

CHAPTER 7. EFFORTS TO SECURE VOLUNTARY COMPLIANCE
SECTION 1. NOTICE OF APPARENT NONCOMPLIANCE

27. PURPOSE. When a compliance review or complaint investigation indicates a failure of a HUD recipient to comply with the Department's Title VI Regulation, section 1.7(d)(1) of that Regulation requires that the recipient be so informed and the matter resolved by informal means whenever possible. If it is determined that the matter cannot be resolved by informal means, action must be taken to terminate, refuse to grant or continue HUD financial assistance as required in 24 CFR 1.8.
- a. Notice of Apparent Noncompliance. The ARA/FHEO shall inform the chief executive officer of a HUD recipient agency of the area(s) in which Regional staff has documentation of apparent noncompliance with Title VI (see Appendix 3.11 for copy of letter).
- (1) CD Block Grant Program. If discrimination is found, and documented, in a CD block grant program, the chief executive officer of the community involved shall receive a concurrent letter indicating those areas of apparent noncompliance with Title VI and the regulation implementing Section 109--the nondiscrimination section--of the Housing and Community Development Act of 174.
- (2) Procedure. Notice of apparent noncompliance shall be sent (return receipt requested) no later than 10 days after the completion of the investigator's preliminary report of the compliance review or complaint investigation. Notice of apparent noncompliance shall not be issued until the Director of Compliance and ARA/FHEO have reviewed and concurred in the merits of the documentation, organization, and the propriety of the recommendations stated in the preliminary report. Concurrence shall be indicated by their signature on the concurrence page of the report (see Chapter 8, paragraph 39k.).
- b. Opportunity for Voluntary Compliance. Every HUD recipient shall be afforded the opportunity to respond to the allegations or assertions of noncompliance or voluntarily comply with Title VI (or Section 109 of the Housing and Community Development Act of 1974; if appropriate) after having been informed in writing and by mail, return receipt requested, of the apparent noncompliance.

NOTE: A HUD applicant/recipient who receives a notice of apparent noncompliance with Title VI may be called a respondent.

- (1) Voluntary Compliance Time Factors. Protracted compliance efforts which result in no concrete steps toward compliance or are used solely to delay taking action may be considered by the courts as an abuse of the Department's discretion in enforcing Title VI. Such an action permits a recipient to remain somewhere between apparent noncompliance and absolute failure or refusal to comply with Title VI. Therefore, a HUD respondent who receives notice of apparent noncompliance with Title VI, (or Section 109, if appropriate) shall be afforded no more than sixty (60) calendar days from the date of receipt of the notice to voluntarily comply, or substantially comply, with the provisions of Title VI (or Section 109, as appropriate). The sixty (60) day limitation for voluntary compliance efforts is consistent with Title VI and Section 109 of the Housing and Community Development Act of 1974.
- (2) Substantial Compliance. Substantial compliance exists when a Respondent undertakes to correct Title VI deficiencies by affirmative action, the completion of which will require time extended beyond the 60 day limitation; or when a Respondent continues to operate in a manner which does not appear to be inconsistent with Title VI.

SECTION 2. INFORMAL RESOLUTION

28. INFORMAL RESOLUTION. The Title VI Regulation requires the resolution of apparent noncompliance by informal means whenever possible.
 - a. Procedures. The procedure for effecting informal resolution of apparent noncompliance applies to applicants for HUD financial assistance to the same extent as to recipients. The procedure used to informally resolve a Title VI matter is as follows:
 - (1) the respondent shall be mailed, return receipt requested, a notice of apparent noncompliance with Title VI (see Appendix 3.11). Said notice shall clearly delineate the problem areas, inform the respondent that it has 60 days

to comply voluntarily before formal enforcement through the administrative process required in section 1.8 of the Department's Title VI Regulation; and offer the opportunity to discuss

both the problem areas and requirements for compliance;

- (2) the ARA/FHEO shall record on a tickler calendar system the date the respondent received the notice, and shall note and record the last day afforded the respondent for voluntary compliance before initiating the administrative process;
- (3) the respondent may request a meeting for the purpose of discussing the problem areas or requirements for compliance. The principal investigator or team leader will accompany either the ARA/FHEO or Director of Compliance to the meeting for the above stated purpose;
- (4) the ARA/FHEO shall approve voluntary compliance plans, methods, procedures, and actions if, when carried out, they would bring the recipient into compliance with Title VI (see Appendix 3.12 and 3.13 for copy of letters approving and rejecting voluntary compliance plans). All other plans must be rejected as inappropriate for Title VI compliance purposes (see Chapter 7, Section 3, paragraph 29).

