

Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System

September 1992

A Report of the United States Commission on Civil Rights

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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Letter of Transmittal

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

The United States Commission on Civil Rights transmits this report, *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System*, to you pursuant to Public Law 98-183, as amended.

This report stems from a comprehensive, on-going evaluation by the Commission of the implementation and enforcement of the Federal Fair Housing Amendments Act of 1988. It focuses on progress being made by State and local agencies to gain certification from the U.S. Department of Housing and Urban Development (HUD) to process Federal fair housing complaints, and the consequences if many agencies fail to be certified.

The Commission finds that progress toward certifying State and local agencies since passage of the 1988 amendments has been minimal. In comparison to the more than 120 agencies participating in the Federal fair housing system in 1988, which processed 70 percent of the Federal caseload, only 14 agencies have been determined by HUD to have substantially equivalent laws. A large number of agencies are at risk of not being certified.

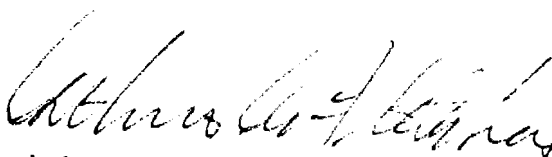
With the impending September 13, 1992, deadline for certifying agencies grandfathered by the 1988 amendments, the Commission's research finds the prospects poor for preserving the traditionally important role of State and local agencies. Many agencies simply will not be able to meet HUD's substantial equivalency requirements by the deadline, and will drop out of the Federal system. Although a number of these agencies may qualify in time, short-term losses could cause a serious and unacceptable breach in Federal fair housing enforcement. Further, the Commission is not optimistic that such losses can be recovered in the long term.

Unless decisive steps are taken to address this situation, people not only will be deprived of the stronger protections provided by the 1988 amendments, but also of the original protections of the 1968 Fair Housing Act. The recommendations contained in this report prescribe actions for advancing the certification of State and local agencies and for lessening the potentially harmful consequences of losing agencies from the Federal fair housing system.

The Commission calls on Congress and the President, in their crucial leadership roles in Federal enforcement efforts, to adopt the Commission's recommendations and to encourage HUD to implement these recommendations.

Respectfully,

For the Commissioners,



Arthur A. Fletcher
Chairperson

Acknowledgments

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Chapter 1

Introduction

Four years ago, Congress enacted the Fair Housing Amendments Act of 1988 in order to expand the rights of all Americans to fair and equal opportunities in housing and to establish a strong new system for securing these rights. The promises of this new law have yet to be realized and may not be in the foreseeable future. Full implementation has been delayed because State and local jurisdictions that assist the Federal Government in processing Federal fair housing complaints have been unable to enact fair housing statutes substantially equivalent to Federal law and thus will be unable to continue processing Federal complaints after September 13, 1992.

The need for the Fair Housing Amendments of 1988 became clear over the course of 20 years' experience with existing Federal fair housing laws. The first major effort by the Federal Government to eliminate discrimination and promote fairness and equal opportunity in housing came with the enactment of Title VIII of the Civil Rights Act of 1968. This act, proposed and debated in the wake of widespread urban rioting in 1967, was conceived as "an

essential and indispensable ingredient . . . [to solving] the problems of American cities."¹ Congress recognized that fair and equal housing opportunities for all Americans were essential to advancing employment and educational opportunities.²

With its "heavy reliance" on conciliation and voluntary compliance,³ however, the 1968 Fair Housing Act lacked an effective enforcement mechanism and amounted to little more than a "toothless tiger."⁴ Discrimination in every area of housing, such as rentals, sales,⁵ and mortgage lending,⁶ remained pervasive. Minorities remained segregated and highly concentrated in America's poor and undeveloped neighborhoods;⁷ the impact of this segregation has been seen most recently in the urban unrest in Los Angeles and elsewhere.

Convinced by mounting evidence and persistent lobbying that a stronger, more comprehensive housing law was necessary, Congress passed the Fair Housing Amendments Act of 1988 (FHAA). These amendments expanded coverage to persons with disabilities and to families with children and completely revamped the fair housing enforcement system, es-

1 114 *Cong. Rec.* 2274 (daily ed. Feb. 6, 1968) (Statement of Sen. Walter Mondale).

2 The nexus between housing and educational opportunities was clearly stated in U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools*, (1967)p. 211.:

"The goals of equal educational opportunity and equal housing opportunity are inseparable. Progress toward the achievement of one goal necessarily will facilitate achievement of the other. Failure to progress toward the achievement of either goal will handicap efforts to achieve the other."

The report recommended that consideration be given to legislation that would "prohibit discrimination in the sale or rental of housing" and "expand programs of Federal assistance designed to increase the supply of housing throughout metropolitan areas within the means of low- and moderate-income families."

3 Leland Ware, Associate Professor of Law, Saint Louis University, School of Law, "New Weapons for an Old Battle: the Enforcement Provisions of the 1988 Amendments to the Fair Housing Act," Jan. 1992, p. 20 (hereafter cited as "New Weapons for an old Battle"). This report was prepared for the consideration of the Administrative Conference of the United States, a permanent, independent Federal agency.

4 134 *Cong. Rec.* S10454 (daily ed. Aug. 1, 1988), (statement of Senator Edward Kennedy).

5 Ronald E. Wienk, *et al*, *Measuring Racial Discrimination in American Housing Markets: The Housing Market Practices Survey* (HUD, 1979), mimeo. The Urban Institute and Syracuse University, *Housing Discrimination Study: Synthesis*, prepared for the Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Aug. 1991, p. 33.

6 Glenn B. Canner and Dolores S. Smith, "Home Mortgage Disclosure Act: Expanded Data on Residential Lending," *Federal Reserve Bulletin* (Nov. 1991), pp. 859-881.

7 Douglas S. Massey and Nancy A. Denton, "The Dimensions of Residential Segregation," *Social Forces*, Vol. 67, (1988), pp. 281-315.

establishing substantially stronger rights and remedies, a progressive system of judicial review, and tough new procedural standards.⁸

While strengthening the authority of the Federal Government's principal enforcement agent, the U.S. Department of Housing and Urban Development (HUD), Congress also sought to preserve the partnership with State and local governments, a partnership which had been central to enforcement efforts prior to 1988. The creation of a system to refer Federal complaints to these agencies "recognize[d] the valuable role State and local agencies play in the enforcement process" and was designed to encourage legislative bodies to enact and enforce broad and effective fair housing laws.⁹

Congress insisted that the intent of the Fair Housing Act be fully realized in *all* jurisdictions, and mandated that only jurisdictions with laws "substantially equivalent"¹⁰ to Federal law could process Federal fair housing complaints. In consideration of the complexities of this task, however, Congress "grandfathered" the 122 agencies participating in the Federal fair housing system as of 1988, giving them up to 4 years to meet the substantial equivalency requirement.

In the interim, only members of the newly protected groups of disability and familial status have obtained the superior rights and remedies provided by the new amendments. Citizens of most of the "grandfathered" States and localities, including the groups traditionally protected by civil rights laws, have been covered under typically much weaker State or local laws. Only with the expiration of the interim period on September 13, 1992, will Federal law protect all Americans equally.¹¹

Can the goals of the 1988 amendments be fully realized? The Commission finds that progress towards certifying State and local agencies has been minimal to date and is likely to fall far short of meeting congressional expectations in the near future. As of June 1992, only 9 of the original 122 agencies had enacted substantially equivalent laws. Five others, which had not previously participated, joined the Federal system for the first time, bringing the total number of agencies with substantially equivalent laws to 14. It appears likely, moreover, that up to 50 percent of the agencies which currently in the Federal fair housing system will not be processing Federal fair housing complaints after the September 13 deadline expires.¹²

A number of factors account for the extremely slow progress. The Commission finds that both HUD and the grandfathered State and local agencies seriously underestimated the technical complexities and political hurdles that had to be surmounted in order to enact substantially equivalent laws. HUD was slow to formulate specific standards for substantial equivalency and to engage aggressively in assisting jurisdictions in the certification process. State and local agencies and the political leadership in these jurisdictions were also slow to focus on the need for fair housing laws that conform to a high degree and in every respect to Federal law. Finally, Congress and the Administration, as the top national political leaders, have not actively supported States and local jurisdictions in the complex and often controversial task of developing and enacting strong new fair housing laws.

The U.S. Commission on Civil Rights is deeply concerned that the promise of the 1988 Fair Housing Act will not be realized.¹³ With the probable loss of

8 Pub. L. 100-430 (1988); 42 U.S.C. § 3601-3619. The enforcement mechanism consists of an administrative enforcement procedure and an improved system which authorizes civil actions by private parties and the Attorney General. There is also an election provision which allows either of the parties to opt to have the action heard in Federal district court or through administrative hearings. *Also see*, "New Weapons for an Old Battle," p. 26.

9 Robert G. Schwemm, *Housing Discrimination Law and Litigation* (New York, NY: Clark Boardman Callaghan, 1991), p. 24-10 (hereafter cited as Schwemm, *Housing Discrimination*). See also 42 U.S.C. § 3610(f).

10 U.S. Department of Housing and Urban Development, *1992 Programs of HUD*, May 1992, "Certification of Substantially Equivalent Agencies," p. 93. "For a State or local agency to be certified as 'substantially equivalent,' the Assistant Secretary for Fair Housing and Equal Opportunity must examine the law administered by the agency and review the agency's ability to administer the law, including consideration of its enforcement activities. The agency's law and its procedures must meet specific criteria [i.e., provisions of rights and remedies] established under the [Federal] Fair Housing Law." See also 24 C.F.R. § 115.3.

11 As discussed below, the FHAA provides an extension of 8 months, from January 13 to September 13, 1992, for agencies to become substantially equivalent. On January 13, 101 agencies were granted this extension by HUD.

12 State and local agencies which can no longer participate in the Federal fair housing system can continue to apply for certification at any time.

13 The Commission also expressed concern in two State Advisory Committee reports, U.S. Commission on Civil Rights, *Implementing*

a large number of State and local agencies from the Federal system after September 13, HUD will be required to process their cases and assume other enforcement activities. Given budgetary uncertainties and the unique position of these agencies to serve their local communities, it is unclear whether HUD can fill the gap. Congress and the Administration must see that HUD has sufficient resources to fully compensate for the loss of State and local support. Because some jurisdictions eventually will enact substantially equivalent laws and rejoin the Federal system, HUD's burden will be most acute in the next one to two years. Fiscal relief needs to be full and immediate to avoid sustained damage to enforcement efforts.

With active support from Congress and the Administration, HUD must continue aggressive efforts to help jurisdictions become substantially equivalent. Broad participation of substantially equivalent State and local agencies can greatly enhance effectiveness and efficiency of the Federal fair housing system.

The Evolution of Title VIII

As originally enacted, Title VIII protected individuals from discrimination on the basis of race, color, religion, or national origin,¹⁴ and by amendment in 1974, on the basis of sex.¹⁵ It prohibits discrimination in the sale or rental of a dwelling,¹⁶ including the negotiation of terms, conditions, or privileges, and in the provision of services or facilities.¹⁷ It also prohibits discrimination in advertising that shows any preference or limitation or makes the

premises unavailable for showing;¹⁸ blockbusting and coercion or other interference in a protected individual's rights;¹⁹ and discrimination in financing of housing.²⁰

Prior to 1988, Title VIII required HUD to seek a conciliation agreement between the parties²¹ only if an investigation revealed a pattern or practice of discrimination and the Secretary decided to attempt to resolve the matter. Unless the investigation developed evidence of discrimination, an individual's only recourse was to bring a civil action in Federal court. However, if evidence of a pattern or practice of discrimination was found, then HUD could refer the case to the Attorney General,²² who could initiate a civil action. But the threat of court action was a weak deterrent, since monetary awards to the victim were limited to actual damages, attorney fees, and court costs, and punitive damages of not more than \$1,000.²³

Not long after the enactment of Title VIII, the shortcomings of the statute became apparent to fair housing proponents. A report prepared for the Administrative Conference of the United States indicated that:

In the years following the enactment of the Fair Housing Act, hundreds of private actions were adjudicated and a body of case law interpreting various aspects of the Fair Housing Act was developed. Despite these activities, advocates of Fair Housing became increasingly disenchanted with the obstacles imposed by the lack of any *meaningful enforcement authority at HUD* and the severe limitations on the relief available to prevailing plaintiffs²⁴

the 1988 Fair Housing Amendments Act, prepared by the Pennsylvania Advisory Committee, Apr. 1990, pp. 7-8, and U.S. Commission on Civil Rights, *Shelter Issues in New York: The New Fair Housing Amendments and Western New York Public Housing*, prepared by the New York State Advisory Committee, Aug. 1992, pp. 3-4.

14 42 U.S.C. § 3604 (1988).

15 *Id.* and Housing and Community Development Act Amendments to the Fair Housing Act of 1974, Pub. L. No. 93-383, § 808(b)(1), 88 Stat. 633, 729 (1974).

16 The statutory definition of dwelling is: [A]ny building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction of location thereon of any such building, structure, or portion thereof. 42 U.S.C. § 3602(VIb)(1988).

17 42 U.S.C. § 3604(b) (1988). See also *Smith v. Town of Clarkton*, 682 F.2d 1055 (4th Cir. 1982); *McDonald v. Verble*, 622 F.2d 1227 (6th Cir. 1980); *United States v. Housing Authority of City of Chickasaw*, 504 F. Supp. 716 (S.D. Ala. 1980).

18 42 U.S.C. § 3604(c)&(d) (1988). See also *Holmgren v. Little Village Community Reporter*, 342 F. Supp. 512 (N.D. Ill. 1971).

19 See *Zuch v. Hussey*, 394 F.Supp. 1028 (E.D. Mich. 1975), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1977).

20 See *Harper v. Union Saving Association*, 429 F. Supp. 1254 (N.D. Ohio 1977); *Laufman v. Oakley Bldg. & Loan Co.*, 408 F. Supp. 489 (D. Ohio 1976).

21 24 C.F.R., § 103.300 (1991).

22 *Id.*

23 Fair Housing Act, Pub. L. 90-284; Title VIII, § 812, 82 Stat. 88, codified at 42 U.S.C.A. § 3612(c)(1977), as amended 42 U.S.C. § 3613(1988).

24 "New Weapons for an Old Battle," p. 25.

When HUD found discrimination and attempted to conciliate a resolution, HUD was successful about half the time. Further, HUD referred only 10 percent of the cases it could not conciliate to DOJ, and few of the referred cases were pursued. In the Commission's 1979 report on fair housing enforcement, the Secretary of HUD commented on this dilemma:

The lack of adequate enforcement power was the most serious obstacle to the development of an effective Fair Housing Program within HUD. Our present authority is limited to a purely voluntary process of conference, conciliation, and persuasion Simply put, "conciliation" all too often has proved an inadequate means of securing compliance with the substantive provisions of Title VIII.²⁵

The 1979 report, *The Federal Fair Housing Enforcement Effort*, also recognized that HUD needed stronger enforcement authority in order to ensure that citizens rights were fully protected under a Federal fair housing law. In essence, the Commission recommended that the 1968 Fair Housing Act be amended to include stronger enforcement mechanisms.

In response to these concerns, Congress essentially rewrote the enforcement provisions of Title VIII with the Fair Housing Amendments Act (FHAA) of 1988. Signed by the President on September 13, 1988,²⁶ and taking effect on March 12, 1989, FHAA created a more effective enforcement system²⁷ by establishing stronger mechanisms for enforcing the law, including substantially greater monetary awards available through judicial review. It empowered the Secretary of HUD to authorize the

Attorney General to file a civil action seeking appropriate preliminary or temporary relief, pending final disposition of a complaint. Where the Secretary determines that there is reasonable cause to believe that discrimination has occurred or is about to occur, he or she must immediately issue a charge on behalf of the complainant commencing a formal administrative proceeding before an administrative law judge. The complainant or respondent may elect, however, not to proceed before an administrative law judge and instead to move the case to an appropriate Federal district court.

In addition, the FHAA prohibited discriminatory housing practices in "dwellings" or structures occupied or intended for occupancy as a residence by at least one family, including vacant land for sale or lease to be used for such a structure. The FHAA added prohibitions against discrimination²⁸ based on handicap²⁹ and families with children (commonly called familial status).³⁰ It specifies three important additional provisions that pertain to persons with disabilities: 1) It is unlawful to refuse to permit, "at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises. . . ."³¹

2) Landlords must make "reasonable accommodations" in rules, policies, practices, or services to afford a person with a disability equal opportunity to use and enjoy a dwelling. 3) Multifamily dwellings first occupied after March 13, 1991, must be constructed so as to accommodate persons with disabilities.³² Several exemptions do appear in the FHAA.³³

25 U.S. Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort*, Mar. 1979, pp. 5, 10.

26 See "Remarks on Signing the Fair Housing Amendments Act of 1988," 24 *Weekly Comp. Pres. Doc.* 1140 (Sep. 13, 1988).

27 42 U.S.C.A. §§ 3610-3614 (West Supp. 1992); and 24 §§ C.F.R. 100, 103-106, 109-110, 115, & 121 (1991).

28 U.S.C.A. § 3604(f)(1) (West Supp. 1992).

29 Handicap is a (1) "physical or mental impairment which substantially limits one or more . . . major life activities, (2) a record of such an impairment, or (3) being regarded as having such an impairment . . . but such terms do not include the current illegal use of or addiction to a controlled substance . . ." 42 U.S.C.A. § 3602(h) (West Supp. 1992).

30 Familial status means "one or more individuals [not yet 18] being domiciled with (1) a parent or another person having legal custody of such individual or individuals; (2) the designee or such parent or other person having such custody, with the written permission or such parent or other person." Pregnant women or individuals in the process of securing custody are accorded familial status. 42 U.S.C.A. § 3602(k) (West Supp. 1992).

31 *Id.* § 3604(f)(3)(A).

32 *Id.*

33 *United States v. Columbus Country Club*, 915 F.2d 877, 883 (3rd Cir. 1990), *cert. denied* 111 S.Ct 2797 (1991).

Exemptions for the Elderly. Certain types of housing for the elderly are exempted from the familial housing provision so that living choices of older persons are not unfairly limited. To qualify for this exemption, three conditions must be met:

1) housing provided under a State or Federal program determined by the Secretary of HUD to be specifically designed and operated to as-

The FHAA also permits civil penalties to be awarded by administrative law judges and Federal district court judges in order to "vindicate the public interest."³⁴ An administrative law judge can award civil penalties up to \$10,000 for first-time offenders and up to \$50,000 for respondents with three or more findings of discrimination during a 7-year period, and a United States district court judge may award civil penalties up to \$50,000 for first-time offenders and up to \$100,000 for repeat offenders.³⁵ Where legal fees and costs are involved, individuals may also be granted reimbursement for them.³⁶ With the strong enforcement mechanisms in place, victims of housing discrimination are receiving substantial settlements through litigation.³⁷

Role of State and Local Agencies in Federal Enforcement Efforts

Fair housing laws were implemented by State and local governments as early as 1950, and by the time the Federal Fair Housing Act was passed in 1968, approximately 60 jurisdictions had prohibited at least some forms of discrimination.³⁸ The act recognized the shared interests among Federal, State and local governments by requiring HUD to turn over fair housing complaints to any State or local agency that had a fair housing law "substantially equivalent" to the Federal statute.

Nevertheless, in 1979 HUD only recognized 23 jurisdictions as substantially equivalent. This situation began to change, however, with the enactment in 1979 of the Fair Housing Assistance Program (FHAP).³⁹ The FHAP authorized HUD's Office of

sist elderly persons; 2) housing intended for, and solely occupied by, persons over the age of 62; and 3) housing intended for, and operated for occupancy by, at least one person 55 or older. To qualify for this latter exemption, these conditions must be met: (a) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and (b) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and (c) the publication of, and adherence to, policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. *See also* 134 Cong. Rec. § 10465-66 (daily ed. Aug. 1, 1988). 42 U.S.C.A. § 3607(b)(2)(West Supp. 1992).

Owner Exemption. Under limited circumstances, sales of single-family houses by an owner are exempt. An exemption is also available in a building not intended to be used by more than four families, if the owner lives in the building. 42 U.S.C. § 3603(b)(1)&(b)(2)(1988).

Religious and Private Club Exemptions. An exemption permits religious organizations to prefer persons of that religion in the sale or rental of noncommercial buildings, unless the religion prohibits membership on the basis of race, color, religion, or national origin. Private clubs also are exempted if they provide lodging for a noncommercial purpose (incident to their primary purpose) that give a preference to their members. *Id.* § 3607(a).

Government Exemption. FHAA does not limit any reasonable Federal, State, or local law restricting the maximum number of occupants for a dwelling. 42 U.S.C.A. § 3607(b)(West Supp. 1992).

The act also allows an owner to make decisions after taking into account the conviction of individuals for the manufacture or distribution of illegal drugs. *Id.* § 3607(b)(4).

³⁴ 42 U.S.C.A. § 3612(g)(3) (West Supp. 1992).

³⁵ *Id.* §§ 3612(g)(3) & 3614(d)(1)(C) (West Supp. 1992).

³⁶ *Id.* § 3613(c) (West Supp. 1992).

³⁷ There have been several very large awards and out-of-court settlements since the FHAA, several of which have exceeded \$1 million. A Federal jury recently awarded the largest amount, \$2.41 million, to a District of Columbia woman who was refused a rental apartment because she had children. The jury found a "pattern and practice" of bias by the company in rejecting families with children that applied for rental housing. *The Washington Post*, July 15, 1992, p. B1.

³⁸ By 1961, 17 States had banned at least some forms of discrimination in housing. Schwemm, *Housing Discrimination*, p. 3-11.

³⁹ Described in U.S. Department of Housing and Urban Development, *1992 Programs of HUD*, p. 92 (hereafter cited as 1992 HUD Programs). Fair Housing Assistance Program (FHAP) (State and Local Agencies Program). *Nature of Program*—Assists State and local agencies that administer fair housing laws certified by the Department as "substantially equivalent" to Title VIII of the Civil Rights Act of 1968, as amended. Assistance includes support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The program is designed to build coordinated intergovernmental enforcement of fair housing laws and provide incentives for States and localities to assume greater responsibility for administering fair housing laws. Appropriations implementing this program were first enacted for FY 80. *Applicant Eligibility*—Applicant agency must (1) be certified as "substantially equivalent" and (2) execute a written "Interim Agreement" or "Memorandum of Understanding" with the Department, describing the working relationship

Fair Housing and Equal Opportunity (FHEO) to provide financial assistance to “equivalent” agencies that agreed to process cases of alleged housing discrimination referred to them by HUD. “Since then, the number of recognized State and local agencies has grown from 23 to [122]. And the percentage of the total national caseload of housing discrimination complaints that these agencies processed rose from less than 10 percent in 1979 to more than 70 percent in 1988.”⁴⁰ Over a 10-year period, HUD invested more than \$30 million in building this successful intergovernmental partnership, which, by promoting a careful division of work and cooperation among agencies, has enabled governments at all levels to secure resources available for fair housing enforcement and other initiatives.⁴¹

State and local agencies enforce a variety of State laws and local ordinances that typically protect the rights of their citizens on the basis of race, color, national origin, sex, and in some jurisdictions, physical disability. Some of these statutes include administrative and punitive measures. Enforcement agencies are similarly diverse, varying greatly in size and composition of staff, budget, and scope and nature of responsibilities. Typically, the head of government, usually the Governor or mayor, appoints commissioners to oversee the agency’s operations and to hear cases. Staff members investigate complaints, work with various local entities (including law enforcement agencies and schools), serve as official liaisons to community and advocacy groups, and plan and develop initiatives to strengthen and protect the civil rights of persons in their jurisdictions. To illustrate the broad range of responsibilities and activities of various State and local agencies, several representative agencies are described in appendix A.

Most agencies spend a small but increasing part of their total resources on fair housing enforcement.

From FY 1987 through FY 1990, the agencies assigned only about one-fifth (median values of 18 to 20 percent) of their total staff to fair housing.⁴² This is also reflected in the portion of the total budget devoted to fair housing—from 10 to 16 percent for the median agency. Typically this amounted to two full-time staff members assigned to fair housing enforcement.

