it a party to the Agreement?

No. It is important to involve the local office of a State and/or municipal human rights agency in the local Agreement, but this should be done through representation on the Community Housing Resource Board.

- (12) Do member firms of a local real estate Board have to sign the Agreement?

Signatures are not required of member firms of a local Board as a condition of executing the Agreement on a local level, and adoption of the Agreement by a local Board does not impose affirmative marketing obligations on any Realtor member who has not voluntarily and independently subscribed to the Agreement. However, the provision for member firm commitments in the Agreement does anticipate eventual member subscription. Obviously, an Agreement that continues to have only Board endorsement is less likely to be implemented in all of its aspects. Hence, after the Agreement has been executed, the Board should be encouraged to secure endorsement of the Agreement by member firms. Repeated failure by the Board to secure member firm endorsement should be reported to the Assistant Secretary for FHEO, Attn: Office of Voluntary Compliance, who will work with the NAR to resolve this problem.

3-6. AGREEMENT WITH NATIONAL ASSOCIATION OF REAL ESTATE BROKERS
- (REALTISTS)

- a. Background. Selecting as its theme "Democracy in Housing," the National Association of Real Estate Brokers was organized forty years ago because (1) Blacks faced severe discrimination in all aspects of housing in America, and (2) those Blacks who were licensed real estate practitioners were excluded from membership in the major trade association (then the National Association of Real Estate Boards) and thus denied an opportunity to provide their clients with trade association services. In order to promote cooperation between the NAR and NAREB and to expand and extend the range of minority sales experience and responsibility, HUD undertook the negotiation of a voluntary affirmative marketing agreement with NAREB patterned closely upon the former's agreement with the NAR. (See Appendix E.)

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- b. Similarity to Realtors Agreement. The Realist Agreement should be implemented, monitored and evaluated in the same way and on the same Voluntary Affirmative Marketing Agreement Report (Form HUD-941A) as the Realtors Agreement. (When using Form HUD 941A to report on a Realist Agreement, write Realist at the top of the form and substitute the word "majority" for "minority" whenever the latter appears.) Moreover, provisions of the Realist Agreement that are substantially equivalent to provisions of the Realtors Agreement should be interpreted and applied similarly.
- c. Points of Special Interpretation. Notwithstanding the similarities attended to above, there are a few points in the Realist Agreement that warrant exposition.
- (1) Advertising. Section IV-A-1 stipulates that "some of this advertising should promote the use of minority brokers in other than racially changing areas or areas of minority concentration." Perhaps the best way to indicate availability to sell in the general housing market area is to include advertising in newspapers of general circulation and by direct mail to target groups.
- (2) Special Outreach. Section IV-A-6 commits member signatories to "...make similar efforts to inform the majority white population of available housing opportunities located in areas of minority concentration." This might be accomplished, not only through ads in newspapers of general circulation, but also by providing listing information to selected church groups and interracial organizations.

3-7. THE NATIONAL HOME BUILDERS AGREEMENT

- a. Background. The genesis of HUD's Voluntary Affirmative Marketing Agreement with the National Association of Home Builders (NAHB) is found in the Dallas Plan of 1972, which was conceived as a means of extending the effect of HUD's affirmative marketing regulations to all housing developed by major builders in the Dallas metropolitan area, including conventionally financed housing not covered by HUD regulations. It was also believed that a program of self-regulation by the home building industry would be more effective in extending equal housing opportunity than a plethora of individual plans pertaining to a multitude of subdivision applications that vastly exceed HUD's capability to effectively monitor. (Voluntary Home Builders Agreement found in Appendix F.)