NOTE: Compliance plans which change HUD approved Tenant Selection and Assignment Plans must receive the concurrence of the AS/FHEO in addition to the signature of the ARA/FHEO, prior to implementation of a plan by a local housing authority.

- b. Parties. The parties to all Title VI cases are the Department and HUD applicant or recipient, never a complainant (see 24 CFR 2.23). Therefore, the parties involved in the informal resolution of a Title VI matter are HUD and the Respondent. This rule shall apply throughout the review or complaint investigation and at the administrative hearing or enforcement levels.
- c. Negotiations. All Title VI efforts to secure voluntary compliance shall be negotiated, not conciliated or mediated (terms often mistakenly interchanged).

- (1) Negotiation Defined. Negotiation may be defined as a discussion mutually initiated by disputants only for the purpose of setting terms or clearing obstacles to an agreement arranged by the disputants.
- (2) Conciliation/Mediation Defined. Conciliation/Mediation is " an attempt to settle

disputes with the help of an outsider who assists the disputants in their negotiations . The sole objective is to settle a controversy by bring the parties to voluntary agreements."1/ The conciliation process is one of four procedures authorized by Title VIII of the Civil Rights Act of 1968 (see Section 810) for the elimination or correction of alleged discriminatory housing practices. In Title VIII cases, HUD (the outsider) attempts, in accordance with the provisions of that law, to assist in the resolution of a housing dispute between persons in the housing industry and individuals seeking housing.

- d. Negotiation Distinguished From Conciliation. Negotiation is carried on between the parties, without outside participants; the terms of any resultant agreement are offered and accepted by the parties only; the resultant agreement, if any, is performed by the party(s); and, if no decision or agreement is reached the parties agree to disagree.

- (1) In conciliated matters, the resolution of the problem is tripartite.(e.g. conciliator and the disputants); conciliation is performed by a person(s) who was not a part of the event which resulted in the dispute (an outsider); "the utmost a conciliator can do is to submit to the parties the recommendation as to the terms upon which they should agree, and further the parties are free to decide whether or not they should accept an award". 2/
- (2) Title VI does not authorize the payment or receipt of an "award" as compensation for damages incurred as a result of violation of the statute or implementing regulation.

1/ Quoted from Labor Disputes and their Settlement by Kurt Brawn, John Hopkins Press, 1955. Also see the Labor Arbitration Guide, Walter E. Baer, Dow-Jones-Irwin Inc., Homewood, Illinois, 1974.

2/ See footnote 1, Supra

Moreover, only disputants (HUD and the Respondent) can agree on a plan, or method for compliance with the Act and its implementing regulation.

- e. Objective of Title VI Negotiation. The objective of Title VI negotiation is to informally resolve those areas of apparent noncompliance with Title VI or its regulation voluntarily, without initiating the

administrative process leading to termination of HUD financial assistance.

SECTION 3. VOLUNTARY COMPLIANCE PLAN

29. VOLUNTARY COMPLIANCE PLANS. A voluntary compliance plan is prepared by the respondent and is that action, method, or procedure, outlined in written form, which, when carried out, is designed to bring the respondent into compliance with Title VI (or Section 109, if appropriate).
- a. The Respondent's Plan. HUD respondents have an obligation to prepare their own plans for compliance with Title VI (or Section 109, if appropriate).
- b. Assisting the Respondent. Section 1.6(a) of the HUD Title VI Regulation requires the Department to provide assistance and guidance to respondents to help them comply voluntarily with the Title VI regulation. HUD staff should not be responsible, for writing the plan. However, assistance and guidance should include but not necessarily be limited to:
- (1) an explanation of the requirements of Title VI;
and
 - (2) review of a proposed plan to determine:
 - (a) whether the proposed action would appear to bring the respondent into compliance;
 - (b) whether proposed actions address the problems delineated in the notice of apparent noncompliance, and
 - (c) whether the methods to be used appear to facilitate desegregation, nondiscrimination and equality of treatment of minority and nonminority persons.