With passage of the 1988 Amendments, State and local FHAP agencies have continued to handle a significant portion of the total case load. In calendar year 1989, FHAP agencies received 3,222 complaints under Title VIII, approximately 45 percent of all HUD complaints. Although the relative share of cases handled by agencies declined to 42 percent in FY 1990, this figure still represents a substantial portion of the total housing enforcement case load.⁴³

Some of the ways State and local fair housing laws may impact on Federal fair housing law are summarized by Robert G. Schwemm:

As a rule, the remedies provided by a State or local fair housing law to private victims of discrimination are independent of their remedies under Federal law. The Federal statutes were not intended to preempt State and local fair housing statutes, and Title VIII specifically preserves any law of a State or political subdivision of a State . . . that grants, guarantees, or protects the same rights as are granted by this title. The victim of housing discrimination, therefore, may file separate Federal and State law claims for the same unlawful act without being forced to choose between Federal and State remedies.⁴⁴

A key exception to this rule arises if a State or local law is substantially equivalent to Title VIII. “Then a housing discrimination victim who files an administrative complaint with HUD under Title VIII will be required first to pursue the claim in a State or local agency.”⁴⁵ A complainant remains free, how-

between the agency and the appropriate HUD Regional Office of Fair Housing and Equal Opportunity. *Legal Authority—Fair Housing Act* (42 U.S.C. § 3601 *et seq.*) (1988).

40 “New Federal Fair Housing Approach Endangers A Relationship That Works,” *Governing*, Commentary By Steven J. Sacks, (August 1989) p. 82. Steven J. Sacks is the former director of the Federal, State and Local Programs Division, U.S. Department of Housing and Urban Development.

41 *Ibid.*

42 See table I.1. Median values are cited in this report for many of the statistics on the State and local agencies responding to the Commission’s Fair Housing Survey. The median is a useful statistic to examine the typical value of some number across all agencies. Its primary defect is also its greatest strength—it does not fully reflect the effects of a few agencies reporting very large or small values. This makes the median a very appropriate statistic to use when it is believed that there are reporting errors in some survey responses.

43 Calculated from figures in HUD, *The State of Fair Housing 1990* (November 1991), p. 6. The drop in the proportion of cases handled by FHAP agencies is due to the addition of two new protected classes in 1988, which are covered almost exclusively by HUD.

44 Schwemm, *Housing Discrimination*, p. 30-2.

TABLE 1.1
State and Local Agency Budget Overview (median values)

	No. of agencies	FY 1987	FY 1988	FY 1989	FY 1990
Fair housing staff	47	2	2	2	2
Fair housing budget	43	\$38,400	\$80,250	\$50,638	\$68,261
Percent of total staff assigned to fair housing	47	18	18	20	18
Percent of total budget assigned to fair housing	43	10	10	16	15
Cases received (total)	47	3,156	3,121	3,123	2,702
Cases closed (totals)	47	2,477	2,670	2,866	2,453

Source: U.S. Commission on Civil Rights, *Survey of State and Local Human Rights Agencies on the Federal Fair Housing Amendments Act of 1988*, OMB #3035-0022 (December 1990).

ever, to bypass the administrative process entirely and file direct court action without first exhausting State or local remedies.⁴⁶

The resolution of a complaint "by a State or local fair housing agency under State or local law does not preclude a subsequent Title VIII suit, and its [decision] may not even be admissible as [evidence] in the Federal proceeding. However, the facts discovered by a State agency in the course of its investigation may be used by the parties in their Federal suit."⁴⁷ Furthermore, if a State court, as opposed to a State or local agency, decides the claim, then its judgment and in particular, the State court's findings of fact, may not be disturbed on appeal in a subsequent Federal court proceeding.⁴⁸

Although most housing discrimination complaints have been based on the Federal statutes, there are major reasons why a particular complainant may wish instead to proceed under a State or local fair housing law. Using the State procedure may be more convenient and less expensive than filing a Federal lawsuit, especially if it involves a simple

administrative complaint that can be initiated without a lawyer and that will be investigated and prosecuted by [the agency's] staff. Furthermore, the factfinder in a State or local agency may be perceived as more sympathetic to civil rights claims than is HUD.⁴⁹

Because the agency is located in the community, the staff is usually more knowledgeable about housing conditions and other elements of the local environment than their HUD counterparts. For example, they would be more likely to know of actions taken by local housing or business establishments to circumvent the law.

Sometimes there are substantive advantages in filing with State or local agencies. Some State and local laws bar discrimination on a variety of bases, not included in Title VIII, such as age, marital or welfare status. "In addition, a State statute may be subject to narrower exemptions or provide more effective sanctions than the Federal laws. For example, a State may revoke or suspend a defendant's real estate li-

⁴⁵ Ibid.

⁴⁶ Such action may be filed pursuant to 42 U.S.C §§ 3612-3613 (1988).

⁴⁷ Schwemm, *Housing Discrimination*, p. 30-3.

⁴⁸ Ibid.

⁴⁹ Ibid.

cense if he is found guilty of housing discrimination.”⁵⁰

Certification of State and Local Agencies

The 1988 amendments reaffirmed and further codified the Federal Government’s commitment to using State and local agencies in the enforcement of Federal fair housing law. Underlying this relationship is the fundamental principle that each agency must operate under a law and in such a fashion as to make the agency’s effect “substantially equivalent” to that intended by the Federal statute.⁵¹

To meet the substantial equivalency requirement, agencies must first satisfy criteria set forth in the FHAA⁵² and in HUD’s regulations⁵³ implementing the FHAA, and then formally apply for certification by HUD.⁵⁴ The Assistant Secretary for Fair Housing and Equal Opportunity (AS/FHEO) was design-

nated by the Secretary of HUD to implement the FHAA with respect to certification of agencies⁵⁵ and to make all certification decisions.⁵⁶

HUD’s Office of General Counsel (OGC) provides assistance to FHEO in carrying out its responsibilities in the area of substantial equivalency certification. That office provides legal reviews of legislation sent by the agencies requesting substantial equivalency certification.⁵⁷

Following precedent established prior to 1988, HUD requires each agency seeking certification to pass two tests. First, HUD determines “whether the law, administered by the agency, *on its face*,” provides rights, procedures, remedies, and judicial review that are “substantially equivalent” to those of Title VIII.⁵⁸ In making this determination of substantial equivalency, HUD applies detailed criteria set forth in the *Final Rule*.⁵⁹ Second, the regulations require that an agency’s “current practices and past

⁵⁰ Ibid., p. 30-4.

⁵¹ 42 U.S.C. § 3610(f)(3)(A)(1988).

⁵² 42 U.S.C.A. § 3610(f)(3)(West Supp. 1992).

⁵³ 24 C.F.R. §§ 115.2 & 115.3(1991).

⁵⁴ The application for certification must include: the fair housing law which created the agency and any regulations and directives issued under the law; the organization of the agency; agency funding and personnel; agency data demonstrating that the “current practices and past performance” comply with the performance standards established in the regulations; and any other information the official wishes to include. 24 C.F.R. § 115.5(a)(1991).

⁵⁵ 42 U.S.C. § 3535(d)(1988). Also see HUD-FHEO, “Substantial Equivalency Activities of the Department of Housing and Urban Development,” Paper, Mar. 5, 1992. See app. E.

⁵⁶ Under the FHAA, “The Secretary may delegate any of his functions, powers, and duties to such officers and employees of the Department as he may designate . . .” 42 U.S.C. § 3535(d)(1988). The actual delegation appears in 24 C.F.R. § 115.1(a)(3)(1991).

⁵⁷ For a detailed discussion of the certification activities conducted by OGC and FHEO, see HUD’s “Substantial Equivalency Activities” Paper, Mar. 5, 1992, app. E.

⁵⁸ Prior to the FHAA, the regulations were similar except that they did not have the phrase “administered by the agency.” 24 C.F.R. § 115.2(a)(1988).

⁵⁹ 24 C.F.R. § 115.3(1991). According to a letter from the former General Deputy Assistant Secretary for FHEO, “If the Assistant Secretary determines, after application of the criteria that a state or local fair housing law, on its face, fails to provide rights and remedies . . .” the agency is given a written notification which *may* include suggested changes in the law. The agency has at least 15 days to submit “data, views, and arguments” in support of its position and to request a conference. If after the agency has provided additional information or changes, “the Assistant Secretary still is of the opinion that the law, on its face, fails to provide rights and remedies . . .” then the State or local agency is informed in writing that certification is denied. Thomas D. Casey, former General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, letter to Joseph Heck, Executive Director, Beloit (MI) Equal Opportunity Commission, June 23, 1989. [See also 24 C.F.R. § 115.7(a)&(b)].

Five of the criteria apply to rights and remedies. First, an enforcement body must be authorized to receive and process complaints. The agency’s governing statute must provide that the complaints be in writing; that the agency acknowledge the filing and advise the complainant of the time limits and choice of forums; that the agency give prompt notice to persons accused of discriminatory practices, advising them of procedural rights and obligations; and that respondents may file an answer.

Second, the enforcement body must be delegated comprehensive authority to investigate and conciliate complaints of discrimination, including the authority to issue subpoenas. Proceedings must commence within 30 days of the complaint’s receipt. The investigation must be completed within 100 days unless impracticable. If the agency is unable to complete the investigation within 100 days, the parties are to be notified in writing of the reasons for the delay. The final administrative disposition must occur within one year, unless impracticable. Any conciliation agreement must be subject to agency approval, and it must be made public unless: the parties agree otherwise and the agency determines that publication is unnecessary to further the purposes of the law. The investigation/conciliation responsibility and the timing

performance [must] demonstrate that, has not been *in operation*, the law in fact provides rights and remedies that are substantially equivalent.”⁶⁰

If on its face the law provides rights, remedies, procedures, and the availability of judicial review, but it has not been in effect, or the appropriate State or local agency has not been in operation, for a sufficient time to permit demonstration of compliance with the performance standards in the *Final Rule*, HUD enters into an Interim Referral Agreement for a period of up to 2 years. During this time, HUD may refer complaints to the agency to allow it to build a track record adequate for HUD to monitor and assess performance.⁶¹

The concept of certifying State and local agencies that handle fair housing complaints is not new. Both the original version of Title VIII and the FHAA require HUD to refer complaints to State or local agencies that have fair housing laws substantially equivalent to the Federal statute.⁶² Before 1988,

HUD had regulations spelling out a “recognition” system for jurisdictions with “substantially equivalent” fair housing laws.⁶³ Although the term “recognition” was replaced by the term “certification” with the enactment of the FHAA in 1988, the concepts detailed in HUD’s 1989 regulations remained consistent with the previous requirements.⁶⁴ The requirement that the State and local recipients of referrals from HUD have “substantially equivalent” laws and ordinances providing “substantive rights” is also present in both sets of regulations.⁶⁵

Defining Standards of Substantial Equivalency

Ten agencies told the Commission that HUD could be flexible in its standards of substantial equivalency.⁶⁶ For example, the representative from the State human rights agency in Michigan wrote:

requirements highlight an anomaly of the regulations. The requirement for comprehensive authority for conciliation and investigation illustrates the significance of the two processes in the resolution of claims. However, the regulations do not provide detail about the *adequacy* of the investigation and conciliation processes, whereas time standards are spelled out in detail.

Third, the law may not place burdens on an individual that may unreasonably “discourage the filing of complaints. . . .” HUD’s regulation provides three examples of such unreasonable burdens: 1) the use of a time limit for the filing of a complaint, specifically less than 180 days after the occurrence or termination of the discriminatory practice; 2) provisions that proscribe testing, or impose costs, criminal penalties, or fees in connection with the filing of complaints; and 3) a requirement that a losing complainant pay the attorney’s fees. 24 C.F.R. § 115.3(a)(1991), and HUD meeting, Nov. 26, 1991.

Fourth, the law cannot contain exemptions that substantially reduce the FHAA’s coverage of protected housing. 42 U.S.C. § 3603(1988) generally provides the housing accommodations covered by the statute.

Fifth, the law must be “sufficiently comprehensive in its prohibitions to be an effective instrument in . . . carrying out” the FHAA’s purposes. The law “must afford administrative and judicial protection and enforcement of the rights” under the FHAA. The agency must be able to seek prompt temporary relief, if necessary, in order to protect the rights of the complainant, pending resolution of a case. It must be able to issue subpoenas and to grant damages, injunctive or equitable relief, and assess a civil penalty. 24 C.F.R. § 115.3(a)(5)(1991) for a detailed list of prohibitions that are required to be in the agency’s legislation. These include: (1) a refusal to sell or rent or negotiate; (2) discrimination in the terms, conditions, or privileges of sale or rental or the provision of services or facilities; (3) advertising that indicates a preference or discrimination; (4) falsely representing the unavailability of a dwelling; (5) coercion of or interference with a person in the exercise or enjoyment of rights granted under the FHAA; (6) blockbusting; (7) financial discrimination; and (8) the denial of access to multiple listing services.

Other relief includes actual damages or a civil penalty. An agency may arrange to have judicial determination with costs of the complaint paid by the agency. For other equitable relief, the regulations require an agency to “be specifically authorized to seek relief in a court.” The distinction between the two provisions could not be explained by HUD. Agencies are prohibited from transferring decision-making authority to nongovernmental entities. 24 C.F.R. §§ 115.3(b)(1)(iii) & (b)(1)(iv)(1991).

60 24 C.F.R. § 115.2(b)(1991)(emphasis added).

61 See *Id.* C.F.R. § 115.11.

62 42 U.S.C. § 3610(f); 24 C.F.R. § 115(1991).

63 49 *Fed. Reg.* 32046-50, (1984).

64 54 *Fed. Reg.* 3232, (1989).

65 See generally 42 U.S.C. § 3610(c)(1988); 42 U.S.C.A. § 3610(f)(West Supp. 1992); 42 U.S.C. § 3610(c)(1988).

66 In the Commission’s survey of State and local agencies, 10 expressed such views. These include Michigan; Jacksonville, Pinellas County, and Tampa, FL; Kentucky; Minneapolis, MN; South Dakota; Utah; California; and King County, WA.

We believe that HUD can certify our agency, at least for those portions of the laws for which we are currently certified and that other means, such as contractual or through a viable work sharing Agreement could resolve any remaining concerns related to the extension of the coverage provided for under the Federal Fair Housing Act. It is our view that "substantially equivalent" does not mean 100% or identical. We believe HUD needs to approach this matter from a similar standpoint. [W]e would implement the 30 day, 100 day requirement, one year time frames and notification under Federal law which is not a part of Michigan's law We do report to HUD the reasons for not meeting the 100 days [the requirement to process complaints] We do not believe that absence of these time frames from State law should prevent us from being considered substantially equivalent. However, even if we have no such certification or contract with HUD, it is our position that claimants will not suffer any loss or redress or protection of their rights as provided for under State laws. Michigan law plus this Department's policy to advise claimants of their rights [and] remedies under the Federal law enforced by HUD represents, we believe, are adequate safeguards.⁶⁷

South Dakota responded to the Commission Survey:

The Division cannot pay for [the] legal representation of [the] Charging Parties; hence, we [cannot] allow attorney's fees. The remedies cannot be granted as mandated by HUD. We have made provisions to ensure [that] the Charging Parties' [rights] are protected by the process and [that they] receive compensatory remedies. [The] concern is that in trying to reconcile HUD's requirements with what can be done under South Dakota law it will be so confusing, charging parties will get discouraged. HUD so far has shown little willingness to grant exceptions.⁶⁸

In King County, Washington, the agency responded that cases not conciliated by the agency could be "taken over by HUD." According to the agency's response to the survey, dual-filing cases with HUD and partial-processing by agencies could alleviate some of the problems for jurisdictions not able to meet substantial equivalency:

HUD could . . . allow cases in which reasonable cause is found by [the agency] and . . . are not conciliated [to] be taken over by HUD at that point and all further processing [can be] handled by HUD (i.e., the filing of a charge, election of forums, proceedings in court, etc.). The cases are dual-filed so this process can be done easily. The Charging Parties' rights could be protected because a charge can be filed by HUD under 42 U.S.C. 3610. Election of a forum can take place. Charging Parties always have the ability to file in court under the Federal Fair Housing Act and so have access to a private cause of action.⁶⁹

Defining "substantially equivalent" is not a simple matter. The statutory term is "relatively open-ended."⁷⁰ Neither the statute nor the legislative history—either the 1968 or 1988 laws—attempt to define the term. The term requires that the agency law and practice provide essentially the same protection (and, in many cases under the regulations, precisely the same protection) as under the FHAA.

The statute and regulations noted above are explicit in including the requirement that both the "facial" and "in operation" provisions be independently satisfied.⁷¹ State and local laws must specify the same rights, remedies, procedures, and judicial review protections available under Federal law, and must fully enforce those provisions,⁷² before a substantial equivalency can be granted.⁷³ Therefore, State and

67 *Michigan, Commission Survey*, Q. 5b, p. 15.

68 *South Dakota, Commission Survey*, Q. 5b, p. 15.

69 *King County, WA, Commission Survey*, Q. 5b, p. 15.

70 *Denny v. Hutchinson Sales Corp.*, 649 F. 2d 816, 819 (10th Cir. 1981).

71 The 1988 regulations provided: Such a determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries: (a) [w]hether the State or local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (b) whether the current practices and past performance of the . . . agency charged with administration and enforcement of such law demonstrates that, in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act. 24 C.F.R. § 115.2(1988).

72 The State or local law must, among other things, provide for an enforcement body to receive and process complaints, delegate to the enforcement body comprehensive authority to investigate complaints, not place any excessive burdens on complainants that might discourage the filing of complaints, prohibit discrimination in fair housing sufficiently to carry out the intent and purposes of the FHAA, and provide for the "judicial protection and enforcement of the rights embodied in the law." *Id.* §§ 115.2-115.3.

73 The regulations require that a "request for recognition under this part may be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law." *Id.* § 115.5.

Some have referred to the Title VIII regulatory requirement for substantially equivalent laws as a certification, e.g., *The Fair Housing*

local laws, when considered in the context of their administrative, regulatory, and judicial structure, must, in every respect, convey the meaning and intent of the Federal Fair Housing Act and the *Final Rule*.⁷⁴

It is appropriate for HUD to accept variances in a jurisdiction's statute *provided* other provisions (e.g. regulations, directives, and rules) fully compensate for such statutory deficiencies. Although statutory provisions, *per se*, do not guarantee that the meaning and intent of a government's legal decisions will be fulfilled, they are more likely to be effective than alternative nonstatutory means, such as administrative guidelines and regulations. Therefore, in judging whether statutory deficiencies are satisfactorily resolved, HUD must be reasonably confident that subsequent evaluation of the law in operation can determine that the intent of the Fair Housing Act is being realized.

The FHAA must be vigorously and uniformly applied in all jurisdictions and for all protected classes. Thus, it is essential that HUD not relax the standards that it used up until January 1992 to evaluate requests for certification.⁷⁵ As of January, HUD properly insisted that State and local laws replicate to a high degree the Federal law in all respects.

Temporary Referral and Extension Procedures

Recognizing that most agencies would need to revise their existing housing laws in order to meet the new requirements in the FHAA, Congress provided a 40-month transitional period (until January 13, 1992) during which "grandfathered" State and local

agencies could continue to receive referrals of HUD complaints.⁷⁶ During this period, referrals of complaints were made only with respect to those matters for which an agency previously had been certified (i.e., race, color, religion, national origin, and sex cases). Complaints based on new areas of coverage (e.g., familial status and handicap) were not referred to these agencies, since Title VIII recognition of the agencies did not include these areas.⁷⁷

By providing a 40-month grace period, Congress sought to maintain the Title VIII referral system while giving previously recognized agencies an opportunity to bring their laws into substantial equivalency with the FHAA.⁷⁸ The FHAA also allowed HUD to extend for up to 8 months the grandfathered status of the 122 agencies if exceptional circumstances existed which prevented them from becoming substantially equivalent by January 13, 1992.⁷⁹ In discussing certification compliance, a congressional report noted that:

In order to provide a reasonable transition period for States to adjust to the new law, agencies currently certified . . . will continue to remain certified for 40 months. This allows most jurisdictions sufficient time to conform their laws to the new Federal standards so that they may remain certified. The Committee recognizes that some jurisdictions may need additional time because of the infrequency of legislative sessions, and the Secretary may grant an additional 8 months for this purpose.⁸⁰

Agencies receiving such extensions, therefore, have until September 13, 1992, to receive Interim Referral Agreements under the FHAA.

In October 1991, the Assistant Secretary for Fair Housing and Equal Opportunity published the cri-

Amendments Act of 1988: The Second Generation of Housing, 42 *Vanderbilt L. Rev.*, 1049, 1069 (1989). While the practical effect of the HUD regulations made the provisions the same as the certification under current law, it is inappropriate to refer to the old requirements as a certification. The old regulations themselves did not use the term "certification." Moreover, to use the term ignores the fact that the determination existed only through the regulations, and not from the statute.

74 The regulations continue the existing substantial equivalency requirements but specify that laws must contain the Title VIII statute of limitations; extend to familial status and handicap, cover the same practices (including coercion, intimidation, threats, and interference); permit judicial enforcement; grant actual damages; permit injunctive relief; and award punitive damages or provide for civil penalties. 24 C.F.R. §§ 115.3, 115.3a (1991). In addition, the *Final Rule* established performance standards to review the efficacy of proceedings and investigation (*Id.* 115.4); procedures for certification application (*Id.* §§ 115.5-115.8); and procedures for conferences (*Id.* § 115.9) and interim referrals (*Id.* § 115.11).

75 It appears that HUD adhered closely to the standards specified in 24 C.F.R. Part 115.

76 42 U.S.C.A. § 3610(f)(4) (West Supp. 1992). See also 24 C.F.R. § 115.6(d) (1992).

77 24 C.F.R. § 115.6(d) (1991). Some agencies received contracts from HUD to investigate complaints involving handicap of familial status provided their laws covered these areas.

78 42 U.S.C.A. § 3610(f)(4) (West Supp. 1992).

79 *Id.*

80 H.R. Rep. No. 711, 100th Cong., 2nd Sess., at 35 (1988).

teria he would use to grant the 8-month extension.⁸¹ Under these requirements, an agency must show that substantial efforts have been made to have laws or ordinances amended in accordance with the FHAA and must also receive a legal analysis from HUD.⁸²

As of March 6, 1992, HUD had extended the deadline for meeting the substantial equivalency requirements for 96 agencies. Thirteen agencies were not granted extensions.⁸³

A Double Standard of Justice

Since enactment of the 1988 amendments, members of the new protected classes of familial status and disability and all individuals *not* living in a jurisdiction covered by one of the grandfathered agencies have been afforded the full rights, remedies, procedures, and judicial review provisions of the Federal law. Members of the original, pre-1988 classes of race, color, national origin, religion, and sex, on the other hand, who are covered by a grandfathered (FHAP) agency, have been afforded only those protections prescribed by State or local law.

In a large number of jurisdictions that have FHAP agencies, State or local laws are substantially weaker than the current Federal law. As noted above, to date only nine of the grandfathered agencies have substantially equivalent laws in place, and none of these have yet *demonstrated* their equivalence in operation. Thus, in nearly all jurisdictions with FHAP agencies, different standards of justice apply to the "new" and "old" protected groups. And members of the original protected groups typically have weaker protections in areas with FHAP agencies than in areas served directly by HUD. For example, in such States a person with a disability or family with children can receive punitive damages and counsel fees under Federal law, whereas such

provisions are typically not available to a member of the other protected classes.