- b. **Applicability and Coverage.** The National Home Builders Agreement is not self-executing. It has significance only to the extent that it is endorsed by builder groups on a local level, and its provisions apply only to those signatory groups and member builders. The Agreement covers all housing, however financed, developed, built or sold by those signatories. In consideration thereof, parties are exempt from the need to file individual affirmative marketing plans when applying for HUD-insured loans or subsidies.
- c. **Parties and Administrative Responsibility.** Parties to the agreement consist of HUD and a local Home Builder Association. The Agreement is administered by the local Builder Group, with support from the nearest HUD FHEO Director, and with citizen participation through a Community Housing Leadership Board. Many provisions of the Agreement pertaining to local Builder Group responsibilities and individual firm commitments are similar to those found in the Realtors Agreement. The remainder of this section of the Handbook will focus on the significant points of difference between the two Agreements.
- d. **Builder Agreement Permits Deviation.** Unlike the Realtors Agreement, with respect to which the National Association maintains close scrutiny over content and operation because of uniform liability insurance requirements, the Home Builders Agreement allows for flexibility at a local level, provided that any deviant agreement is at least as comprehensive in its commitments as the national model, and is approved by the Assistant Secretary for FHEO. Similarly, the amendment process is easier to effect than the Realtors Agreement, although both require Regional and Headquarters approval.
- e. **Recommended Supplementary Features to Include in Deviant Agreements.** The sales and rentals reporting procedure in the model agreement could definitely be improved. Section 3-C and 3-E enable builders to report their occupancy data either directly to HUD or to the Builder Groups on a quarterly basis. The latter then total those data for all reporting builders and forward the results to HUD. In the latter alternative, the Department has no record of individual firm sales or rentals and cannot bring corrective action to bear in time to prevent racial selection practices. Moreover, a tardy quarterly report to the Builder Group from a builder, and a tardy report from the Builder Group to HUD, could easily result in a four to five month lag from the time of occupancy to HUD

- receipt of a report, and even then the report would not identify the builders. Thus, in negotiating Voluntary Home Builder Agreements, HUD FHEO staff should seek to amend the national model by securing monthly occupancy reports directly from the individual builder signatories. If that is unacceptable to the Builder Group, HUD FHEO staff should seek a two-month report directly from the builders. Should that be unacceptable, staff should strive to get a breakdown of individual firms in the Builder Group's quarterly reports on form(s) HUD 935.1 and/or HUD 935.4. Other desirable features to seek for inclusion in a Voluntary Builders Agreement are:
- (1) The appointment of an Equal Opportunity Officer for each signatory firm with responsibility for implementing the Agreement in respect to that firm.
 - (2) Provision for affirmative employment practices in the hiring and training of minority and female construction, sales and clerical personnel.
 - (3) Elaboration of Builder Group monitoring procedures vis-a-vis individual builder signatories.
- f. Community Housing Leadership Board (CHLB). There are two significant differences between the Community Housing Resource Board as described in the Realtors Agreement, and the Community Housing Leadership Board (CHLB) of the Home Builders Agreement. The first lies in the responsibility of membership appointment which, in the Builders Agreement, resides with the Builder Group. The second difference is the absence of explicit reference to the need for minority and fair housing group representation on the CHLB. Local HUD Office Equal Opportunity Directors can exercise a veto over persons who, in their judgment, do not have "a substantial interest in housing and equal opportunity." Alternatively, and preferably, local HUD offices should require additional members to ensure that minority and women's interests are adequately represented.
- g. Relationship of CHRB to CHLB. Wherever possible, HUD staff should urge that the same citizen group involved in a Realtors Agreement (CHRB) be requested to function as a CHLB for the Builders Agreement.
- h. Reports. Irrespective of the reporting frequency decided upon, Form(s) HUD 935.1 (single family sales) and/or HUD 935.4 (multi-family rentals), should be used as appropriate. Although these forms are designed for monthly use until 95% of
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rent-up or sales, they would be suitable for a longer report period when used in conjunction with a Voluntary Home Builders Agreement. In any case, the reporting period/frequency should be specified in the Agreement, and in cover instructions to builder signatories. In addition to these occupancy reports, the Builder Group is required to provide HUD, at least quarterly, with a description of all actions taken by the Group to implement provisions of the Agreement. These reports should be considered when developing the HUD annual evaluation required for all voluntary affirmative marketing agreements. Data supplied by a Builder Group in its quarterly occupancy reports should be supplemented through HUD/FHEO contacts with the Builder Groups' EO Officer, and through inquiries addressed at meetings of the Builder Groups' Equal Opportunity Committee.

- i. Termination. While the Realtors Agreement on a local level may be terminated by either HUD, through the Assistant Secretary for Fair Housing and Equal Opportunity, or by a local real estate board, the Builders Agreement may not be terminated unilaterally by HUD without providing the Builder Group with an opportunity for a hearing and determination of the facts. Section VI of the Agreement controls Section X in this respect.

j. Miscellaneous Points of Clarification

- (1) In Section 3-A-2, what is meant by stating that "inclusion of the slogan or logo is not necessary in any classified advertisement where there exists a Publisher's Notice?"