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- c. Submission of Plans. A HUD respondent may submit a written plan for voluntary compliance with Title VI for approval to the Office of FHEO, at any time. Although it is preferable that a plan be submitted before the initiation of the administrative process (24 CFR 1.7(d)), a voluntary plan may also be submitted at any stage of the administrative process (24 CFR 1.10(f)), except that such plan should be submitted for approval no later than 30 days from the expiration date of the time for both parties to file exceptions to the final decision of noncompliance. Plans submitted after notice of the opportunity for hearing but before the expiration date of the time for both parties to file exceptions to the final decision must be approved by

the AS/FHEO.

d. Approval or Rejection of Voluntary Compliance Plans.

(1) The ARA/FHEO is authorized to approve or reject voluntary compliance plans submitted prior to the initiation of the administrative process. The only exception is that alterations in tenant selection and assignment (TS&A) plans must receive the concurrence of the AS/FHEO.

(a) TS&A plans submitted to Department staff (prior to the initiation of administrative proceedings) for the stated or implied purpose of achieving compliance with Title VI must be reviewed by Regional FHEO staff. The ARA/FHEO must come to an initial determination as to the acceptability of a proposed revised TS&A.

1 If a proposed voluntary compliance plan or proposed revised TS&A is unacceptable as a means of achieving compliance with Title VI, the ARA/FHEO must so determine and advise the HUD recipient accordingly.

2 If a proposed voluntary compliance plan (other than a TS&A plan) is acceptable as a means of achieving compliance with

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Title VI, the ARA/FHEO must so determine and advise the HUD recipient accordingly.

3 AS/FHEO concurrence is not necessary prior to an ARA/FHEO notifying a recipient of rejection of a proposed compliance plan (see Appendix 3.13 for form letter).

4 AS/FHEO concurrence is required before a HUD recipient may be advised that a TS&A plan is acceptable as one which will achieve compliance with Title VI.

(2) The AS/FHEO shall approve or reject voluntary compliance plans submitted after the initiation of the administrative process.

NOTE: For the purpose of Title VI enforcement, the initiation of the administrative process begins when the ARA/FHEO forwards a report of a compliance review or complaint investigation to AS/FHEO with a recommendation for formal enforcement or sanctions (see Title VI Compliance

Flow Chart, Appendix 4.6).

30. TYPES OF VOLUNTARY COMPLIANCE PLANS UNDER TITLE VI. There are as many types of voluntary compliance plans which may be submitted by a HUD respondent as there are areas of apparent noncompliance with Title VI. The types depend largely upon the areas of apparent noncompliance found and documented by FHEO investigators: For example:

- a. revised or modified tenant selection and assignment plans (TS&A's) where it has been found and documented that a housing authority maintained racially identifiable housing projects (see Appendix 4.5 for model plan).
- b. plans for greater minority participation in the planning process of a local renewal agency which has been found (and documented) to have directly caused, or failed to prevent, the exclusion or underrepresentation of all minorities (when compared to the number of minorities available) in the overall planning process of the local agency to the same extent and degree as nonminority persons;

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- c. plans which increase minority participation and/or increase the number of minorities benefiting from HUD programs, activities, services, financial aid, enrollment, eligibility etc. where it has been documented that a HUD respondent has directly caused or failed to prevent segregation, discrimination or disparate treatment of minority program beneficiaries;
- d. plans, referenced in a-c above, which are designed to overcome the past effect of conditions which result in limiting minority persons in participating in or benefiting from HUD programs due to past administration or operation of these programs.

31. VOLUNTARY COMPLIANCE PLANS DISTINGUISHED FROM AFFIRMATIVE ACTION PLANS UNDER TITLE VI.

Voluntary compliance plans are distinguished from affirmative action plans by time and rationale for their respective submission.

- a. Voluntary Compliance Plans. Voluntary compliance plans are plans prepared voluntarily by respondents and are planned actions, methods or procedures in written form which are designed to correct existing conditions or procedures which currently operate in such a manner as to violate the provisions of Title VI of the Department's implementing Regulation. Such plans may be submitted for HUD approval at any stage of the

resolution of a Title VI matter, preferably before the initiation of the administrative process.