African Americans, Hispanics and members of the other previously protected groups, having fought hard for the 1988 amendments, are understandably impatient for the double standard that has applied to them these past 4 years to end without delay. As put by Ms. Penda Hair, an attorney with the NAACP Legal Defense Fund in Washington, D.C.: "Our concern is that African Americans in places like Jacksonville, FL, have no remedy because the certified agency there can only conciliate. I don't want that situation to persist for another eight months."⁸⁴ She also said that "victims of housing discrimination would be better off if they had access to Federal remedies even if the Federal system is backed up, because some State and local agencies have no ability to provide relief."⁸⁵

To address the double standard problem, HUD instituted a special procedure for handling agency complaints during the 8-month extension period.⁸⁶ Under the procedure, an agency that received the extension continued to process Federal complaints as before until it determined that reasonable cause existed to believe a violation had occurred. In the event the agency found reasonable cause, the parties to the complaint were to be apprised of the rights and remedies available under Federal law and could opt to have their case referred to HUD for processing. If the case were referred back to HUD and it agreed with the agency's finding of reasonable cause, HUD then assisted the agency in seeking to resolve the complaint through conciliation.⁸⁷ Should conciliation efforts fail, the case was brought into HUD's system and processed as other HUD cases.⁸⁸

The Commission believes that this double standard in applying the Federal Fair Housing Act ought to expire as planned on September 13, 1992, as pre-

81 Gordon H. Mansfield, Assistant Secretary for Fair Housing Equal Opportunity, U.S. Department of Housing and Urban Development, letter to Agency Director(s), State and Local Human Rights/Relations Agencies, Oct. 30, 1991, p. 1.

82 Ibid., and *Fair Housing Advocate*, Fair Housing Council, No. 9, Nov.—Dec. 1991, p. 2.

83 *Fair Housing and Fair Lending*, Vol. VII, No. 10, Apr. 1992, p. 13. West Virginia, originally denied an extension, has since signed an Interim Referral Agreement. The original deadline for requesting an extension was Jan. 13, 1992. By that date, 101 agencies were granted extensions. By March 1992, five of those agencies had received Interim Referral Agreements.

84 *Fair Housing-Fair Lending*, vol. VII, no. 6, Dec. 1, 1991, p. 3.

85 Ibid., p. 4.

86 Ibid., pp. 2, 3. The new procedure was worked out with the NAACP Legal Defense and Education Fund, the National Association of Human Rights Workers, and the International Association of Official Human Rights Agencies (IAOHRA), whose membership includes fair housing agencies.

87 Ibid.

88 Ibid.

scribed in the FHAA. In areas that do not have substantially equivalent laws by then, HUD, State and local governments, private organizations and members of the public should make a concerted effort to enact strong laws that provide the same protection and enforcement as Federal fair housing statute. Broad support at all levels of government and from the communities they serve is essential to fully realizing the fair housing goals of the 1988 amendments.

Monitoring Agencies During the Interim Period

During the 8-month extension period (January 13-September 13, 1992), HUD monitored the progress and activities of the remaining 96 agencies with extensions. The 14 agencies that already have Interim Referral Agreements were also monitored with respect to progress in meeting FHAA's "operational" requirements.⁸⁹

The Funded Programs Division at HUD's headquarters and the Program Services Branches in the regions had the primary responsibility for monitoring. The Director of the Funded Programs Division indicated that regional staff would also have more of a role in assessing agency compliance with "operational" requirements in the certification process during the 8-month extension period.⁹⁰ As of January 1992, when the extension period began, however, specific guidelines and procedures on how to direct these activities had not been developed.⁹¹

According to the director of the Funded Programs Division, FHEO was to make "an assess-

ment" of the progress and status of the agencies under extension in July 1992. The Assistant Secretary would then determine what measures could be taken to assist the agencies in becoming substantially equivalent by September 13, 1992.⁹²

Agencies Not Granted Extensions

The 16 agencies that did not have extensions for certification no longer processed complaints for HUD.⁹³ According to FHEO's General Deputy Assistant Secretary, these agencies either did not establish "exceptional circumstances" or did not apply for an extension.⁹⁴

Six of the 16 agencies are located in HUD's Region V. For many of the residents, the closest city for filing complaints in person is Chicago, a distance of 40 to more than 100 miles.⁹⁵ Five HUD regions have at least one agency that has been denied an extension.⁹⁶ In Region X (Seattle), which is nearly 50 percent minority and has a large non-English-speaking population,⁹⁷ two out of seven agencies have been denied extensions and none has an Interim Agreement.⁹⁸

In light of the September 13, 1992 extension deadline set by the FHAA, the Commission is greatly concerned that only 14 agencies nationally have Interim Referral Agreements and that not a single agency was officially certified as of January 13, 1992. With 16 agencies already out of the Federal fair housing system, a major issue is how many of the remaining

89 Leonora Guarraia, General Deputy Assistant Secretary to the Assistant Secretary, Office of Fair Housing and Equal Opportunity, HUD Meeting, Jan. 21, 1992.

90 Marcella Brown, Director, Funded Programs Division, Office of Fair Housing Assistance and Voluntary Programs, HUD Meeting, Jan. 21, 1992.

91 Ibid.

92 Marcella Brown, Director, Funded Programs Division, Office of Fair Housing Assistance and Voluntary Programs, telephone interview, June 23, 1992 (hereafter cited as Brown Telephone Interview, June 23).

93 As of January 1992, 13 agencies were denied extensions and 4 agencies did not apply for an extension. West Virginia now has an Interim Referral Agreement.

94 Leonora Guarraia, HUD Meeting, January 13, 1992. The 13 State and local human rights/relations agencies denied extensions include Nevada (Region IX), West Virginia (Region III), Oregon (Region X), South Dakota (Region VIII), Alaska (Region X), Anchorage (AK) (Region X), District of Columbia (Region III), and Danville (IL), Urbana (IL), Bloomington (IL), Hazel Crest (IL), Park Forest, (IL), and Beloit (WI) (Region V). "Current Status of State and Local Human Rights Agencies' Requests for Extensions and Request for Certification," Jan. 13, 1992. This list was provided by Marcella Brown, Director, Funded Programs Division, HUD Meeting, Jan. 21, 1992 (hereafter cited as "Current Status of State and Local Agencies"); and Lauretta Dixon, Supervisory Equal Opportunity Specialist, Funded Programs Division, Office of Fair Housing and Equal Opportunity, telephone interview, Jan. 28, 1992.

95 The six agencies are: Bloomington, Danville, Hazel Crest, Park Forest, and Urbana, IL. and Beloit, WI.

96 Regions III, V, VIII, IX, and X.

97 U.S. Bureau of the Census, *1990 Census Summary*, (PHI-3 [AK]).

98 See HUD's Extensions Granted Chart, Jan. 1992, app. B.

96 agencies granted extensions will qualify for agreements.⁹⁹

This report evaluates the consequences for enforcement of the Fair Housing Act if the majority of the 122 State and local jurisdictions are not certified by HUD in 1992, and makes findings and recommendations to assist the Administration, Congress, and State and local governments in fulfilling the mandate of the 1988 amendments. While the legal responsibility to enforce fair housing under the new law rests with HUD, the moral responsibility to meet the challenge of fair housing enforcement must be shared by government at all levels.

As part of the research for this study in 1990, the Commission surveyed 129 State and local human relations/rights agencies nationwide to collect information on their efforts to incorporate provisions of the

FHAA into their fair housing laws.¹⁰⁰ Eighty-seven agencies returned the survey.¹⁰¹ The survey asked agencies about 1) their experiences in obtaining certification; 2) whether they had requested certification, as well as their current certification status; 3) the likelihood that proposed legislation would be substantially equivalent; 4) whether they had protections different from the Federal law; and 5) the impact of such differences on ensuring the rights of complainants.

Research also included field interviews of HUD staff at headquarters and in 6 regions (III, IV, V, VI, VII and IX), and representatives of various State and local agencies staff, private fair housing advocacy groups, Boards of Realtors, and business groups concerning their involvement in the certification process.

99 According to the Director of the Funded Programs Division, the 96 remaining agencies are continuing to work on their legislation in order to become substantially equivalent. At the agencies' request, HUD has provided technical assistance. Assistance has included reviewing the Office of General Counsel's legal analysis with the agencies, testifying at legislative hearings, and attending State and local meetings with staff. According to the Director, HUD staff have visited every State and local agency in Regions I, III, V, VII, IX, and X, and recently attended the Tri-Regional Conference in Chicago. "None of the remaining 96 agencies has indicated that it cannot make the September 13, 1992 deadline for certification," she said, adding that "None has fallen out of 'the extension pool.'" Brown Telephone Interview, June 23.

100 In December 1990, as part of its fair housing study, the Commission sent 129 State and local agencies a survey concerning their operations, staff, and budget, complaints processing procedures and data, their certification activities, and their overall fair housing program. Seven of the 129 agencies were not FHAPs, but actively pursued certification. U.S. Commission on Civil Rights, *Survey of State and Local Human Rights Agencies on the Federal Fair Housing Amendments Act of 1988*, OMB #3035-0022 (December 1990) (hereafter cited as *Commission Survey*) App. C. In addition to the survey, the agencies also were asked to submit copies of their respective laws/ordinances, regulations, their organizational chart, proposed legislation to meet substantial equivalency with the amendments, their recent *Annual Report(s)*, and the FHAP agreement with HUD, where appropriate. See app. C.

101 Although 87 agencies returned the survey, the Arlington (VA), Human Relations Commission, which was newly established, could not report comparable data. Thus, the total survey responses analyzed included 86 agencies.

Chapter 2

Obstacles to Certification and Prospects for Success

With only nine State and local agencies obtaining Interim Referral Agreements by the original deadline, it is important to know why more agencies did not succeed in obtaining certification. Although Congress allowed up to 4 years for agencies to attain certification, numerous obstacles have impeded the process, especially during the earlier stages.

Before the certification process began, there were indications that State and local agencies would encounter obstacles in their State legislatures and local governing councils to get substantially equivalent laws passed. In response to HUD's proposed regulations for implementation, published in November 1988, several agencies and other organizations expressed concerns over HUD's requirements for substantially equivalence. Comments published in the *Final Rule*¹ identified five major areas of concern: (1) Should procedures in fair housing laws of States and localities be required to mirror the FHAA or adhere to a more flexible standard? (2) Should an agency be certified that does not protect all of the classes protected by the FHAA? (3) Should building codes and laws or ordinances administered by other agencies be considered in determining the adequacy of the law? (4) Should State or local fair housing laws be required to include an exemption from discrimination based on familial status for housing of the elderly? (5) Should State and local agency enforcement mechanisms be required to be substantially equivalent to the FHAA?²

Several comments suggested that time limits, provisions requiring notification to complainants and respondents, and similar procedural criteria are in-

appropriate, burdensome, and may require substantial amendments to current laws or ordinances.³ HUD responded that the procedural aspects contained in the *Proposed Rule* are essential to providing adequate protection to parties in a complaint, and that the absence of such protection would substantially weaken a fair housing law.

Some agencies also urged that the *Final Rule* allow for State and local agencies to be certified even if their laws do not cover the new classes of persons protected by the FHAA, so long as the agencies meet all other requirements for recognition. HUD responded that the legislative history of the FHAA supports the proposed regulation that coverage of all protected classes is essential to a substantial equivalence certification.⁴

Several jurisdictions indicated that it is "onerous and inconsistent" with State and local fair housing enforcement procedures to require States and localities to mandate accessibility requirements for new construction that are substantially equivalent to section 804(f) of the FHAA.⁵ They noted that in most areas, building code ordinances and mechanisms are not part of fair housing enforcement, and that enforcement of these requirements is not handled in the same manner as fair housing cases.⁶ However, HUD responded that the legislative history of the FHAA, and particularly the discussion of the importance of the States' and localities' involvement in the implementation of new construction accessibility requirements, supported their position that local construction requirements be included as part of the HUD certification process.

1 54 *Fed. Reg.* 3276, Jan. 23, 1989 (hereafter cited as *Final Rule*).

2 *Id.*

3 *Id.* at 3277.

4 Also see, *House of Representatives Report* 100-71 on the Fair Housing Amendments Act of 1988, June 17, 1988. "If an agency currently certified on the day before the date of enactment does not provide anti-discrimination protection for the new covered classes, handicap and familial status, the Committee does not intend for complaints involving such classes to be referred to those agencies. Jurisdiction over these complaints would remain with HUD, until the agency is certified as substantially equivalent for the new classes."

5 *Final Rule* at 3277.

6 *Id.*

Many comments objected to the requirement that certified agencies administer a fair housing law that provides the same protection for housing for older persons as those contained in the FHAA. Some pointed out that as a result of this proposed requirement, their fair housing laws would have to be amended to limit existing protection for families with children in order to obtain certification.⁷

A major concern was the ambiguity of HUD's definition of "substantial equivalency." Initially, HUD indicated that in order to be substantially equivalent, State and local laws merely had to "mirror" the Federal law by incorporating HUD's *Final Rule* and the Federal Fair Housing Act. State and local agencies strongly objected to this approach to obtaining substantial equivalency. The agencies implied that HUD should be flexible in interpreting substantial equivalency. This dispute was compounded by the fact that nowhere is the term explicitly defined.

In 1988, in a letter to HUD's Office of General Counsel, the executive director of the Missouri Commission on Human Rights expressed his concerns about meeting certification requirements:

Generally, while it appears the proposals under Part 115 [*Final Rule*] were well intended, the ability or inability of FHAP agencies to meet the revised certification requirements could result in the destruction of FHAP. As I reviewed Part 115, I could not help but wonder how many State/local agencies would first decide to take the risk of opening statutes/ordinances in order to meet the proposed standards.

Further anxiety is added to my concern based on our experience in Missouri, wherein our most recent successful effort to revise the Missouri Human Rights Act (1986), resulting in HUD certification, took approximately five years. Missouri's experience in conjunction with the length of time it has taken to obtain the sorely needed revisions to Title VIII suggest forty or forty-eight months may not be adequate.

Also under § 115.3(a)(i)(ii)(iii) and (iv) potential difficulties may be created at the State/local level by requiring specified processing time frames in the statute/ordinance. Although the intent is to provide a permissive time guide, it should be recognized that at least for now Title VIII is beyond the time frame debate; since permissive time frames are part of the Title VIII law. My concern focuses on the possible burden this requirement may place on State/local agencies in the event efforts are made to make specified time frames a requirement rather than a guide. A required time frame, with sanctions other than a mere reporting stipulation for exceeding the period, could place a "chilling" effect on the manner in which the law is applied and its potential effectiveness. Since time frames can be and are a part of certified agencies' Memorandums of Understanding with HUD, it would appear unnecessary to include time frames as a substantial equivalency criteria.

In a December 6, 1988, letter to HUD, the executive director of the Pennsylvania Human Relations Commission explained that Pennsylvania "is reluctant to abandon its time-tested investigative procedures and reporting format that it believes to be more effective than those recently prescribed by HUD."⁹ He indicated that many substantially equivalent agencies use a particular format because they have existing court precedents and legislative directions and mandates that tell them that this is acceptable to them, and another form may not be.¹⁰

In 1990 the assistant director of the Pennsylvania Human Relations Commission explained:

Our agency operates under the Pennsylvania State law. [In addition to housing] it covers employment and public accommodations too. There is insensitivity by HUD to our requirements. Where our law conflicts with HUD's procedures, our feeling is that State procedures should follow. We only ask that HUD respect [Pennsylvania's] history and legal framework. In Pennsylvania, mental and physical handicaps are covered. We cannot pull out a section to conform with HUD. [It is] . . . politically impossible to just make changes [in the law] . . . , on House Bill 1925 [the revised law] . . . The issue is 'substantially equivalent' v. 'substantially identical.' Maybe they are worded differently . . . but they mean the same.¹¹

⁷ *Id.* at 3278. The *Final Rule* was revised so that State and local fair housing laws may include an exemption for housing for older persons in order to consider their needs, as stipulated in section 807 of the FHAA.

⁸ Alvin A. Plummer, Executive Director, Missouri Commission on Human Rights, letter to Office of General Counsel, U.S. Department of Housing and Urban Development, Dec. 6, 1988, pp. 3-5.

⁹ Homer Floyd, executive director, Pennsylvania Human Relations Commission, as cited in U.S. Commission on Civil Rights, *Implementing the 1988 Fair Housing Amendments Act*, prepared by the Pennsylvania State Advisory Committee, Apr. 1990, pp. 7-8.

¹⁰ *Ibid.*

¹¹ Louise Enclay, Assistant Director, Pennsylvania Human Relations Commission, Harrisburg, PA, interview, Sept. 25, 1990.

The director of the housing unit at the same agency reiterated:

We are a multifunctional agency operating under a codified law that covers housing, employment and public accommodations. We are fighting battles all over again. Now we have to change the law that is already good . . . Why can't we parallel rights in State and Federal courts? Why mirror?¹²

These statements indicate that these agencies anticipated problems early in the certification process.

The Commission survey responses identified several significant obstacles that influenced agencies' ability to obtain certification in a timely manner.

- State and local agencies encountered problems in making statutory revisions. Although all 86 agencies reported having to amend their present law in order to be substantially equivalent, 48 said prospects for including certain criteria for adequacy of law were "poor" or "uncertain." Thirty-five jurisdictions that had already amended or were in the process of amending their law said that the amended law did not or would not have all of the rights, procedures, remedies, or judicial review criteria specified in FHAA.¹³ Seven agencies cited "political" factors affecting the passage of the legislation.¹⁴

- Fourteen agencies reported receiving "inadequate" or "incorrect" technical guidance or assistance from HUD regarding the certification process.¹⁵

- Eight agencies reported a need for outside legal assistance to draft a fair housing law.¹⁶

- Thirty-five local agencies reported the need for "enabling legislation" before they could apply for certification, meaning that the State law must pass before a city ordinance can be considered.¹⁷

- Four agencies reported that a State court ruling was expected to or had likely affected its ability to carry out certain required Federal provisions.¹⁸

Lack of Technical and Legal Assistance

To meet the criteria of the FHAA, all State and local governments wishing to continue their participation in the Federal fair housing system had to revise their existing laws and ordinances. These jurisdictions must address as many as 65 different criteria established by the FHAA and HUD's implementing regulations: a very large, complex, and often politically difficult undertaking. Ironically, some of the agencies with the strongest fair housing laws in the land have experienced the greatest difficulty in conforming those laws to the FHAA. Having broadly defined rights and strong enforcement mechanisms already, these agencies were reluctant to open up their current laws to review and revision. They asked why provisions in their laws that were similar but not identical to provisions in the FHAA were not "substantially equivalent." They asked why the intended effects of some of FHAA's provisions could not be realized through administrative as opposed to statutory means. Given the difficult issues raised by such questions, it was absolutely essential to many agencies to receive technical assistance and clear and specific guidelines from HUD as they attempted to revise and draft fair housing amendments that would meet the "substantially equivalent" requirement.

Technical Assistance from HUD: 1988-1990.

A significant number of agencies surveyed by the Commission indicated that the guidance and technical assistance received from HUD was inadequate during the early stage of the certification process through 1990.¹⁹ Of the 86 agencies responding to the Commission's survey, 56 sought or were offered technical assistance from HUD, while 30 said they had not sought or been offered such help. Thirty-two reported telephone inquiries with HUD staff about the process, 15 said they had received written documents (usually a copy of the fair housing law), and 29 re-

12 Raymond Cartwright, Director, Housing Unit, Pennsylvania Human Relations Commission, Harrisburg, PA, interview, Sept. 25, 1990.

13 See Agencies with Amended Legislation by Region with Poor or Uncertain Prospects for Meeting Certification Criteria, app. D.

14 These include Charleston, WV; Maryland; Washington; West Virginia; Springfield, MO; Colorado; and North Carolina.

15 These 14 include Cambridge, MA; Massachusetts; Rhode Island; Pennsylvania; Philadelphia, PA; Maryland; Broward County, Lee County, and Tallahassee, FL; Beloit and Madison, WI; Iowa; Kansas; and South Dakota.

16 These include New Haven, CT; Delaware; Harrisburg and Reading, PA; Kentucky; Jacksonville, FL; Urbana, IL; and Omaha, NE.

17 These include Boston and Cambridge, MA; Huntington, WV; Prince George's County, MD; Durham, Winston-Salem, and Greensboro, NC; Broward County, Lee County, Pinellas County, and St. Petersburg, FL; and Madison, WI.

18 These include Boston, MA; Beckley, WV; Kansas City, MO; and St. Joseph, MO.

19 The appointment and confirmation of the Assistant Secretary of FHEO did not occur until November 21, 1989, approximately 2 years after the passage of the FHAA.

ported attending at least one HUD-sponsored conference on certification.

Fourteen agencies indicated that HUD's efforts to assist them were inadequate or inappropriate. Other agencies reported that assistance was minimal, that they were only told to have their ordinances "mirror" the new fair housing law,²⁰ and that their attempts to secure information were not "fruitful."²¹

For example, the executive director of the Pennsylvania Human Relations Commission informed the Commission that:

The Pennsylvania Human Relations Commission has made efforts . . . to secure HUD assistance unsuccessfully . . . In order to utilize the interest [in certification], a statewide conference was . . . scheduled in 1989 for enforcement agencies in Pennsylvania . . . [The] HUD Chief [Regional] Counsel in the Philadelphia Regional Office withdrew the HUD attorney . . . at the last moment, for "budgetary" reasons . . . Even informal discussions have produced no assistance, as most staff are unable to discuss the criteria with any degree of certainty.²²

The agency finally applied for certification in October 1991.²³

Reflecting a common complaint that HUD had not provided substantive guidance as to what flexibility might be granted in applying criteria for substantial equivalency, the housing unit supervisor at the Philadelphia Human Relations Commission stated:

We do not know the intent of HUD in the certification process . . . We have not received any written guidance on certification and none is forthcoming. There has not been an attempt on the part of HUD to give assistance. We are basically using the *Final Rule* [as a guide] and receiving

other State and local laws to see what has been passed and rejected.²⁴

In 1990, the director of the Illinois Department of Human Rights (IDHR),²⁵ raised concerns about substantial equivalency and the lack of assistance from HUD:

As you may or may not be aware, the drafting and passage of the Illinois legislation was the result of a combined effort of the regional HUD staff, local fair housing organizations, realtors, local agencies, traditional civil rights organizations, contractors and State agencies. Given the commitment and expertise of the committee of lawyers who drafted the Illinois legislation, we at the Illinois Department are amazed and greatly chagrined by your assessment that the Illinois legislation is not substantially equivalent to the Federal law. Part of our concern stems from the fact that the Illinois drafting committee attempted to obtain from HUD as much direction as we could through repeated conferences with attorneys from HUD's General Counsel's office to ensure IDHR's full compliance with HUD's substantial equivalency requirements. Because of HUD's reluctance or inability to define what it meant by "substantial equivalency," and because of HUD's refusal to provide FHAP agencies with the assistance necessary to better ensure our achievement of substantial equivalency or to review and assess proposed amendments prior to their introduction to State legislatures or city councils, Illinois, therefore, went forward with legislation which we determined would mimic the Federal law.²⁶

The Illinois Department of Human Rights originally applied for certification in October 1989 and applied for an extension in October 1991.²⁷

Although HUD's involvement in the certification process was limited and slow in developing in the early stages, at least some of the regional offices were

20 See, for examples, *Broward County, FL, Commission Survey, and New York State, Commission Survey*, Q. 2, p. 5.

21 See, for examples, *Maryland, Pennsylvania, Iowa, and North Carolina, Commission Survey*, Q. 2, p. 5. Also see Dallas HUD/FHAP Conference, May 1, 1991, pp. 1-18 (hereafter cited as Dallas FHAP Conference). These national conferences, which are sponsored by HUD for State and local FHAPs, cover a broad range of relevant issues and topics. At the conference, both North Carolina and South Carolina State directors reported minimal assistance from HUD. These were two of the first States to receive Interim Referral Agreements; however, the directors attributed their "success" to networking with different interest groups in their State rather than to HUD.

22 Homer C. Floyd, executive director, Pennsylvania Human Relations Commission, Commonwealth of Pennsylvania, Harrisburg, Commission Survey, Attachment B, Responses, Aug. 10, 1990, pp. 2-3.

23 U.S. Department of Housing and Urban Development, Receipt of Requests for Certification per 24 C.F.R. 115.5, Nov. 1, 1991 (hereafter cited as HUD, Requests for Certification, Nov. 1, 1991).

24 Rachael Lawton, housing unit supervisor, Philadelphia (PA) Human Relations Commission, interview, Sept. 24, 1990.

25 Joyce E. Tucker, (former) Director, State of Illinois, Department of Human Rights, letter to Gordon Mansfield, Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, May 23, 1990.