If the particular page of advertising contains the HUD-approved Publisher's Notice, signatory builders are exempt from the need to print the HUD logo or slogan in their advertising on that page.

- (2) In Section 3-C-1, clarify the statement that "The HUD Area Office shall supply Builder Group an identification of the minority groups whose housing opportunities the parties seek to increase, by cost and kind of housing."

What is here sought are estimates of housing demand potential by minority groups whose access to housing has been restricted by reason of discrimination. The best procedure to follow in making such estimates

is set forth in a HUD booklet entitled, "A Model

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Procedure for Analyzing the Minority Housing Market." All HUD economists should have access to this booklet, which was prepared by the Washington Center for Metropolitan Studies and published in 1975. If expertise is unavailable to undertake such an analysis for your local community, then a rough estimate of cost qualification could be made by establishing gross family income categories for each minority group (assuming that contemporary income data can be obtained), establishing the number of minority families within each income category, and assuming that each group of families can afford housing that costs within 25% of the income limits established. If neither the expertise nor contemporary demographic and income data is available, HUD personnel should not attempt to guess at the number and kinds of housing units affordable by any minority group. There should be no problem, however, in identifying those minority groups whose housing opportunities the parties seek to increase.

3-8. AGREEMENT BETWEEN HUD AND THE NATIONAL ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS (NARELLO)

- a. Background. There are many real estate brokers who are not affiliated with either the National Association of Realtors or the National Association of Real Estate Brokers. However, all persons seeking to market residential real property are licensed by the State as a prerequisite for doing business. Thus, in order to impact upon the marketing activities of unaffiliated real estate practitioners, HUD, on November 9, 1977, entered into an Affirmative Fair Housing Marketing Agreement with the National Association of Real Estate License Law Officials (NARELLO). NARELLO represents all of the State real estate licensing agencies in the country.
- b. Major Provisions (See Appendix G.)
 - (1) A requirement for each real estate licensee and candidate for a license to receive education in fair housing principles and practices.
 - (2) Testing on fair housing principles and practices in real estate licensing examinations.
 - (3) Disciplinary action against licensees who violate

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- (4) Affirmative efforts to assist minorities and women to enter the real estate business.
 - (5) Cooperation between HUD and the responsible licensing authority.
- c. Obtaining New Agreements. Each Director, Office of Regional FHEO, should identify the state real estate licensing agencies in his or her Region that have not adopted the Affirmative Fair Housing Agreement. The Monthly Status Report Check List may be consulted for this purpose. The Director should contact the chief administrative officer of the real estate licensing agency in non-adopting states. The identity, address and telephone number of such persons may be obtained from Headquarters' Office of Voluntary Compliance. In making contact, the Director should determine what measures, if any, the agency has taken in regard to the Agreement. If Agreement adoption has not been formally considered by the agency, the Director should request that the agency do so at its next business meeting. If Agreement adoption has been formally rejected by the agency, the Director should request that the agency reconsider its position and should offer to meet with the agency to discuss the Agreement. If the agency rejects Agreement adoption and the Director believes that the rejection is final, the Assistant Secretary for FHEO should be so advised.
- d. Adoption Procedures. Agreement adoption is evidenced by execution on the signatory page by appropriate licensing agency officials, the Regional Administrator and the Assistant Secretary for FHEO. Procedurally, this may occur in any of several ways.
- (1) The agency may adopt the Agreement, execute three signed copies, and forward them to the Regional Office or a Field Office within the Region. In that event, the signature of the Regional Administrator should be added and the three signed copies be sent to Headquarters. The Assistant Secretary for Fair Housing and Equal Opportunity will sign them and return two of the copies to the Regional Office. A completed agreement should then be presented to the agency.
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- (2) The agency may adopt the Agreement, execute the signature page and forward it directly to Headquarters. In that event, the Assistant Secretary for Fair Housing and Equal Opportunity will sign three copies of the Agreement and forward them to the appropriate Regional Office. The signature of the Regional Administrator should be added and a completed Agreement should then be presented to the agency. A copy of the completed Agreement should be returned to the Director, Office of Voluntary Compliance, for Headquarters file.
- e. Agreement Presentation. The presentation of an Agreement to a licensing agency pursuant to any of the above procedures may be accomplished by mail or through a personal visit by Regional Office FHEO personnel. The latter method is preferable because a presentation ceremony affords HUD and the agency an excellent opportunity to impress both the real estate industry and the public with the fair housing posture being taken. Recent presentation ceremonies have involved state governors and the news media. The Director, Office of Voluntary Compliance, can render advice on arranging a ceremony and attendant publicity. In all cases a press release should be issued. The Assistant Secretary for FHEO will send a letter thanking the agency for its commitment to fair housing.
- f. Recordkeeping. The existence of Affirmative Fair Housing Agreements will be recorded by the Regional Office on its Monthly Status Report Check List.
- g. Implementation. Following are steps to implement the Affirmative Fair Housing Agreement:
- (1) Field Offices may be requested by a licensing agency to render technical advice or assistance in planning or carrying out Agreement provisions. Such requests may be fulfilled at the field level or forwarded to the Director, Office of Voluntary Compliance, for handling.