- b. An Affirmative Action Plan (AAP). An AAP is a written document which sets forth methods, procedures, or actions of a nature which, when implemented, will eliminate and/or overcome prior conditions or the effect of past conditions found by the Department to have limited participation by persons of a particular race, color, or national origin in HUD program(s).

- (1) When Required. AAP's are required when an applicant for or recipient of HUD financial assistance has been found (after hearing) to have failed to comply with Title VI or other law or Executive Order on the basis of race, color, or national origin in a HUD program or activity administered by the applicant/recipient.

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- (2) Submission of AAPs. In reference to the above stated AAPs must be submitted:
- (a) as a condition precedent to the acceptance of an application for or the availability of financial assistance for a program or activity in which the recipient has previously discriminated against persons on the grounds of race, color, or national origin.
- (b) as a condition precedent to the continuation or reinstatement of the respondents eligibility for HUD financial assistance for a program or activity in which the recipient has previously discriminated against persons on the grounds of race, color, or national origin.
- (3) When not Required. AAP's may not be required:
- (a) in the absence of a finding (after hearing) of discrimination;
- (b) unless the basis for requesting an AAP is clearly stated by the ARA/FHEO and carries the concurrence of the AS/FHEO.

SECTION 4. FAILURE TO REACH VOLUNTARY COMPLIANCE

32. FAILURE TO REACH VOLUNTARY CCMPLIANCE.

Voluntary compliance efforts have failed when a HUD respondent fails or refuses to furnish an assurance required under Section 1.5 of the Title VI Regulation or otherwise

fails or refuses to comply with the requirements imposed by or pursuant to Section 1.4 and when the areas of apparent noncompliance cannot be corrected by informal means.

- a. Consequences of Failure to Reach Voluntary Compliance. Failure to reach voluntary compliance results in the initiation of action the result of which may be termination, refusal to grant or continue Federal financial assistance (24 CFR 1.8), or other means authorized by law which includes referral to the Department of Justice.
- b. ARA/FHEO. When voluntary compliance efforts have failed (60 days after notice of apparent noncompliance) the ARA/FHEO shall inform the respondent by mail, return receipt requested, of that fact and indicate that the matter is being referred to Central Office FHEO for initiation of formal enforcement proceedings.

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- c. Formal Enforcement. The ARA/FHEO then sends to the AS/FHEO a copy of the complete report of the compliance review or complaint investigation, including all documentation and a memorandum recommending the initiation of formal enforcement action against the respondent.
- d. AS/FHEO. Designated staff in the Central Office of FHEO shall review the entire file and supporting documentation on behalf of the AS/FHEO for the purpose of assuring that:
 - (1) the matter has been thoroughly investigated;
 - (2) the issues or allegations are clear;
 - (3) the background data is sufficient to reflect a clear picture of the circumstances surrounding or precipitating the matter;
 - (4) the report recommends enforcement under Title VI;
 - (5) the report reflects a clear showing that there is a violation of Title VI which is supported by the evidence; and
 - (6) the file reflects evidence that would support a finding that compliance cannot be secured by voluntary means (see also form letter 3.15(a) and (b), Appendix 3).
- e. Secretarial Abstract. If all materials appear accurate and are supported by the documentation, a Secretarial Abstract will be prepared by staff in the Office of

AS/FHEO outlining the merits of the case and documentation, and formally requesting the concurrence of the Secretary in proceeding with formal enforcement.

- f. Deficiencies. If materials forwarded to the AS/FHEO are unclear, inconsistent or poorly documented, the deficiencies will be called to the attention of Regional staff and the file returned for correction. If an extended oral briefing is required, the principal investigator or team leader will be called into Central Office for a case conference.
- g. Secretarial Concurrence. When the Secretary concurs in the recommendation to proceed with formal enforcement under Title VI the matter is referred to the Office of General

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Counsel, Equal Opportunity and Administration Division, for action pursuant to Part 2 of the Department's Title VI Regulation (See Appendix 4.2 (a) and (b) for flow chart of actions under Part 1 and 2 of the Title VI Regulation).