26 Ibid.

27 U.S. Department of Housing and Urban Development, Receipt of Requests for Certification per 24 C.F.R. 115.5, Dec. 13, 1991 (hereafter cited as HUD, Requests for Certification, Dec. 13, 1991).

actively involved in the certification process from the beginning. For example, one agency in Region IV, the Escambia-Pensacola Human Relations Commission in Florida, reported in the Commission survey that it found the assistance from the Atlanta Regional Office "beneficial":

The Director and Fair Housing Compliance person [at the Human Relations Commission] has attended all Tri-regional Conferences Telephonic assistance has been rendered. HUD has provided our agency with copies of . . . approved Fair Housing State laws for review. Telephonic response from Region IV has been most beneficial and [they have been] very cooperative²⁸

Other FHEO offices in the regions reported working with "their" FHAP agencies early in the process. For example, the regional director for Fair Housing and Equal Opportunity in Philadelphia (Region III) discussed his region's involvement:

[W]e had a FHAP conference We had one in September 1990 . . . and we went over the requirements for substantial equivalency. And [the FHAPS] indicated they wanted closer advice, so the regional counsel, at my urging, requested of the General Counsel permission to provide seminars for localities who wish to become substantially equivalent.²⁹

In 1991 the Fair Housing and Equal Opportunity regional director in Region VII (Kansas City, KS) spoke on his involvement with certification:

I am pro-certification in this region. We have 16 FHAP agencies. . . . If none of those 16 agencies are certified, the entire workload would have to be handled by my staff, and I do not have the staff to address that magnitude of work. I am a member of the Advisory Committee that has been meeting periodically . . . where we have been addressing issues involving certification and case processing and other

kinds of positions, trying to identify how we can best accommodate the continuation of the FHAP program.³⁰

Although the amendments passed in 1988, HUD did not fully establish a formal policy on providing technical assistance to the agencies until 1990. However, during the early period of the certification process, at least one HUD document articulated the Department's responsibilities regarding technical assistance to State and local agencies. In July 1989, Thomas D. Casey, then General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, issued a memorandum to FHAP agencies and the regional directors outlining HUD's responsibility to provide technical assistance during the certification process. It stated:

Because the expertise for the administration and enforcement of fair housing laws rests with the Office of FHEO, it is our responsibility to provide expert advice and guidance. An agency should be able to get from FHEO the information and assistance it needs to maintain its certification with respect to matters of administrative enforcement. The Region should provide technical assistance freely and continuously to assist the agencies in bringing their procedures and performance into full conformity with our requirements for certification.³¹

This memorandum never became formal policy. It thus appears that through 1990, HUD's involvement in the certification process was largely informal, and technical assistance to the agencies was neither consistent nor coordinated.

Technical Assistance from HUD: 1990-Present. In 1990 the Office of Fair Housing and Equal Opportunity took the first steps to develop a formal and more proactive plan to assist the agencies in the certification process. The turning point for HUD appears to have come during the FHAP/HUD conference in Baltimore. A year later, the General Deputy Assistant Secretary for the Office of Fair Housing

28 *Escambia-Pensacola (FL) Human Relations Commission, Commission Survey*, Q. 2, p. 5. The tri-regional Conference includes Regional IV (Atlanta), Region V (Chicago) and Region VII (Kansas City, KS)

29 Barry Anderson, Regional Director, Office of Fair Housing and Equal Opportunity, Region III, Philadelphia, interview, Part I, Nov. 19, 1990, p. 40.

30 Floyd May, Regional Director, Office of Fair Housing and Equal Opportunity, Region VII, Kansas City, KS, interview, Apr. 10, 1991, p. 20.

31 Thomas D. Casey, former General Deputy Assistant Secretary for FHEO, letter to All Regional Directors for FHEO, and to Grandfathered State and Local Agencies, PD-89-1, Technical Guidance on Annual Performance Review (APRs) of Grandfathered State and Local Agencies, PD-89-1, July 14, 1989.

and Equal Opportunity reviewed the efforts resulting from the Baltimore conference.³²

The purpose of this report today is to talk about the activities and accomplishments of the Fair Housing Agency Advisory Council.³³ The Council . . . was created after the Baltimore conference because of the need for us (HUD and FHAP) to work together and to identify common issues and to try to move forward in . . . accomplishing the mission that we have been talking about . . . which is enforcing fair housing for all. The existence of this Council is itself a concrete illustration of our conference theme, enforcing fair housing for all. Together we can open doors . . .

At the FHAP Policy Conference in Baltimore (in February 1990), . . . the idea [developed] of creating an Advisory Council as a means of improving the working relationship between the department and the agencies participating in the Fair Housing Assistance Program. We recognized that a more formal structure was needed to facilitate frequent and candid dialogue between the department and those State and local agencies which by statute or contractual arrangement, shared with us the responsibility for (implementation) of the Fair Housing Amendments. The Council is composed of representatives from the FHAP agencies, (staff) from HUD Regional Offices, as well as headquarters staff at HUD. We have met three times [in June 1, 1990, December 14, 1990, and March 12,

1991]. . . . In addition, we have had at least six national conference calls.

At our first meeting, June 1, 1990, the Council identified five major areas of concern. These were certification, case processing procedures, FHAP funding principles, FHAP regional training, and planning More importantly, the Council has engaged in substantive discussion and research which have had a direct impact on FHAP policies, procedures and management.³⁴

On October 6, 1991, the Office of Fair Housing and Equal Opportunity formed the Funded Programs Division, which includes the FHAP and other funded fair housing programs. The Funded Programs Division coordinates certification activities between FHEO and the Office of General Counsel.³⁵ It reviews all requests made by State and local agencies for certification and makes written recommendations for appropriate action.³⁶

In May 1991, to expedite the certification process, the Office of General Counsel delegated the responsibility to review (but not approve) local agencies' proposed legislation to the regional counsels.³⁷ During the same month, the Assistant Secretary of FHEO established a Program Services Branch in each of the regional offices. The regional branches were formed to address the overall needs, concerns and operations

32 Leonora Guarraia, Dallas FHAP Conference, Apr. 30, 1991, pp. 30-31.

33 Later renamed Fair Housing Agency Advisory Work Group.

34 Ibid.

35 Lauretta A. Dixon, Supervisory Equal Opportunity Specialist, Funded Programs Division, Office of Fair Housing Assistance and Voluntary Programs, telephone interview, Nov. 15, 1991 (hereafter cited as Dixon Telephone Interview). The Division includes three major fair housing programs: FHAP, the Fair Housing Initiatives Program (FHIP) and the Certification Program. The Fair Housing Initiatives Program provides funds for State and local government agencies, public and private nonprofit organizations, and other groups to develop or implement programs to prevent or eliminate discriminatory housing practices. These organizations undertake testing, enforcement programs, and provide their communities with outreach and educational programs in the fair housing area. See U.S. Department of Housing and Urban Development, "Overview: The Fair Housing Initiatives Program (FHIP), and U.S. Department of Housing and Urban Development," *1992 Programs of HUD*, p. 92.

36 Marcella Brown, Director, Funded Programs Division, Office of Fair Housing Assistance and Voluntary Programs, telephone interview, Oct. 31, 1991. According to the Department's Fact Sheet on Procedures for Interim Certification, The Funded Programs Division reviews the request for completeness. This includes a review and determination that:

(1) the request was submitted by the appropriate official (as identified in the law or ordinance),

(2) the law submitted is passed legislation and includes all of the pages (not just amended sections and pages), and that the pages are all legible, and

(3) the request is supported by the data required in the Final Rule, Part 115.

This Fact Sheet sets out the procedures and requirements the Office of Fair Housing and Equal Opportunity follows with respect to interim certification only. It does not identify the procedures and requirements for certification.

37 Harry Carey, Assistant General Counsel, Equal Opportunity and Administrative Law, Office of General Counsel, Dallas FHAP Conference, May 1, 1991, p. 3.

of the FHAPs. In addition to certification guidance, staff members review and monitor FHAP activities related to fair housing, review complaint files, provide technical assistance such as speeches on certification procedures, and evaluate the FHAPs' performance.

The branch chief of the Program Services Branch in Atlanta described his unit's certification responsibilities:

We [make trips] for technical assistance. . . . We have had training with [the substantially equivalent] guidelines . . . and I have a staff meeting every week to try to keep abreast of what is happening. They [FHAPs] may write and request³⁸ our services. We usually refer them to the legal [office].

The branch chief at the Region VII office in Kansas City, Kansas, explained their responsibilities include offering assistance to the 16 FHAPs in the certification process.³⁹

I am drafting a letter now to the FHAP agencies to [let them know] where the regional counsel is going [to] be holding a meeting to assist them with certification. And we go out and provide technical assistance whenever possible . . . I just talk about . . . certification . . . basically, I take [Part] 115 and talk to them [FHAPs] about that . . . [I tell them] [w]hat they have to do in order to get certified. Now if it becomes a legal question or something like that then I have referred them to our legal office . . . [T]o tell them what they are required to do [and] how they go about doing it . . . that kind of thing . . . and to offer any kind of technical assistance that we can provide them.⁴⁰

Despite these efforts, however, only nine agencies had Interim Referral Agreements as the 40-month certification period was about to expire. As of November 1991, moreover, only 28 agencies had requested extensions and only 5 had been granted. In response, HUD tried to accelerate the pace of certification. In December 1991, HUD devoted its eighth annual FHAP Policy Conference entirely to certification, specifically to providing technical assistance to agencies interested in applying for certification.⁴¹ HUD's more active role in certification and the posi-

tive message on certification delivered at the December conference were instrumental in sustaining the certification effort and in forestalling a serious loss of participation among FHAP agencies.

At the Commission's request, HUD submitted a paper detailing their efforts to provide assistance to the agencies.⁴² It said, in part:

Technical assistance by FHEO to the agencies has been constant since the passage of the Act. The Office engages in a variety of technical assistance activities on an on-going basis throughout the certification process for all agencies.

FHEO, through its Regional Offices and Headquarters, has provided assistance to over 100 State and local agencies since the passage of the Act. This includes organizing and carrying out four national conferences, and over 30 regional conferences, seminars, and specialized training sessions on certification to the agencies. The Assistant Secretary, General Deputy Assistant Secretary and staff of the Office of Fair Housing Assistance and Voluntary Programs, Funded Programs Division, upon request, have been involved in testifying at several legislative hearings, participating in numerous face-to-face meetings and teleconference calls with agency representatives and their elected representatives sponsoring the fair housing legislation regarding certification.

FHEO has also provided assistance to agencies with respect to the writing and rewriting of fair housing legislation and implementing rules. If the agency has requested a legal review of its proposed or passed legislation, a detailed written response is forwarded to the agency by FHEO. Legal reviews have been sent via facsimile or federal express mail to over 60 agencies. Since most agencies sent proposed and passed legislation to HUD for review more than once, this equates to approximately 100 responses to agencies to assist them in passing a substantially equivalent fair housing law.

FHEO has also provided technical assistance to other persons and groups interested in assisting the State and local agencies achieve substantial equivalency certification. These include participating in numerous meetings and providing technical assistance to the National Council of Governors, Conference of Mayors, International Association of Official Human Rights Agencies, National Association of Human Rights Workers, Lawyers' Committee for Civil

38 Charles Stigger, Branch Chief, Program Services Branch, Region IV, Atlanta, interview, Mar. 5, 1991, pp. 11 and 13.

39 Myrtle Wilson, Branch Chief, Program Services Branch, Region VII, Kansas City, Kansas, interview, Apr. 11, 1991, pp. 46-47.

40 Ibid.

41 HUD, Eighth Annual Fair Housing Assistance Program Policy Conference, Raleigh, NC, Dec. 8-11, 1991.

42 HUD/FHEO, "Substantial Equivalency Activities" Paper. See app. E for full text.

Rights Under Law, NAACP Legal Defense and Education Fund, national and local real estate boards and associations, as well as legislative staff persons of Congressmen and Senators, State and local elected officials, and special interest groups (i.e., private fair housing groups, disability groups, children's support groups, etc.)

HUD's current involvement with certification demonstrates strong support for the participation of State and local agencies in the enforcement of Title VIII. Nevertheless, the Department's most substantive efforts were initiated only after 1990, more than 2 years after passage of the 1988 amendments, and less than 1 year before the January 13, 1992, deadline for certification.⁴⁴ HUD's delay in providing effective technical assistance with revising, drafting, and amending new laws appears to be a significant cause for the low number of agencies granted Interim Referral Agreements by January 13, 1992. It also appears however, that a significant number of agencies did not quickly initiate aggressive efforts to make their laws equivalent to the Fair Housing Act. For example, the Commission's survey found that 30 out of 85 agencies, more than one-third, had not sought technical assistance from HUD as late as 1990.⁴⁵

Need for Legal Assistance. Eight agencies reported that in order for them to draft legislation, they needed legal advice or assistance from an attorney.⁴⁶ In the majority of cases, the agencies did not have an attorney on staff. Five agencies were forced to hire part-time, outside legal counsel. These included agencies in Delaware, Kentucky, Jacksonville (FL), New Haven (CT), and Omaha (NE).

Criteria for Adequacy of Law and Political Factors

All of the agencies surveyed by the Commission reported that they had to revise their current laws in response to FHAA. A large fraction of these agen-

cies indicated they were having or anticipated having difficulties in getting all requisite revisions adopted. Forty-eight agencies said their prospects for incorporating one or more FHAA provisions into their law were "poor" or "uncertain."⁴⁷ Of 78 agencies already working on new legislation at that time, 35 stated that their amended law would not have all the rights, procedures, remedies, or judicial review provisions of the FHAA.⁴⁸

The Commission asked agencies to evaluate their prospects for meeting various HUD criteria by 1992, and then ranked the criteria by the number of agencies reporting "poor" or "uncertain" prospects. The criterion reported most often was the ability to seek civil penalties (16 agencies), followed by the ability to award damages, provisions to make conciliation agreements public, and requiring accessibility for the physically handicapped, each of which was cited by 13 agencies. Table 2.1 shows the number of the agencies (out of the total of 86) according to the four basic criteria groups used by HUD to judge the adequacy of a law: substantive rights, procedural rights, remedies, and judicial review.

It is clear that no single criterion or group of related criteria represents a bottleneck to the certifica-

TABLE 2.1
Agencies Reporting Poor or Uncertain Prospects by HUD Criteria Group

Criteria group	Agencies
Substantive rights	23
Remedies	33
Procedural rights	32
Judicial review	8

⁴³ Ibid.

⁴⁴ 42 U.S.C.A. § 3610(f)(4) (West Supp. 1991); 24 C.F.R. § 115 (1991).

⁴⁵ One possible reason that State and local agencies may have delayed efforts to become certified is that they expected HUD to eventually relax its standards for substantial equivalency. (HUD comments, July 28, 1992). See also the discussion of "Need for State Enabling Legislation."

⁴⁶ The eight agencies are: New Haven, CT; Delaware; Kentucky; Jacksonville, FL; Omaha, NE; Reading, PA; Urbana, IL; and Harrisburg, PA.

⁴⁷ See Agencies with Amended Legislation By Region with Poor/Uncertain Prospects for Meeting Certification Criteria, app. D.

⁴⁸ Commission Survey Q. 5, p. 14. See app. B.

tion process. However, according to the law, the agencies must meet all criteria to be substantially equivalent.

At the Dallas FHAP/HUD conference, the directors of the three agencies that had received Interim Referral Agreements from HUD spoke on the strategies they used to pass laws substantially equivalent to the Federal law.⁴⁹ Two speakers discussed the political climate that had to be considered in the certification process.

The executive director of the Texas Commission on Human Rights described the process that was necessary to persuade the Texas legislature to support the new legislation, as well as the importance of including groups such as the Texas chapter of the Board of Realtors in the certification process.⁵⁰ He said:

You have to stay on top of that process, making sure that you are in touch with the appropriate people because I found it very helpful when they understood what your full problem was . . . I will make a comment about the political process. I have always believed, . . . that when you have someone with self-interest, their hearts and minds will follow . . . So we captured their attention and on the basis of States rights, the hometown vote, and real estate vote, all of the home builders and all of the apartment associations in the State of Texas lobbied for the Texas Fair Housing Act through the Texas legislature. . . . I learned a long time ago in politics you [have] got to know how that process works.

A member of the South Carolina Human Affairs Commission also spoke on the importance of understanding the political climate surrounding the certification process.⁵²

[W]hat I decided to do is to find out who among the real estate community had sensitivity towards the issue of fair housing. Then we studied the connection that they had to

the various political entities in the State. The whole plan was to get the fair housing industry to the point that the government could embrace it. And I figured to do that I had to get certain people to embrace it. And so we spent a significant time discussing the issue away from public view with people with whom we felt were sensitive to the issue and people who were substantial contributors to the governor and his political party. And so we were successful in South Carolina, basically, because we made it possible for the governor to make fair housing an issue.⁵³

Need for State Enabling Legislation

Thirty-five local agencies responding to the Commission's survey have had to wait for enabling legislation from the State legislative body before they could incorporate some provisions of the FHAA. This has influenced their ability to request certification in a timely manner and, in some cases, has totally precluded action to seek certification.⁵⁴ The 35 local agencies are located in six States: Massachusetts, Pennsylvania, Florida, North Carolina, Wisconsin, and Missouri.⁵⁵ Of these States, only Florida and North Carolina had Interim Referral Agreements as of June 1992.

The experience of Texas and North Carolina illustrates the potential importance of enabling legislation. Both States required enabling legislation to permit local agencies to seek certification. Passage of enabling legislation has allowed four locals—one in Texas and three in North Carolina—to obtain Interim Referral Agreements.

Boston's fair housing agency needed enabling legislation to enforce some of the provisions of the FHAA.⁵⁶ But, in a suit filed in 1978, the local chapter of the NAACP in Boston had alleged that HUD failed to carry out its mandate to promote fair housing within its housing and community block grant development program.⁵⁷ The court ruled on June 23,

49 Seven agencies in the survey said that "political factors" within their jurisdictions were hampering their certification efforts. These include Charleston, WV; Maryland; Washington; West Virginia; Springfield, MO; Colorado and North Carolina.

50 William Hale, executive director, Texas Commission on Human Rights, Dallas FHAP Conference, May 1, 1991, pp. 3-4.

51 Ibid.

52 James Clyburn, Commissioner, South Carolina Human Affairs Commission, Dallas FHAP Conference, May 1, 1991, pp. 6-8.

53 Ibid.

54 Enabling legislation is defined as a State law that gives governmental officials the right to put into effect and to enforce a particular law or ordinance. For example, the legislative body of a political subdivision may, by ordinance or resolution, authorize the establishment or membership in and support of a local human relations commission. The legislative bodies of political subdivision shall have the authority to grant to local agencies powers and duties similar to those now exercised by the State agencies under the provision of an act. *Black's Law Dictionary* 274 (5th ed. 1983), and *Fair Housing—Fair Lending*, vol. 10, no. 14, State Laws, May 1, 1992.

55 See *Commission Survey*, Q. 1, p. 4.

56 *Boston (MA)*, *Commission Survey*, Q. 1, p. 4.

1989, that HUD must impose a series of fair housing conditions (to promote, among other things, nondiscriminatory low income housing) in both Boston and the Commonwealth of Massachusetts, giving the jurisdictions more effective enforcement authority, including the authority to issue subpoenas and levy fines.⁵⁸ This court order supersedes the enabling legislation and allows the local agency to carry out some of the enforcement mechanisms of the FHAA.

The St. Petersburg, Florida, agency reported that:

Until it is determined if enabling legislation can be obtained from the State legislature, the cities and counties appear to lack the authority to validly adopt many of the provisions of the FHAA, or if such were adopted would be unable to enforce them through the courts.⁵⁹

In 1990 the assistant city solicitor in Philadelphia, Pennsylvania, explained enabling legislation in his State:

If a complaint falls under State jurisdiction, then the case will be handled under the State law. Although there is a separate city ordinance and the agency operates under the city charter and is funded locally, in some cases, the agency may be subjected to State law. With regard to penalties the agency may have to fall under State law for certification . . .⁶⁰

At the Dallas FHAP/HUD conference in 1991, the executive director of the North Carolina Human Relations Commission explained what enabling legislation is in North Carolina and how they tried to remedy the situation in his State for local agencies applying for certification:

We feel that as a State agency, we have the responsibility to ensure that if our law passed that local agencies . . . would have an opportunity to utilize the State's statute as a basis for their own local ordinances . . . [I]n our State it is called enabling legislation . . . [I]t establishes a relationship with North Carolina's law. The [local] Directors had in their particular ordinance, the ability to enforce the

State's Fair Housing Law. Also, they put it in the provision that says the same would be in existence every time the State would amend its law . . . But it really short-cuts a whole lot of local and county processes when you have that occur. We thought that was a real big issue for us and so we wrote into our law this enabling legislation allowing the city and county that advantage.⁶¹

North Carolina was one of the first State agencies to receive an Interim Referral Agreement under the FHAA. Since the State's law passed, three of the other 14 agencies with agreements are located in North Carolina. According to the Director of the Funded Programs Division, the local agencies in North Carolina—Asheville-Buncombe County, Charlotte-Mecklenburg, and Winston-Salem—were “brought in” under State enabling legislation.⁶²

Pending Court Cases

Court cases, either decided or pending, also have affected the ability of some agencies to include or enforce certain provisions of the FHAA. At the time of the survey, agencies in two jurisdictions (Boston and Missouri) reported that litigation had affected their progress towards certification. In 1990 a Missouri State Supreme Court decision made it difficult for local agencies in that State to incorporate some of the provisions of the 1988 amendments.⁶³ The court found that the agency in Springfield violated the Missouri Constitution and exceeded its jurisdiction when it imposed penalties on an employer for violating an antidiscrimination ordinance. As a result of this case, the city of Kansas City will not be able to seek substantial equivalency without either major changes in the Missouri Constitution or other enabling legislation from the State.⁶⁴

Many of the obstacles to the State and local agencies becoming certified prior to the September 13, 1992, deadline were not controlled or influenced by HUD. As the comments cited above suggest, State leadership (i.e., Governors, mayors, council members, legislators, and commissioners), private fair

57 *NAACP Boston Chapter v. Kemp*, No. 78-850-S D. Mass., June 23, 1989).

58 *Id.* at 4.

59 *St. Petersburg (FL), Commission Survey*, Q. 1, p. 4.

60 Dennis Abraham, Assistant City Solicitor, Law Department, Philadelphia, PA, interview, Sept. 24, 1990.

61 Jim Stowe, Executive Director, North Carolina Human Relations Commission, Dallas FHAP Conference, May 1, 1991, pp. 12-13.

62 Marcella Brown, Director, Funded Programs Division, Office of Fair Housing Assistance and Voluntary Programs, telephone interview, June 23, 1992.

63 *Yellow Freight System, Inc. v. Mayor's Comm'n on Human Rights of Springfield*, 791 S.W. 2d. 382 (Mo. 1990)

64 *Kansas City, MO Commission Survey*, Q. 1, p. 4.

housing groups, other organizations and interested citizens needed to be involved to ensure that their jurisdiction had a strong and broad fair housing law. Of the 14 State and local agencies that have received Interim Referral Agreements from HUD, all cited strong support and involvement of top government leaders, legislators, Boards of Realtors, and private fair housing groups. Conversely, community involvement was not sought by State and local officials in many instances where jurisdictions have failed to enact substantially equivalent fair housing laws. General public awareness and involvement are imperative if many of these agencies are to become substantially equivalent. Therefore, the Commission urges State and local jurisdictions and other parties to promote public awareness of the importance and significance of a strong and effective fair housing law.

Prospects for State and Local Agency Certification

Results from the Commission's survey revealed that 48 FHAP agencies, substantially more than half of those responding, rated their prospects for including all provisions of the 1988 amendments into their own law to be "poor" or "uncertain" (see table 2.2).

Although this does not mean that all or even most of such agencies will be denied certification, the result is still disturbing because it correlates positively with patterns of agency decertification. Four of the 48 agencies reporting "poor" or "uncertain" prospects have actually signed Interim Referral Agreements. Although the success rate of this group, 8 percent, provides at least a ray of hope that eventually more of them may be certified, it compares poorly to the 16 percent success rate (6 of 38) observed among agencies reporting "excellent" or "good" prospects. Moreover, the proportion of agencies that reported "poor" or "uncertain" prospects that have subsequently not been given an extension is higher than that of the "excellent" and "good" groups (16 vs. 10 percent).