- (2) Licensing agencies, upon request, normally advise representatives of other governmental agencies whether a particular firm or individual has a current valid license. These agencies also entertain complaints alleging violation of state license requirements and standards. In the event that a finding of a violation of Title VIII has been made by HUD, it would be appropriate for the Director, Office of Regional FHEO, to request consideration by the licensing agency as to whether it should undertake administrative action against the licensee in question. Further cooperation may be initiated with the advice and prior consent of the Director, Fair Housing Enforcement and Section 3 Compliance.
 - (3) Agency requests for literature, instructional materials and the like (available per Agreement sub-paragraph VI.B.) should be referred to the Director, Office of Voluntary Compliance, for handling.
- h. NARELLO Affirmative Fair Housing Agreement Committee. A new committee has been formed by NARELLO to represent that organization's interests in having members adopt the Affirmative Fair Housing Agreement. The Affirmative Fair Housing Agreement Committee will monitor HUD's progress in obtaining Agreement adoption and will assist HUD with those members that have responded negatively or have not responded to the Department's adoption solicitations. The Committee will apply its expertise in licensing matters to clarify issues that may have prevented Agreement adoption in various states. The Committee may also deal with problems of implementation. Unless otherwise instructed by the Assistant Secretary for FHEO, contact with the Committee will be channelled through the Director, Office of Voluntary Compliance.
- i. Monitoring. The Director, Office of Regional FHEO, is responsible for monitoring each Affirmative Fair Housing Agreement executed within his/her region. Monitoring shall be accomplished through personal contact with an appropriate official or officials of a licensing agency. A copy of an internal use format appropriate for monitoring the NARELLO Agreement is included as Appendix M to this Handbook. The monitoring report shall be completed by Regional Office FHEO personnel using information gained through agency contact and a copy shall be forwarded to the Office of Voluntary Compliance upon completion. Monitoring shall be accomplished within six months following the execution of an Agreement and annually thereafter within 30 days of the anniversary of the execution of the Agreement.

3-9. MORTGAGE LENDER PLANS

- a. Background. Title VIII of the Civil Rights Act of 1968 prohibits discrimination by any lending institution engaged in making commercial real estate loans against any applicant for housing assistance because of that applicant's race, religion, color, sex or national origin. The Act further requires that "All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and to cooperate with the Secretary of HUD to further such purposes." In cooperation with the Assistant Secretary for Fair Housing and Equal Opportunity, those Federal regulatory agencies responsible for supervising the activities of real estate lending institutions have already prescribed minimum procedures -- a housing logotype poster, a notice of nondiscrimination, and advertising guidelines--to be used by banks and savings and loan associations under their authority. 1/
- b. Applicability. The types of lending institutions suitable for developing Voluntary Affirmative Lending Plans and the names of their respective regulatory agencies, are set forth in tabular form below.

Type of Lending Institution	Regulatory Agency
Federally-insured Savings and Loan Associations	Office of Community Investment, Federal Home Loan Bank Board, 1700 G St., N.W., Washington, 20552, Phone: 202-377-6000
National Banks (Any bank with "National" in its name)	Consumer Examination Division Comptroller of the Currency Washington, D.C. 20219 Phone: 202-447-1600
State member commercial banks of the Federal Reserve System	Office of Consumer Affairs, Federal Reserve System, 20th and C St., N.W. Washington, D.C. 20551 Phone: 202-452-3401

1/ See Federal Financial Regulatory Agencies: Nondiscrimination by Supervised Lending Institutions in Making Loans for Housing Purposes, HUD Bulletin, December 1972.