33. DEFERRAL OF ACTION UPON APPLICATIONS FOR FINANCIAL ASSISTANCE.

- a. Authority. The Department's Title VI Regulation at Section 1.8(b) states in relevant part: "...The Department shall not be required to provide assistance (in cases where an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with requirements for effecting compliance) during the pendency of administrative proceedings ... except ... pursuant to a contract therefore approved prior to January 3, 1965".
- b. Executive Order 11764. Executive Order 11764 (superseding EO 11247) authorizes the Attorney General to coordinate enforcement of Title VI by Federal departments and agencies, and to prescribe standards and . procedures regarding implementation of that Act. The Attorney General Guidelines for the enforcement of Title VI (28 CFR 50.3(I)(A)) state: "In some instances, ... it is legally permissible temporarily to defer action on an application for assistance pending initiation and completion of Section 602 (of Title VI) procedures including attempts to secure voluntary compliance with Title VI" (see Appendix 1. 5).
- c. "Deferrals". The action commonly referred to as "deferral" is: the act of postponing staff processing of an application for assistance pending initiation and completion of procedures required by Section 602 of Title VI of the Civil Rights Act of 1964. Normally,

this course of action is appropriate only with respect to applications for noncontinuing assistance or initial applications for program of continuing assistance. It is not available where Federal financial assistance is due and payable pursuant to a previously approved application.

- d. When to Defer Processing Applications for Financial Assistance from HUD. A deferral may be imposed only after the following six steps have been completed by HUD/FHEO staff or civil rights compliance staff of another Federal department or agency charged with the responsibility to administer and enforce Title VI:

(1) a Title VI compliance review or complaint investigation has been conducted;

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(2) a report of the review and investigation has been written in its final form with the documentation of each area of Title VI violation, as well as a recommendation for the initiation of the administrative hearing process;

(3) the ARA/FHEO has concurred in the recommendation for a hearing;

(4) a notice of apparent noncompliance with Title VI has been mailed, return receipt requested to the respondent;

(5) the respondent has been afforded at least 30 days (not to exceed 60 days) to voluntarily comply and has indicated its intention not to comply; and

(6) the respondent has been notified that all efforts to secure compliance voluntarily have failed (see Appendix 3.15(a) and 7(b) for form letters).

- e. Deferral Process Under Title VI. The deferral process under Title VI is instituted by:

(1) The ARA/FHEO. The ARA/FHEO at his/her discretion recommends to the AS/FHEO (who requests the appropriate Regional Administrator to defer processing noncontinuing assistance applications from a respondent who has been notified of apparent noncompliance with Title VI and who has refused or failed to indicate its intention to comply voluntarily within 30 days after receipt of the notice. Deferrals imposed at the recommendation of the ARA/FHEO are called "interim deferrals"; or

(2) The AS/FHEO. The AS/FHEO requests each program

Assistant Secretary to instruct the appropriate Regional Administrator to defer processing all applications from applicants against whom Section 602 administrative procedures have been initiated. Deferrals imposed at the request of the AS/FHEO are called "consequential deferrals".

NOTE: The Department of Justice must be notified in advance of HUD action to defer processing applications for financial assistance (see Appendix 1.5, 28 CFR 50.3(v)).

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- f. "Lifting a Deferral". The expression "lifting a deferral" means, in general, removing administrative restrictions on the processing of applications from applicants which were imposed as a result of alleged Title VI violations.
- (1) When to Lift Deferrals. "Interim Deferrals" (those initially recommended by ARA/FHEO) may remain in force and effect until: (1) voluntary compliance is achieved, or (2) Secretarial action is taken (concurrence or nonconcurrence) on the request to initiate an administrative hearing against the respondent. "Consequential Deferrals" (those initiated by AS/FHEO) may remain in force and effect until: (1) voluntary compliance is achieved; or (2) the matter is finally resolved.
 - (2) Responsibility for Lifting Deferrals. Once the AS/FHEO is satisfied that the respondent has complied, or substantially complied (see Chapter 7, paragraph 27b(2)) , or that the compliance matter has been finally resolved, the AS/FHEO shall so inform the program Assistant Secretary and/or the Regional Administrator to "lift the deferral", as appropriate.

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