These patterns suggest that many of the 96 agencies that have been granted extensions will fail to receive Interim Referral Agreements or become certified by September 13, 1992.

In July 1992, the Commission was able to contact 80 of the 96 agencies with extensions to ascertain their application status and prospects for obtaining an Interim Referral Agreement by the September deadline.⁶⁵ Just over half (41) of these agencies expect to have an Interim Referral Agreement with HUD by September 1992. However, more than one-third (28)

TABLE 2.2
Certification Status of 128 State and Local Agencies

Prospects for amending laws to meet criteria	No. of agencies	Interim agreement	Extension	
			Yes	No
Poor/uncertain prospects	48	4	36	8
Excellent/good prospects	38	6	28	4
Subtotals	86	10	64	12
Agencies not responding	42	4	30	8
Totals	128	14	94*	20

Sources: U.S. Commission on Civil Rights, *Survey of State and Local Human Rights Agencies on the Federal Fair Housing Amendments Act of 1988*, OMB #3035-0022 (December 1990), table 1, p. 6, and appendix C.

*The total of agencies granted extensions is as of January 1992. Subsequently, two more were added, bringing the total to 96 as discussed in the text.

65 Agencies were contacted by telephone July 13 - 15, 1992.

definitely did not expect to qualify by September, and another 14 percent (11) were uncertain. Eleven of the twenty-eight agencies not expecting to obtain an agreement are *State* agencies, including several in large States. State agencies were actually more likely than local agencies to tell the Commission that they did not expect to reach Interim Referral Agreements by September 1992.

A number of agencies (10 of 28) cited their inability to pay the costs of civil litigation arising from fair housing complaints as the main reason for expecting not to reach an agreement with HUD. Other major reasons cited were delays by HUD in delivering technical assistance or in reviewing applications (seven agencies) and delays by their governing bodies (seven agencies).

Projections based on the poll of agencies with extensions, plus the 16 agencies already out of the Federal system, suggest that about half of the 122 grandfathered FHAP agencies will not be processing Federal fair housing complaints after September 13, 1992. Of particular concern, this loss will probably include 14 or more previously recognized State agencies. This clearly will have a major effect on HUD's case load and the quality of fair housing enforcement.

It is unclear whether HUD will be able to process all of the applications for certification in the remaining time. In particular, the rate at which HUD's Office of General Counsel (OGC) has been able to review and analyze each applicant's law may make it difficult for all pending applications to be processed

in time. For example, by November 1990, HUD had received 31 requests for certification, but only 16 had been sent to OGC for legal analysis.⁶⁶ By November 1991, requests for certification were up to 73, OGC had reviewed 29, and 16 awaited legal analysis.⁶⁷ By December 13, 1991, 76 agencies had requested certification, OGC had reviewed 30, and 18 were awaiting legal analysis.⁶⁸ Between December 1, 1991, and February 25, 1992, OGC completed 29 substantial equivalency reviews, or approximately 31.5 percent of the total number of reviews performed since the act was amended.⁶⁹ During this period, OGC completed approximately nine applications per month. At this rate, it would be impossible to thoroughly process the applications of all 96 remaining agencies with extensions before the September 13, 1992, expiration date.

Finally, the pace of agencies actually obtaining Interim Referral Agreements has been slow. Only five agencies obtained agreements between January and June 1992. This means that for the last 3 months of the extension period, OGC could be called upon to complete the review and analysis of up to 96 agency submissions. It is also unlikely that all reviews will result in approval for an Interim Referral Agreement or certification. Based on the above factors, it appears that, unless HUD can devise a way of accelerating the certification process without lowering certification standards, fewer than half of the remaining 96 agencies will receive Interim Referral Agreements by the September deadline.

⁶⁶ HUD, Requests for Certification, Nov. 1, 1991.

⁶⁷ *Ibid.*, Nov. 14, 1991.

⁶⁸ *Ibid.*, Dec. 13, 1991.

⁶⁹ HUD, "Substantial Equivalency Activities" paper, app. E.

Chapter 3

Consequences of Not Certifying Fair Housing Agencies

The double standard of justice that has been applied to “new” and “old” protected groups in jurisdictions with grandfathered FHAP agencies since 1989 ends September 13, 1992. In jurisdictions where HUD must assume enforcement responsibilities, provided it does so adequately, *all* persons finally will be afforded the full rights, remedies, procedures and judicial review prescribed by the Federal Fair Housing Act. On the other hand, failure to achieve broad support of Federal fair housing enforcement by substantially equivalent State and local agencies would have serious consequences for HUD, for human rights agencies, and ultimately for the victims of discrimination. HUD will have to take over the enforcement activities—e.g., complaints processing, education, and outreach services—currently provided by a significant number of FHAP agencies. In light of the tight Federal budget and the unique position of the agencies to serve their communities, however, it is questionable whether HUD can fully compensate for a major loss of State and local agency support.

Furthermore, the loss of financial and technical support under FHAP is likely to cause many agencies to curtail or eliminate their fair housing programs, including processing complaints and education and outreach activities. With the probable erosion of fair housing enforcement activities in some jurisdictions, citizens may have greater difficulty getting assistance in resolving their complaints

or even ascertaining if they have any grounds for complaint. Moreover, if the deterrent effect of law enforcement in such areas is weakened, housing discrimination could increase.

This chapter examines some of the consequences of losing significant numbers of State and local agencies from the Federal system after September 13.

The Fate of FHAP Complaints

Knowing what will become of cases currently handled by FHAP agencies is essential to any analysis of the probable effects of losing a large number of these agencies: Would HUD be forced to add all or most of the affected complaints to its current caseload? Would the State and local agencies continue to process the same cases under their regulations, even if the same procedures and remedies are not available to complainants as under Federal law?

The Commission’s survey directly asked agencies what they believed would happen to the Title VIII complaints they currently process if they are not certified.¹

Although the responses of the agencies varied greatly, and many declined to speculate or offer a numeric answer, a general consensus existed on a number of issues.

Few agencies believed that many complainants would file complaints directly with HUD without first trying the State or local agency. When asked

¹ The Commission’s survey of State and local agencies asked the following question:

If you are not certified as substantially equivalent by 1992:

- a. What fraction of complaints now filed directly with your agency and within your current jurisdiction, would be filed directly with HUD?
- b. What fraction of complaints filed with your agency and within your jurisdiction, would you refer to HUD but also process at your agency?
- c. What fraction of complaints filed with your agency and within your jurisdiction, would you defer to HUD and not process at your agency?

U.S. Commission on Civil Rights, *Survey of State and Local Human Rights Agencies on the Federal Fair Housing Amendments Act of 1988*, OMB #3035-0022, December 1990 (hereafter cited as *Commission Survey*).

what proportion of cases would likely be filed directly with HUD, for example, the Maine Human Rights Commission said: "Probably none. The closest HUD office is in Boston. It has been our experience that people do not file with the Federal agencies where there is . . . available State remedy."² Similarly, the Kentucky Commission on Human Rights speculated: "Less than 10%. State agencies are generally deemed more competent and sensitive to the needs/issues placed before them."³ And the Beckley (WV) Human Rights Commission answered: "None. Based on the fact that people prefer to deal with someone they can see and make direct contact with, and be on a more personal basis."⁴

Despite the importance of State and local agencies to individuals with fair housing complaints, many agencies say that they are likely to curtail their fair housing enforcement efforts if they do not receive certification and the resulting financial support from HUD. Out of 71 agencies responding, 34 said that they would reduce their fair housing enforcement activities. The New Jersey Department of Law and Public Safety, Division on Civil Rights, told the Commission: "The Division's ability to investigate and process housing discrimination complaints would be severely diminished."⁵

Of the 34 agencies reporting that they would reduce activities, nine said that they would totally eliminate fair housing enforcement activities. For example, the human rights agency in Boston reported that, "Failure to obtain substantial equivalency could possibly . . . force the agency to cease taking fair housing complaints."⁶

Commissions in New Jersey; Maryland; Kentucky; Prince Georges County, MD; Winston-Salem, NC; and Olathe, KS, reported that losing certification will mean the end of their fair housing program, particularly complaint processing.

Although HUD might not receive many of the complaints directly, it would still receive complaints through referrals from agencies. Of the agencies participating in the survey whose responses could be

categorized, 36 out of 56 indicated that they would either refer most (90 percent or more) cases to HUD or inform all complainants of their rights to file with HUD. Kansas City, MO, indicated that, "although we will continue our complaint processing function, we will encourage all complainants to file with HUD to insure that their Federal rights are protected."⁷

Many agencies, while planning to refer cases to HUD, said they would also pursue them under local law. Of 71 agencies whose response could be categorized on this issue, 26 indicated that all cases would be dual-filed with HUD, 23 agencies indicated that some would be dual-filed, and only 22 agencies indicated that they would either not refer local cases to HUD or would not pursue cases filed with HUD.

In some cases, dual-filing of complaints may not cause serious duplication of effort. For example, the Asheville (NC) Community Development Division stated that: "We would initially attempt to mediate any complaint, following that we would refer the complaining party to HUD for the full remedy under the law."⁸ While this procedure would seem to offer complainants access to both Federal and local protection and assistance, duplicate investigations would still occur for cases ultimately referred to HUD, and the possibility exists of problems with filing deadlines under Federal law. In other cases, the duplication of enforcement effort would begin earlier, as suggested by the Massachusetts Commission Against Discrimination (MCAD): "The same cases would continue to be filed here at MCAD. We would continue to have jurisdiction and would therefore have to process them under our new State law."⁹

In sum, responses to the Commission survey create a disturbing picture. Where local fair housing efforts are maintained but are not linked to the Federal system, waste and confusion may arise if Federal and local agencies process the same complaint. In other areas, programs to enforce fair housing laws would be curtailed and in some cases eliminated.

2 *Maine, Commission Survey*, Q. 6, p. 17.

3 *Kentucky, Commission Survey*, Q. 6, p. 16.

4 *Beckley, WV, Commission Survey*, Q. 6, p. 16.

5 *New Jersey, Commission Survey*, Q. 7, p. 16.

6 *Boston, Commission Survey*, Q. 7, p. 16.

7 *Kansas City, MO, Commission Survey*, Q. 6, p. 16.

8 *Asheville, NC, Commission Survey*, Q. 6, p. 16.

9 *Massachusetts, Commission Survey*, Q. 6, p. 16.

Impact on HUD's Workload and Budget of Absorbing FHAP Complaints

The potential effect on HUD of absorbing the current FHAP agency case load is reflected in comments from HUD staff. The regional director in Atlanta (Region IV) explained:

If North Carolina is not able to get those locals certified. . . . [W]e would have to do more of the cases. I mean, we would send them as many as they could take and we would have . . . to hope that we could handle them. . . . We refer out more than 50 percent of the cases that come into this region. So if we do not get another State or local [agency] certified in the next year . . . [the case load] is going to double. . . . So, instead of 40 cases a month, we are going to get 80 cases.¹⁰

When asked about the impact of not having the agencies certified, the branch chief in Kansas City's (Region VII) Program Division replied:

It is a frightening thought. I really do not know. I know that headquarters is going to have to do something if these agencies are not certified by 1992 . . . [if they] are not in the

pipeline. There is no way that HUD can process all of these cases with the staff we have. . . .

Even with the sustained contribution of grandfathered agencies, the FHAA has greatly increased HUD's workload, both in absolute terms and relative to capacity. Between 1988 and 1990, the number of complaints filed with HUD increased by more than 255 percent, while the investigative staff has increased from 169.2 full-time equivalency slots to 310.8 full-time equivalency slots,¹² an increase of only 84 percent. Consequently, HUD's investigator workload measured in number of complaints received for processing has risen from an average of 7.4 new complaints in 1988 to an average of 14.3 new complaints received per investigator in 1990, a 94 percent increase. Compounding this increased workload, moreover, is the fact that FHAA has caused HUD to upgrade substantially its investigation standards.

As with the FHAP agencies surveyed, HUD's case backlog increased between 1988 and 1990, but fell in 1991 (see table 3.1). Between 1988 and 1990, the total net addition to the original inventory of cases was 2,168. By 1991, the net inventory growth had dropped to 1,711.

TABLE 3.1
Changes in HUD Complaint Backlog

	1988	1989	1990	1991
Total complaints closed	1,361	1,997	4,138	6,104
Total complaints received	1,255	3,952	4,457	5,657
Change in total backlog	-106	1,955	319	-457

Source: U.S. Commission on Civil Rights, *Survey of State and Local Human Rights Agencies on the Federal Fair Housing Amendments Act of 1988*, OMB #3035-0022 (December 1990), and U.S. Department of Housing and Urban Development, *State of Fair Housing* (1991). Data for 1991 are from unpublished statistics provided by HUD/FHEO.

10 Kathleen Coughlin, Regional Director, Office of Fair Housing and Equal Opportunity, Region IV, Atlanta, GA, interview, Part II, Mar. 6, 1991, p. 42.

11 Myrtle Wilson, Branch Chief, Program Services Branch, Region VII, Kansas City, KS, interview, Apr. 11, 1991, p. 42.

12 HUD response to *Commission Survey*, table 3, 1991.

On September 13, 1992, HUD will have to absorb all (Federal) cases currently being processed and any complaints that would have gone to agencies that do not have interim agreements by the deadline. Based on current agency backlog, HUD's case load could potentially increase by 1500 or more cases in September, literally overnight.¹³ This amounts to 6 months or more of work at HUD's current case processing rate. Aside from the immediate impact, absorbing the full potential flow of FHAP complaints, given HUD's present investigator staff (currently 310), could increase the number of complaints per investigator by more than 50 percent.¹⁴ A significant increase in new cases, therefore, would sharply curtail HUD's progress in reducing its case backlog and place great pressure on HUD's complaint processing standards and budget.

HUD offsets part of State and local enforcement costs through the FHAP program. Using data from HUD's 1990 *State of Fair Housing* report and assuming that all Federal dollars that go to State and local agencies, regardless of the purpose, are costs incurred by the Federal Government to operate the

FHAP, the average cost *to the Federal Government* per case handled by an agency is estimated to have been \$1,887 in 1990.¹⁵

The cost for HUD to process a complaint itself can be calculated by dividing HUD's reported total expenditures for fair housing enforcement (less expenditures on the Fair Housing Initiatives and Fair Housing Assistance Programs by the total number of fair housing cases closed. This yields a cost per case for HUD of \$10,150 for FY 1989 and \$6,429 for FY 1990.

What *new* resources would HUD (FHEO) need to handle the extra cases without sacrificing processing standards or other programs? Taking into account that at least 14 agencies will continue to process cases after September, but assuming the worst case, that all others are lost, the Commission estimates an upper limit of resources for FHEO's Title VIII compliance activities to be \$13 million per annum to handle all new cases,¹⁶ and an additional amount to take over processing of cases already in the pipeline in various stages of processing.

13 As of July, 1992, the *total* agency case inventory was in excess of 2,000 (HUD, unpublished data. Laurence D. Pearl, Director, Office of Program Standards and Evaluation, FHEO, (U.S. Department of Housing and Urban Development, telephone interview, Aug. 1992). A potentially large number of these cases would also be transferred back to HUD (i.e., "reentered" by HUD) after September 13.

14 In the extreme case that *all* FHAP cases are absorbed, 3,218 in 1990, the Commission estimates that investigator workload would increase by more than two-thirds, from approximately 14 to 24.

As discussed earlier in this chapter, it is unlikely that HUD's case load would increase by the full amount even if *no* FHAP agencies were certified by September 13. Many complainants would find it too hard to file, would not have heard about their rights through FHAP agency outreach programs, or would have their cases processed under State laws providing lesser protection.

15 This cost was estimated by dividing the total number of complaints closed in each year into the total Federal dollars allocated to State and local agencies. In 1990, HUD allocated \$5,767,000 and the State and local agencies closed 3,055 complaints for an average cost to HUD of \$1,887 per complaint.

16 Multiplying HUD's FY 1990 cost per case of \$6429 by the 3,218 FHAP cases, and subtracting the 1990 FHAP program expenditure of \$5.7 million, suggests that HUD's operating costs could increase by almost \$15 million dollars. Note that this estimate excludes costs for additional cases transferred to HUD from FHAP agencies on September 13.

It must be recognized that there are limitations to any method used to estimate additional costs from such a fundamental change in the logistics of fair housing enforcement. For example, it could be argued that the cost per additional case for 1989/1990 of \$3,721 would be a more appropriate estimate to use. On the other hand, it could be argued that the \$6,429 figure is too low, as HUD would have to open additional field offices if it were to truly replace the role of State and local agencies.

Chapter 4

Findings and Recommendations

HUD has primary responsibility for enforcing Federal fair housing laws. However, under both the 1968 Fair Housing Act and the 1988 amendments, complaints received by HUD must be referred to State and local agencies whose fair housing laws have been determined by HUD to be “substantially equivalent” to the Federal fair housing law. By 1987, 70 percent of fair housing complaints were referred to State and local agencies under this system. Some fair housing advocates and private citizen groups raised concerns that the Administration and HUD had abandoned its Federal enforcement responsibility, and had compromised the enforcement effort by certifying some State and local agencies who were not, in fact, providing substantially equivalent rights and remedies under the 1968 Fair Housing Act.

When Congress enacted the Fair Housing Amendments Act of 1988 (FHAA), it responded to this concern by mandating that HUD certify a State or local agency *only* if that agency provides substantive rights, procedures, remedies, and the opportunity for judicial review “substantially equivalent” to the FHAA. Congress intended that every governmental entity, State or local, that desired to continue to process fair housing complaints as part of the Federal system have full and independent statutory authority to enforce all provisions of the Fair Housing Act as amended in 1988. This principle was important to ensure complete protection of the fair housing rights of all persons as guaranteed under the Federal law. At the same time, however, Congress granted the 122 agencies whose fair housing laws were presumed to be substantially equivalent under the 1968 Federal Fair Housing Act a grace period of up to 4 years in which to conform their laws to the FHAA. In effect, State and local agencies were allowed to process Federal complaints without being in compliance with Federal law.

Congress concluded that 4 years would be sufficient time for State and local jurisdictions to conform their laws to the FHAA. Nevertheless, to date, only 14 agencies have been found to have substantially equivalent laws, and no agencies have been

fully certified. Further, the Commission estimates that approximately 50 percent of the 122 grandfathered FHAP agencies are at high risk of dropping out of the Federal fair housing system after September 13, 1992. Of particular concern, this loss will probably include 14 or more previously certified State agencies. Among agencies that reported poor prospects for meeting the September 13, 1992, certification deadline, one-half indicate good or excellent prospects of fully satisfying substantial equivalency criteria in 1993.

Neither Congress, the Administration, HUD nor many State and local agencies appear to have accurately gauged the obstacles that have hampered the enactment of substantially equivalent fair housing laws. As a result, aggressive efforts toward certification developed slowly over the 4 years since passage of the 1988 amendments. HUD took nearly 3 years to develop, coordinate, and implement an aggressive program to assist agencies striving towards substantial equivalency.

Faced with the difficult task of making major, complex changes to their laws, coupled with HUD's slow response, many of the State and local agencies were confused and discouraged during the early stages. In the absence of clear and formal guidelines, some agencies appear to have taken a “wait and see” attitude toward certification, hoping that HUD would relax its stringent standards for substantial equivalency. In a number of jurisdictions, statutory revisions have been rejected, caught up in a hostile political climate, or delayed pending legislative action. Some agencies have submitted applications to HUD, believing that they had met the requirements of the law, but were denied. Many local agencies have been delayed, awaiting passage of State enabling legislation. Other agencies did not apply because they felt they could not meet the requirements on time.

This report raises concerns about HUD's ability to enforce the Federal Fair Housing Act should a significant number of State and local agencies not be certified by HUD. Without the “partnership” between HUD and these agencies, effective enforce-

ment of the Fair Housing Amendments Act of 1988 and equal opportunity in housing will not be fulfilled. After September 13, 1992, HUD is likely to be in a very difficult predicament. Unable to refer complaints to States and localities that are not substantially equivalent, HUD could be inundated with new complaints. At this time, HUD does not appear to have enough staff and other resources to handle its current workload, much less many new complaints. To absorb the full potential increase in enforcement workload, without sacrificing enforcement standards or other fair housing programs, the Commission estimates that HUD's FHEO would require a budget increase of approximately \$13 million in fiscal year 1993. In light of the current Federal budget deficit problems, the prospects of Congress approving a request from HUD for a supplemental appropriation of this amount are very uncertain.

The Commission will address the full scope of fair housing enforcement in a future report. In the interim, however, due to the immediacy of the certification problem, the Commission concludes and recommends the following:

Finding 1: In many States and localities, efforts to enact substantially equivalent fair housing laws have been hampered by a lack of involvement from Federal, State, and local government leaders and officials, businesses, and private organizations. Support for certification has not been generated within these communities. Consequently, revised fair housing statutes have been rejected or delayed by the legislative body. In a number of other jurisdictions, new statutes were enacted, but have been rejected by HUD as not being substantially equivalent. Several agencies also cited local political factors that have hampered enacting new fair housing laws. In addition, a number of local agencies need to have enabling legislation before their ordinances can be revised.

Most of the agencies that have received Interim Referral Agreements cited strong support from and involvement of the community and government leaders, legislators, Boards of Realtors, and private fair housing groups.

Recommendation 1: State and local officials, such as governors and mayors as well as business and community leaders, must be involved intensively through personal participation in the certification process. It is essential that information concerning the importance of State fair housing laws reach all sectors of the communities and that leaders strive to

build broad-based support for strong and effective fair housing laws. In addition, government leaders must also provide sufficient staff and financial resources to enable the jurisdiction to guarantee broad and effective rights and remedies to all its citizens. If agencies currently facing legislative and political difficulties are to become substantially equivalent, governors, mayors, and business and community leaders must become more active in the certification process.

Finding 2: HUD will have to absorb the enforcement activities of a large number of State and local agencies that are not expected to be certified by the September 13, 1992, deadline. In order to process these complaints and avoid a serious complaint backlog and decrease in performance, HUD's FHEO will require a budget increase in fiscal year 1993.

Recommendation 2: Congress and the Administration should ensure that funds and other resources are provided fully to meet HUD's expanded enforcement responsibilities, beginning in the first quarter of fiscal year 1993. Congress should conduct a hearing to assess the obstacles discussed in this report, and the impact that not certifying State and local agencies will have on HUD's ability to enforce the Fair Housing Act effectively.

HUD should take immediate action to assess the impact of losing agencies from the FHAP. Specifically, HUD should develop a management plan to ensure that adequate resources and staff are available to process Title VIII fair housing complaints within the 100 day time requirement. HUD should not reassign staff and other resources from its other civil rights programs, thus decreasing the effectiveness of those programs.

Finding 3: Despite recent gains in the quality and timeliness of HUD's technical assistance to State and local agencies, many agencies still do not understand the procedures or criteria for attaining substantial equivalency.

Recommendation 3: HUD should develop a clear working definition of the term "substantially equivalent" and provide uniform written guidelines on HUD's certification process. This will help agencies become certified and is essential for any future expansion of the Fair Housing Assistance Program to other States and localities.

The FHAA must be vigorously and uniformly applied in all jurisdictions and for all protected classes. Thus, it is essential that HUD not relax the standards that it used until January 1992 to evaluate requests

for certification. As of January, HUD properly insisted that State and local laws replicate to a high degree the Federal law in all respects as specified in the *Final Rule* (24 C.F.R. §§ 115.3 and 115.3a).

In developing standards for substantial equivalency, it is appropriate for HUD to accept variances in a jurisdiction's statute as anticipated by 24 C.F.R. § 115.3(c). However, in doing so, HUD must ensure that other provisions of the jurisdiction's enforcement system (e.g., regulations, directives, and rules) fully compensate for the statutory deficiencies. In judging whether statutory variances are satisfactorily resolved, HUD must be reasonably confident that subsequent evaluation of the law in operation can determine that the effects intended by the Fair Housing Act are being realized.