Mutual Savings Banks and
Commercial Banks, other
than National Banks or
State member banks of the
Federal Reserve System

Office of Consumer Affairs
and Civil Rights
Federal Deposit Insurance
Corp, 550 17th St., N.W.
Washington, D.C. 20429
Phone: 202-389-4427

Federal Land Banks and
Federal Land Bank Associations;
Federal Intermediate
Credit Banks, & Production
Credit Association

Farm Credit Administration
490 L'Enfant Plaza, S.W.
Washington, D.C. 20578
Phone: 202-755-2195

Type of Lending Institution

Regulatory Agency

State Savings and Loan
Association, State
Chartered Commercial Banks,
a few Mutual Savings Banks

State Banking Authorities

Mortgage Bankers

HUD and the VA insofar as
Federally-insured mortgages
are involved

Insurance Companies

State Insurance Commissions

c. Major Parties to a Voluntary Lenders Plan

- (1) HUD, through Area Managers with jurisdiction over the metropolitan area in question. Sign off required by Regional Administrator and Assistant Secretary for FHEO.
- (2) The members of a "Lenders Group", consisting of as many lending institutions from the area as possible. Area bank representatives may already meet on a regular basis for clearinghouse purposes. Such a clearinghouse could function as the nucleus for a lenders group to include, in addition, insurance companies and mortgage bankers.

- d. Rationale. These Plans are designed to accomplish two objectives: (1) to develop a condition in which all people within a given market area, without regard to race, color, religion, sex, national origin, or marital status, will be afforded the same opportunity to apply for and, if qualified, receive commercial real estate and home improvement loans; and (2) to advance equal employment opportunity within firms signatory to the Plan.

e. Minimum Elements to Include in the Plan

- (1) Specification of parties: HUD and as many lending institutions in a given area as can be convened, collectively identified as the Lender Group.
- (2) Statement of objectives: Define equal lending opportunity for housing purposes and equal employment opportunity in lending institutions.
- (3) Scope: Include the terms and conditions of all loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling.
- (4) Application Process: Each signatory to the plan will develop written, standardized loan application criteria, subject to review by HUD; make these criteria available to all loan applicants; and make loans based solely on an applicant's ability to fulfill the criteria.
- (5) Advertising:
 - (a) Each lender signatory will advertise the fact that it is an equal lending institution. Those firms that have not already done so will place "Equal Housing Lender" posters in conspicuous places throughout their offices.
 - (b) The Lender Group will develop information on fair lending practices which will be offered monthly to consumer groups of the area, such information to be prepared bilingually, if warranted by the ethnic composition of the area.
 - (c) The Lender Group will conduct an advertising campaign, to include newspaper ads declaring member signatories to be fair lending establishments; will prepare and distribute flyers, newsletters, and brochures for distribution to fair housing and consumer groups; and will place advertisements in minority newspapers and publications. Each member signatory advertisement, newsletter, and pamphlet should display the equal housing lender logotype.
- (6) Employment: Each lender signatory will undertake affirmative employment practices to assure equal opportunity in employment, promotions, placements, layoffs, terminations, and benefits for all employees, and shall, in addition, undertake sensitivity training for all employees who deal with minority and women loan applicants.

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- (7) Equal Opportunity Officer: Each lender signatory will designate an Equal Opportunity Officer to carry out the provisions of the plan.
- (8) Reporting: A reporting system to indicate problems and progress will be developed, that is mutually satisfactory to the signatories.
- (9) Equal Opportunity Committee: The Lender Group will organize an Equal Opportunity Committee to consist of the Equal Opportunity Officer from each firm. The Committee will supervise and monitor the plan on behalf of signatory members, prepare and conduct training in respect to the plan, and function in a liaison capacity with HUD. Indeed, such a Committee, if organized promptly, could function as the Lender Group's negotiating team to develop the plan.