Finding 4: Without certification and technical and financial support from HUD, many of the agencies are likely to reduce or eliminate their fair housing programs. This would make it much more difficult for individuals with fair housing complaints to receive local assistance and the full protection of the Federal Fair Housing Act. The level of housing discrimination in affected areas would likely increase.

Without certification, a majority of State and local agencies would refer cases to HUD so that individuals would have the full rights and remedies available under Federal law. A majority of the agencies making referrals, however, would also process the same complaint under their own laws, creating wasteful duplication of fair housing enforcement efforts.

An estimated one-third of currently grandfathered FHAP agencies will not refer cases to HUD if they are not certified. This raises a concern that individuals filing these complaints may not be aware of the full rights and remedies available to them under Federal law.

Recommendation 4: HUD needs to be more aggressive in dealing with non-participating State and local agencies. HUD must increase its efforts to achieve participation in the Federal fair housing system of *all* State and local jurisdictions. Specifically, HUD should provide these jurisdictions with sustained and timely assistance with drafting laws that will meet a substantial equivalency review. HUD should establish stronger ties with those agencies seeking certification, including assigning staff to specific agencies to handle inquiries and offer assistance. Further, HUD must continue to provide legal advice on State and local proposed fair housing

laws. If HUD determines that a proposed law is substantially equivalent, HUD officials should offer to testify on behalf of the proposal.

Finding 5: HUD has not developed a plan to process complaints from those agencies where extensions were denied and, more important, from those agencies that will not have an Interim Referral Agreement after September 13, 1992.

Recommendation 5: HUD should attempt to reach a Memorandum of Understanding (MOU) with *all* State and local agencies not in the Federal fair housing system. The MOU should state that jurisdictions that do not have fair housing laws substantially equivalent to the Federal Fair Housing Act will explain to the parties in a complaint the rights and remedies under Federal law and give the complainant the option of forwarding the complaint to HUD for processing. Regional staff should conduct periodic assessments of complaints filed in those jurisdictions with an MOU to review their fair housing activities to ensure that jurisdictions are in compliance with the MOU.

HUD should involve regional and field offices fully in the certification process and in processing complaints. FHEO regional staff should be detailed to field offices that do not process complaints and should network with other fair housing agencies, advocacy groups, and any other organizations that require assistance enforcing the law.

Finding 6: HUD organized the Funded Programs Division at headquarters and the Programs Division or Branch in its regions to provide assistance to State and local agencies seeking certification, and to instruct them on the Federal requirements for complaints processing. However, the Commission found that the units are operating without formal guidelines or training, and the level of participation and contact with the agencies varies by region.

Recommendation 6: HUD should provide formal training and operating guidelines for these divisions. Specific training should include instruction on the criteria for adequacy of law and procedures that HUD applies to determine "meaning and intent" of the State and local law. HUD should develop uniform guidelines and instructions on how the staff should assist agencies during the interim phases. These activities should be given high priority. In order to ensure consistency in technical assistance, HUD should develop an instructional manual on the

certification and complaint process for its Funded Programs Division.

Finding 7: Some regions coordinated efforts to provide technical assistance to the State and local agencies seeking certification. For example, tri-regional meetings (e.g., Regions IV, V, and VII) involving HUD regional staff and State and local agencies are held regularly to provide technical assistance to agencies.

Recommendation 7: HUD should thoroughly review and evaluate its inter-regional cooperation and coordination with FHAPs to measure effectiveness and productivity. Based on its findings, HUD should encourage these joint efforts throughout all of its regions.

Finding 8: In some regions, the Regional Administrator and FHEO Director have been active in certification, often lending support to staff efforts.

Recommendation 8: All regional administrators and FHEO regional directors must be actively involved in the certification process, by attending meetings, issuing memoranda of support, or contacting State and local agencies' directors periodically regarding their certification progress.

Finding 9: Monitoring of jurisdictions with Interim Referral Agreements is required in the law, but as late as January 21, 1992, HUD had not developed formal procedures or written guidelines and instructions for HUD staff to use in the monitoring process.

Recommendation 9: HUD should develop written guidelines and instructions for those staff responsible for monitoring the activities and progress of those agencies with Interim Referral Agreements.

These guidelines should outline specific duties, responsibilities, timetables, and benchmarks that the agencies must meet.

Finding 10: The law requires HUD to monitor the FHAP agencies at least every 5 years to assess their qualifications for the Fair Housing Assistance Program. However, there are currently no uniform guidelines or benchmarks to assess the performance or participation of the agencies in the program, either during the interim phase or after the extension period.

Recommendation 10: HUD should develop and implement uniform guidelines to evaluate the participation and qualifications of the certified agencies. The Funded Programs Division at headquarters and regional staff should be knowledgeable about these guidelines and be able to conduct training and informational seminars with assigned FHAPs regarding these guidelines.

Finding 11: Based upon the Commission's Survey information, per case processing costs of FHAP agencies' are significantly less than HUD's costs.

Recommendation 11: HUD should conduct a cost analysis of complaint processing by the State and local agencies to determine the actual cost of administering or using the FHAP and to determine where additional cost savings can be made, including the amount of fees paid to State and local agencies for complaint closures. HUD should also conduct a study on the actual cost to HUD (i.e., accrued cost to HUD in providing technical assistance and reviewing completed cases) of administering the FHAP. The study should examine differences in service/product mix and quality as well as process efficiency.

Appendix A

Discussion of Selected State and Local Agencies

Virginia. Under the State Code of Virginia, the Virginia Department of Commerce issues licenses and is responsible for disciplining most of the occupations, professions, and businesses. As part of this mandate, it is responsible for fair housing practices to protect the public safety, health, and welfare of its residents, as well as the environment.¹ Virginia's fair housing program is assigned to the Real Estate Board for administrative purposes. However, the fair housing administrator reports to the director and senior deputy director of the Virginia Department of Commerce.² The fair housing staff has the authority to receive complaints of housing discrimination, to order investigations, to conduct factfinding and formal hearings, and to negotiate settlement agreements between parties in dispute.³ In addition, the Virginia fair housing program provides "assistance to citizens, and seeks to protect their rights to equal housing under the law," as well as provide educate and train professionals who wish to comply with both the Federal and State statutes.⁴ In 1990, of its total budget of \$7,327,283, fair housing expenditures totaled \$196,274.⁵ In 1990 four full-time positions were assigned to fair housing: an administrator, assistant administrator, executive secretary, investigator, and two part-time case analysts.⁶

Currently, coverage includes race, color, religion, national origin, sex, age, familial status, and handicap.⁷ Although Virginia's revised fair housing law does not provide for administrative hearings, it does provide for adjudication of complaints.⁸

New Hampshire. In 1965 the State legislature established the New Hampshire Commission for Human Rights to prevent and eliminate discrimination in employment, housing, and public accommodations.⁹ The Governor, with the approval of the Executive Council, appoints five volunteer commissioners to oversee the agency's operations. The commissioners review investigations, preside over public hearings,

¹ Virginia Fair Housing Law, VA. Code Ann. & 96-36 (Supp. 1991). Also see, Virginia Department of Commerce, *Biennial Report* (June 30, 1991), p. 1 (hereafter cited as *Virginia, Biennial Report*).

² *Virginia, Biennial Report*, p. 3.

³ *Ibid.*, and § 36-96-8.

⁴ *Virginia, Biennial Report* (1986-88), p. 1.

⁵ *Virginia, Commission Survey*, table 2, p. 17.

⁶ *Ibid.*, table 3, p. 18.

⁷ Virginia Fair Housing Law, House Rule No. 1153, *Amendment in the Nature of a Substitute* (Proposed by the Senate Committee on General Laws, Feb. 18, 1991).

⁸ *Virginia, Commission Survey*, pp. 14-15.

⁹ New Hampshire Commission for Human Rights, *Biennial Report* (Draft), Fiscal Years 1988 and 1989 (July 1, 1987-June 30, 1989) (hereafter cited as *New Hampshire, Biennial Report*).

and adopt agency policies. A professional staff investigates and conciliates complaints, and conducts educational outreach programs.¹⁰ In 1989 there were 10 employees, including an executive director, a deputy director, 3 "antidiscrimination" investigators, 2 clerical workers, and 3 temporary positions funded by Federal monies.¹¹ In 1990 the agency received \$8,500 from HUD under the Fair Housing Assistance Program.¹² In 1990 coverage did not include adjudication in court at agency expense, the award of punitive damages against the respondent, any temporary or permanent injunction, a provision for temporary restraining orders, or reasonable attorney's fees and costs.¹³

Huntington, West Virginia. The Huntington Human Relations Commission was established in 1972 by the city council to enforce the Huntington Human Relations Ordinance. Under the ordinance, the commission "assures equality in the areas of employment, housing and public accommodations, regardless of a person's race, religion, color, national origin, ancestry, sex, age, handicap, blindness or familial status."¹⁴ However, in 1990 the ordinance did not provide for many of the *rights* and *remedies* that are provided under the FHAA, including: 1) filing and advising the complainant of the time limits and choice of forums provided under the law, 2) commencing proceedings within 30 days of receiving the complaint, 3) investigating and completing the investigation in no more than 100 days after receipt of the complaint, and 4) assuring a civil penalty against the respondent, or arranging to have the award of punitive damages against the respondent adjudicated in court at agency expense.¹⁵ The city council appoints 11 commissioners to oversee agency operations, participate in public hearings, issue cease and desist orders, and set the agency's policy. Compliance activities make up the core of the commission's work. These activities include investigation, conciliation, and litigation.¹⁶ Other activities include joint operations with Federal, State, and other local agencies' educational and outreach programs.

In 1990 the Huntington commission employed three staff members, including one full- and one part-time investigative/professional staff member assigned to fair housing.¹⁷ In 1990, of its total budget of \$107,152, about 40 percent was spent on fair housing activities.¹⁸

Jacksonville, Florida. The Jacksonville Community Relations Commission and the Jacksonville Equal Opportunity Commission are jointly responsible for implementing the city's civil rights ordinance. The Jacksonville Equal Opportunity Commission assures equal opportunity in employment and fair housing.

¹⁰ Ibid. Also see N.H. Rev. Stat. Ann. § 354-A (1984 and Supp. 1987).

¹¹ *New Hampshire, Biennial Report*.

¹² New Hampshire Commission for Human Rights, Cooperative Agreement for the Fair Housing Assistance Program (FHAP), Sept. 22, 1990.

¹³ *New Hampshire, Commission Survey*, table 1, pp. 9-10.

¹⁴ Carolyn Brown, Chairperson, Huntington Human Relations Commission, letter to Robert K. Nelson, Mayor of the city of Huntington (West Virginia), Aug. 22, 1990.

¹⁵ *Huntington (WV), Commission Survey*, table 1, pp. 6-7 and 9.

¹⁶ Huntington (WV) Human Relations Commission, *Annual Report for Fiscal Year 1989-90*, pp. 1-2.

¹⁷ Ibid.

¹⁸ *Huntington (WV), Commission Survey*, Table 2, p. 17.

The Jacksonville Community Relations Commission addresses all other complaints of discrimination and works to promote goodwill in the community. Both commissions protect fair treatment and equal opportunity for members of all economic, social, racial, religious, and ethnic groups of the city,¹⁹ investigate complaints of discrimination, conduct activities with schools and the police department, and make recommendations to the executive and legislative branches of the city government on strategies for eliminating discrimination.²⁰ In 1990 the commissions employed a staff of 11, including 6 investigators. Two of these investigators were assigned to fair housing full-time.²¹ In 1990 through 1991, of the total budget of \$472,906, about 11 percent was spent on fair housing activities, including complaints processing, training, and education and outreach.²² In 1990 the ordinance did not include: 1) provision for the award of actual damages to an aggrieved person or adjudication in court at agency expense; 2) provision for assessing a civil penalty against the respondent; or 3) provision for judicial review.

Marion, Indiana. The Marion Human Relations Commission enforces the city's civil rights ordinance and provides assistance and outreach programs to the citizens of Marion concerning alleged civil rights violations.²³ The commission investigates allegations of discrimination based on race, color, sex, national origin, ancestry, and handicap in the areas of housing, employment, public accommodations, education, and credit.²⁴ The commission staff members sponsor and attend meetings, conferences, workshops, training seminars and programs with schools, Federal agencies, and such advocacy groups such as the local chapters of the League of United Latin American Citizens (LULAC) and the Urban League.²⁵ In 1990 the total budget included \$11,450 for fair housing activities²⁶ and funding for one full-time fair housing coordinator.²⁷ Coverage did not include familial status, injunctive or other equitable relief, assessment of a civil penalty against the respondent, or reasonable attorney's fees and costs.²⁸

Oklahoma. The Oklahoma Human Rights Commission was created in 1963 to "work toward removing friction, eliminating discrimination and promoting unity and understanding among the people of Oklahoma."²⁹ In July 1985 the State legislature passed the Oklahoma Fair Housing Law, which prohibits discrimination in the sale or rental of housing based on race, color, sex, religion, national origin,

¹⁹ Jacksonville (FL) Community Relations Commission, *Annual Report*, Fiscal years 1988-89, p. 1.

²⁰ Ibid.

²¹ Jacksonville, (FL), *Commission Survey*, table 3, p. 18.

²² Ibid., table 2, p. 17.

²³ Marion, (IN) Human Relations Commission, *1989 Annual Report*, Introduction.

²⁴ Ibid., Director's Statement.

²⁵ Ibid.

²⁶ Marion IN, *Commission Survey*, table 2, p. 17.

²⁷ Ibid., table 3, p. 18.

²⁸ Ibid., table 1, pp. 9-10.

²⁹ Oklahoma Human Rights Commission, *Annual Report*, Fiscal Years 1986 and 1987, p. 1 (hereafter cited as *Oklahoma Annual Report*.)

age, or handicap.³⁰ In 1990 coverage did not include: 1) familial status; 2) the 100-day requirement to complete the complaint or 3) provisions that could subject a complaint to costs, criminal penalties, or fees in connection with filing of complaints.³¹ The agency consists of a nine-person board that establishes policy, sets goals, and approves programs and projects related to eliminating discrimination and approving intergroup relations. The Oklahoma commission employs a director, and a full-time professional and administrative staff. The professional staff is assigned to two distinct functional departments: (1) Enforcement and Compliance and (2) Community and Intergroup Relations. The Enforcement and Compliance Department receives, processes, and investigates complaints of discrimination.³² The Community Relations Department is assigned the task of implementing the educational and enforcement aspects of the commission's fair housing program.³³ In 1990, of the total agency budget of \$904,131, payments for fair housing activities totaled \$111,445.³⁴

Missouri. The Missouri Commission on Human Rights in Jefferson and its three area offices in St. Louis, Kansas City, and Sikeston operate under the Missouri Human Rights Act, which prohibits discrimination on the basis of race, color, religion, national origin, ancestry, sex, and handicap in public accommodations and housing.³⁵ The duties of the commission include discouraging discrimination, conducting research on discrimination in Missouri, and coordinating civil rights activities with public and private organizations.³⁶ In 1990 the State law did not include: 1) familial status; 2) provisions to have the award of actual damages to an aggrieved person adjudicated in court at agency expense; 3) provisions to assess civil penalties against the respondent or to have the award of punitive damages against the respondent adjudicated in court at agency expense.³⁷ There are 11 commissioners who serve for staggered terms of 6 years. The Governor appoints the commissioners to formulate agency policy and serve as hearing panel members.³⁸ The commission has agreements with the U.S. Department of Housing and Urban Development and the Equal Employment Opportunity Commission for processing complaints, providing outreach programs, and sponsoring workshops and seminars on timely topics for the community.³⁹ In 1990, of its total budget of \$1,064,342, approximately 10 percent was for fair housing initiatives, and 12 of the 23 investigative and other professional staff were assigned to fair housing activities.⁴⁰

³⁰ Okla. Stat Ann. tit. 256 § 1451 *et seq.*

³¹ *Oklahoma Commission Survey*, table 1, p. 7.

³² *Oklahoma Annual Report*, p. 4.

³³ *Ibid.*

³⁴ *Oklahoma Commission Survey*, table 2, p. 17.

³⁵ Mo. Ann. Stat. §§ 213.120, 314.060 (Vernon 1985). Also see Missouri Commission on Human Rights, *Annual Report*, Fiscal Year '89, p. 1 (hereafter cited as *Missouri Annual Report*).

³⁶ *Id.* § 213.030 and *Missouri Annual Report*, p. 1.

³⁷ *Missouri Commission Survey*, table 1, pp. 7-9.

³⁸ Mo. Ann. Stat. § 213.020.

³⁹ *Missouri Commission Survey*, *Ibid.*, pp. 5-6.

⁴⁰ *Ibid.*, Survey #1, table 2, p. 16, and table 3, p. 17.

U.S. COMMISSION ON CIVIL RIGHTS



Survey of State and Local Human Rights Agencies

on the

Federal Fair Housing Amendments Act of 1988

OMB Control No.:
Expiration Date:

3035-0022
September 30, 1991

PART I
REQUEST FOR DOCUMENTS

Please send us a copy of the following documents:

- Your current State or local fair housing law or ordinance.
- Regulations, policy guidelines, orders, etc. that govern your agency's fair housing enforcement efforts.
- Proposed legislation that is intended to make your current law or ordinance "substantially equivalent" to the Federal Fair Housing Act. Please indicate the status of each proposal.
- Organizational chart and addresses of any area offices.
- Annual reports for the past four years.
- FHAP cooperative agreement.

U. S. COMMISSION ON CIVIL RIGHTS
SURVEY OF STATE AND LOCAL HUMAN RIGHTS AGENCIES
CONCERNING THE
FEDERAL FAIR HOUSING AMENDMENTS ACT OF 1988

The U.S. Commission on Civil Rights is an independent, bi-partisan Federal agency. As part of its responsibilities, the Commission appraises the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice.

Under this mandate the Commission is conducting an 18-month study to evaluate the implementation and effectiveness of the Federal Fair Housing Amendments Act of 1988. This survey is a key part of the study.

State and Local agencies, such as yours, play a major role in enforcing the Federal Fair Housing Act. It is therefore essential that the Commission understand how the Fair Housing Amendments of 1988 are going to affect your operations, today and in the future. We want to know about your experience to date in seeking recertification under 24 CFR § 115.3, whether you are likely to be recertified by 1992 and, if not, what the consequences would be for fair housing enforcement efforts in your area.

Based on the results of the survey and other data, the Commission will report its findings to the President and Congress, along with any recommendations for administrative, regulatory, or legislative changes to ensure maximum enforcement of the Fair Housing Amendments of 1988. The Commission will also prepare a more detailed analysis on the survey, which will be sent to each participant.

We estimate most agencies will spend less than 14 hours completing the survey, including up to two hours responding to follow-up questions. We appreciate that this is a considerable effort. Nevertheless, we believe the results of the survey will be of value to your agency and, particularly, will help to ensure that the partnership between State and Local fair housing agencies and the Federal Government remains strong.

Please send us your survey responses and other requested information no later than February 15, 1991. A preaddressed envelope has been included with the survey for your convenience.

Should you have any questions about the survey, please feel free to contact Wanda Johnson or Franklin Chow of the Civil Rights Evaluation Unit at (202) 376-8512. Thank you for your time and patience.

SECTION A

The following questions pertain to certification under the Fair Housing Act. Questions 1–5 ask about your experiences with and the prospects for certification. The last two questions ask about the consequences for your operations if your agency is not recertified by 1992.

1. What actions have been taken or are planned to incorporate the provisions of the Fair Housing Amendments Act of 1988 into your governing fair housing law?

2. Has your agency sought or been offered technical assistance by HUD in any phase of the certification process?

☐ Yes
☐ No

If yes, please answer parts (a) and (b).

a) Describe the sources from which your agency has sought or received technical assistance. [E.g. telephone inquiries, written correspondence, HUD-sponsored conferences.]

b) If you have received technical assistance, describe the circumstances, nature, and results of the assistance.

3. Has your agency made a formal request for certification?

☐ Yes
☐ No

If yes, please answer parts (a) and (b).

a) What was the outcome/current status?

b) If your initial submission was found to be insufficient, are you planning a resubmission responding to HUD's concerns? If so, when will you reapply? Do you predict that your submission will be found to be sufficient?

4. Table 1 below lists the criteria established by the U.S. Department of Housing and Urban Development (24 CFR Part 115.3 and 115.3a) to judge the equivalency of a State or local law or ordinance. Please check the appropriate answer, as to whether or not your current fair housing law or ordinance meets each of the following criteria, as you interpret them.

If your law or ordinance does not currently satisfy criteria, please indicate the likelihood that they will be satisfied prior to January 1992 as required by § 115.6(d). If the prospects for satisfying a criterion are "poor" or "uncertain," please explain why in the space provided at the end of table 1 or on a separate attachment.

Table 1

Criteria	Current Coverage		Prospects for Coverage by 1992			
	Yes	No	Excellent	Good	Poor	Uncertain
§115.3 Criteria for adequacy of law.						
(a) In order for a determination to be made that a State or local fair housing agency administers a law which on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:						
(1) Provide for an administrative enforcement body to receive and process complaints and provide that:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) Complaints must be in writing:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complainant;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iv) A respondent may file an answer to a complaint.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaint matters, and require that:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Table 1 (cont'd)

Criteria	Current Coverage		Prospects for Coverage by 1992			
	Yes	No	Excellent	Good	Poor	Uncertain
(ii) The agency investigate the allegations of the complaint and complete the investigation in no more than 100 days after receipt of the complaint, unless it is impracticable.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iii) If the agency is unable to complete the investigation within 100 days it shall notify the complainant and respondent in writing of the reasons for not doing so;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iv) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so it shall notify the complainant and respondent, in writing, of the reasons for not doing so;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(v) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent and the complainant and shall be subject to the approval of the agency;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(vi) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(ii) Anti-testing provisions;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to Section 803 of the Act (which provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner and units in owner-occupied dwellings containing living quarters for no more than four families).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) Be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, i.e., prohibit the following acts:						
(i) Refusal to sell or rent based on discrimination because of race, color, religion, sex, familial status, or national origin;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Table 1 (cont'd)

Criteria	Current Coverage		Prospects for Coverage by 1992			
	Yes	No	Excellent	Good	Poor	Uncertain
(ii) Refusal to negotiate for a sale or rental based on discrimination because of race, color, religion, sex, familial status, or national origin;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iii) Otherwise making unavailable or denying a dwelling based on discrimination because of race, color, religion, sex, familial status, or national origin;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iv) Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, based on discrimination because of race, color, religion, sex, familial status, or national origin;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(v) Advertising in a manner that indicates any preference, limitation or discrimination because of race, color, religion, sex, familial status, or national origin;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(vi) Falsely representing that a dwelling is not available for inspection, sale, or rental because of discrimination because of race, color, religion, sex, familial status, or national origin;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(vii) Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise of enjoyment of any right granted or protected by section 803, 804, 805, or 806 of the Act;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(viii) Block busting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(ix) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any persons in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, familial status, or national origin. Such transactions include:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(A) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(B) The selling, brokering, or appraising of residential real property;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Table 1 (cont'd)

Criteria	Current Coverage		Prospects for Coverage by 1992			
	Yes	No	Excellent	Good	Poor	Uncertain
(x) Denying a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization, or other service because of race, color, religion, sex, familial status or national origin.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.						
(1) The agency must have authority to:						
(i) Seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the agency concludes that such action is necessary to carry out the purposes of the law or ordinance;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(ii) Issue subpoenas;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iii) Grant actual damages or arrange to have adjudicated in court at agency expense the award of actual damages to an aggrieved person;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(v) Assess a civil penalty against the respondent, or arrange to have adjudicated in court at agency expense the award of punitive damages against the respondent.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Judicial review of a final agency order must be in a court with authority to grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper; affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and enforce the order to the extent that the order is affirmed or modified.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) The requirement that the State or local law prohibit discrimination on the basis of familial status does not require that the State or local law limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.						
(d) The State or local law may assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in Part 100 Subpart E.						

Table 1 (cont'd)

Criteria	Current Coverage		Prospects for Coverage by 1992			
	Yes	No	Excellent	Good	Poor	Uncertain
<p>(e) A determination of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account all relevant matters of State or local law, e.g., regulations, directives and rules of procedure, or interpretations of the fair housing law by competent authorities, as may be necessary.</p>						
<p>(f) A law will be held to be not adequate "on its face" if it permits any of the agency's decision making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, "decision making authority" shall include:</p>						
(1) Acceptance of the complaint;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Approval of the conciliation agreement;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Dismissal of a complaint;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) Any action specified in Section 115.3(a)(2)(iv) or 115.3(b)(1).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>(g) The State or local law must provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an action in an appropriate court not less than 1 year after the occurrence or termination of an alleged discriminatory housing practice. The court should be empowered to:</p>						
(1) Award the plaintiff actual and punitive damages;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Allow reasonable attorney's fees and costs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Table 1 (cont'd)

Criteria	Current Coverage		Prospects for Coverage by 1992			
	Yes	No	Excellent	Good	Poor	Uncertain
§115.3a Criteria for adequacy of law—discrimination because of handicap.						
(a) In addition to the provisions of §115.3, in order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices, based on handicap, that are substantially equivalent to those provided in the Act, the law or ordinance must be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, i.e., it must prohibit the following acts:						
(1) Advertising in a manner that indicates any preference, limitation, or discrimination because of handicap;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Falsely representing that a dwelling is not available for inspection, sale, or rental based on discrimination because of handicap;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Blockbusting, based on representations regarding the entry or prospective entry into the neighborhood of a person or persons with a particular handicap;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of handicap. Residential and real estate-related transactions include:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(ii) The selling, brokering, or appraising of residential real property;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) Denying a person access to, or membership or participation in, multiple listing services, real estate brokers' organizations, or other services because of handicap;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) Discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a handicap of that buyer or renter, or of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Table 1 (cont'd)

Criteria	Current Coverage		Prospects for Coverage by 1992			
	Yes	No	Excellent	Good	Poor	Uncertain
(7) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of that person, or a person residing in or intending to reside in the dwelling after it sold, rented, or made available, or of any person associated with that person.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) For purposes of this section, discrimination includes—						
(1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that—						
(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(ii) With respect to dwellings with a building entrance on an accessible route—	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(A) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;						
(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and						
(C) All premises within covered multifamily dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheel chair can maneuver about the space.						

Table 1 (cont'd)

Criteria	Current Coverage		Prospects for Coverage by 1992			
	Yes	No	Excellent	Good	Poor	Uncertain
(c) The law or ordinance administered by the State or local fair housing agency may provide that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1-1986") suffices to satisfy the requirements of paragraph (b)(3)(ii)(C) of this section.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) As used in this section, the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you indicated in table 1 above that the prospects for incorporating a criterion listed in § 115.3 or § 115.3a "poor" or "uncertain," please explain why in the space below.

5. Section 810(f) of the Federal Fair Housing Act (as amended) requires the Secretary of HUD to certify a State or local agency if it operates under a law or ordinance that is "substantially equivalent" to the Act.

a) Have any changes been proposed or incorporated into your current law that would provide: 1) protections that are less comprehensive, or exemptions that are broader than those found in the Act; 2) agency procedures that differ from those described under the Act; 3) remedies available to the agency that differ from those provided under the Act; or 4) judicial review of agency action that differs from that provided under the Act?

- ☐ Yes
☐ No

If yes, please indicate how the new provisions differ from the Act and rate the prospects (Excellent, Good, Poor, Uncertain) that HUD will accept these changes in considering your request for certification?

5. b) Are there any provisions in the Federal Fair Housing Act that you believe cannot be incorporated into your current law in a form that will satisfy HUD's criteria for certification?

- ☐ Yes
☐ No

If yes, could HUD make exceptions in certifying your agency without significantly limiting your ability to process cases in a manner commensurate with that intended by the Fair Housing Act? Please explain how complaints falling within the exceptions would be processed by the agency and by HUD. Explain how this process will ensure that all rights of the aggrieved party provided under the Fair Housing Act would be protected.

6. If you are not certified as substantially equivalent by 1992:
- a) What fraction of complaints, now filed directly with your agency and within your current jurisdiction, would be filed directly with HUD? Please explain the basis for your estimate.
 - b) What fraction of complaints filed with your agency and within your jurisdiction, would you refer to HUD but also process at your agency?
 - c) What fraction of complaints filed with your agency and within your jurisdiction, would you defer to HUD and not process at your agency?
7. If your agency is not certified to process Federal fair housing cases beyond 1992 and if funding by the State or local authority is not increased to compensate for lost revenues from HUD, how would your agency respond?
8. When was your agency first certified by HUD to process dual-filed fair housing cases?

_____ (year)

SECTION B

The following questions pertain to the scope and scale of your operations between 1987 and 1990. Some of these questions ask about the fair housing cases your agency processed. Please report only those complaints that were, or could have been, filed under both Federal law and your governing law or ordinance.

In questions 10–16, you are asked to report budget and case information by "fiscal year." Please indicate if you are reporting on a basis other than your agency's fiscal year (e.g. calendar year, Federal fiscal year).

9. When does your fiscal year begin? _____
10. Please provide the following information on your agency's finances for each fiscal year between 1987 and 1990:

Table 2
Agency Finances: Fiscal Years 1987-1990

Item	1987	1988	1989	1990
Total Agency Budget				
Total Expenditures on Fair Housing ¹				
Expenditures for Fair Housing Case Processing ¹				
Expenditures for Fair Housing Training ¹				
Expenditures for Other Fair Housing Enforcement (e.g. education/outreach) ¹				
Administrative & Overhead Expenditures on Fair Housing Cases ¹				
FHAP Contract Cases (familial status and handicap)				
FHAP Cooperative Agreement				
Fair Housing Initiatives Program (FHIP)				

¹ If your agency does not maintain expenditures separately for housing categories, please provide an approximate percentage of total expenditures that is spent in each category.

11. Please provide the following information on your agency's staffing for each fiscal year between 1987 and 1990:

- Total staff, administrative and clerical, investigative and other professional staff, in full-time equivalents.
- Investigative and other professional staff allocated to processing fair housing cases, in full-time equivalents (FTE's).

Table 3
Agency Staffing: Fiscal Years 1987-1990

Item	1987	1988	1989	1990
Total Agency Staff				
Total Agency Administrative & Clerical Staff				
Total Agency Investigative Staff				
Investigative & Professional Staff Assigned to Fair Housing (FTE's)				

12. If you operate field or area offices, please list their locations, primary functions, and total staff.

Location	Staff	Primary Functions

13. Please provide the following information about housing discrimination cases your agency **received** in each fiscal year between 1987 and 1990?

a) **Basis of Complaint:** Please use table 4 below to provide a breakdown of the fair housing complaints your agency received according to the basis of complaint. In cases where more than one basis was cited, count the complaint once for each applicable basis. Count each complaint only once in computing the total complaints received.

Table 4
Basis of Complaints Received
Fiscal Years 1987-1990

Basis of Complaint	1987	1988	1989	1990
Race and Color				
Religion				
Sex				
National Origin				
Family Status				
Handicap				
Other ¹				
Total Cases				

¹ Indicate "other" categories in space below.

13. b) **Origin of Complaint:** In table 5 below, please enter the number of fair housing complaints your agency received by their origin.

Table 5
Origin of Complaints Received
Fiscal Years 1987-1990

Origin of Complaint	1987	1988	1989	1990
Original filing with agency				
Deferred by HUD				
Referred by Private Agency				
Referred by Other State/Local Agency				
Other Origin				

- c) **Disposition of Complaints:** In table 6 below, please enter the number of fair housing complaints received in each fiscal year between 1987 and 1990 by your agency according to whether your agency processed the case or referred it to another agency.

Table 6
Disposition of Complaints Received
Fiscal Years 1987-1990

Disposition of Complaint	1987	1988	1989	1990
Processed by agency				
Referred to HUD				
Referred to Other State/Local Agency				
Referred to Private Agency				

13. d) **Jurisdiction of Complaints:** In table 7 below, please indicate how many of your agency's complaints were processed solely under your State or local law and how many under the Federal Fair Housing Act.

Table 7
Jurisdiction of Complaints Processed by Agency:
Complaints Received Fiscal Years 1987-1990

Jurisdiction of Complaint	1987	1988	1989	1990
State/Local only				
Dual: Federal & State or Local				

14. Of the complaints you **referred** to HUD in fiscal year 1990, how many alleged discrimination on the basis of familial status or handicap?

Familial Status _____

Handicap _____

15. Please provide the following information about housing discrimination cases your agency **closed** in each fiscal year between 1987 and 1990?

a) In table 8 below, for the cases closed by your agency, please indicate the method used to finally resolve them.

Table 8
Methods of Closing Cases
Fiscal Years 1987-1990

Method of Resolution	1987	1988	1989	1990
Administrative Closure				
Conciliation ¹ (pre-hearing)				
Administrative Proceeding				
Litigation				
Other Method				
<hr/>				
Total Cases Closed				

¹ May include failed conciliation attempts where no other method of resolution is available.

15. b) In table 9 below, please enter the average time, in months, required to process cases closed by your agency between fiscal year 1987 and 1990. [If possible, compute the average total time from the date a complaint was originally filed. If this is not possible, then calculate the average from the date your agency assumed responsibility for each case. Please indicate the basis of your calculations.]

Table 9
Average Months to Process Cases Closed
Fiscal Years 1987-1990
by Method of Final Resolution

Method of Final Resolution	1987	1988	1989	1990
Administrative Closure				
Conciliation (no hearing)				
Administrative Proceeding				
Litigation				

- c) In table 10 below, please indicate how many of the cases closed by your agency were resolved in favor of the plaintiff, broken down by the methods used to finally resolve the cases.

Table 10
Number of Cases Resolved in Favor of Plaintiff
Cases Closed during Fiscal Years 1987-1990
by Method of Final Resolution

Method of Final Resolution	1987	1988	1989	1990
Conciliation ¹				
Administrative Proceeding				
Litigation				

¹ Indicate the number of conciliations.

15. d) In table 11 below, please enter the average monetary settlement or award received by successful complainants, broken down by the methods used to finally resolve the cases.

Table 11
Average Monetary Settlement or Award for Cases Closed
Fiscal Years 1987-1990
by Method of Final Resolution

Method of Final Resolution	1987	1988	1989	1990
Conciliation				
Administrative Proceeding				
Litigation				

- e) In table 12 below, please provide a breakdown of those cases closed administratively by your agency, by reason.

Table 12
Reason for Administratively Closing Cases
Fiscal Years 1987-1990

Reason for Closure	1987	1988	1989	1990
Lack of Jurisdiction				
Merit				
Fail to Cooperate/Locate				
Complaint Withdrawn				
Other Reasons ¹				

¹ List other reasons in space below.

16. During fiscal year 1990, did you have a contract with HUD to investigate allegations of discrimination on the basis of familial status or handicap?

☐ Yes
☐ No

17. a) Please describe your procedures for monitoring fair housing agreements and decisions (e.g. conciliation agreements, consent orders, decrees, etc.). In cases where a violation is found, what remedies are available to the agency or complainant?

17. b) In table 14 below, of fair housing agreements and decisions monitored in each fiscal year between 1987 and 1990, how many respondents were found in violation of the agreement?

Table 13
Fair Housing Agreements and Decisions Monitored and Found In Violation
Fiscal Years 1987-1990

	1987	1988	1989	1990
Monitored				
Found in Violation				

Appendix C - Current Status of State and Local Agencies, Requests for Extensions for Certification, as of January 13, 1992, by HUD Regional and Field Offices

REGION I (Boston)	
Connecticut	Yes
New Haven, CT	Yes
Maine	Yes
Massachusetts	Yes
Boston, MA	Yes
Cambridge, MA	Yes
New Hampshire	Yes
Rhode Island	Yes
REGION II (New York)	
New Jersey	Yes
New York	Yes
Rockland County, NY	Yes
Albany, NY	Yes
New York City, NY	Yes
REGION III (Philadelphia)	
Delaware	Yes
District of Columbia	No
Maryland	Yes
Howard County, MD	Yes
Montgomery County, MD	Yes
Prince Georges County, MD	Yes
Pennsylvania, PA	Yes
Allentown, PA	Yes
Harrisburg, VA	Yes
Philadelphia, PA	Yes
Pittsburgh, PA	Yes
Reading, PA	Yes
York, PA	Yes
Virginia	Yes
Arlington County, VA	Yes
West Virginia	No
Beckley, WV	Not Applied
Charleston, WV	Yes
Huntington, WV	Yes
REGION IV (Atlanta)	
Florida	Interim Agreement
Broward County, FL	Yes
Clearwater, FL	Yes
Hillsborough, FL	Yes
Dade County, FL	Yes
Gainesville, FL	Yes
Jacksonville, FL	Yes
Lee County, FL	Yes
Escambia-Pensacola, FL	Yes
Orlando, FL	Yes
Pinellas County, FL	Yes

St. Petersburg, FL	Yes
Tampa, FL	Yes
Tallahassee, FL	Yes
Georgia	Yes
Kentucky	Yes
Lexington-Fayette, KY	Yes
Louisville-Jefferson, KY	Yes
North Carolina	Interim Agreement
Asheville-Buncombe County, NC	Yes
Charlotte-Mecklenburg, NC	Yes
Durham, NC	Yes
Greensboro, NC	Yes
New Hanover County, NC	Yes
Raleigh, NC	Yes
Winston-Salem, NC	Yes
South Carolina	Interim Agreement
Tennessee	Yes
Knoxville, TN	Yes
REGION V (Chicago)	
Illinois	Yes
Bloomington, IL	No
Danville, IL	No
Elgin, IL	Yes
Evanston, IL	Yes
Hazel Crest, IL	No
Park Forest, IL	No
Springfield, IL	Yes
Urbana, IL	No
Indiana	Interim Agreement
Columbus, IN	Yes
East Chicago, IL	Yes
Fort Wayne, IN	Yes
Gary, IN	Yes
Hammond, IN	Yes
Marion, IN	Yes
South Bend, IN	Yes
Michigan	Yes
Minnesota	Yes
Minneapolis, MN	Yes
St. Paul, MN	Yes
Ohio	Yes
Dayton, OH	Yes
Wisconsin	Yes
Beloit, WI	No
Madison, WI	Yes
REGION VI (Ft. Worth)	
New Mexico	Yes
Oklahoma	Yes
Texas	Interim Agreement
Dallas, TX	Interim Agreement

Fort Worth, TX	Yes
REGION VII (Kansas City)	
Iowa	Yes
Des Moines, IA	Yes
Dubuque, IA	Yes
Iowa City, IA	Yes
Kansas	Yes
Kansas City, KS	Not Applied
Lawrence, KS	Yes
Olathe, KS	Yes
Salina,	Yes
Missouri	Yes
Kansas City, MO	Yes
St. Joseph, MO	Yes
St. Louis, MO	Yes
Omaha, NE	Yes
Nebraska	Yes
Lincoln, NE	Yes
REGION VIII (Denver)	
Colorado	Yes
Montana	Yes
South Dakota	No
Sioux Falls, SD	Yes
REGION IX (San Francisco)	
Hawaii	Yes
Arizona	Interim Agreement
Phoenix, AZ	Yes
California	Yes
Nevada	No
REGION X (Seattle)	
Alaska	Not Applied
Anchorage, AK	No
Oregon	Yes
Washington	Yes
King County, WA	Yes
Seattle, WA	Yes
Tacoma, WA	Yes

Appendix D Agencies with Amended Legislation By Region with Poor/Uncertain Prospects for Meeting Certification Criteria

REGION	AGENCY	SUBSTANTIVE RIGHTS	PROCEDURAL RIGHTS	REMEDIES	JUDICIAL REVIEW	EXTENSION	
						Yes	No
I	New Hampshire	<ul style="list-style-type: none"> - Reasonable Modification¹⁰ - Reasonable Accommodation¹⁰ - Accessible Route¹⁰ - ANSI¹⁰ - Multi-family¹⁰ 		<ul style="list-style-type: none"> - Assess Civil Penalty⁴ - Award Punitive⁹ Damages⁹ - Grant Relief⁶ - Attorney's Fees⁹ 		<input checked="" type="checkbox"/>	
	Rhode Island		<ul style="list-style-type: none"> - 180 days filing³ - Anti-testing³ - Filing Fees³ - Accept Complaint⁸ - Approve Conciliation⁸ - Dismiss Complaint⁸ - Any Action⁸ 			<input checked="" type="checkbox"/>	
	New Haven	<ul style="list-style-type: none"> - Reasonable Modification¹⁰ - Reasonable Accommodation¹⁰ - Accessible Route¹⁰ - ANSI¹⁰ - Multi-family¹⁰ - Advertising⁵ 	<ul style="list-style-type: none"> - Serve Notice¹ - 30 days² - 100 days² - 1 year² - Filing Fees³ 	<ul style="list-style-type: none"> - Actual Damages⁶ - Punitive Damages⁹ - Fees⁹ 	Judicial Review ⁷	<input checked="" type="checkbox"/>	
	Cambridge	<ul style="list-style-type: none"> - Block Busting⁵ - Accessible Route¹⁰ 	<ul style="list-style-type: none"> - Civil Enforcement⁹ 	<ul style="list-style-type: none"> - Prompt Relief⁶ - Grant Actual Damages⁶ - Award Punitive Damages⁹ - Fees⁹ 	Judicial Review ⁷	<input checked="" type="checkbox"/>	

II	New Jersey	<ul style="list-style-type: none"> - Sale/Rental⁵ - Terms/Conditions⁵ - Accessible Route¹⁰ - ANSI¹⁰ - Multi-family¹⁰ 				<input checked="" type="checkbox"/>	
	New York City	<ul style="list-style-type: none"> - Contracted Out⁴ 				<input checked="" type="checkbox"/>	
III	Maryland	<ul style="list-style-type: none"> - Conciliation-Public² - Reasonable Modification¹⁰ - Reasonable Accommodation¹⁰ - Accessible Route¹⁰ - ANSI¹⁰ - Multi-family¹⁰ 	<ul style="list-style-type: none"> - Serve Notice¹ - 30 days² - 100 days² - 1 year² - Civil Enforcement⁹ 	<ul style="list-style-type: none"> - Grant Actual Damages⁶ - Assess Civil Penalty⁶ - Award Punitive Damages⁹ - Grant Relief⁹ - Fees⁹ 		<input checked="" type="checkbox"/>	
	Virginia				Judicial Review ⁷	<input checked="" type="checkbox"/>	
	West Virginia	<ul style="list-style-type: none"> - Conciliation-Public² - Accessible Route¹⁰ - ANSI¹⁰ - Multi-family¹⁰ 		<ul style="list-style-type: none"> - Assess Civil Penalty⁶ - Award Punitive Damages⁹ 			<input checked="" type="checkbox"/>
	Baltimore	<ul style="list-style-type: none"> - Conciliation-Public² 	<ul style="list-style-type: none"> - Serve Notice¹ - 30 days² - 100 days² - 1 year² 			Not Listed	
	Harrisburg	<ul style="list-style-type: none"> - Anti-Testing³ - Filing Fee³ - Not Contain Exemptions⁴ - Accept Complaint⁸ - Conciliation Agree⁸ - Dismissal & Action⁸ 		<ul style="list-style-type: none"> - Award Damages⁹ - Fees⁹ 		<input checked="" type="checkbox"/>	

	Reading	- Accessible Route ¹⁰ - ANSI ¹⁰	- Accept Complaint ⁸ - Conciliation ⁸ - Dismissal ⁸	- Award Damages ⁹ - Grant Relief ⁹ - Fees ⁹		<input checked="" type="checkbox"/>	
	Charleston		- Conciliation-Public ² - Anti-testing ³	- Grant Actual Damages ⁶ - Grant Relief ⁹ - Assess Civil Penalty ⁶ - Fees ⁹		<input checked="" type="checkbox"/>	
	Huntington	- Selling, brokering ⁵ - Deny Access ⁵ - Accessible Route ¹⁰ - ANSI ¹⁰ - Multi-family ¹⁰	- Serve Notice ¹ - 30 days ² - 100 days ² - Any Action ⁸ - Civil Enforcement ⁹	- Access Civil Penalty ⁶		<input checked="" type="checkbox"/>	
	Wheeling	- Conciliation-Public ² - Accessible Route ¹⁰	- Serve Notice ¹ - 100 days ² - Anti-testing ³	- Grant Actual Damages ⁶ - Grant Relief ⁹ - Access Penal ⁶	Judicial Review ⁷	Not listed	
	District of Columbia		- 180 days ³ - Anti-testing ³ - Filing Fees ³				<input checked="" type="checkbox"/>
IV	Georgia			- Assess Penalty ⁶		<input checked="" type="checkbox"/>	
	Kentucky			- Assess Penalty ⁶ - Award Damages ⁹		<input checked="" type="checkbox"/>	
	Broward		- Anti-testing ³			<input checked="" type="checkbox"/>	
	Clearwater		- Anti-testing ³ - Filing Fees ³			<input checked="" type="checkbox"/>	

	Gainesville		<ul style="list-style-type: none"> - 180 days¹ - Anti-testing¹ - Filing Fees & Exemptions⁴ 			<input checked="" type="checkbox"/>	
	Jacksonville		<ul style="list-style-type: none"> - Civil Enforcement⁹ 	<ul style="list-style-type: none"> - Prompt Relief⁶ - Grant Actual Damages⁶ - Grant Relief⁶ - Assess Penalty⁶ - Award Damages⁹ - Fees⁹ 	Judicial Review ⁷	<input checked="" type="checkbox"/>	
	St. Petersburg	<ul style="list-style-type: none"> - Conciliation-Public² - Accessible Route¹⁰ - ANSI¹⁰ - Multi-family¹⁰ 	<ul style="list-style-type: none"> - Delegate Authority² - Issue Subpoenas⁶ 	<ul style="list-style-type: none"> - Award Damages⁹ - Grant Relief⁹ 	Judicial Review ⁷	<input checked="" type="checkbox"/>	
	Tallahassee	<ul style="list-style-type: none"> - Advertising⁵ - False Representation⁵ - Block Busting⁵ - ANSI¹⁰ - Multi-family¹⁰ 				<input checked="" type="checkbox"/>	
	Lexington	<ul style="list-style-type: none"> - Conciliation-Public² - Negotiate⁵ - Deny Dwelling⁵ - Terms/Conditions⁵ - Advertising⁵ - False Representation⁵ - Block Busting⁵ - Transactions⁵ 	<ul style="list-style-type: none"> - Serve Notice¹ - 30 days² - 100 days² - 1 year² 	<ul style="list-style-type: none"> - Assess Penalty⁶ - Award Damages⁹ - Fees⁰ 		<input checked="" type="checkbox"/>	
	Charlotte		<ul style="list-style-type: none"> - Anti-testing³ - Filing Fees³ 		Judicial Review ⁷	<input checked="" type="checkbox"/>	
	New Hanover	<ul style="list-style-type: none"> - Conciliation-Public² 		<ul style="list-style-type: none"> - Assess Penalty⁶ 		<input checked="" type="checkbox"/>	

	Pinellas			- Grant Damages ⁶		<input checked="" type="checkbox"/>	
	Tampa			- Grant Damages ⁶		<input checked="" type="checkbox"/>	
	Winston-Salem	- Conciliation-Public ²				<input checked="" type="checkbox"/>	
	West Palm Beach		- Filing Fees ³			Not listed	
V	Michigan	- Conciliation-Public ²	- Serve Notice ¹ - 30 days ² - 100 days ² - 1 year ² - Issue Subpoenas ⁶	- Assess Penalty ⁶		<input checked="" type="checkbox"/>	
	South Bend		- Discourage filing ³			<input checked="" type="checkbox"/>	
	Minneapolis	- ANSI ¹⁰ - Multi-family ¹⁰	- Serve Notice ¹ - 30 days ² - 100 days ² - 1 year ²			<input checked="" type="checkbox"/>	
	Madison		- Civil enforcement ⁹ - Grant Relief ⁹			<input checked="" type="checkbox"/>	
	Beloit			- Fees ⁹			<input checked="" type="checkbox"/>
	Urbana		- Serve Notice ¹ - 30 days ² - 100 days ² - Anti-testing ³ - Filing Fees ³	- Grant Damages ⁶	Judicial Review ⁷		<input checked="" type="checkbox"/>