f. Optional Elements to Seek in the Plan

- (1) Each lender signatory will provide minority and female owned businesses an opportunity to bid on printing, office supplies, sign painting, advertising, and other services needed by lender signatories.
- (2) The Lender Group, through its Equal Opportunity Committee, will develop a "Code of Fair Mortgage Lending Practices" and commend its endorsement by each member firm. (See "Flag Program" developed by Mortgage Bankers of America. Appendix I.)
- (3) The Equal Opportunity Committee will constitute a loan review committee whenever loan disapproval warrants.
- (4) The Lender Group will adopt, and advocate for endorsement by each member firm, a general policy of investment and reinvestment in the area immediate to the location of each lending institution, and adopt and advocate a policy of correspondent reviews to police loan practices in other areas.
- (5) The Lender Group will adopt, and advocate for endorsement by each member firm, equitable foreclosure procedures. (e.g., Borrowers should be assured that foreclosure procedures will not be used to negate affirmative lending procedures.)
- (6) Affirmative disclosure reporting under the Home Mortgage

Disclosure Act of 1975 requires lenders to post notice of loans made by census tract and zip code. This information should be made available to the loan review committee.

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(7) A Community Housing Resource Board, organized by HUD, will meet at least quarterly with the Equal Opportunity Committee to assess program progress and to facilitate communication with minority groups in the area.

(g) Model Lenders Plan. Attached as Appendix H is a model lenders plan which included the optimum provisions of an ideal plan.

3-10. APARTMENT MANAGERS AND OWNERS PLANS

- a. Specific Rationale. Apartment housing councils, whose members develop and manage rental units, are found in metropolitan areas throughout the United States. Because of their influence over management policies, these groups of apartment owners and managers have a tremendous potential for reducing housing discrimination.
- b. Initiating a Plan. Discussion with metropolitan housing associations should be initiated by the Area Office FHEO Director.
- c. Major Parties to a Plan
 - (1) HUD Area Manager, Regional Administrator and Assistant Secretary for FHEO.
 - (2) The local Apartment Association, through signature of its officers, and signatory members of the Association.
- d. Minimum Elements to Include in a Plan
 - (1) Specification of parties to the plan, referring to apartment house management firms collectively as the Housing Association.
 - (2) Statement of objectives and definition of equal housing opportunity and related goals.
 - (3) Scope to include all apartments developed and rented by signatory management firms to be covered by the plan.
 - (4) Provision for monitoring of the plan.
 - (5) Organization of a Community Housing Resources Board

by HUD, consisting of representatives of the City and community organizations throughout the metropolitan area having a substantial interest in fair housing and equal opportunity, to meet at least quarterly to advise and assist in monitoring the plan.

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e. Necessary Apartment Association Responsibilities

- (1) Organize an Equal Opportunity Committee, consisting of an Equal Opportunity Officer from each affiliate member of the Association, that will:
 - (a) supervise and monitor the plan on behalf of the Association;
 - (b) develop training for employees of affiliate members to acquaint them with the purpose and provisions of the plan; and
 - (c) meet at least quarterly with the Community Housing Resource Board.
- (2) Commend adoption of the plan to its constituent members.

f. Necessary Individual Member Responsibilities

- (1) Affirmatively advertise and market all available rental units using the HUD equal opportunity logo.
- (2) Provide training for all staff members to acquaint them with the purpose and provisions of the plan.
- (3) Display equal housing opportunity posters where they are clearly visible to all applicants.
- (4) Designate an Equal Opportunity Officer to represent management in supervising the development and implementation of the aforementioned tasks, and to participate in a periodic review of the plan with HUD.

g. Optional Additional Responsibilities

- (1) The Association will develop disciplinary procedures and/or remedial actions in respect to any of its members found guilty of an illegal discriminatory act.
- (2) Member signatories will develop an affirmative employment

program to assure equal opportunity in the recruitment, hiring, and terms and conditions of employment for all staff.

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(3) The Association will develop a standard application form containing eligibility requisites for renting an apartment, with written and verbal instructions to rental staff that the criteria be uniformly applied to all applicants. All applicants should be requested to fill out a form, to be time and date stamped, irrespective of immediate vacancy. All forms should be retained by the rental office for not less than one year and be made available to HUD upon its review of the plan. Application forms should make provision for the applicant's name, address, telephone number, color, and sex, and indicate the reason for any applicant's rejection. 1/

h. Model Apartment Association Plan. Attached as Appendix J is a model plan which includes the optimum provisions of an ideal plan.

1/ In those states that do not prohibit the identification of applicants by color, the HUD negotiator should seek to have applicants identified on the application as per HUD racial/ethnic/sex categories.

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