VI	New Mexico	<ul style="list-style-type: none"> - Negotiate⁵ - Deny⁵ - Terms/Conditions⁵ - Advertising⁵ - False Representation⁵ - Block Busting⁵ 		- Assess Penalty ⁶		<input checked="" type="checkbox"/>	
VII	Kansas City, MO		<ul style="list-style-type: none"> - Civil Enforcement⁹ - Filing Fees³ 	<ul style="list-style-type: none"> - Grant Damages⁶ - Grant Relief⁶ - Assess Penalty⁶ - Award Damages⁹ - Grant Relief⁶ 			<input checked="" type="checkbox"/>
	St. Joseph	<ul style="list-style-type: none"> - ANSI¹⁰ - Multi-family¹⁰ 	<ul style="list-style-type: none"> - Delegate Authority² - 30 days² 	<ul style="list-style-type: none"> - Award Damages⁹ - Grant Relief⁶ - Fee⁹ - Seek Judicial Action 		<input checked="" type="checkbox"/>	
	Nebraska	<ul style="list-style-type: none"> - Conciliation-Public² - Denying Dwelling⁵ - Advertising⁵ 	<ul style="list-style-type: none"> - 100 days² 	<ul style="list-style-type: none"> - Grant Relief⁶ - Assess Penalty⁶ 		<input checked="" type="checkbox"/>	
	Missouri	<ul style="list-style-type: none"> - Refusal to Sell⁵ - Negotiate⁵ 	<ul style="list-style-type: none"> - Serve Notice¹ - 100 days² - 1 year² 	<ul style="list-style-type: none"> - Grant Damages⁶ - Assess Penalty⁶ 		<input checked="" type="checkbox"/>	
	Iowa	<ul style="list-style-type: none"> - Conciliation-Public² 		<ul style="list-style-type: none"> - Assess Penalty⁶ 		<input checked="" type="checkbox"/>	
VIII	South Dakota	<ul style="list-style-type: none"> - ANSI¹⁰ - Multi-family¹⁰ 	<ul style="list-style-type: none"> - Serve Notice¹ - 30 days² - 100 days² - 1 year² 	<ul style="list-style-type: none"> - Grant Relief⁶ - Assess Penalty⁶ 			<input checked="" type="checkbox"/>
IX	California			<ul style="list-style-type: none"> - Assess Penalty⁶ 		<input checked="" type="checkbox"/>	

X	Alaska	<ul style="list-style-type: none"> - Conciliation Public² - Contain Exemption⁴ - Reasonable Modification¹⁰ - ANSI¹⁰ - Multi-family¹⁰ 		- Assess Penalty ⁶		<input checked="" type="checkbox"/>	
	Washington		<ul style="list-style-type: none"> - Service Notice¹ - 100 days² - Anti-testing⁷ - Filing Fees⁹ 	- Assess Penalty ⁶		<input checked="" type="checkbox"/>	
	King County	- Accessible Route ¹⁰	<ul style="list-style-type: none"> - Serve Notice¹ - 30 days² 	<ul style="list-style-type: none"> - Award Damages⁹ - Grant Relief⁹ - Fees⁹ 		<input checked="" type="checkbox"/>	

Sources: Survey Question Number 4 and Extension Granted Chart

Footnotes to Appendix D

- ¹ Serve Notice: Provision for service of notice on complainant. §115.3 (a)(1)(ii)
- ² Delegate Authority: Authority of the enforcement agencies to investigate and conciliate complaints including subpoena power. §115.3 (a)(2)
30 Days: Commence proceedings before end of 30 days. §115.3 (a)(2)(i)
100 Days: Complete investigation in no more than 100 days. §115.3 (a)(2)(ii)
1 Year: Make final administrative disposition within one year. §115.3 (a)(2)(iv)
Conciliation-Public: Conciliation agreement shall be made public. §115.3 (a)(2)(vi)
- ³ Discourage Filing: Not to discourage filing of complaints. §115.3 (a)(3)
180 Days Filing: Provision that a complaint must be filed within 180 days. §115.3 (a)(3)(i)
Anti-Testing: Provisions on anti-testing. §115.3 (a)(3)(ii)
Filing Fees: Fees in connection with the filing of complaints. §115.3 (a)(3)(iii)
- ⁴ Exemptions: Exemptions of certain types of housing from the coverage of the law. §115.3 (a)(4)
- ⁵ Refusal To Sell: Refusal to rent or sell to a person based on discrimination against those covered under the FHAA. §115.3 (a)(5)(i)
Negotiate: Refusal to negotiate on the basis of discrimination for a sale or rental. §115.3 (a)(5)(ii)
Denying Dwelling: Denying a dwelling based on race, sex etc. §115.3 (a)(5)(iii)
Terms and Conditions: Discrimination in the terms and conditions in the sale/rental of a dwelling. §115.3 (a)(5)(iv)
Advertising: Advertising in a manner that indicates a preferred type of individual. §115.3 (a)(5)(v)
False Representation: Falsely representing that a dwelling is not available. §115.3 (a)(5)(vi)
Block Busting: Deliberate measures to prevent or block a person from buying in a neighborhood. §115.3 (a)(5)(viii)
Transaction: Discriminatory transactions in residential real estate. §115.3 (a)(5)(ix)
Selling or Brokering: The discriminatory selling, brokering, or appraisal of property. §115.3 (a)(5)(B)
Deny Access: Denying access to brokers' organizations and services. §115.3 (a)(5)(x)

- ⁶ Prompt Relief: Seek quick judicial relief pending disposition of complaint. §115.3 (b)(1)(i)
Issue Subpoenas: Authority to issue subpoenas. §115.3 (b)(1)(ii)
Grant Actual Damages: Grant actual damages to an aggrieved person. §115.3 (b)(1)(iii)
Assess A Civil Penalty: Ability to levy civil penalties against the respondent. §115.3 (b)(1)(v)
- ⁷ Judicial Review: Provides Judicial review of a complaint. §115.3 (b)(3)
- ⁸ Contracted Out: Agency's authority to contract complaints out. §115.3 (b)(f)
Accept Complaint: Acceptance of the complaint. §115.3 (b)(f)(1)
Approve Conciliation: Approval of the conciliation agreement. §115.3 (b)(f)(2)
Dismissal: Dismissal of a complaint. §115.3 (b)(f)(3)
- ⁹ Civil Enforcement: Action in an appropriate court within one year. §115.3 (b)(g)
Award Punitive Damage: Award the plaintiff actual and punitive damages. §115.3 (b)(g)(1)
Grant Relief: Grant relief as it deems appropriate. §115.3 (b)(g)(2)
Attorney Fees: Agency provides reasonable attorney's fees and cost. §115.3 (b)(g)(3)
- ¹⁰ Reasonable modification: Reasonable modification to dwelling at the expense of the handicapped person. §115.3a (b)(1)
Reasonable Accommodations: Reasonable accommodations to afford handicap use and enjoyment of dwelling. §115.3a (b)(2)
Accessible Route: Accommodations such as ramps, automatic doors, etc. to make entrances and exits "accessible" to handicap. §115.3a (b)(3)(i)
ANSI: American National Standard Institute's building codes. §115.3a (c)
Multi-Family: Buildings consisting of four or more units. §115.3a (d)

Appendix E

Substantial Equivalency Activities of the Department of Housing and Urban Development¹

Since the passage of the Fair Housing Amendments Act of 1988 and the publication of the implementing regulations in March 1989, the Department has vigorously worked to provide accurate guidance to the State and local agencies that were grandfathered in as certified under the Fair Housing Act (the "Act"). The Office of Fair Housing and Equal Opportunity (FHEO) has the responsibility for the implementation of the Act and the regulations regarding substantial equivalency certification of agencies.

The Office of General Counsel (OGC) provides assistance to FHEO in carrying out its responsibilities in the area of substantial equivalency certification. That Office provides legal reviews of legislation sent by the agencies requesting substantial equivalency certification. The following details the activities of FHEO and OGC in the certification process since the passage of the amendments.

FHEO Activities

Technical assistance by FHEO to the agencies has been constant since the passage of the Act. The Office engages in a variety of technical assistance activities on an on-going basis throughout the certification process for all agencies.

FHEO, through its Regional Offices and Headquarters, has provided assistance to over 100 State and local agencies since the passage of the Act. This includes organizing and carrying out 4 national conferences, and over 30 regional conferences, seminars, and specialized training sessions on certification to the agencies. The Assistant Secretary, General Deputy Assistant Secretary and staff of the Office of Fair Housing Assistance and Voluntary Programs, Funded Programs Division, upon request, have been involved in testifying at several legislative hearings, participating in numerous face-to-face meetings and teleconference calls with agency representatives and their elected representatives sponsoring the fair housing legislation regarding certification.

FHEO has also provided assistance to agencies with respect to the writing and rewriting of fair housing legislation and implementing rules. If the agency has requested a legal review of its proposed or passed legislation, a detailed written response is forwarded to the agency by FHEO. Legal reviews have been sent via facsimile or federal express mail to over 60 agencies. Since

¹ Document received from HUD/FHEO on Mar. 5, 1992.

most agencies sent proposed and passed legislation to HUD for review more than once, this equates to approximately 100 responses to agencies to assist them in passing a substantially equivalent fair housing law.

The Assistant Secretary, General Deputy Assistant Secretary, Office Director, Funded Programs Division Director and staff, as well as the Regional Office FHEO staff have participated in over 20 programs and activities which the agency(ies) sponsored and requested the Department's participation to discuss substantial equivalency certification.

FHEO has also provided technical assistance to other persons and groups interested in assisting the State and local agencies achieve substantial equivalency certification. These include participating in numerous meetings and providing technical assistance to the National Council of Governors, Conference of Mayors, International Association of Official Human Rights Agencies, National Association of Human Rights Workers, Lawyers' Commission for Human Rights, NAACP Legal Defense Fund, national and local real estate boards and associations, as well as legislative staff persons of Congressmen and Senators, State and local elected officials, and special interest groups (i.e., private fair housing groups, disability groups, children's support groups, etc.)

In 1990, at the Fair Housing Assistance Program National Policy Conference, FHEO established a national fair housing agency advisory workgroup made up of executives of selected State and local agencies and Regional and Headquarters representatives of the Department. The group was formed to further intergovernmental cooperation between the agencies and the Department. Currently, the group includes representatives from eleven agencies and five HUD Regional Office Directors. Headquarters representatives include the Assistant Secretary, General Deputy Assistant Secretary, Office and Division Directors. The group has met approximately six times and has had numerous teleconference calls.

A major agenda item for the workgroup from its inception to the present has been substantial equivalency certification. Several significant activities were recommended by the agency representatives and adopted by HUD to assist agencies achieve substantial equivalency certification. Particularly significant was the developing of written guidance to clarify legal and administrative issues and arranging for State and local agency representatives with passed legislation to provide direct assistance to other agencies attempting to do so. Examples of the assistance include presentations at HUD conferences, meetings, teleconferences and participation in individual agency training sessions. As a result of the work of this group, policy decisions were implemented that resolved longstanding issues in activities and processes of the agencies and the Department in other areas affecting the operation of the Fair Housing Assistance Program.

OGC Activities

Since passage of the amendments to the Fair Housing Act in 1988, the Office of General Counsel at Headquarters has performed at least one review for substantial equivalency of laws from 60 jurisdictions, including 40 State laws and 20 local laws. For a number of jurisdictions, more than one

formal review has been conducted, since OGC Headquarters is reviewing both proposed and enacted legislation. A total of 72 reviews of enacted legislation have been conducted, as well as 20 reviews of proposed legislation.

Because many State and local agencies did not submit laws for equivalency review until October or November, 1991, and because the review needed to be completed as soon as possible, OGC-Fair Housing completed twenty-nine equivalency reviews between December 1, 1991 and February 25, 1992, or approximately 31.5% of the total number of reviews performed since the Act was amended.

These figures do not include the substantial number of reviews of proposed local legislation which have been conducted by Regional Counsel offices, which have ranged from informal provision of technical assistance, to provision of verbal or written comments on draft legislation, to meetings with agency representatives to discuss the substantial equivalency process and/or review legislation.

In addition to the formal reviews, there have been on-going and extensive contacts associated with the reviews between the Office of General Counsel for Fair Housing and the State and local agencies. An example of the process occurred during the Fall of 1991, with staff of the Pennsylvania Human Relations Commission. The Commission has submitted proposed legislation for review very shortly before it was introduced in the State legislature. OGC staff were in communication with staff of the Commission throughout the time that the bill was under consideration and ultimately prepared a review of the enacted legislation. During the legislative session in Arizona, OGC staff consulted with the Attorney General of Arizona while its law was pending on the floor of the legislature to ensure that changes being made comported with equivalency concerns. Similar contacts with other jurisdictions are now occurring as State legislatures consider changes to State laws to achieve equivalency.

In December 1990, the Associate General Counsel for Equal Opportunity and Administrative Law, at the annual Fair Housing Assistance Program (FHAP) conference in Dallas, Texas, announced OGC's commitment to reviewing proposed State legislation and conducting, with FHEO, workshops on equivalency for State and local governments. Agencies were later sent an announcement of the policy, as well as copies of three State laws which had already been determined to be equivalent. Subsequently, OGC-Fair Housing staff have participated in workshops for FHAP agencies on equivalency issues and have also worked informally with representatives of numerous State and local agencies on individual equivalency-related questions during the course of the workshops. From December 1990 to the present, OGC-Fair Housing staff have completed 73 reviews of enacted or proposed legislation, or 79.3% of the reviews conducted since the Act was passed, not including the technical assistance and informal reviews conducted by Regional Counsel of proposed local legislation.

OGC-Fair Housing, as part of its reviews of enacted legislation, has included comments which address provisions of State or local legislation which are not identical to those found in the Fair Housing Act. In many instances, the differences are minor and require no action. In some instances, the differences suggest that implementation of the law be monitored to ensure that it is interpreted similarly to the

Act. In some situations, the differences require that, because the State or local legislation does not cover practices which are made unlawful under the Act, HUD-filed complaints which involve those particular practices should not be referred to the agency for enforcement, despite overall equivalency of the law. Additionally, some provisions which are not included in the enacted legislation, but which are considered to be of concern in the equivalency analysis, may be added by regulation or clarified by interpretation. These possibilities provide more flexibility in approving equivalency.

Appendix F



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

AUG 28 1992

Mr. Wilfredo J. Gonzalez
Staff Director
U. S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, DC 20425

Dear Mr. Gonzalez:

I am responding to your August 25, 1992 request for HUD's review and comments on the Commission's final draft report on "Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System." It is unfortunate that, despite our extensive efforts to cooperate with the Commission in the preparation of this report, the Commission has chosen to disregard or downplay what we consider to have been significant accomplishments in a relatively short time concerning a very complex and difficult area. "Fair Housing for All" is one of Secretary Kemp's top priorities and we are proud of our achievements in this area.

1. Although the Commission requested HUD's comments on the "final draft report," the report did not include Chapter 4, Findings and Recommendations, and the Commission declined to provide it when my staff requested it. HUD therefore expresses no views on the contents of that Chapter.
2. The Commission's survey of State and local agencies was conducted in 1990. The pace of activity in the last eighteen months suggests that conclusions drawn from this survey are likely to be outdated. We have provided information on the current status of our substantial equivalency efforts in Enclosure A.
3. The Commission agrees with HUD that "it is essential that HUD not relax the standards that it used up until January 1992 to evaluate requests for certification. As of January [1992], HUD properly insisted that State and local laws replicate to a high degree the Federal law in all respects." (p.28). In view of the Commission's conclusion, which should be highlighted as significant, it seems inappropriate to provide

extensive quotations (p.24-28 and 41-44) from State and local officials who attack the high standards that the Commission and HUD support. In addition, the report does not indicate the flexibility which has been a part of HUD's analysis of State and local laws, which indicates HUD's clear adoption of a "substantial equivalency" rather than a "mirror image" standard.

4. The discussion at the end of Chapter 2 expressing concern about possible problems with the Office of General Counsel's (OGC) processing of requests for certification in a timely manner was without basis when written and, based on OGC's processing activities in 1992, is without basis in fact. Contrary to the information in the report, OGC does have the capacity to conduct reviews of requests for certification in a comprehensive and timely fashion and has prioritized and allocated the resources necessary to do so. The report also fails to acknowledge the depth of legal analysis required to review legislative, regulatory and administrative submissions and the fact that most jurisdictions will require multiple analyses. The fact is that, during the last three months, OGC has provided legal analysis of approximately 66 laws and ordinances from grandfathered agencies and has reviewed 16 interim agreements.

HUD has actively worked with states and localities in their efforts to be certified. For example, OGC prepared six memoranda analyzing laws and regulations in connection with the certification of the Fair Housing Law of the State of Massachusetts. (See Enclosure B). This is not atypical. In addition, HUD notified all grandfathered agencies by a March 20, 1992 letter from the Assistant Secretary for Fair Housing and Equal Opportunity of the need to resubmit their requests for certification by June 1st so that a review of their laws and negotiation of an interim agreement could be completed by the September 13, 1992 deadline. (Enclosure C). HUD has continued to receive and process requests for certification received after June 1st, 1992. In fact, 13 of the 19 requests for legal analysis pending in Headquarters OGC were received after June 1st, and 9 of the 13 were received in the last 30 days. Nonetheless, virtually all currently outstanding analyses should be completed before September 13, 1992.

5. Despite documentation provided by HUD that the 1989 monitoring guidance sent to the Regions governing grandfathered agencies was "formal guidance", the report fails to reflect this information. All

grandfathered agencies which were granted the 8-month extension continue to be governed by these 1989 monitoring guidelines. Additionally, the Department's written guidance describing performance standards for assessing the performance of agencies with interim agreements was issued on September 24, 1991. Guidance to the Regions concerning monitoring activities is reviewed and may be revised and updated on an on-going basis. The existing guidance provides in-depth requirements, timelines and procedures by which the Regions should monitor an agency's performance and provide necessary follow-up action.

6. Although the report discusses some of HUD's activities to assist State and local agencies in the certification process prior to 1990, it does not adequately reflect the extent of those activities. The Department has been actively involved with certification since November 1988, when the proposed regulations were issued, and has continued since that time. Specifically, the final regulations were issued in January 1989; Fair Housing Assistance Program (FHAP) National Policy conferences held in FY 89, FY 90, FY 91 and FY 92 all focused specifically on the topic of certification; the Fair Housing Agency Advisory Work Group was formed and has provided effective recommendations, accepted by HUD, in the area of certification; and extensive technical assistance has been provided to the agencies, upon request, in the form of on-site visits, conference calls and written guidance. Another significant step was to establish a policy, in 1990, to review proposed laws and regulations in addition to enacted legislation and final regulations. Although the policy was to review proposed laws and regulations only once, the Department has, in fact, conducted numerous reviews of proposed legislation/regulations for more than 90% of the 120 grandfathered agencies, in addition to multiple reviews of the final laws/regulations. Given the fact that HUD cannot require states and localities to pass specific legislation nor lobby their governing bodies to do so, our efforts to assure the involvement of state and local government in the new fair housing enforcement scheme have been forceful and continuous.
7. The case processing procedures for agencies with executed interim agreements and grandfathered agencies which received extensions are vastly different. The procedures utilized by grandfathered agencies (including the period of the extension) follow the pre-amended Title VIII requirements. The Fair Housing Amendments Act (FHAA) significantly revised and

expanded the rights, procedures, remedies and other areas of Title VIII enforcement (e.g., establishment of the administrative hearing process and the right of election for judicial review). All agencies with executed interim agreements have revised their laws to be substantially equivalent to the FHAA.

8. The report is written as though the Department will be operating without the state and local agencies permanently or for a long and indefinite period (although the Commission's recent survey shows that a considerable number of agencies expect to be certified by 1993). We are continually receiving requests for certification and expect to have more than 100 agencies certified as substantially equivalent in the next three or four years. (It took approximately 10 years from FY 1979, when the Fair Housing Assistance Program was authorized up to the point in 1988 when the FHAA was passed for HUD to recognize 122 agencies.) The report should reflect this likely temporary loss of agencies and their return on a piecemeal basis rather than the scenario of a permanent loss which it projects.
9. We take exception to the manner in which the Commission computes the costs of complaint processing by FHAP agencies (p. 83, 84) because it understates FHAP costs. While HUD's FHAP allocation (not all of which is spent for complaint processing) represents HUD's contribution to complaint processing, it does not represent (nor has it ever been intended to represent) the full cost of processing because FHAP agencies contribute state and local funds for that purpose. An estimate of HUD's costs to process a complaint formerly handled by a FHAP agency should represent the full cost. It is clear that HUD will incur some additional costs to pick up the slack from jurisdictions which are not certified by September 1992. However, the estimate of \$13 million on page 84 is highly suspect.
10. The Commission inappropriately defines "workload" as "number of complaints received for processing." (p. 81). An investigator's workload also contains open complaints carried over from one period to another.
11. The report suggests that HUD has no plans to address the impact on its workload of complaints returned from state and local agencies as of September 13, 1992. The Department has taken steps to address this situation. Every effort is being made to continue to assist state and local agencies to revise their laws to meet the substantial equivalency requirements. In addition, HUD has conducted extensive investigative training for all

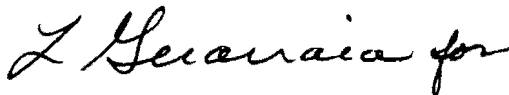
regional and field office staff who were not previously involved in complaint processing activity.

12. On page 3 of the draft report, the last four words of the next to last sentence of footnote 8 should be deleted. If either party elects to have a charge adjudicated in Federal court the election is binding on the other party.

At page 8 the draft report incorrectly states that "[p]rior to 1988, Title VIII required HUD to seek a conciliation agreement between the parties only if an investigation revealed a pattern or practice of discrimination and if the Secretary decided to attempt to resolve the matter." (Emphasis added, citation omitted.) There was no requirement that a complaint involve a pattern or practice of discrimination in order for HUD to seek to resolve a complaint through conciliation. (Furthermore, the citation in Footnote 20 is incorrect.)

Thank you for the opportunity to comment on your draft report.

Very sincerely yours,

A handwritten signature in cursive script, appearing to read "G. Mansfield for".

Gordon H. Mansfield
Assistant Secretary

Enclosures

ENCLOSURE A

Status of HUD's Activities Regarding Requests for Certification

Number of jurisdictions "grandfathered in" as certified under the
Fair Housing Act: 120

Extensions:

Number requested:	114
Number granted:	101
Number denied:	13
Number not requesting extension:	6

Number of requests received for Certification from agencies since
September 13, 1988

Total requests received:	89	(Grandfathered 73 Nongrandfathered 16)
Number of States:	42	
Number of localities:	47	

Number of requests received since January 13, 1992: 36*

Agencies with substantially equivalent laws and ordinances and
executed interim agreements as of August 27, 1992

<u>States</u>	<u>Localities</u>
Texas	Dallas, TX
North Carolina	Asheville-Buncombe County, NC
	Charlotte, NC
	Winston-Salem, NC
South Carolina	
Indiana	
Florida	
Arizona	
Nebraska	

TOTAL: 11

*Number reflects only agencies that have formally requested certification. It does not include the actual number of legal reviews of passed laws conducted for these agencies, those agencies which have not formally requested certification, or the multiple reviews of proposed laws/regulations of agencies which have and have not made formal requests for certification.

page 2

Agencies with substantially equivalent laws and ordinances
(without executed interim agreements) as of August 27, 1992

States

Localities

Connecticut
Illinois
Massachusetts
Montana
Oklahoma
Pennsylvania
Georgia
Kansas
Virginia
West Virginia

Salina, KS
Charleston, WVA
Dubuque, IO
Shaker Heights, OH
Greensboro, NC

TOTAL: 15

Number expected to receive interim agreements by
September 13, 1992: 26

[Enclosures B and C may be inspected at the
U.S. Commission on Civil Rights, 1121 Vermont Ave. NW,
Room 709, Washington, D.C. 20425.]